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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|-----------------------|
| IN THE INTEREST OF DONYALE R., a Minor, | ) | Appeal from the       |
|   | ) | Court Circuit of      |
| (THE PEOPLE OF THE STATE OF ILLINOIS,   | ) | Cook County.          |
|   | ) |                       |
| Petitioner-Appellee,                    | ) | 15 JD 70126           |
|   | ) |                       |
| v.                                      | ) | The Honorable         |
|   | ) | Kristal Royce Rivers, |
| DONYALE R.,                             | ) | Judge Presiding.      |
|   | ) |                       |
| Respondent-Appellant).                  | ) |                       |

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Pierce and Mason concurred in the judgment.

**ORDER**

- ¶ 1       *Held:* When the trial court fails to inform the defendant of the sentencing range he faces for violating his probation, the appellate court must reverse the judgment entered on a plea of guilty to the charge that the defendant violated his probation.
- ¶ 2       Donyale R. pled guilty to a charge that he violated the terms of his probation. The trial court sentenced Donyale to the custody of the Department of Juvenile Justice (DJJ). We reverse and remand because the trial court failed to inform Donyale of the sentencing range he faced before he pled guilty.

¶ 3

### BACKGROUND

¶ 4

In January 2013, when Donyale was 14 years old, police in Lake County, Illinois, arrested him and charged him with burglary. Police arrested Donyale for retail theft in March 2013 and for domestic battery in September 2013. After another arrest, for attempted harassment of a witness in 2014, the Lake County State's Attorney filed a petition asking the court to adjudge Donyale a delinquent and make him a ward of the court.

¶ 5

In January 2014, the juvenile court found Donyale unfit to stand trial. A probation officer noted that the high school had assigned Donyale to the special education program with a diagnosis of emotional disability. The probation officer recommended referral to Lake County's FACE-IT program.

¶ 6

A psychologist working for the juvenile court interviewed Donyale and recommended that the court should find him fit to stand trial. On November 3, 2014, the juvenile court judge held a hearing to determine Donyale's fitness for trial. Donyale explained his understanding of the proceedings:

"THE COURT: \*\*\* Then can you tell me in your own words what a trial is?

THE MINOR: A trial? When you plead guilty or not guilty.

Q [THE COURT] What happens in a trial?

THE MINOR: The judge and whoever work for the Judge they talk to see what they should do, what the judge should do.

Q What does your attorney do?

THE MINOR: She help with like try to get to do right.

Q What does your attorney do during the trial?

THE MINOR: She tries to get me a shorter plea like.

Q Do you understand what a negotiation is?

THE MINOR: Yes.

Q What is that?

THE MINOR: You plead guilty on one of the cases."

¶ 7 The court then asked a series of yes or no questions, to which Donyale answered consistently yes, indicating that he understood. The court questioned Donyale's attorney, who said that she had spoken with Donyale, and she felt that Donyale understood the proceedings. The court found Donyale fit to plead and fit to stand trial.

¶ 8 Defense counsel had worked out a plea agreement with the assistant State's Attorney. Donyale agreed to plead guilty to attempting to harass a witness, and the State agreed to drop the other charges. Before taking the plea, the court admonished Donyale that the charge was a Class 3 felony, and he "face[d] the possibility of being sentenced to the Department of Juvenile Justice where [he] could remain until [his] 21st birthday." The court added that it could sentence Donyale to probation.

¶ 9 The court asked Donyale about the incident that led to the plea. Donyale explained:

"We were walking to my friend's house, and [Randal, the victim] bumped me, and I got to walking towards him taking off my jacket.

\*\*\*

\*\*\* I was going to fight him and my friend reminded me I couldn't do it because you gonna get in trouble. \*\*\* I said all right, so I left.

Q Okay. So what did you say to him about the trial he was supposed to testify on? What did you do?

A I threatened him.

Q How does that relate to the trial he was supposed to testify in?

A Because when he said I seen him at the store I did not see him. I seen him by his house, the apartment.

Q So there was a pending case already between you and Mr. Randal when you took off your jacket and threatened him. You said you know where he lives?

A Yes.

Q You had an issue with Mr. Randal?

A Yes, in school.

\*\*\*

Q He pressed charges. You saw him later in the month?

A Yes.

Q You threatened him at that time?

A Yes, I seen him by his apartment.

Q That involved him giving testimony in the case pending, the older case?

A Yes."

¶ 10 The court accepted the plea and the agreed disposition, sentencing Donyale to two years of probation and sending Donyale to FACE-IT.

¶ 11 Donyale's mother moved from Lake County to Berwyn in Cook County. Donyale "struggled to adjust" to FACE-IT. Holly Ann Hinton, assistant director at FACE-IT, reported to the Lake County juvenile court:

"[T]he Treatment Team expressed concerns regarding Donyale's level of cognitive functioning. The most recent intellectual testing available to the team prior to Donyale's admission was from 2006 and indicated that Donyale was functioning within the Low average range of ability \*\*\*. Since that time, a Fitness Evaluation was conducted, and intellectual testing \*\*\* suggested that Donyale's functioning falls within the Well below average range on verbal tasks and within the lower extreme on non-verbal tasks. \*\*\* The FACE-IT Program does not appear to be an appropriate placement for him. Donyale's cognitive functioning hinders his ability to comprehend many of the necessary components of the FACE-IT Program. His understanding is limited, and he lacks the vocabulary to grasp many of the therapeutic concepts used."

¶ 12 The FACE-IT treatment team sought to transfer Donyale to a residential facility in Cook County that could better meet Donyale's needs. The Lake County court transferred the case to the Cook County Juvenile Court on June 15, 2015.

¶ 13 Donyale and his family found no residential placement for Donyale in Cook County. Donyale moved in with his mother and her paramour in June 2015, but several incidents of domestic violence led her to conclude that she could not handle Donyale. Donyale's aunt, Sheree H., agreed to assume temporary custody of Donyale in August 2015. Donyale did not

abide by Sheree's rules and the restrictions the juvenile court placed on him as conditions of his probation.

¶ 14 Sheree reported to the court that Donyale stole a substantial sum of money from her and her children. In March 2016, Chicago police picked up Donyale on a charge of violating probation. A probation officer in her report emphasized that Donyale "HAS NOWHERE ELSE TO GO," (emphasis in original), because his mother, his aunt, and his other relatives refused to take him in, and an attempted residential placement through the Department of Children and Family Services (DCFS) had failed when he got into fights and ran away less than four hours after he arrived.

¶ 15 At the hearing on the violation of probation, the judge of the Cook County Juvenile Court said, "Donyale, we're just trying to figure out where you place your head. I understand you want to go back to DCFS, but they've got to step in for you to go there." Defense counsel told the court Donyale was "ready to enter a blind plea" to one charge of a probation violation. Counsel explained, "when there's a plea, we can get DCFS involvement sooner. \*\*\* [Y]ou can make an amendment to the original sentence and potentially commit him there so we can assist [Donyale] in having a place to stay."

¶ 16 With no further admonishments, the judge asked whether Donyale admitted that he violated probation by staying out hours past curfew on January 31, 2016. Donyale said, "I did do that." After the admission, the court informed Donyale of his right to put on witnesses. The judge accepted Donyale's plea and set the matter for sentencing. The judge then realized she had not informed Donyale of the possible sentencing range. Based on the prosecutor's representation that Donyale faced sentencing for a Class B misdemeanor, the

court said to Donyale, "You would be looking at the possibility of up to six months on probation or being placed 30 days in the detention center." The court did not ask whether that information affected Donyale's decision to plead guilty.

¶ 17 At another hearing two weeks later, the judge said,

"When you were arraigned, I told you the improper range of sentencing. \*\*\*  
[T]his is a felony case so you are looking at the possibility of being sentenced to  
the [DJJ] up to your twenty-first birthday \*\*\*.

You are also looking at the possibility of being placed on probation for that same  
amount of time. The same does hold true regarding the thirty days you could be  
sentenced to in the Detention Center \*\*\*. Do you understand the range of  
penalties?"

Donyale answered, "No."

¶ 18 The judge made a second attempt, this time asking Donyale whether he understood each  
part of the possible sentencing:

"You could be sentenced to the [DJJ] up to five years or your twenty-first  
birthday; do you understand that?"

MINOR RESPONDENT: Okay.

THE COURT: Okay; you could also be sentenced to probation up to five years or  
your twenty-first birthday; do you understand that?"

MINOR RESPONDENT: Yes.

THE COURT: You also could be sentenced \*\*\* up to thirty days in the Detention  
Center which is where you're currently; do you understand that?"

MINOR RESPONDENT: Yes."

¶ 19 The judge did not ask whether Donyale wished to change his plea.

¶ 20 On March 28, 2016, Donyale's probation officer submitted to the court a case summary which included information about Donyale's family, housing and school.

¶ 21 The judge requested clinical information about Donyale before the sentencing hearing. Priscilla DuBois, a psychologist working for the juvenile court, reviewed medical, school and court records. She interviewed Donyale's mother, Donyale, Sheree, and a therapist and a social worker who had worked with Donyale. She prepared a report that narrated Donyale's development, including his frequent legal transgressions, the efforts of his family and teachers to cope with Donyale, incidents of domestic violence, and Donyale's continuing behavioral and mood disorders. DuBois wrote:

"Donyale disclosed \*\*\* that his aunt, [J.C.], began to sexually molest him when he was 14 years old and that it continued [more than a year]. \*\*\* The allegation of Sexual Penetration was indicated against [J.C.]. \*\*\*

\*\*\*

\*\*\* Donyale became destructive in his home at an early age, and these behaviors worsened with his father's death [before Donyale turned three]. \*\*\*

\*\*\*

Donyale's immediate memory was good, although his recent memory was questionable as he could only recall three of the four words he was asked to remember a few minutes later. His remote memory was grossly intact \*\*\*.

\*\*\*



\*\*\* Donyale earned an estimated Verbal Comprehension Index (VCI) score \*\*\* placing him in the Extremely Low Range of intellectual functioning. These tests are a measure of his verbal reasoning, attention to verbal information, and knowledge acquired from his environment. \*\*\*

\*\*\*

\*\*\* Over the years, Donyale has reportedly displayed symptoms of impulsivity, irritability, agitation, destructiveness, low frustration tolerance, and a short temper. He exhibits chronic and persistent irritability or anger on a daily basis. Donyale further presents with severe, recurrent, intense and explosive angry outbursts across settings resulting in verbal and physical aggression directed at others and property destruction. These frequent outbursts are grossly out of proportion in intensity to the trigger or are without provocation, and are inconsistent with his developmental level. Donyale's mood disturbance is further complicated by his co-occurring diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD). \*\*\* Donyale was psychiatrically hospitalized in 2004 and 2005 due to uncontrollable behavior and suicidal ideation. \*\*\* Most recently, he was psychiatrically hospitalized in March [2016] after he reportedly became increasingly aggressive and agitated at home and threatened his aunt. \*\*\* Without intensive treatment to address his [mood disorder] and ADHD symptoms, they are likely to persist.

\*\*\*

\*\*\* Donyale requires structure, boundaries, and strict consequences to reduce his aggression, leaving the house without permission, and other negative behaviors.

\*\*\*

\*\*\* [T]his psychologist offers the following treatment and service recommendations:

Intensive Individual Therapy: Donyale would benefit from long-term, intensive therapy addressing his \*\*\* history of trauma, aggression, oppositional disposition, and poor coping skills. Cognitive-behavioral therapy that is concrete and structured will likely be most useful for Donyale to accommodate his low intellectual functioning and ADHD symptoms. \*\*\*

Medication Management: Donyale is currently prescribed and reportedly compliant with psychotropic medication \*\*\*.

\*\*\*

Substance Abuse Treatment: \*\*\* With treatment, his substance use will decrease as will his risk for recidivism by promoting healthy coping strategies. \*\*\*

\*\*\*

After considering Donyale's risk and protective factors and treatment needs, of the three sentencing options currently being considered by the court, it is recommended Donyale be sentenced to a residential placement that could provide intensive individual psychotherapy \*\*\*. A residential placement can address all of Donyale's recommended treatment needs \*\*\*.

Community-based treatment was considered but rejected at this time. \*\*\*

DJJ was also considered but rejected at this time. While DJJ could provide brief individual counseling and \*\*\* ensur[e] Donyale is medication compliant, remains abstinent from substances, and attends classes, DJJ is less likely to maintain such gains long-term or intensely address the mental health issues that contribute to Donyale's acting out behaviors. DJJ will only serve to increase Donyale's exposure to delinquent peers."

¶ 22 The trial judge heard arguments about sentencing at a hearing on June 2, 2016. The prosecutor requested sentencing to DJJ, without discussing the services and treatment available there. The probation officer also recommended sentencing to DJJ. She said that Donyale "has not shown any investment in helping himself. \*\*\* He likes to use aggression to get what he wants." She added, "he probably could benefit from services if he wanted to invest in them; but \*\*\* the protection of the community outweighs that at this point." Defense counsel, relying largely on DuBois's report, asked for residential placement.

¶ 23 The judge said:

"It's been requested that you be made a ward of DCFS. The problem I see with that is that in less than four hours, during which you were sent to [a residential placement], you were in two incidents. One was screaming and threatening at the staff, making gang references, and refusing to follow directions. The other was actually a violent outburst in which you punched a file cabinet, causing great damage to the file cabinet, and you postured aggressively towards the staff. You then \*\*\* fled. \*\*\*"

\*\*\* So the option of releasing you on probation and placing you in DCFS's custody in hopes that you will receive any treatment that could help you, really, is greatly diminished.

\*\*\*

\*\*\* I find that it is in the best interest of the minor and for the general safety and welfare of the public that \*\*\* you are hereby sentenced to [DJJ]."

¶ 24 Donyale now appeals.

¶ 25 ANALYSIS

¶ 26 Donyale contends that when the court accepted Donyale's plea to the violation of probation, the court failed to fulfill its duties (1) to determine Donyale's fitness to stand trial; (2) to consider less restrictive alternatives and the availability of services for Donyale; (3) to review a social investigation report completed less than 60 days before the sentencing hearing; and (4) to admonish Donyale correctly about the sentencing range he faced. We find the last issue dispositive.

¶ 27 Supreme Court Rule 402A provides:

"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 sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision." Ill. S. Ct. R. 402A (eff. Nov. 1, 2003).

¶ 28 The rule requires "substantial compliance, meaning a specific and affirmative showing in the record that the defendant understood each of the required admonitions." *People v. Ellis*, 375 Ill. App. 3d 1041, 1046 (2007). We review *de novo* the issue of whether the trial court complied with Rule 402A. *People v. Saleh*, 2013 IL App (1st) 121195, ¶ 14.

¶ 29 The trial court did not inform Donyale about the possible sentencing range before the court accepted Donyale's guilty plea. The trial court later attempted to tell Donyale about the sentencing, but conveyed only misinformation. Two weeks after accepting the plea, the court finally informed Donyale accurately about the sentencing range.

¶ 30 The State relies on *In re Westley A.F.*, 399 Ill. App. 3d 791 (2010), as authority for affirmance despite the error. In *Westley*, the court informed Westley of the possible sentencing consequences of a finding that he violated probation at a hearing on a petition charging Westley with a violation of probation. Less than a month later, the court held another hearing on the charge, and Westley pled guilty. The *Westley* court found substantial compliance with Rule 402A, as it held:

"In determining whether substantial compliance was had, courts consider the entire record, including what transpired at earlier proceedings. [Citation.] Each case must be considered on its own unique facts, with the main focus being on the length of time between the admonishments and the admission to violating probation. \*\*\*

\*\*\* [G]iven the short period of time between when respondent was admonished and when he admitted to violating his probation, and the fact that respondent was similarly admonished when he pleaded guilty, we determine that an ordinary

person in respondent's position would have understood the sentencing range he faced." *Westley A.F.*, 399 Ill. App. 3d at 796-97.

¶ 31 Here, in November 2014, the Lake County juvenile court judge told Donyale about the sentencing range he faced for attempting to harass a witness. Sixteen months later, the Cook County court accepted Donyale's admission to violating probation. DuBois and Hinton emphasized that Donyale had poor verbal skills and "questionable" memory for words. In this context, we cannot find substantial compliance with the requirement that before the court accepts a guilty plea, the court must determine that the defendant understands the applicable sentencing range. "It has long been held that a guilty plea cannot be understandingly entered where the trial court informs the defendant that the minimum sentence is less than it actually is. [Citation.] Analogously, \*\*\* the erroneous admonitions regarding possible sentences, both the maximum and the minimum, during the probation revocation proceedings did not substantially comply with the requirements of Rule 402A." *Ellis*, 375 Ill. App. 3d at 1046-47.

¶ 32 We acknowledge that the trial court, the attorneys and the probation officer faced an immediate problem of where Donyale would sleep, since none of his relatives would take him in, and an attempted residential placement had failed miserably. Nonetheless, Supreme Court rules do not permit us to affirm a conviction based on a plea made by a defendant when the court took no steps to assure that the defendant understood the sentencing consequences of his plea before accepting the plea.

¶ 33 In view of the need for reversal for proper sentencing admonishments, we need not address Donyale's other grounds for reversal. We trust that the court will have a new social report completed within 60 days before sentencing, and the court will more clearly state its

findings regarding the availability of services through the DJJ if the court again sentences Donyale to the DJJ. Defense counsel will also have a new opportunity to seek a fitness hearing if he or she thinks one necessary. We reverse the judgment and remand for further proceedings on the charge of a violation of probation.

¶ 34

#### CONCLUSION

¶ 35

Because the trial court failed to take any steps to ensure that Donyale understood the sentencing range he faced before it accepted his guilty plea to the charge that he violated his probation, we reverse the trial court's judgment and remand for further proceedings in accord with this order.

¶ 36

Reversed and remanded.