

¶ 5 In July 2007, defendant pleaded guilty to arson (720 ILCS 5/20-1(a) (West 2004)), a Class 2 felony.

¶ 6 According to the factual basis, in September 2005 defendant decided to set the house in which he lived on fire. Defendant poured gasoline around the house foundation in the basement; thereafter, the hot water heater turned on, igniting the gasoline, resulting in a fire.

¶ 7 At the September 2007 sentencing hearing, the trial court considered the presentence investigation report (PSI) and other evidence. The court sentenced defendant to 36 months' probation and 60 days in jail with credit for time served and day-for-day credit.

¶ 8 In February 2010, the State filed a petition for revocation of probation. Defendant admitted he violated the terms of probation by consuming alcohol on December 17, 2009. In November 2010, the State presented an updated PSI showing in March 2010 defendant pleaded guilty to an amended Class A misdemeanor for battery. In December 2010, the trial court resentenced defendant to 18 months' periodic imprisonment with service of 90 days' confinement. The court noted the sentence should not be characterized as a work-release program and the release was not restricted to employment. The court continued the resentencing hearing to allow for further consideration of the periodic imprisonment schedule. When the hearing resumed, the court provided defendant could serve 74 one-day weekends, and make up the balance of the 16 days either on days he did not work or as a continuous period during the last four weeks of the 18-month sentence. While pronouncing sentence, the trial court stated, "If you want to do it in some other fashion that causes you to not lose your job, I'll let you fiddle with the timing."

¶ 9 In late December 2010, defendant filed a motion to reconsider sentence, contending his sentence was excessive. At the hearing on the motion, the trial court offered to

modify the period of periodic imprisonment to 12 months. However, the defendant chose to maintain 18 months' periodic imprisonment. The trial court denied the motion on February 25, 2011.

¶ 10 On March 21, 2011, defendant filed a notice of appeal and the trial court appointed OSAD to represent him. In February 2012, OSAD filed a motion to withdraw as counsel and included a supporting memorandum of law. Proof of service has been shown on defendant. On its own motion, this court granted defendant leave to file additional points and authorities on or before March 15, 2012. None have been filed. After examining the record and executing our duties consistent with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 11 II. ANALYSIS

¶ 12 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Finley*, 481 U.S. 551 (1987), which we characterize as a motion to withdraw pursuant to *Anders*, 386 U.S. 738 (1967), contending an appeal in this case would be frivolous. Specifically, OSAD contends the trial court did not abuse its discretion in resentencing defendant to 18 months' periodic imprisonment. We agree.

¶ 13 As a preliminary matter, we note OSAD's motion to withdraw was filed pursuant to *Finley*, which applies to postconviction collateral attacks. *Finley*, 481 U.S. at 556. *Anders* applies in direct appeals where an attorney appointed to represent an indigent client moves to withdraw because no meritorious issue exists. *Anders*, 386 U.S. at 744. Because this is a direct appeal from the trial court's judgment, we characterize OSAD's motion as a motion to withdraw pursuant to *Anders*.

¶ 14 A reviewing court may not alter a defendant's sentence absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). The trial court has broad discretionary powers in imposing a sentence and its sentencing decisions are entitled to great deference. *Alexander*, 239 Ill. 2d at 212, 940 N.E.2d at 1066. " 'A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the "cold" record.' " *Alexander*, 239 Ill. 2d at 212-13, 940 N.E.2d at 1066 (quoting *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999)). A sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Crenshaw*, 2011 IL App. (4th) 090908, ¶ 22, 959 N.E.2d 703.

¶ 15 A sentence of periodic imprisonment may be imposed to permit a defendant to seek employment, work, attend to family needs, or obtain treatment, among other things. 730 ILCS 5/5-7-1(b) (West 2004). Section 5-7-1(d) of the Unified Code of Corrections (Code) provides, in pertinent part, as follows:

"A sentence of periodic imprisonment shall be for a definite term of from *** 18 to 30 months for a Class 2 felony, *** however, no person shall be sentenced to a term of periodic imprisonment longer than one year if he is committed to a county correctional institution or facility, and in conjunction with that sentence participates in a county work release program comparable

to the work and day release program provided for in Article 13 of the Unified Code of Corrections in State facilities." 730 ILCS 5/5-7-1(d) (West 2004).

¶ 16 Here, defendant received an 18-month periodic imprisonment sentence requiring him to serve 90 days' confinement in the McLean County jail. OSAD contends defendant's sentence does not qualify as a work-release program, requiring the periodic imprisonment to be no more than 12 months, under the Code. In support, OSAD cites *People v. Reyes*, 338 Ill. App. 3d 619, 788 N.E.2d 361 (2003), for the following proposition: where the record does not indicate defendant's employment was part of a county work-release program, then an 18-month sentence is valid.

¶ 17 Our review of the record shows the trial court's resentencing considerations were to impose a burdensome sentence without causing detriment to defendant's employment. In this effort, the court allowed defendant great flexibility in executing his sentence. The court required defendant to serve at least one day per week in the county jail but suggested he could serve additional days when he did not work. Moreover, release was not restricted to employment. Nothing in the record indicates defendant's sentence was subject to the terms of a county work-release program. Based on the record, we conclude defendant was not ordered to participate in a county work-release program. Therefore, the 18-month periodic imprisonment term was statutorily authorized for this Class 2 felony.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 20 Affirmed.