

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130403-U
NOS. 4-13-0403, 4-13-0408 cons.
IN THE APPELLATE COURT

FILED
October 31, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JEFFREY W. WASHINGTON,)	Nos. 10CF332
Defendant-Appellant.)	10CF344
)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court reversed the trial court's revocation of defendant's probation and remanded with directions to allow defendant to withdraw his admission to the allegations in the State's petition to revoke probation.
- ¶ 2 In October 2011, defendant, Jeffrey W. Washington, pleaded guilty to retail theft (720 ILCS 5/16A-3(a) (West 2010)) in two separate cases (Sangamon County case Nos. 10-CF-332 and 11-CF-344). Pursuant to a negotiated plea agreement, the trial court sentenced defendant to 30 months of drug-court probation for the two convictions. In March 2013, the State filed a petition to revoke defendant's probation. At a hearing that same month, defendant admitted the allegations in the State's petition and the court revoked his probation. At a May 2013 resentencing hearing, the court resentedenced defendant to consecutive prison sentences of five years in case No. 10-CF-332 and seven years in case No. 11-CF-344.

¶ 3 Defendant appeals, arguing that (1) the trial court's revocation of his probation must be reversed because the court failed to admonish him in compliance with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) and (2) his seven-year sentence in case No. 11-CF-344 must be vacated and remanded with a sentencing cap of six years because the court incorrectly admonished him at the guilty-plea hearing that he faced a maximum prison sentence of six years. Because we agree with defendant's first contention, we reverse the revocation of his probation and remand for further proceedings. We note that the State also agrees with defendant's first contention, and we accept the State's concession.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Charges

¶ 6 In June 2010, the State charged defendant with retail theft (720 ILCS 5/16A-3(a) (West 2010)) in case No. 10-CF-332. Because defendant had a previous conviction for theft (Sangamon County case No. 08-CF-923), that charge was enhanced from a Class A misdemeanor to a Class 4 felony. See 720 ILCS 5/16A-10(2) (West 2010) (theft of property valued at less than \$300 with previous theft conviction).

¶ 7 In May 2011, while defendant was released on bond in case No. 10-CF-332, the State charged him with a second retail theft in case No. 11-CF-344. That charge was a Class 3 felony because the value of the property at issue exceeded \$300. 720 ILCS 5/16A-10(3) (West 2010).

¶ 8 B. The October 2011 Guilty-Plea Hearing

¶ 9 In October 2011, the trial court held a consolidated guilty-plea hearing in both cases. Pursuant to a negotiated-plea agreement, defendant pleaded guilty to the charges in both cases and the court sentenced him to 30 months of drug-court probation. Prior to accepting de-

fendant's guilty plea, the court made the following statement to defendant: "[A]ny sentence served on either case, for instance, if you were given the maximum term of six years in one case and then be [*sic*] given the maximum term of six years in another case, you would serve a total of 12 years."

¶ 10 The trial court further admonished defendant that retail theft, as charged in case No. 11-CF-344, was a Class 4 felony which, due to defendant's criminal history, carried a sentencing range of one to six years. Defendant stated that he understood this admonishment, which was actually incorrect because defendant faced a Class 3 felony charge in case No. 11-CF-344. Following further admonishments and the presentation of the factual basis, the court accepted defendant's guilty pleas and entered judgments of conviction.

¶ 11 C. The March 2013 Petition To Revoke

¶ 12 On March 1, 2013, the State filed a petition to revoke, alleging that defendant had violated various terms of his probation. At a hearing that same day, the trial court admonished defendant as to the allegations in the State's petition to revoke. The State clarified that defendant had pleaded guilty to one Class 3 felony and one Class 4 felony. Defense counsel noted that the docket sheets indicated defendant had pleaded guilty to two Class 4 felonies. After the State said that it would check whether one of the felonies was indeed a Class 3, the court continued the case to later date.

¶ 13 On March 8, 2013, at the continued hearing on the State's petition to revoke, the State announced that defendant had pleaded guilty to a Class 3 felony and a Class 4 felony that required the imposition of consecutive sentences. Again, defense counsel noted that the docket sheets indicated both of defendant's convictions were for Class 4 felonies. The trial court admonished defendant that if he was resentenced on to two Class 4 felonies, he would face up to 12

years in prison. The court further explained—out of "an abundance of caution"— that if defendant was resentenced on a Class 3 felony and a Class 4 felony, he faced up to 16 years in prison. Despite the continued confusion, the court accepted defendant's admission to the allegations in the State's petition to revoke.

¶ 14 Prior to accepting defendant's admission, however, the trial court did not give the following Rule 402A(a) admonishments: that (1) defendant had the right to a hearing with defense counsel present and the right to appointed counsel if defendant was indigent and the underlying offense was punishable by imprisonment; (2) at the hearing, defendant had the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his behalf; (3) at the hearing, the State must prove the alleged violation by a preponderance of the evidence; and (4) by admitting a violation, or by stipulating that the evidence was sufficient to revoke, there would 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 was sufficient to revoke, defendant waived 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 behalf. Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003). In addition to the failure to give these admonishments, the court did not determine whether a factual basis existed for defendant's admission. See Ill. S. Ct. R. 402A(c) (eff. Nov. 1, 2003). After accepting defendant's admission, the court revoked defendant's probation.

¶ 15 At a May 2013 resentencing hearing, defense counsel stated, "My client is still under the belief that he [pleaded] guilty to two Class 4 [felonies] *** and we are asking that he be sentenced within those confines." Despite the indication on the docket sheets that defendant pleaded guilty to two Class 4 felonies—something the State characterized as a "typo"—the trial

court announced that it would nonetheless resentence defendant within the range for a Class 3 felony. Following the parties' arguments, the court sentenced defendant to consecutive prison sentences of five years in case No. 10-CF-332 and seven years in case No. 11-CF-344.

¶ 16 These appeals followed. On defendant's motion, we consolidated the cases for review.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues that (1) the trial court's revocation of his probation must be reversed because the court failed to fully admonish him pursuant to Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) and (2) his seven-year sentence in case No. 11-CF-344 must be vacated and remanded with a sentencing cap of six years because the court incorrectly admonished him at the guilty-plea hearing that he faced a maximum prison sentence of six years.

¶ 19 A. Rule 402A Admonishments

¶ 20 The purpose of giving admonishments under Rule 402A "is to ensure that defendant understood his admission, the rights he was waiving, and the potential consequences of his admission." *People v. Dennis*, 354 Ill. App. 3d 491, 496, 820 N.E.2d 1190, 1194 (2004). As earlier noted, the State concedes that the trial court's revocation of defendant's probation must be reversed because the court failed to give the required admonishments under Rule 402A. We accept the State's concession, reverse the court's revocation of defendant's probation, and remand with directions that defendant be allowed to withdraw his admission to the allegations in the State's petition to revoke.

¶ 21 B. Defendant's Seven-Year Sentence

¶ 22 The State contends that defendant's seven-year sentence in case No. 11-CF-344 need not be vacated because the actual total sentence imposed (12 years) would have been within

the permissible resentencing range even if defendant had been convicted of two Class 4 felonies. However, because our reversal of the revocation of defendant's probation necessarily negates the seven-year sentence the trial court imposed as a result of that revocation, we need not address the State's contention.

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 25 Reversed and remanded.