2017 IL App (3d) 140943-U

Order filed March 30, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Tazewell County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0943
v.	)	Circuit No. 11-CF-636
	)	
JONATHAN L. HOTTELL,	)	Honorable
	)	Timothy J. Cusack,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Holdridge and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in sentencing defendant to six years' imprisonment following revocation of defendant's probation because the sentence was based on the original offense rather than defendant's probation violations.

¶ 2 Defendant, Jonathan L. Hottell, argues that the trial court erred in resentencing him to six years' imprisonment following the revocation of defendant's probation. Specifically, defendant argues that the record demonstrates that the sentence was imposed in order to punish him for his probation violations rather than the underlying offense. We affirm.

¶ 3 FACTS

¶ 4 On November 28, 2011, defendant was charged with aggravated driving under the combined influence of alcohol, drugs, or intoxicating compounds to a degree that rendered him incapable of driving safely (DUI), resulting in great bodily harm to another (625 ILCS 5/11-501(d)(1)(C) (West 2010)). Defendant pled guilty to aggravated DUI pursuant to a partially negotiated plea agreement whereby the State agreed to a sentencing cap of five years' imprisonment and dismissal of charges filed in several separate cases. The trial court accepted defendant's plea.

¶ 5 As a factual basis for the plea, the prosecutor stated that police officers spoke with Lila Anderson, defendant's mother, and William Anderson, Lila's husband, at the emergency room on the evening of the incident. William told the officers that defendant had come to their residence that evening. Defendant was so intoxicated he could barely stand. Lila told the officers that she followed defendant when he walked out of the house because she wanted to stop defendant from driving while intoxicated. Defendant entered his vehicle on the driver's side. Lila attempted to remove defendant from the vehicle, but defendant accelerated. Lila was knocked down to the ground. When she stood up, there was a large amount of blood on her clothing. The officers observed and photographed a "gash" on Lila's right leg running from above her knee to several inches below her knee. They also noticed gashes and scrapes on her right hand and a large bruise on her left hand.

¶ 6 The officers then went to defendant's residence and spoke with defendant. Defendant's jeans were bloody and he stumbled while speaking to the officers. Defendant stated "he had been on benzodiazepine for 25 years and was also taking Xanax." Defendant reported that he sometimes "black[ed] out" from his medications. Defendant stated that he used "legal weed"

because it could not be detected on drug tests. The officers later determined defendant was referring to K-2, or synthetic cannabis. The officers asked defendant to step outside, and defendant almost fell down. The officers then arrested defendant. The officers smelled alcohol on defendant's breath and K-2 on his clothing. The officers took defendant to the hospital, where he underwent blood and urine testing. The testing showed that in defendant's blood and urine "there was .02 alcohol as well as Alprazolam and hydroxy-alprazolam."[1]

¶ 7 The county probation department prepared a presentence investigation report (PSI) of defendant. The PSI stated that defendant reported that he did not remember the offense. Defendant reported that he took Ambien and two other prescribed medications and woke up in jail. Defendant had previously been convicted of battery, criminal trespass to a residence, harassment through electronic communications, criminal sexual assault, and various traffic offenses. Defendant reported that he stopped drinking 15 years prior. Defendant reported that he had used marijuana regularly in the past, but no longer used it. Defendant used "spice," or synthetic cannabis, after he stopped using marijuana, but did not use it very often.

¶ 8 The PSI included a psychological evaluation of defendant prepared by a psychologist. The psychological evaluation found that defendant was very sensitive to interpersonal rejection. Defendant "also appear[ed] to be extremely anxious, and to suffer from long-term low-grade treatment resistant depression." The evaluation found that defendant "may be at risk for abusing mind-altering substances." Defendant appeared to be highly motivated to engage in therapy. The evaluation noted that defendant experienced "a significant right hemisphere injury" when he was 19 years old due to an automobile accident.

[1]Alprazolam is the generic name for Xanax.

¶ 9 A sentencing hearing was held. A police officer testified regarding his investigation into the incident. Photographs of Lila's injuries were introduced into evidence. Two other police officers testified regarding two previous incidents where defendant was arrested for driving under the influence of drugs. Both incidents occurred in the two weeks prior to defendant's arrest in the instant case.

¶ 10 The State submitted Lila's victim impact statement. Lila stated that defendant was her son and was from a dysfunctional family. Defendant's biological father had no contact with him. Defendant relied on Lila and her husband for emotional and financial support. Lila's injuries had healed, and her insurance covered her medical bills. Lila stated that if defendant were incarcerated, it would only cause her additional emotional and financial stress. Defendant suffered from insomnia and anxiety and was taking Ambien and Xanax at the time of the incident. Defendant no longer took those drugs and often told Lila that he was truly sorry for causing her injury.

¶ 11 After weighing the factors in mitigation and aggravation, the trial court sentenced defendant to 30 months' probation, with the first 12 months being intensive probation. The trial court required that defendant receive mental health treatment, take his medications as prescribed, take no other medications than the ones prescribed, and ingest no illegal substances. On the "Certificate of Conditions of Probation" form, the trial court ordered: "As required by the probation officer, the Defendant shall undergo and pay for, as appropriate: medical, anger control, psychological, psychiatric, drug/alcohol and domestic violence treatment." The trial court noted that its sentence of probation was based on Lila's victim impact statement and the psychological evaluation. The trial court stated that defendant was getting a "large break" and

admonished defendant that for any violation of his probation, he could be sent to the Department of Corrections (DOC) up to the maximum term.

¶ 12 Approximately seven months later, the State filed a petition to revoke probation. The petition alleged that defendant violated the terms of his probation in the following ways: (1) failing to obtain a substance abuse evaluation; (2) failing to engage in substance abuse treatment; (3) failing to engage in mental health services; (4) possessing "a box of n2o cartridges (known as Whip-Its)"; (5) possessing whip cream canisters, which he admitted he inhaled to get high; (6) possessing a packet of spice (synthetic cannabis); (7) testing positive for benzodiazepines and tetrahydrocannabinol (THC); (8) failing to maintain a residence allowing for effective supervision by the probation officer due to large amounts of clutter and garbage; and (9) failing to clean up old containers at the direction of the probation officer. The petition also alleged that multiple syringes, empty beer bottles, and empty alcohol containers were found in defendant's kitchen during unannounced home visits.

¶ 13 Defendant declined to have a hearing on the State's petition to revoke, admitting that he failed to comply with one or more of the terms of his probation. The trial court continued the matter for sentencing, and ordered that the terms of defendant's probation would stay in effect until his sentencing hearing.

¶ 14 A supplemental PSI was filed. The supplemental PSI noted that a full PSI had previously been filed prior to defendant's first sentencing hearing. A copy of the original PSI was attached to the supplemental PSI. The supplemental PSI stated that it included "recent updates on the defendant's employment, family, treatment, violations of Probation, and community attitude."

¶ 15 The supplemental PSI reported that defendant had not completed any of the 130 hours of community service that was ordered as a requirement of his probation. While on probation,

defendant tested positive on two occasions for benzodiazepines and cannabis, and on one occasion for opiates and methadone. Defendant's breath tests for alcohol were all negative. During an unannounced home visit, a probation officer observed empty alcohol containers, syringes, and empty K-2 or spice containers. Defendant claimed that these items were more than six months old. The officer told defendant to clean his residence because it was impossible to properly inspect due to large amounts of garbage and clutter. A probation officer also found "n2o cartridges" and empty whipped cream containers in defendant's residence. Defendant admitted he had been inhaling them. Defendant claimed that the syringes were to administer insulin to his dog. However, defendant had not had a dog the entire time he was on probation.

¶ 16 Defendant continually gave excuses to probation personnel as to why he could not enter substance abuse treatment. Defendant stated that he did not "see the point" in paying for something he did not need. Probation personnel gave defendant the contact information for several treatment facilities.

¶ 17 Approximately one month after the petition to revoke probation was filed, defendant began outpatient substance abuse treatment at the Tazwood Center for Wellness. Defendant stated he did not believe he was an addict, but recognized that he needed to change some of his behaviors. Defendant found the information he was provided at Tazwood to be useful. Defendant said he could " 'see the point to being sober' " and wanted to change his life.

¶ 18 Approximately 1½ months after defendant began substance abuse treatment at Tazwood, defendant's Facebook page showed that defendant was at a local bar. Defendant told his probation officer that the Global Positioning System on his phone erroneously showed his location as being at the bar. Defendant claimed he was actually visiting a friend who lived next door to the bar. Two weeks later, defendant posted a photograph of a half empty wine bottle and

an open can of beer on Facebook with the caption: " '*I can't drink. Cough cough ;).*' " A week later, probation officers located "seventy-two n2o cartridges," two jars of " 'Jungle Juice,' " and an aerosol can of maximum impact. Defendant stated he used these items as inhalants. The officers also found multiple empty packages of K-2, a receipt showing that defendant purchased the K-2 while on probation, and an empty Budweiser Platinum bottle that was not present at the officers' previous visit.

¶ 19 When the officers discovered this contraband at defendant's residence, they took defendant into custody and submitted a violation report with the State's Attorney's office. Defendant was released from custody on a personal recognizance bond approximately one week later.

¶ 20 Defendant's probation officer spoke to a Tazwood employee two days later. The Tazwood employee reported that defendant said he had been arrested for having an old beer bottle, and the court made the probation officer apologize to defendant. The probation officer advised the Tazwood employee as to what the officers found in defendant's home. Tazwood staff confronted defendant about this, and defendant demanded a joint meeting with probation and Tazwood personnel. A meeting was scheduled, but defendant did not attend. Tazwood personnel advised defendant's probation officer that Tazwood would be "unsuccessfully discharging" defendant and referring him for residential treatment.

¶ 21 Defendant began residential treatment at White Oaks approximately one month later. Defendant told his probation officer that his experience at White Oaks was " 'life changing' " and " 'really opened' his eyes." However, defendant had to leave approximately two weeks after he began treatment due to health issues.

¶ 22 Reports from personnel at White Oaks stated that defendant left the facility to obtain medical treatment for back pain and blood in his urine. He returned to White Oaks with a filled prescription for Hydrocodone. He had taken two pills before returning to White Oaks, which was against the rules. Defendant was permitted to return to treatment, but was required to turn over the rest of his medication to the staff. Defendant attempted to procure additional medication by manipulating the staff. For example, defendant told staff members that the Hydrocodone had been approved by the staff doctor when it had not. The next day, defendant was told that it might take a few hours to verify his medication with the prescribing doctor and that he could not have more Hydrocodone until it was verified. Defendant then packed his belongings and left the facility.

¶ 23 Approximately two weeks later, defendant tested positive for methadone. Defendant denied taking it. Defendant explained that he traded someone his melatonin for Vicodin, and that person must have given him methadone instead of Vicodin. Later, defendant tried to explain his positive drug test by positing that the Pekin Prescription Lab " 'switched [his] medication.' "

¶ 24 Defendant also failed to successfully complete mental health treatment. Approximately six months after his sentence of probation began, defendant made several appointments at Heartland Behavioral Health, but he failed to attend the appointments. After the petition to revoke probation was filed, defendant began engaging in mental health services at Tazwood. However, defendant canceled his mental health treatment after only two sessions. Defendant told Tazwood personnel that he was feeling better and no longer needed services.

¶ 25 On two occasions, defendant had pornography playing when probation staff arrived for unannounced home visits. Defendant allowed the pornography to continue playing during the home visits. Defendant exposed his buttocks to his probation officer on a home visit by "wearing

pants with the majority of the fabric in the rear area missing with no under garments." On one occasion, defendant "directed his flatulence in the direction of" a probation officer. Defendant posted several statements about probation on Facebook, including posting his probation officer's phone number and encouraging others to " 'make it jingle.' "

¶ 26 The supplemental PSI concluded that defendant struggled to take responsibility for his behaviors and "exhibited an inconsistent commitment toward change." Defendant claimed that his issues on probation were due to his relationship with his probation officer, and he continued to present "circular stories to excuse his behaviors." Defendant's counselors at Tazwood and White Oaks expressed concern regarding defendant's manipulative behaviors. Defendant's probation officer opined that defendant was "no longer appropriate for community supervision" due to his failure to maintain services for his substance abuse and mental health issues and the fact that he continued to consume illegal substances.

¶ 27 A new sentencing hearing was held. The State introduced the following evidence in aggravation: (1) a CD of jail calls; (2) photographs taken of defendant's home while he was on probation; (3) the results of drug tests from two different dates during defendant's probation showing defendant tested positive for THC; (4) a document showing defendant was unsuccessfully discharged from the Tazwood Center for Wellness while on probation; and (5) a screenshot from defendant's "purported Facebook page" taken while defendant was on probation. Defendant submitted four letters to the trial court, including one letter from Lila.

¶ 28 During the State's argument, the prosecutor detailed defendant's numerous probation violations. The prosecutor then stated:

> "And because of this we go back to the Statute where you look at the factors in aggravation, the factors in mitigation and you initially said that the

Defendant was unlikely to reoffend and that his attitude indicated [he] would comply with the probation conditions, and we would strongly suggest that those are not proper mitigation factors at this time due to his behavior."

¶ 29 The prosecutor then argued:

"In light of all of these reasons and the fact that the Defendant has completely exhausted his resources for community supervision and is no longer appropriate for that, we do think that the court should again look at the seriousness of the offense and the great bodily harm was caused by the Defendant's getting high and driving that day, and that was a culmination of a long stint where he repeatedly drank and drove or drove impaired multiple times, and it had to come to him nearly running over his mom and causing great bodily harm to her to stop him.

And so because of the Court's efforts to do this we do not think community supervision is appropriate and we recommend that the Court enter 4 rulings, the first ruling being a term in the Illinois [DOC] for 8 years. The People recognize that this is the Defendant's first sentence to the Illinois [DOC] ***.

However, the fact that it is his third and caused great bodily harm, you know, we believe that sentence would be necessary to deter others from that conduct as well as in the interests of justice."

¶ 30 Defense counsel argued that defendant was unable to successfully complete substance abuse treatment while on probation because of his health problems. He also argued that some of defendant's positive drug screens may have been inaccurate. Defense counsel stated that

defendant had a "tremendous sense of guilt over what happened to his mother as a result of this particular incident."

¶ 31 Defendant gave a statement in allocution. Defendant stated that he wanted to complete his residential drug treatment program but his medical issues forced him to leave. He acknowledged that he "should have done better at promptly getting substance abuse treatment, even with the difficulties of living far out in the country and with having my driver's license revoked and being no public transportation." He stated that he felt extremely guilty for the injuries he caused to his mother as a result of the underlying DUI offense. Defendant stated that he did not intend to hurt his mother and that he would never again operate a vehicle while under the influence of drugs.

¶ 32 The trial court sentenced defendant to six years' imprisonment. Before delivering its sentence, the trial court stated that it had considered the PSI, the exhibits, the evidence and arguments presented by the parties, defendant's statement in allocution, and the statutory factors in mitigation and aggravation. The trial court noted that it had originally sentenced defendant to intensive probation despite his criminal history. The trial court stated that, at the time of the original sentence, defendant's attorney, Lila, and the probation department believed defendant could successfully complete probation. The court then stated:

> "And that sentence [of intensive probation] was handed out in an effort to get you to a place where you would [not] have to go to the [DOC]. Your treatment of the probation officers during this case shows an utter lack and an utter disregard for their job, which is frankly to help you.
>
> You mock them. You don't help them out. You don't follow through on anything they suggest. These aren't things that are done by just somebody that

suffers from some type of substance abuse problem, this is somebody that just has a lack of respect for authority, or for people that are helping them and that is the worst part.

* * *

You have taken an opportunity and completely thrown it away. That's what I see here today. I understand, and I agree with [defense counsel], what good does it do to put you in prison? It doesn't do any good at all.

But what good does it do to let you stay out? Who is going to profit from this? Who is going to say we are not going to be back here in another 6 months arguing the exact same things that we were arguing [at the first sentencing hearing]?

I have a pretty good feeling that that we will all be back here again and it won't do anybody any good. You don't want to get help right now, you don't want to listen to the people that want to help you, so you can't be helped.

In that type of situation, there is only one other choice, and that is DOC. And while that may not be helpful to you, you have got to wake up some time and that is the only option here.

Factors in mitigation that I find, originally your criminal conduct caused serious physical harm to another, and I understand that your mom has written this off and said it wasn't that bad and it's not affecting me now and what not.

The pictures were horrific. You were a viable candidate for DOC [at the first sentencing hearing]. You avoided that at that time. You can't say that there were any substantial grounds excusing your conduct or that justify your conduct

by saying that you were out of it, you had a substance problem and that caused your conduct—That's not a justifiable excuse.

Your criminal conduct was not induced or facilitated by someone other than you. You haven't compensated *** the victim ***. You have a prior history of criminality. Your criminal conduct is the result of circumstances likely to recur.

The character and attitudes that indicate that you will be likely to commit another crime. You are unlikely to comply with terms of probation. I don't believe that imprisonment would entail excessive hardship on your dependents and I don't believe it would endanger your medical condition, whatever that might be.

* * *

A sentence to the [DOC] is necessary to deter others—And you have a prior history of delinquency."

¶ 33 The trial court then reasoned:

"I thought, based on everything I saw at [the time of the original sentence], even the statements that you made, that you were a person that was going to be able to take this intensive probation and run with it and I would never see you again.

Instead you did absolutely nothing. [The prosecutor] pointed it out paragraph by paragraph, you didn't follow through on anything. I can't give you probation.

I find that the sentence of probation or conditional discharge would deprecate the seriousness of this crime committed in the Petition to Revoke, the allegations contained in it. It's inconsistent with the ends of justice and

nothwithstanding the costs of confinement, the last notice I ever got for imprisonment was $22,600 per year to incarcerate a person in Illinois.

***. However, I think the citizens of Tazewell County will be better off spending that money for your incarceration to make sure they are safe while they go on about their lives in a lawful manner rather than to have you get behind the wheel of a car again and cause possibly some harm or injury, possible death to some other individual who certainly doesn't deserve it, not at your hands.

I hereby sentence you to a term of imprisonment in the [DOC] for 6 years."

¶ 34 ANALYSIS

¶ 35 Defendant argues that he is entitled to a new sentencing hearing because the record shows that his six-year prison sentence was to punish him for violating the conditions of his probation rather than the underlying offense. We find that, when read in context and taken as a whole, the record shows that defendant was properly sentenced for the underlying offense rather than his probation violations.

¶ 36 "After revoking a sentence of probation, the trial judge may resentence a defendant to any sentence that would have been appropriate for the original offense." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). The sentence cannot be punishment for the probation violation. *Id*. However, the trial court "may consider the defendant's conduct while on probation in reassessing his rehabilitative potential." *Id*. See also *People v. Young*, 138 Ill. App. 3d 130, 140 (1985) ("Conduct which leads to revocation of probation has been regarded as a 'breach' of the court's trust, or as otherwise causing the court to lose confidence in the defendant's rehabilitative potential."). The trial court may consider the defendant's conduct up to the time of sentencing,

including the defendant's probation violations, "as an element in determining an appropriate sentence." *Id.* at 142. When considering the trial court's remarks at the sentencing hearing, we must take the remarks in context and read them in their entirety while also considering the arguments of counsel. *Id*. "A sentence within the statutory range for the offense will not be disturbed as an abuse of the sentencing court's discretion unless this court is strongly persuaded that the sentencing judge intended to penalize the defendant for violating his probation." *Risley*, 359 Ill. App. 3d at 920-21.

¶ 37 Defendant argues that the applicable standard of review is *de novo* because this issue involves the application of law to undisputed facts. However, all the cases we have reviewed addressing a claim that the trial court erroneously sentenced a defendant for probation violations rather than the underlying offense—including the cases cited by defendant—have applied an abuse of discretion standard of review. See *Risley*, 359 Ill. App. 3d at 921; *People v. Varghese*, 391 Ill. App. 3d 866, 877 (2009); *People v. Gaurige*, 168 Ill. App. 3d 855, 871 (1988). Accordingly, we review this issue for abuse of discretion.

¶ 38 Based on the foregoing principles, we conclude that defendant's sentence was neither unjust nor an abuse of discretion. Stated another way, we are not convinced that the prison term imposed by the court was intended to punish defendant for his violation of probation. See *Risley*, 359 Ill. App. 3d at 920-21. In sentencing defendant, the trial court mentioned the underlying offense several times. The trial court noted that the injuries Lila suffered as a result of the original offense were "horrific." Additionally, just prior to delivering the sentence, the trial court stated that the citizens of Tazewell County would be safer with defendant in prison in case defendant were to "get behind the wheel of a car again and cause possibly some harm or injury, possible death to some other individual who certainly doesn't deserve it."

¶ 39 Additionally, the trial court discussed the statutory factors in aggravation and mitigation. The trial court found that defendant had a prior history of delinquency and a sentence of imprisonment was necessary to deter others. The trial court noted that several mitigating factors did not apply. Specifically, the trial court found that there were no "substantial grounds excusing [defendant's] conduct," defendant's criminal conduct was not induced or facilitated by another person, defendant had not compensated the victim, defendant had a prior history of criminality, defendant's criminal conduct was not the result of circumstances unlikely to recur, defendant's character and attitudes indicated defendant was likely to commit another crime, defendant was not likely to comply with the terms of probation, and a sentence of imprisonment would not endanger defendant's medical condition. We also note that the sentence imposed by the trial court was well within the statutory range for the offense, which was 1 to 12 years' imprisonment. See 625 ILCS 5/11-501(d)(2)(F) (West 2010).

¶ 40 We acknowledge that the trial court discussed defendant's probation violations extensively at the resentencing hearing. However, the trial court's sentencing comments did not indicate that it was punishing defendant based on bad acts he committed while on probation. Rather, the trial court's comments concerning defendant's probation violations showed that the court had lost confidence in defendant's rehabilitation potential based on defendant's failure to cooperate with probation personnel or to follow through with obtaining treatment. For example, the trial court noted that it believed at the original sentencing hearing that defendant would be able to successfully complete his term of intensive probation, but "[i]nstead [defendant] did absolutely nothing. [The prosecutor] pointed it out paragraph by paragraph, [defendant] didn't follow through on anything." The trial court also noted that defendant showed a lack of respect for authority based on his treatment of the probation officers and his failure to "follow through

on anything they suggest[ed]." Defendant's lack of cooperation while on probation was relevant to his rehabilitation potential and was a proper consideration at the resentencing hearing. See *Young*, 138 Ill. App. 3d at 140-42.

¶ 41 We find support for our holding in *Young*, 138 Ill. App. 3d 130. In *Young*, the defendant pled guilty to retail theft and was sentenced to one year of intensive probation. *Id*. at 132. The defendant's probation was revoked after she stole money and stamps from the county building while she was cleaning it as part of her community service. *Id*. at 132-33. Before resentencing the defendant to three years' imprisonment, the trial court stated it had considered the evidence and arguments of the parties. *Id.* at 133. The court noted that the defendant had seven prior theft convictions. *Id.* The trial court then discussed the defendant's probation violations. *Id.* at 134. Then, when the court was discussing factors in mitigation and aggravation, the court referred to the probation violations rather than the underlying offense. *Id*. at 134.

¶ 42 Nevertheless, the *Young* court found that the defendant's three-year sentence was imposed for the original offense rather than that conduct that formed the basis of the probation revocation. *Id*. at 142. The *Young* court held that "the trial court can consider conduct of the defendant up to the time of sentencing, which includes the conduct which resulted in the revocation, as an element in determining an appropriate sentence." *Id*. The *Young* court reasoned:

> "An analysis which suggests that the trial court (1) cannot consider the conduct which resulted in the probation being revoked, or (2) cannot consider such conduct past a certain point in the sentencing hearing, or (3) that thereafter a sentencing judge must specifically state that he nevertheless is sentencing the defendant solely on the basis of the original offense—and has considered the conduct which was the basis for the revocation only to the extent of the

defendant's rehabilitative potential—is not only without merit but reflects a head-in-the-sand attitude." *Id*. at 140.

¶ 43 Similarly, in *People v. Wilcox*, 281 Ill. App. 3d 494, 496 (1996), we found that the record as a whole showed that the defendant was sentenced for the underlying offense rather than his probation violations even though the trial court made several references to the conduct which formed the basis for revocation of the defendant's probation.

¶ 44 We reject defendant's reliance on *People v. Varghese*, 391 Ill. App. 3d 866 (2009). In *Varghese*, the defendant pled guilty to aggravated criminal sexual abuse for meeting a 13-year-old girl on the internet and engaging in various sexual acts with her in a library parking lot. *Id.* at 868. The defendant was sentenced to two years of sex offender probation. *Id.* The trial court revoked the defendant's probation after he admitted to driving on a suspended license. *Id*. The trial court resentenced the defendant to seven years' imprisonment. *Id*. at 872. Before delivering its sentence, the trial court noted that it had considered the evidence presented on each side, the statutory factors in aggravation and mitigation, the defendant's statement in allocution, the PSI, and the arguments of the parties. *Id.* Based on evidence presented at the resentencing hearing, the trial court also found that while defendant was on probation, he attempted to meet a 16-year-old girl he met on the internet to have sex. *Id*. The trial court reasoned:

> " 'the conduct of the defendant indicates that the sex offender probation has had effectively no impact on him and that he was attempting to do again the same things that brought him back before me.
>
> This conduct is intolerable. This conduct is dangerous, and I'm going to order that he serve 7 years in the Illinois [DOC] ***.' " *Id*.

¶ 45 The *Varghese* court held that the record showed "that the trial court punished defendant for his conduct while on probation rather than strictly for his original offense." *Id*. at 876. The court reasoned:

> "Here, the remarks of the trial court in their totality clearly indicate that it never expressly considered defendant's original offense when fashioning his sentence. Rather, the trial court's concluding comments, by focusing on defendant's conduct while on probation, demonstrate that it improperly commingled uncharged conduct with his original offense. Immediately prior to imposing sentence, the trial court chastised defendant for the reprehensible nature of his conduct while on probation. It stated in summation: 'This conduct is intolerable. This conduct is dangerous.' Read in context, the phrase 'this conduct' clearly referred to defendant's conduct while on probation. That the trial court's final sentencing determination immediately followed this statement and a lengthy discussion about the certainty of the uncharged conduct strongly indicates that defendant was sentenced for such particular 'dangerous' and 'intolerable' uncharged conduct. ***. With only a passing reference to defendant's original offense, it is apparent that the trial court improperly commingled defendant's conduct while on probation with his original offense." *Id.* at 877.

¶ 46 Here, unlike in *Varghese*, the trial court's comments at the resentencing hearing show that it expressly considered defendant's original offense when fashioning its sentence. The trial court stated that Lila suffered "horrific" injuries as a result of the original offense. Additionally, just prior to delivering the sentence, the trial court stated that the citizens of Tazewell County would be better off having defendant in prison than on probation "to make sure they are safe

while they go on about their lives in a lawful manner rather than to have [defendant] get behind the wheel of a car again and cause possibly some harm or injury, possible death to some other individual who certainly doesn't deserve it." Unlike in *Varghese*, these statements were more than mere passing references to the underlying offense.

¶ 47 We also reject defendant's reliance on *People v. Gaurige*, 168 Ill. App. 3d 855 (1988) and *People v. Clark*, 97 Ill. App. 3d 953 (1981). Both cases were remanded for resentencing following revocation of probation because the record did not show what factors the trial court relied on in imposing the sentences beyond the acts that resulted in revocation of probation. *Gaurige*, 168 Ill. App. 3d at 871; *Clark*, 97 Ill. App. 3d at 957. In this case, the trial court explicitly considered factors other than defendant's probation violations, including the extent of the injuries defendant caused to Lila, defendant's criminal history, and the necessity to deter others.

¶ 48 *People v. Bedenkop*, 252 Ill. App. 3d 419 (1993) is also distinguishable. In *Bedenkop*, the defendant pled guilty to possession of a controlled substance. *Id*. at 420. When her probation was revoked, the trial court sentenced her to seven years' imprisonment—the maximum sentence. *Id.* at 427. The trial court noted that the defendant had given birth to a baby addicted to cocaine while on probation and reasoned that it was " 'going to preclude [the defendant]as best as [it could] from becoming pregnant.' " *Id.* at 426-27. The *Bedenkop* court held that the sentence was improper because the "trial judge's remarks clearly reveal[ed] that the sentence was not based on the original crime and her potential for rehabilitation, but on conduct occurring since she was put on probation." *Id.* at 427.

¶ 49 In the instant case, unlike in *Bedenkop*, the trial court's comments did not show that it was sentencing defendant to punish him for conduct that occurred while he was on probation.

Rather, when discussing defendant's probation violations, the trial court focused on defendant's lack of compliance with the terms of his probation and his lack of respect for probation personnel. We reassert that defendant's continual unwillingness to comply with the terms of his probation was relevant to his rehabilitation potential and was properly considered by the trial court. Additionally, the trial court's remarks showed that the trial court also considered the seriousness of the underlying offense and the statutory factors in aggravation and mitigation in delivering its sentence.

¶ 50 Finally, we reject defendant's contention that the fact that his six-year sentence exceeded the original five-year sentencing cap shows that his sentence was a punishment for his conduct while on probation rather than the underlying offense. Defendant concedes that the trial court was not bound by the five-year sentencing cap at the resentencing hearing. Where, as here, a defendant's conduct on probation causes the court to reevaluate the defendant's rehabilitation potential, a higher sentence than originally contemplated is proper. See *People v. Ford*, 4 Ill. App. 3d 291, 293 (1972) ("It is our belief, however, that a sentence higher than one which a court might originally have had in mind, may properly be imposed upon probation revocation, not to punish defendant for his subsequent acts, but to reflect the court's reassessment of the defendant's rehabilitation potential.")

¶ 51 As we have found that no error in sentencing occurred, we need not address defendant's arguments that this issue should be reviewed for plain error or that trial counsel was ineffective for failing to preserve the issue.

¶ 52 CONCLUSION

¶ 53 The judgment of the trial court is affirmed.

¶ 54 Affirmed.