2019 IL App (2d) 170443-U
No. 2-17-0443
Order filed May 21, 2019



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of McHenry County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 15-CM-1938 |
| GERALD WILLIAMS, | ) | Honorable Charles P. Weech, |
| Defendant-Appellant. | ) | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court properly revoked defendant's conditional discharge, as the pertinent condition was that he complete a counseling program and he did not complete the 26-week counseling program that he attended.

¶ 2 Defendant, Gerald Williams, appeals from an order of the circuit court of McHenry County revoking his conditional discharge and sentencing him to five days in jail for domestic battery, a Class A misdemeanor (720 ILCS 5/12-3.2 (a)(1), (b) (West 2016)). Defendant argues that the State failed to prove by a preponderance of the evidence that he violated his conditional discharge. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 10, 2016, defendant pleaded guilty to domestic battery (*id.*) and was sentenced to one year of conditional discharge. In addition to the statutory terms of conditional discharge, the trial court ordered that defendant shall "file within 60 days *** a written PAIP [Partner Abuse Intervention Program] evaluation signed by any therapist approved for practice by any Illinois government agency and file *** written evidence of Defendant's compliance with all recommendations of such therapist before 2-8, 2017." During the hearing, the following colloquy took place:

> "THE COURT: And as part of that sentence, I'm sentencing you to 90 days in jail. So if you don't comply with the terms and conditions, they file a petition to revoke and they would be able to prove by a preponderance—not be proof beyond a reasonable doubt, but by a preponderance, more likely than not—that you didn't complete the terms and those terms are paying a fine, having a partner abuse evaluation done, follow any recommendations of that evaluation—And if they don't ask for 26 weeks, there's something wrong with them.
>
> [DEFENSE COUNSEL]: I explained that to him, Judge.
>
> THE COURT: Okay.
>
> [DEFENSE COUNSEL]: I explained this to him because a preponderance of the evidence on a—on a conditional discharge violation is minimal and—
>
> THE COURT: Right.
>
> [DEFENSE COUNSEL]: It's got to take this time, [defendant]. It's just got to take.

> THE COURT: It has to or you're going to be doing 90 days in jail. Because you—You're agreeing, Judge, put me in jail for 90 days if I don't do this. So you have to understand that. I'm giving the keys to the jail and putting them in your pocket. And you screw up, you're going in for 90 days. You've already agreed to this."

¶ 5 On May 10, 2016, defendant filed a "Partner Abuse Intervention Evaluation Summary" prepared by Hilary Pirro, a program director at Direct Counseling Inc. Under the heading "Evaluation Recommendations," a box was marked next to the preprinted words: "24 week Partner Abuse Intervention Programming." The second page indicated: "The above named individual was evaluated and it is required that the client successfully completes the following." Under that, a box was marked next to the preprinted words: "A Partner Abuse Intervention Program that is approved by the Illinois Department of Human Services. The program length is 24 weeks with a maximum of one two hour session per week. Included in program is a Domestic Violence education seminar." The bottom of the page indicated that the "Program Name" was "DIRECT COUNSELING INC." and provided the address for the program.

¶ 6 On May 31, 2016, the case was before the trial court for "Evaluation status." The court ordered that the case be "continued for release on 2-8-17." The court handwrote the following on the order: "Defendant must complete the 24 week PAIP + a domestic violence seminar by 2-8-17. He must appear on that date."

¶ 7 On September 28, 2016, a document entitled "Partner Abuse Intervention Program Monthly Compliance Report to Court" (PAIP report) was filed with the court. The PAIP report indicated that it was from "Turning Point, Inc." It indicated that defendant attended his first PAIP session on June 28, 2016. It further indicated that "defendant has attended 12 *** of 26 *** sessions." It was signed by "Holly Puchner MA, QMHP P.A.I.P. Coordinator." Similar

PAIP reports were filed on November 14, 2016, and November 23, 2016. The PAIP reports filed in November were signed by "Zitlalli Roman MSW, P.A.I.P. Facilitator" and indicated that "defendant has attended 16 *** of 26 *** sessions" and "21 *** of 26 *** sessions," respectively.

¶ 8 On December 27, 2016, a fourth PAIP report was filed with the court. It indicated that "defendant has attended 24 *** of 26 *** sessions." It further stated: "Client was asked to leave room due to inappropriate behavior towars [*sic*] facilita [*sic*]." It recommended the following "treatment action": "Contact Turning Point to assess options." It was signed by "Zitlalli Roman MSW, P.A.I.P. Facilitator." A box next to the words "The defendant has successfully completed all PAIP requirements" was not marked.

¶ 9 On February 2, 2017, a fifth PAIP report was filed. It was identical to the fourth PAIP report with one exception—it recommended that defendant "Contact Turning point to assess options for return and completion of program."

¶ 10 On February 8, 2017, the State filed a petition to revoke defendant's conditional discharge, alleging that defendant failed to complete counseling with PAIP and failed to serve his stayed jail sentence. On that same date, defendant appeared with counsel. The following occurred:

> "THE COURT: Yes. He is present in open court. Good morning, [defendant].
>
> THE DEFENDANT: Good morning.
>
> [DEFENSE COUNSEL]: This, too, is a release when he shows completion. I don't have a completion letter. I've got a completion form that he's done all but—
>
> THE COURT: The last I saw was 24 of 26.
>
> [DEFENSE COUNSEL]: Yes.

THE DEFENDANT: Yeah. I'm at 25.

THE COURT: Close, but not quite done. When is your next class?

THE DEFENDANT: That was the whole thing about the situation. They—

[DEFENSE COUNSEL]: This is the one that you told him 24, and they told him 24, and when he got to the 24, they said, no, you are supposed to do 26.

As the Court will recall, this was back in—

THE COURT: Right.

[DEFENSE COUNSEL]: —May of last year or whatever. He has done—How many have you done?

THE DEFENDANT: 25.

[DEFENSE COUNSEL]: He's done 25.

THE COURT: Well, did you reschedule the additional class? The final class?

THE DEFENDANT: No. Well, I tried to, but they told me I couldn't (indiscernible). I have to do four more classes.

THE COURT: All right.

THE DEFENDANT: Yeah. It was—It was an issue. They said something about 1ike—

[DEFENSE COUNSEL]: It's like doing DUI classes. If you miss, you have to start over.

THE COURT: The 24 (indiscernible) Typically, it depends on which location he went to. Was the location at Direct?

[DEFENSE COUNSEL]: Well, no, Turning Point.

THE COURT: Turning Point. All right.

[DEFENSE COUNSEL]: It was not my recommendation, but it's the one he went to.

THE COURT: They have been the most consistent of all of them, I will say.

[DEFENSE COUNSEL]: Have they?

THE COURT: Yeah. They have been the most forgiving for—

[DEFENSE COUNSEL]: Okay.

THE COURT: So—

THE DEFENDANT: See, that's the thing, because when I went there, and they said you got into an altercation (indiscernible) like about the class situation.

THE COURT: That may be why they're asking for four more classes. You've got an altercation in the paper.

THE DEFENDANT: See, that's the thing. Like, they were saying, because what I said—They said I was—They said I had 24 classes. There was an altercation, and like that's really why I had to do four more classes, because I said I had 24 classes. So, that's—

[DEFENSE COUNSEL]: You had to do 26.

THE DEFENDANT: Right.

THE COURT: I'll give you time to get it done. Let's go out to March—

[DEFENSE COUNSEL]: End of March.

THE COURT: Because you're gone?

[DEFENSE COUNSEL]: Yes.

THE COURT: If I went to March 22nd—

[DEFENSE COUNSEL]: You have to get the completion order signed.

THE COURT: March 22nd.

THE DEFENDANT: See, that's the thing. I can't—They won't—

THE COURT: You are either going to do or you are not. If you are not, then we will proceed on the petition to revoke and you can go to jail then for up for the timeframe up to a year.

It's your choice, [defendant]. I'm giving you an option here. You take your option, or we go to hearing.

Understood? I'm done. Okay. I don't work that way.

[DEFENSE COUNSEL]: Do you understand?

That's fine. Let's set a date.

VOICE: Will [defendant] be accepting service?

[DEFENSE COUNSEL]: Yes.

VOICE: Or [defense counsel].

THE COURT: You are sure showing me reasons why you may need some additional classes. All right. I'll see you back here on that date."

¶ 11 On February 23, 2017, and March 27, 2017, PAIP reports were filed that were identical to the one filed on February 2, 2017. On May 4, 2017, an eighth PAIP report was filed. In addition to indicating that "defendant has attended 24 *** of 26 *** sessions," it indicated that "defendant has been terminated from treatment." The reasons for termination were cited as "[c]ontinued patterns of abuse" and "Client behaved innapropriately [*sic*] towards facilitators." The box next to the words "The defendant has successfully completed all PAIP requirements" remained empty.

¶ 12 On May 10, 2017, the trial court conducted a hearing on the petition to revoke. The State asked the trial court to take judicial notice of the file, noting that the last PAIP report was filed on May 4, 2017, showing that defendant had completed 24 of 26 sessions.

¶ 13 Defendant testified that he was ordered to complete the recommended PAIP treatment before February 8, 2017. He testified that he had completed it. He agreed that he had been asked to leave the PAIP classroom because of inappropriate behavior and that, as of April 25, 2017, he had been terminated from the program. However, he testified that he completed 24 hours of PAIP treatment pursuant to the trial court's order of May 31, 2016.

¶ 14 Defendant moved for a directed finding and the trial court denied the motion. Thereafter, the State argued that it had met its burden of proving by a preponderance of the evidence that defendant failed to complete PAIP treatment. The State argued that the trial court ordered defendant to complete PAIP treatment and that "[t]here is no completion document filed with the Clerk of the Court that shows that he has completed." The State further argued that the May 4, 2017, PAIP report indicated that defendant had been terminated from the program.

¶ 15 Defense counsel argued that defendant "was ordered by the Court to do 24 sessions. He has completed the 24 sessions." Defense counsel further argued that defendant was terminated from the program only after he argued with them about having to attend additional sessions. Counsel stated: "He complied exactly with the Court's order, 24 weeks of PAIP as the May 31st [order] shows."

¶ 16 The trial court granted the State's petition to revoke, finding that defendant had not completed the PAIP program. The court stated: "There has not been a completion done. The defendant has not completed the program. He has completed the majority of it, but he has not completed the full 26 weeks of the program." Nevertheless, the court found that the 90-day

sentence was not appropriate. The court ordered that defendant be taken into custody and released the following Monday. The court stayed the sentence.

¶ 17 On June 14, 2017, the trial court denied defendant's motion for reconsideration.

¶ 18 Defendant timely appealed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues that the State failed to prove by a preponderance of the evidence that he violated the terms of his conditional discharge. To obtain a revocation, the State must prove by a preponderance of the evidence that the defendant violated a condition of his conditional discharge. 730 ILCS 5/5-6-4(c) (West 2016); *People v. McGuire*, 216 Ill. App. 3d 705, 709 (1991). We will not disturb the court's ruling on a petition to revoke unless it is against the manifest weight of the evidence. *McGuire*, 216 Ill. App. 3d at 709. "A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16.

¶ 21 Defendant argues that the trial court's ruling that he violated the conditions of his conditional discharge is against the manifest weight of the evidence, because he submitted written proof that he "completed 24 weekly sessions of a PAIP" and thus complied with the court's order that he " 'complete the 24 week PAIP.' " We disagree.

¶ 22 Looking at the record as a whole, it is clear that the trial court ordered defendant to successfully complete PAIP treatment, not 24 weekly sessions of a PAIP. In the February 10, 2016, order, the trial court ordered defendant to file, within 60 days, "a written PAIP evaluation signed by any therapist" and to file, by February 8, 2017, "written evidence of [his] compliance with all recommendations of such therapist." The evaluation prepared by the program director at

Direct Counseling Inc. recommended that defendant "successfully complete[] *** A Partner Abuse Intervention Program that is approved by the Illinois Department of Human Services." This language is clear. Defendant must successfully complete a PAIP. To be sure, the trial court, after reading the evaluation, ordered that defendant "must complete the 24 week PAIP." However, the trial court's use of the word "the" makes clear that it was referring to the PAIP program specified in the evaluation by Direct Counseling Inc., which was described as being 24 weeks in length. Contrary to defendant's interpretation, the court was not specifying that defendant must complete "24 weekly sessions of a PAIP." In any event, defendant did not attend "the 24 week PAIP" at Direct Counseling Inc. Instead, defendant chose to attend the PAIP at Turning Point (against the recommendations of his attorney). The evidence presented does not establish that defendant "successfully complete[d]" the Turning Point PAIP that he chose to attend. Indeed, the evidence shows otherwise. Accordingly, we hold that the court's revocation of conditional discharge is not against the manifest weight of the evidence.

¶ 23 Defendant's reliance on *People v. Prusak*, 200 Ill. App. 3d 146 (1990), does not warrant a different conclusion. In *Prusak*, the defendant was sentenced to probation for aggravated criminal sexual abuse against his daughter, with a condition that he " 'shall seek psychiatric evaluation *** and shall cooperate with any treatment recommendation made by that agency.' " *Id.* at 147. A treatment plan was developed that required the defendant to attend weekly meetings at a sexual offender group program. *Id.* The defendant attended those meetings until he was terminated from the program "due to his continued persistence that he did not remember having any inappropriate sexual conduct with his daughter." *Id.* at 147-48. The State filed a petition to revoke the defendant's probation, alleging that he failed to satisfy a condition of probation by being terminated from the treatment program. The trial court granted the petition,

finding that, although the defendant " 'followed the letter of the order' " of probation, he did not follow " 'the spirit of the order of probation.' " *Id.* at 148-49.

¶ 24 We reversed, holding that the defendant did not violate the terms of his probation. We stated: "The only thing that [the defendant] did not do was accept responsibility for his sexual misconduct." *Id.* at 149-50. We noted that this was " 'almost universal' " among sex offenders. *Id.* at 150. We also noted that the trial court's decision was particularly troubling given that the defendant "suffer[ed] from physical ailments that affect his mental abilities, including his ability to remember clearly." *Id.* We concluded:

> "Simply because [the defendant] did not benefit from fulfilling the condition imposed upon his probation does not mean that he did not satisfy the condition. The trial court improperly interpreted the condition of probation to mean that not only did [the defendant] have to undergo treatment, but he was also required to be 'cured.' " *Id.*

¶ 25 Defendant contends that here, as in *Prusak*, the trial court, by requiring defendant to show "that he graduated from the program," improperly based its ruling on the spirit of the order rather than its written terms. We disagree. First, we find that *Prusak* must be "substantially limited to its unique facts." See *McGuire*, 216 Ill. App. 3d at 709. In any event, it is readily distinguishable. In *Prusak*, the probation conditions did not require the defendant to admit to inappropriate sexual conduct, so a failure to do so could not form the basis of a provocation revocation. Here, however, as noted above, the trial court required that defendant successfully complete PAIP treatment. The trial court's finding that defendant did not do so is not against the manifest weight of the evidence. Accordingly, we hold that the trial court's revocation of defendant's conditional discharge is not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the order of the circuit court of McHenry County revoking defendant's conditional discharge. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 28 Affirmed.