

Rule 402A. Admissions or Stipulations in Proceedings to Revoke Probation, Conditional Discharge or Supervision.

In proceedings to revoke probation, conditional discharge or supervision in which the defendant admits to a violation of probation, conditional discharge or supervision, or offers to stipulate that the evidence is sufficient to revoke probation, conditional discharge or supervision, there must be substantial compliance with the following.

(a) Admonitions to Defendant. The court shall not accept an admission to a violation, or a stipulation that the evidence is sufficient to revoke, without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant understands the following:

(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;>

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision.

(b) Determining Whether Admission Is Voluntary. The court shall not accept an admission to a violation, or a stipulation sufficient to revoke without first determining that the defendant's admission is voluntary and not made on the basis of any coercion or promise. If the admission or tendered stipulation is the result of an agreement as to the disposition of the defendant's case, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the agreement, or that there is no agreement, and shall determine whether any coercion or promises, apart from an agreement as to the disposition of the defendant's case, were used to obtain the admission.

(c) Determining Factual Basis for Admission. The court shall not revoke probation, conditional discharge or supervision on an admission or a stipulation without first determining that there is a factual basis for the defendant's admission or stipulation.

(d) Application of Rule 402. The provisions of Rules 402(d), (e), and (f) shall apply to proceedings on a petition to revoke probation, conditional discharge or supervision.

Adopted October 20, 2003, effective November 1, 2003.

Committee Comments

(October 20, 2003)

This rule follows the mandate expressed in *People v. Hall*, 198 Ill. 2d 173 (2001).