

NOTICE

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2014 IL App (4th) 130232-U
NOS. 4-13-0232, 4-13-0233 cons.

FILED
October 7, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v. (No. 4-13-0232))	Vermilion County
MICHAEL ELLIOTT,)	No. 10CF468
Defendant-Appellant.)	
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THE PEOPLE OF THE STATE OF ILLINOIS,)	No. 10CF478
Plaintiff-Appellee,)	
v. (No. 4-13-0233))	Honorable
MICHAEL ELLIOTT,)	Craig H. DeArmond,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's finding that the State presented sufficient evidence to prove, by a preponderance of the evidence, that defendant violated his probation was not against the manifest weight of the evidence.

(2) The trial court committed no reversible error when resentencing defendant upon revocation of his probation.

¶ 2 Defendant, Michael Elliott, appeals the trial court's judgment revoking his probation in Vermilion County case Nos. 10-CF-468 and 10-CF-478 and resentencing him to concurrent sentences of five years and two years in prison, respectively. He argues (1) the State failed to present sufficient evidence to prove he violated the terms of his probation and (2) the court

considered improper factors when sentencing him. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On August 31, 2010, the State charged defendant with one count of delivery of a controlled substance (720 ILCS 570/401(d) (West 2008)) in Vermilion County case No. 10-CF-468. On September 3, 2010, it brought additional charges against defendant, including one count of possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), in Vermilion County case No. 10-CF-478.

¶ 5 On December 14, 2011, the trial court conducted a hearing with respect to both cases and defendant pleaded guilty to an amended charge of attempted delivery of a controlled substance (720 ILCS 5/8-4(a) (West 2008), 720 ILCS 570/401(d)(i) (West 2008)), a Class 3 felony, in case No. 10-CF-468 and possession of a controlled substance (720 ILCS 570/402(c) (West 2008)), a Class 4 felony, in case No. 10-CF-478. On February 8, 2012, the court sentenced defendant to 30 months' probation subject to several terms and conditions, including that defendant (1) "report to, and appear in person before the probation officer ***, as she shall direct"; and (2) not "possess, consume, or have in [his] body the presence of" cannabis, alcohol, or "any controlled substance unless prescribed to [him] by a physician."

¶ 6 On October 23, 2012, the State filed a petition to revoke defendant's probation. It alleged defendant violated the conditions of his probation by failing to report to his probation officer as directed on May 21 and June 18, 2012, and by testing positive for cocaine and opiates on September 24, 2012.

¶ 7 On January 10, 2013, the trial court conducted a hearing on the petition to revoke. The State presented the testimony of Tara Woodard, defendant's probation officer. Woodard tes-

tified defendant was required to report to her on a monthly basis. She stated he was scheduled for an appointment on May 21, 2012, and had been given an appointment card in April for that date. However, on May 21, 2012, defendant went to the front window of the probation department's secretary's office and dropped off his reporting form without being seen by Woodard. Woodard noted that, at that point, defendant was not allowed to report by form or mail. According to Woodard, defendant was next mailed notice that he was scheduled for an appointment on June 18, 2012. On that date, defendant again arrived at the probation department, dropped off his reporting form "[at] the front window," and left before seeing Woodard. Woodard reiterated that defendant had not been given permission to report via form.

¶ 8 On cross-examination, Woodard acknowledged defendant came to the front window of the probation department on both dates, had communication with the department's secretary, and provided documentation. When asked about the substance of defendant's communication with the secretary, Woodard testified defendant "just said that he could drop off his reporting form and left the building." She did not know how the secretary responded to defendant's statement. Additionally, Woodard testified she called defendant after the June appointment to tell him he missed the appointment. Defendant responded "that he thought he just had to drop off a reporting form because nothing changed in the between." Thereafter, defendant consistently reported to Woodard on a monthly basis. On redirect, Woodard testified that, prior to May 21, 2012, defendant had reported to her in person.

¶ 9 Following Woodard's testimony, the State rested. Defendant then testified on his own behalf. He stated he was in the courthouse on May 18 and June 21, 2012, for the purposes of reporting to the probation office and paying on his fines. (We note defense counsel's initial

questions to defendant (and, as a result, defendant's testimony) set forth the dates of May 18 and June 21, 2012, while the State's petition to revoke and Woodard's testimony reflect the actual dates at issue were May 21 and June 18, 2012.) Defendant acknowledged he did not see Woodard on those dates and testified: "I didn't know I needed to. It ask [sic] you on your probation report if you need to talk to your probation officer. I didn't have anything to tell anybody I needed to." Defendant agreed he had been on probation before and that "there was a practice at that time in [his] prior probation that [he] would turn in paperwork." He further testified that, on both the May and June 2012 dates, he spoke with a receptionist at the probation department but denied that anyone told him he needed to speak with Woodard. According to defendant, "[t]hey just asked me if I needed to. I said I didn't have anything to say. Nothing new. And I said okay." He asserted he saw Woodard every month thereafter and his failure to see her on May 21 and June 18, 2012, was inadvertent.

¶ 10 The trial court determined the State proved by a preponderance of the evidence that defendant violated his probation by failing to report to his probation officer as directed on May 21 and June 18, 2012. The court reasoned as follows:

"[Defendant's] knowledge of *** probation actually works against him. *** [Defendant's] been on probation before and I can take judicial notice of which shows [defendant] has a 30[-]year criminal history where he's been on probation a multitude of times. He's familiar with reporting to probation. It is not a sufficient way of reporting to probation by simply dropping off the form when you know you're supposed to see your probation officer in person."

The court noted that, hypothetically, a person on probation may fear he would test positive for a controlled substance and might not want to see his probation officer because the probation officer could have him tested. It concluded: "[Defendant] knew what he was supposed to do, he knew that he was supposed to see *** Woodard. He choose [*sic*] not to do that. It isn't an issue of [defendant] going up to his probation officer for the very first time and having no idea what was expected of him."

¶ 11 On February 27, 2013, the trial court conducted defendant's sentencing hearing. At the State's request, the court took judicial notice of defendant's presentence investigation report, which showed defendant had an adult criminal history that included convictions for criminal damage to property (1978), attempted theft (1980), unlawful possession of cannabis (1997), and criminal trespass to real property (2009). Additionally, defendant had four convictions for driving under the influence (DUI) (1984, 1987, 1991, and 1999), seven convictions for driving on a revoked license (1986, 1989, two in 1991, 1992, 1993, and 1999), and two convictions for operating an uninsured motor vehicle (1991 and 1993). He had been sentenced to probation a total of seven times.

¶ 12 Regarding defendant's physical and mental history and condition, the presentence investigation report stated as follows:

"[D]efendant advised he suffers from high blood pressure, high cholesterol, carpal tunnel and arthritis in both hands, his right leg hurts constantly due to a past broken ankle and a knee problem. The defendant further advised that he was at Indiana University Hospital in Indianapolis, Indiana for approximately six weeks eight

years ago due to gangrene and surgeries. He also advised approximately seven or eight years ago that he was blind for four years. He stated that he had cataract surgery and his vision was restored. The defendant reported he is prescribed Naproxin once a day for arthritis, Crystore once a day for Cholesterol, Tendenol once a day for blood pressure, and Hydrocodone four times a day for leg pain."

The report described defendant as unemployed but noted he received a medical card, food stamps, and Social Security Income (SSI).

¶ 13 Finally, the presentence investigation report stated, on September 24 and December 17, 2012, defendant tested positive for both cocaine and opiates. Defendant's drug test results from those dates were attached to the report.

¶ 14 The State recommended defendant be placed in the Illinois Department of Corrections (DOC) for two years, arguing he had "proven unsuccessful at probation." Defense counsel asked that defendant be placed back on probation, arguing he had consistently reported to his probation officer since the dates at issue in the petition to revoke, had not been arrested or charged with any criminal violations, and was in extremely poor physical health "as evidenced by his receipt of SSI disability."

¶ 15 Ultimately, the trial court resentenced defendant to concurrent sentences of five years in prison in connection with case No. 10-CF-468 and two years in prison in connection with case No. 10-CF-478. In reaching its decision, the court stated "the nexus" of defendant's probation violations was "testing positive for cocaine and opiates as well as [defendant's] failure

to report." It noted defendant's "34-year adult criminal history," including his four DUI convictions and seven convictions for driving on a revoked license. The court then stated as follows:

"So I guess from the arguments of [defense counsel] I'm somehow supposed to be comforted by the thought that after years of drug and alcohol abuse you've now qualified to receive our tax money as [SSI]. In other words, I'm paying for you to have abused drugs and alcohol. That's a comforting thought."

The court went on to discuss the nature of the offenses at issue, noting that they were both drug-related offenses. Additionally, it considered that defendant was placed on probation in February 2012 and was "still testing positive for cocaine" in September 2012. Finally, the court concluded as follows:

"Taking into consideration the history, character, and condition of the Defendant, I'm of the opinion that imprisonment is necessary for the protection of the public; and probation would deprecate the seriousness of the offense and be inconsistent with the ends of justice."

¶ 16 On February 27, 2013, defendant filed motions to reconsider in both cases. He argued the State had failed to prove the material elements of its petition to revoke by a preponderance of the evidence and the trial court erred in finding otherwise. Additionally, defendant argued the court erred in sentencing him to imprisonment in DOC, maintaining his sentences were excessive.

¶ 17 On March 18, 2013, the trial court conducted a hearing on defendant's motions to

reconsider. In arguing the motions, defense counsel pointed out that the only evidence presented at the hearing on the State's petition to revoke involved defendant's alleged failure to report to his probation officer and no evidence had been adduced regarding his use of controlled substances. The trial court stated its recollection of the evidence was that the State only proceeded on paragraph two of its petition, alleging defendant failed to report as directed in May and June 2012, and did not seek to prove paragraph three, alleging defendant tested positive for controlled substances in September 2012. Nevertheless, the court found the State clearly established a violation based on defendant's failure to report, noting defendant "was no stranger" to either the courthouse or the probation department, he knew when he was supposed to report, and he failed to report as directed. Additionally, with respect to defendant's sentences, the court stated as follows:

"[Defendant's sentences] are not unreasonable in light of the Defendant's substantial prior criminal history, and the fact that he had violated a Class 3 probation. The State having established the allegations, the finding and sentence based upon the history, character, [and] condition of the offender were appropriate. Further probation would have been inconsistent with the ends of justice."

The court denied defendant's motions to reconsider.

¶ 18 Defendant filed notices of appeal in both cases. His cases were consolidated on appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant first argues the State failed to present sufficient evidence to

establish a violation of his probation. The State has the burden of proving that the defendant violated his probation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2012); *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999). "A proposition is proved by a preponderance of the evidence when the proposition is more probably true than not true." *People v. Love*, 404 Ill. App. 3d 784, 787, 937 N.E.2d 752, 755 (2010); *People v. Matthews*, 165 Ill. App. 3d 342, 344, 519 N.E.2d 126, 128 (1988) (defining the preponderance-of-the-evidence standard "as whether, considering all the evidence in the case, the proposition on which the party has the burden of proof is more probably true than not true").

¶ 21 "In evaluating whether the State met its burden, the trial judge is free to resolve inconsistencies in the testimony and to accept or reject as much of each witness's testimony as the judge pleases." *Love*, 404 Ill. App. 3d at 787, 937 N.E.2d at 755. "Because the trial judge is in a superior position to weigh the evidence and decide on the credibility of the witnesses, we may not reverse the judgment merely because we might have reached a different conclusion." *Love*, 404 Ill. App. 3d at 787, 937 N.E.2d at 755; *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731 ("When the evidence is controverted, the trial court, which sits as the trier of fact, has the function of weighing the evidence, assessing the credibility of the witnesses, and drawing reasonable inferences from the testimony presented.").

¶ 22 "When the trial court finds that a violation of probation has been proved, a challenge to the sufficiency of the evidence *** will succeed only if the trial court's finding is against the manifest weight of the evidence." *People v. Colon*, 225 Ill. 2d 125, 158, 866 N.E.2d 207, 226 (2007). "A finding is against the manifest weight of the evidence when a contrary result is clearly evident." *Matthews*, 165 Ill. App. 3d at 344-45, 519 N.E.2d at 128.

¶ 23 Here, in its petition to revoke, the State alleged defendant violated his probation on two separate grounds, asserting defendant (1) failed to report to his probation officer as directed on May 21 and June 18, 2012; and (2) tested positive for cocaine and opiates on September 24, 2012. Initially, defendant correctly points out on appeal that the State failed to present any evidence to support a finding that defendant violated his probation by testing positive for a controlled substance while on probation. The only evidence presented at the hearing on the petition to revoke concerned defendant's failure to report to his probation officer. Thus, we agree with defendant that the State did not prove by a preponderance of the evidence that he violated his probation by testing positive for cocaine and opiates on September 24, 2012.

¶ 24 With respect to the State's remaining allegation against defendant, that he failed to report to his probation officer as directed in May and June 2012, we find the State's evidence was sufficient to meet its burden. The record shows, in February 2012, defendant was sentenced to 30 months' probation. One condition of his probation was that he "make a report to, and appear in person before [his] probation officer ***, as she shall direct." At the hearing on the State's petition to revoke, Woodard testified defendant was required to report *to her* on a monthly basis and was not given permission to report via form. Despite these requirements and the fact that defendant had appeared in person before Woodard at previous appointments, defendant failed to meet with Woodard during probation appointments on May 21 and June 18, 2012. Instead, on those dates, defendant appeared at the probation department, dropped off his reporting form, and left without being seen by Woodard. Defendant's own testimony showed he spoke with a secretary in the probation department who asked whether he needed to speak with his probation officer and defendant declined.

¶ 25 We find the evidence presented was sufficient to prove by a preponderance of the evidence that defendant violated his probation. Notably, the evidence showed defendant was required to meet in person with his probation officer on a monthly basis but failed to do so in both May and June 2012. The trial court's finding of a probation violation was not against the manifest weight of the evidence.

¶ 26 On appeal, defendant argues his testimony raised a reasonable inference that the probation department's secretary "influenced [him] to conclude that he was not required to see his probation officer in person if he had no changes on his reporting form *** and nothing new to report." He contends that the State failed to rebut this testimony and, because it was uncontradicted, it could not be disregarded by the trial court.

¶ 27 To support his position, defendant cites *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 430 N.E.2d 1126 (1981), a paternity action in which the plaintiff alleged the defendant was the father of her child. In that case, there was "no apparent conflict between the testimony of the parties regarding their sexual intimacy during the probable period of conception" and the plaintiff denied that she had intercourse with anyone else during the relevant time frame. *Brown*, 88 Ill. 2d at 83-84, 430 N.E.2d at 1126-27. Nevertheless, a jury returned a verdict in favor of the defendant and the trial court denied the plaintiff's motion for a judgment notwithstanding the verdict. *Brown*, 88 Ill. 2d at 83, 430 N.E.2d 1126. The appellate court reversed and remanded, and it directed the trial court to enter judgment in favor of the plaintiff. *Brown*, 88 Ill. 2d at 83, 430 N.E.2d 1126. On review, the supreme court affirmed the appellate court's judgment. *Brown*, 88 Ill. 2d at 87, 430 N.E.2d at 1128.

¶ 28 In reaching its decision, the supreme court noted that although "the credibility of

witnesses and the weight to be accorded their testimony are typically jury considerations [citations], a jury cannot arbitrarily or capriciously reject the testimony of an unimpeached witness." *Brown*, 88 Ill. 2d at 85, 430 N.E.2d at 1127. It then set forth the proposition relied upon by defendant in this case that "[w]here the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury." *Brown*, 88 Ill. 2d at 85, 430 N.E.2d at 1127. With respect to the case before it, the court found the plaintiff's testimony "was rational, reasonably consistent, and certain" and concluded there was "no evidence in th[e] record that would justify a jury in discrediting [the] plaintiff's testimony that she did not have sexual relations with any other male during the critical period." *Brown*, 88 Ill. 2d at 85, 430 N.E.2d at 1128. It concluded as follows:

"In view of the admittedly existing intimate relationship between [the] plaintiff and [the] defendant during the period of conception, the absence of any testimony from which the jury could reasonably infer that [the] plaintiff had sexual relations with anyone other than [the] defendant during the critical period, and the absence of any evidence that tended to cast doubt on [the] plaintiff's credibility, we conclude that the evidence overwhelmingly supported [the] plaintiff's allegation that [the] defendant is the father of her child, and that no contrary verdict based on that evidence could ever stand." *Brown*, 88 Ill. 2d at 86, 430 N.E.2d at 1128.

¶ 29 Defendant also relies on *People v. Welch*, 78 Ill. App. 3d 184, 184-85, 397 N.E.2d 94, 94-95 (1979), wherein the trial court determined the defendant violated his probation for failing to " 'maintain treatment at the Illinois Psychiatric Institute.' " At a hearing in the matter, the defendant testified he went to the reception area of the Psychiatric Institute and spoke with a receptionist, who told him "that the organization would not take him." *Welch*, 78 Ill. App. 3d at 186, 397 N.E.2d at 96. The defendant testified he was not directed to any other office and went home. *Welch*, 78 Ill. App. 3d at 186, 397 N.E.2d at 96. He also asserted he reported the matter to his probation officer but was not given any further assistance in obtaining treatment. *Welch*, 78 Ill. App. 3d at 186, 397 N.E.2d at 96.

¶ 30 On review, the First District stated it was "not satisfied that the proof shows by a preponderance of the evidence that [the] defendant is solely culpable for violation of the conditions of his probation." *Welch*, 78 Ill. App. 3d at 186, 397 N.E.2d at 96. In reaching its decision, the court noted the defendant's testimony had been "clear and definite" that he requested assistance but was rejected by a receptionist at the Psychiatric Institute and that he reported the incident to his probation officer, who made no further effort to assist him. *Welch*, 78 Ill. App. 3d at 186-87, 397 N.E.2d at 96-97.

¶ 31 We find the facts of this case distinguishable from the case law defendant cites, including *Brown* and *Welch*. First, defendant's testimony regarding his interaction with the probation department's secretary does not necessarily establish what he asserts—that the secretary led him to believe that he was not required to see Woodard in person. In fact, defendant never explicitly attributed his alleged belief that he did not have to see Woodard to his conversation with the probation department's secretary. Instead, according to defendant, he was asked if he

needed to speak with his probation officer and he replied that he "didn't have anything to say." Second, although defendant argues a reasonable inference to be drawn from the evidence was that the secretary gave him the impression that he was not required to meet with Woodard, another reasonable inference that may be drawn from the evidence is that defendant knew he was required to meet with Woodard in person, as evidenced by his previous compliance with the terms of his probation.

¶ 32 Unlike in *Brown*, there was sufficient evidence presented in this case to support the trier of fact's finding. Additionally, unlike *Welch*, wherein the defendant was denied access to psychiatric treatment, the evidence in this case was not "clear and definite" that defendant was rejected by the probation department's secretary or denied access to his probation officer. As stated, the trial court's finding of a probation violation was not against the manifest weight of the evidence and the case law cited by defendant does not require an opposite result.

¶ 33 On appeal, defendant next challenges the sentences imposed by the trial court. He contends that, upon resentencing, the court considered improper factors, including that he tested positive for controlled substances while on probation and that he had qualified to receive SSI benefits.

¶ 34 "A trial court has broad discretion in imposing a sentence." *People v. Somers*, 2012 IL App (4th) 110180, ¶ 20, 970 N.E.2d 606. "On revoking a defendant's probation, the trial court sentences him to a disposition that would have been appropriate for the original offense." *People v. Palmer*, 352 Ill. App. 3d 891, 895, 817 N.E.2d 137, 140 (2004). A defendant's "conduct while on probation is evidence of his rehabilitative potential" and "it is appropriate for a defendant who conducts himself poorly while on probation to receive a more severe sentence than

he originally received." *Palmer*, 352 Ill. App. 3d at 895, 817 N.E.2d at 141. "[A]bsent an abuse of discretion, a sentence within the statutory range will not be overturned on appeal." *People v. Davis*, 319 Ill. App. 3d 572, 578, 746 N.E.2d 758, 763 (2001).

¶ 35 Here, defendant does not argue the trial court imposed a sentence outside the applicable statutory range. Rather, as stated, he maintains the court considered improper factors upon resentencing. The State argues defendant failed to preserve his alleged sentencing errors for review because he failed to raise them in his motion to reconsider, wherein he argued only that his sentences were excessive. See *People v. Baez*, 241 Ill. 2d 44, 129-30, 946 N.E.2d 359, 409 (2011) (holding sentencing claims of error are forfeited unless included within a postsentencing motion). Defendant acknowledges that his postsentencing motion "did not specifically raise the issue[s] presented *** on appeal." However, he contends we may nevertheless address his claims pursuant to the plain-error doctrine as they implicate the integrity of the judicial process.

¶ 36 "A reviewing court may consider unpreserved error when a clear or obvious error occurs and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Ramsey*, 239 Ill. 2d 342, 440-41, 942 N.E.2d 1168, 1222 (2010). The first step in plain-error analysis "is to assess whether a clear or obvious error occurred." *Ramsey*, 239 Ill. 2d at 441, 942 N.E.2d at 1222. Under the circumstances presented, we find no "clear or obvious error" warranting reversal of the trial court's sentencing decision.

¶ 37 First, defendant argues on appeal that the trial court "erred in basing [his] sentence[s] of imprisonment on [defendant] 'testing positive for cocaine and opiates,' where the State presented no evidence supporting that allegation during the probation revocation hearing." We acknowledge that, at the resentencing hearing on February 27, 2013, the court noted "the nexus" of defendant's probation violations was "testing positive for cocaine and opiates as well as [defendant's] failure to report." However, as discussed, testing positive for a controlled substance was not an appropriate basis for revoking defendant's probation where the State failed to present any evidence to support that allegation at the hearing on its petition to revoke.

¶ 38 Nevertheless, we find no reversible error occurred. Although the record shows the trial court made a misstatement of fact at the resentencing hearing, it corrected that misstatement when addressing defendant's motion to reconsider. In particular, at the March 2013 hearing on defendant's motion to reconsider, the court stated its recollection of the evidence was that the State only proceeded on paragraph two of its petition, alleging defendant failed to report as directed in May and June 2012, and did not seek to prove paragraph three, alleging defendant tested positive for controlled substances in September 2012. We note "comments by the trial court at a postsentencing hearing that shed light on claims of errors raised by the defendant are permissible; in fact, they are encouraged, to 'give[] the appellate court the benefit of the trial court's reasoned judgment on those issues.'" *Baez*, 241 Ill. 2d at 130, 946 N.E.2d at 409 (quoting *People v. Reed*, 177 Ill. 2d 389, 394, 686 N.E.2d 584, 586 (1997)). Here, not only do the court's postsentencing comments show that it was aware of the correct basis for finding defendant violated his probation, they also show the basis for the court's sentencing decision, which included defendant's prior criminal history, his character and condition, and the court's determination that

further probation would have been inconsistent with the ends of justice.

¶ 39 Additionally, we find that, under the facts presented, it was not inappropriate for the trial court to consider that defendant tested positive for a controlled substance while on probation. Although such circumstances were not an appropriate basis for finding defendant violated his probation and ordering his probation revoked, evidence was presented at the sentencing hearing, through defendant's presentence investigation report, that showed defendant tested positive for cocaine and opiates on two separate occasions while still on probation. As discussed, a trial court may consider a defendant's conduct on probation when fashioning an appropriate sentence. Here, the record contains evidence to support such considerations and we find no error.

¶ 40 Defendant's final argument concerns the following comments made by the trial court at sentencing:

"So I guess from the arguments of [defense counsel] I'm somehow supposed to be comforted by the thought that after years of drug and alcohol abuse you've now qualified to receive our tax money as [SSI]. In other words, I'm paying for you to have abused drugs and alcohol. That's a comforting thought."

He maintains the court's finding raises "concerns similar to the situation where a sentencing judge considers a defendant's unemployed status as a factor in aggravation" and "did not reflect the rigorous federal standards imposed on claimant's [*sic*] who must establish a severe level of physical or mental impairment before qualifying for federal disability benefits." Again, we find no error.

¶ 41 Taken in context, the trial court's comments demonstrate its focus on the nature of

defendant's original drug-related offenses, his criminal history, and his apparent continued use of controlled substances while on probation, each of which is an appropriate sentencing consideration. The specific comments referenced by defendant on appeal were made in response to defense counsel's argument that defendant was in poor physical health. The trial court did not dispute that contention, which finds support in the presentence investigation report; however, its comments indicate it placed greater emphasis on other factors, including defendant's use of drugs and alcohol. In any event, we find the comments to which defendant now objects were isolated and, given the court's findings at the hearing on defendant's motion to reconsider, not reflective of any "clear or obvious error" on the part of the trial court.

¶ 42 Under the circumstances presented, we find no plain error occurred. The trial court did not abuse its discretion when resentencing defendant.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment. As part of this court's judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 45 Affirmed.