

NOTICE
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2012 IL App (4th) 110533-U

Filed 9/20/12

NO. 4-11-0533

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
KAYRENE WRIGHT,)	No. 06CF128
Defendant-Appellant.)	
)	Honorable
)	Claudia S. Anderson,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the evidence indicated defendant willfully refused to pay the financial obligations of her probation conditions, the trial court's decision to revoke her probation was not against the manifest weight of the evidence.
- ¶ 2 In August 2006, the trial court found defendant, Kayrene Wright, guilty of theft from a person and robbery. In October 2006, the court sentenced her to probation and required her to pay restitution and other costs. In October 2010, the State filed a petition to revoke defendant's probation. After finding the State met its burden on the petition, the court revoked defendant's probation and resentenced defendant to concurrent three-year prison terms on the offenses.
- ¶ 3 On appeal, defendant argues the trial court erred in revoking her probation. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In May 2006, the State charged defendant by amended information with single counts of theft from a person (720 ILCS 5/16-1(a) (West 2006)) and robbery (720 ILCS 5/18-1 (West 2006)). In August 2006, the trial court found her guilty on both counts. In October 2006, the court sentenced her to four years' probation and ordered her to perform 400 hours of public-service work and pay \$256 in court costs, \$2,132 in restitution, and a \$200 genetic-marker-grouping-analysis fee.

¶ 6 In October 2010, the State filed a petition to revoke defendant's probation. The State claimed defendant violated her probation by willfully failing to pay court costs, restitution, and the genetic-marker fee. The trial court appointed the public defender to represent her.

¶ 7 In February 2011, the trial court conducted a hearing on the revocation petition. Andrea Caudill, defendant's probation officer, testified the court ordered defendant to pay court costs, restitution, and the genetic-marker fee. Caudill stated defendant still owed \$231 in court costs, \$1,892 in restitution, and \$200 for the genetic-marker fee.

¶ 8 Defendant testified she was 58 years old. She lived in Memphis, Tennessee, with her daughter. She stated she had a heart condition and had been unable to find work. She had only been able to pay \$240 but would have paid the rest if she had the money. She stated she had no income.

¶ 9 On cross-examination, defendant stated she worked at Kentucky Fried Chicken from March 2009 to May 2010. From June 2008 to January 2009, she worked at Meadowbrook Farms. From October 2008 to February 2009, defendant worked at a temporary agency. Defendant stated she stopped smoking in August 2009.

¶ 10 The trial court found defendant had paid only \$265 toward the total amount she owed and that \$250 of that amount came from her bond. Although defendant had been employed on several occasions, the court found she failed to make a good-faith effort to pay the money she owed. The court found the State met its burden on the petition and revoked her probation.

¶ 11 At the April 2011 resentencing hearing, the trial court noted an additional \$100 had been paid toward restitution. Noting defendant's long criminal history and characterizing her as "a menace to the peaceful community of Danville, Vermilion County, Illinois," the court resentenced her to concurrent three-year prison terms on both counts. The court also ordered defendant to pay the balance of the restitution within five years.

¶ 12 In May 2011, defendant filed a motion to reconsider sentence. Defendant argued the sentence was excessive given that her failure to pay was not a willful act but was based on her inability to pay due to her financial status. In June 2011, the trial court denied the motion. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues the trial court erred in revoking her probation, claiming the State failed to prove the 58-year-old grandmother, who was unemployed and in poor health, had the ability to pay. We disagree.

¶ 15 "A probation revocation proceeding is in the nature of a civil proceeding arising in the wake of a previous conviction and sentence of probation, and the violation of previously imposed conditions of probation, not the commission of a culpable offense, must be proved." *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999). The State has the burden of proving the probation violation by a preponderance of the evidence. *Williams*, 303 Ill.

App. 3d at 267, 707 N.E.2d at 731; 730 ILCS 5/5-6-4(c) (West 2006).

¶ 16 On appeal, the trial court's decision on a petition to revoke probation will not be overturned unless the court's findings are against the manifest weight of the evidence. *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731. "A finding is against the manifest weight of the evidence only if a contrary result is clearly evident." *People v. Clark*, 313 Ill. App. 3d 957, 960, 731 N.E.2d 432, 435 (2000).

¶ 17 According to section 5-6-4(d) of the Unified Code of Corrections (730 ILCS 5/5-6-4(d) (West 2006)), a term of probation "shall not be revoked for failure to comply with conditions of a sentence or supervision, which imposes financial obligations upon the offender unless such failure is due to his willful refusal to pay." "Willful failure to pay means a voluntary, conscious and intentional failure." *People v. Davis*, 216 Ill. App. 3d 884, 888, 576 N.E.2d 510, 513 (1991). "Willfulness generally may be inferred from the actor's conduct and other circumstances." *People v. Clark*, 268 Ill. App. 3d 810, 814, 645 N.E.2d 590, 593 (1995).

¶ 18 In the case *sub judice*, the trial court sentenced defendant to four years' probation in October 2006. As part of her probation, the court required defendant to pay court costs, restitution, and the genetic-marker fee. At the February 2011 hearing on the State's petition to revoke probation, the evidence indicated defendant still owed \$231 in court costs, \$1,892 in restitution, and \$200 for the genetic-marker fee.

¶ 19 The evidence also indicated defendant had been employed, albeit part-time, from October 2008 to February 2009 at a temporary agency, from June 2008 to January 2009 at Meadowbrook Farms, and from March 2009 to May 2010 at Kentucky Fried Chicken. Defendant had also smoked cigarettes but quit buying them in August 2009.

¶ 20 We agree that defendant's failure to pay was willful and intentional. Although defendant was employed on multiple occasions and had discretionary cash to purchase cigarettes, she demonstrated she did not consider the financial obligations of her probation conditions to be a priority. Defendant's initial out-of-pocket payment after the application of her bond was only \$15. No evidence indicated defendant tried to contact the probation department to explain her circumstances or make a partial payment. As evidenced by her conduct, she made little or no effort to pay the monetary conditions of her probation.

¶ 21 Defendant argued at the revocation hearing that she was unemployed and had a heart condition. However, those were current conditions. They did not excuse her failure to comply with the terms of her probation when she was gainfully employed. "[A] defendant's failure to make *bona fide* efforts to pay [her] probation fee 'may reflect an insufficient concern for paying the debt [she] owes to society for [her] crime.' " *People v. Walsh*, 273 Ill. App. 3d 453, 457, 652 N.E.2d 1102, 1106 (1995) (quoting *Bearden v. Georgia*, 461 U.S. 660, 668 (1983)). Given defendant's long criminal history, which the trial court found to include 52 convictions, of which 29 were felonies, it is clear defendant has little respect for the law and no concern for payment of the debt she owes, not only to society but also to the court and victim as well. We find the trial court's decision to revoke defendant's probation was not against the manifest weight of the evidence.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.