

NOTICE

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FILED

March 28, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 151007-U

NO. 4-15-1007

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JAMES E. GREEN,)	No. 14CF1130
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court substantially complied with Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) in admonishing defendant about his admission to a probation violation despite providing incorrect information regarding the period of mandatory supervised release.
- ¶ 2 In October 2015, defendant, James E. Green, admitted a probation violation on the underlying offense of domestic battery with a prior domestic battery conviction. 720 ILCS 5/12-3.2(a)(2),(b) (West 2012). At the time defendant admitted the violation, the trial court incorrectly admonished him that he faced a one-year period of mandatory supervised release (MSR) rather than the statutorily mandated period of four years. The court subsequently sentenced defendant to two years' imprisonment with a four-year MSR period.

¶ 3 Defendant appeals, asserting the trial court failed to substantially comply with Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) when it incorrectly admonished him regarding the MSR period. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2014, defendant entered a plea of guilty to one count of domestic battery with a prior domestic battery conviction, a Class 4 felony. 720 ILCS 5/12-3.2(a)(2),(b) (West 2012). At the time defendant entered his plea, the trial court admonished defendant that he faced a sentence of one to three years in the Illinois Department of Corrections (DOC) with a four-year period of MSR. Pursuant to a plea agreement, defendant received a sentence of 18 months' probation, which required completing 40 hours of community-service work and enrolling in a partner-abuse-intervention program.

¶ 6 In October 2015, the State filed a petition to revoke defendant's probation. The petition alleged, while on probation, defendant (1) committed the offense of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2014)), (2) failed to complete his community-service work, (3) consumed alcohol, and (4) failed to enroll in a partner-abuse-intervention program. During the October 8, 2015, arraignment on the petition, the trial court admonished defendant that he faced a possible prison sentence of one to three years followed by a four-year period of MSR.

¶ 7 On October 19, 2015, when defendant indicated his intention to admit the probation violation, the trial court erroneously admonished defendant that any prison sentence he received would be followed by a one-year period of MSR. Defendant thereafter admitted the probation violation and the case was scheduled for sentencing.

¶ 8 On November 19, 2015, the trial court held a sentencing hearing. The parties did not present any evidence, but when making its recommendation for 30 months' imprisonment,

the State pointed out that defendant faced a four-year period of MSR. The court sentenced defendant to two years' imprisonment but did not mention any MSR period.

¶ 9 On November 23, 2015, the trial court held a hearing after realizing it neglected to admonish defendant that he would receive a four-year period of MSR. On November 30, 2015, defendant filed a motion to reconsider his sentence, asserting his sentence was excessive given the mitigating circumstances. Defendant did not challenge the imposition of a four-year MSR period. The following month, the trial court denied the motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues his due-process rights were violated when the trial court failed to admonish him about the four-year MSR period before accepting his admission to the probation violation as required by Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003).

¶ 13 We begin by noting defendant failed to raise this issue before the trial court, which renders the argument forfeited. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). However, this court may consider otherwise forfeited issues that result in plain error. *Id.* In considering plain error, we must first determine whether the trial court committed a clear or obvious error. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007). Whether the trial court erred by failing to substantially comply with Rule 402A(a) is subject to *de novo* review. *People v. Saleh*, 2013 IL App (1st) 121195, ¶ 14, 995 N.E.2d 375.

¶ 14 “A defendant in a proceeding to revoke probation has fewer, rather than more, procedural rights than a defendant who still awaits trial.” *People v. Dennis*, 354 Ill. App. 3d 491, 495, 820 N.E.2d 1190, 1193 (2004). When a defendant intends to admit a probation violation,

the trial court is first required to substantially comply with Rule 402A(a) by providing the following admonishments:

“(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will 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 is sufficient to revoke, the defendant waives 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 or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision.” Ill. S. Ct. R. 402A(a)(1) to (6) (eff. Nov. 1, 2003).

¶ 15 The trial court must substantially comply with Rule 402A. Ill. S. Ct. R. 402A (eff. Nov. 1, 2003). A trial court substantially complies with Rule 402A(a) when, despite the fact that the court did not specifically admonish the defendant as required by the rule, the record “affirmatively and specifically shows that the defendant in fact understood that item.” *Dennis*, 354 Ill. App. 3d at 495.

¶ 16 In this case, the trial court admonished defendant regarding (1) the specific allegations in the petition to revoke his probation, (2) his right to counsel and a hearing, (3) his right to confront the State’s witnesses and present witnesses and evidence on his own behalf, (4) the State’s burden of proof, and (5) the sentencing range of one to three years’ imprisonment. See Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003). In addition, the court also admonished defendant that, by admitting the violation, he was giving up his right to a hearing, the right to confront the State’s witnesses, and the right to present evidence and witnesses on his own behalf. See Ill. S. Ct. R. 402A(a)(5) (eff. Nov. 1, 2003). The only flaw in the court’s admonishment was that the court advised defendant that he faced a one-year MSR period rather than a four-year MSR period.

¶ 17 Defendant argues the trial court’s failure to admonish him about the MSR period—part of the sentencing range—prior to accepting his admission was sufficient to demonstrate a lack of substantial compliance with Rule 402A(a). In making this argument, defendant attempts to distinguish two cases that have found the failure to properly admonish a defendant under Rule 402A(a) is not necessarily fatal where the defendant was properly

admonished on prior, recent occasions. See *Dennis*, 354 Ill. App. 3d at 496; *In re Westley A.F., Jr.*, 399 Ill. App. 3d 791, 797, 928 N.E.2d 150, 156 (2010).

¶ 18 In *Dennis*, this court found the trial court substantially complied with Rule 402A(a) despite failing to admonish the defendant that, by admitting the petition to revoke his probation, he was giving up his right to a hearing and to confront witnesses. *Dennis*, 354 Ill. App. 3d at 496. This court explained that an ordinary person in the defendant's position would have understood his rights because he had been repeatedly admonished about them during prior proceedings, including at the arraignment on the petition to revoke his probation held a month before. *Id.* at 493, 496.

¶ 19 Defendant argues, unlike in *Dennis*, he had not been subject to prior proceedings—specifically, probation-violation proceedings—in which he had been properly admonished under Rule 402A(a). This overlooks one of the pertinent similarities between the cases. In *Dennis*, we found substantial compliance where the defendant had been properly admonished regarding his rights at the arraignment on the petition to revoke his probation, which occurred one month prior to defendant admitting the petition. Similarly, here, defendant was properly admonished as to his rights during his arraignment on the petition to revoke his probation—less than two weeks prior to defendant admitting the petition. Such a short period of time between the correct admonishment and defendant admitting his violation supports a finding of substantial compliance.

¶ 20 In *Westley A.F.*, the reviewing court found the trial court substantially complied with Rule 402A(a) despite the trial court's failure to advise the defendant of the sentencing range he faced when he admitted violating his probation. *Westley A.F.*, 399 Ill. App. 3d at 796-97. In reaching this decision, the court noted the close proximity—one month—between the defendant

being properly admonished at his guilty-plea hearing and admitting the probation violation. *Id.* at 797. The court concluded, “given 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.” *Id.*

¶ 21 Defendant argues *Westley A.F.* is distinguishable because, in *Westley A.F.*, the court relied on the close proximity between the defendant being properly admonished at his guilty-plea hearing and admitting the probation violation. *Id.* Conversely, here, defendant points out more than a year passed between his proper admonishment at the guilty-plea hearing and his admission to the probation violation. Despite this distinction, the underlying premise in *Westley A.F.* remains the same as in *Dennis*—when a defendant was admonished about his rights in close proximity to the date he admitted the probation violation, the reviewing court may find substantial compliance with Rule 402A(a) in spite of the trial court’s failure to provide all of the proper admonishments when the defendant admitted the probation violation.

¶ 22 Although defendant was incorrectly admonished regarding the MSR period when he admitted the probation violation, the record reflects defendant understood he faced a four-year MSR period. First, defendant was properly admonished at the time he entered his plea of guilty in November 2014. Second, the trial court properly admonished defendant regarding the MSR period when he was arraigned on the petition to revoke his probation on October 8, 2015. Less than two weeks later, on October 19, 2015, defendant admitted the petition. Thus, an ordinary person in defendant’s position would have understood the sentencing range he faced included a four-year MSR period. This is further demonstrated by the fact that he did not later challenge the MSR period, despite numerous opportunities to do so.

¶ 23 During the November 19, 2015, sentencing hearing, the State noted defendant faced a four-year MSR period. Defendant did not challenge the four-year MSR period at that time. When the trial court scheduled the case for a hearing on November 23, 2015, to ensure defendant was properly admonished as to the four-year MSR period, defendant did not challenge his MSR. Despite being reminded of the four-year MSR period during both the sentencing hearing and the subsequent hearing date, defendant chose not to raise this issue in his November 30, 2015, motion to reduce sentence. All of these facts weigh in favor of a finding that defendant knew he faced a four-year MSR period.

¶ 24 Accordingly, we conclude the trial court substantially complied with Rule 402A(a) when admonishing defendant regarding the admission of his probation violation. Because we conclude no error occurred, we need not address whether the court's actions constituted plain error.

¶ 25 III. CONCLUSION

¶ 26 Based on the foregoing, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 27 Affirmed.