NOTICE
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2026 IL App (5th) 250426-U

NO. 5-25-0426

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	De Witt County.
	)	
v.	)	No. 21-CF-49
	)	
ZACKARY J. ANGELL,	)	Honorable
	)	Karle E. Koritz,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOLLINGER delivered the judgment of the court.
Justices Vaughan and McHaney concurred in the judgment.

ORDER

¶ 1 *Held*: Reversible error did not occur during the pendency of defendant's case. Because no claim to the contrary would have arguable merit, appellate counsel is granted leave to withdraw, and the judgment of the circuit court of De Witt County is affirmed.

¶ 2 Defendant, Zackary J. Angell, entered a plea of guilty to the offense of possession of less than five grams of methamphetamine. He was sentenced to probation, which was later revoked. He now appeals. The Office of the State Appellate Defender (OSAD) was appointed as defendant's counsel in this appeal. OSAD has concluded this appeal lacks arguable merit and, on that basis, has filed a motion for leave to withdraw as counsel, pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), along with a supporting memorandum of law. OSAD properly served defendant with notice. This court gave defendant the opportunity to file a response to OSAD's motion. Defendant

has not filed a response. Having considered OSAD's *Finley* motion and memorandum, and the entire record on appeal, this court agrees with OSAD's assessment. We therefore grant OSAD's motion to withdraw, and we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On June 10, 2021, defendant was charged by information with one count of possession of less than five grams of methamphetamine, or a substance containing methamphetamine, a Class 3 felony, in violation of section 60(a) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/60(a) (West 2020)). The information alleged that the offense took place on or about June 6, 2021. On July 14, 2021, the public defender's office was appointed to represent defendant. On July 19, 2021, a conflict public defender was appointed.

¶ 5 At a hearing held on January 5, 2022, the circuit court noted that there had been "difficulty getting [defendant] to court." The court stated that a failure-to-appear warrant had been issued for defendant, and that a preliminary hearing in the case was required. Thereafter, the circuit court stated to defendant, "if you fail to appear in court when required by the [c]ourt, your failure to appear would constitute a waiver of the right to confront witnesses against you and trial could proceed in your absence." After ensuring defendant understood, the circuit court stated, "Show defendant admonished as to trial *in absentia*."

¶ 6 On August 17, 2022, defendant appeared in court, in the "custody of Macon County" on charges unrelated to this case. The circuit court asked if an agreement in this case had been reached, to which defendant responded, "Yes, sir." The State announced that pursuant to the agreement, defendant would plead guilty to the charge of possession of less than five grams of methamphetamine, in exchange for which defendant would be placed on 30 months of probation, with what the State characterized as "standard terms and conditions to apply." In addition,

defendant would be sentenced to 180 days in the county jail, with day-for-day good-time credit to apply, and with credit for 90 days defendant had already served. Following the hearing, defendant would be transferred back to the Macon County jail. The State discussed the fees, fines, and assessments that would apply, including a "mandatory drug assessment," as well as offsets thereto, and stated that defendant would be required to abstain from the use of alcohol or illicit drugs, would submit to random drug testing, and "would agree to admissibility of lab reports at any future [petition to revoke] proceedings without foundation." Defendant agreed that the foregoing were the terms of the guilty plea agreement.

¶ 7 The circuit court admonished defendant with regard to the jury-trial rights he was giving up by pleading guilty, and the charge and range of penalties he faced, all of which defendant stated he understood. The circuit court specifically admonished defendant that because defendant had a prior possession of methamphetamine conviction, defendant faced an extended-term sentence of up to "ten years." The circuit court noted that defendant had signed a written plea of guilty, and asked defendant if defendant needed to have anything on the written form explained to him. Defendant stated, "No, sir." The circuit court ensured that no threats or coercion had been used to induce defendant to plead guilty, and that no promises had been made to defendant other than those in the agreement.

¶ 8 The State provided a factual basis for the plea, stating that if the matter proceeded to trial, the State would produce evidence of a traffic stop on June 6, 2021, of a vehicle in which defendant was a passenger. The State would produce evidence of methamphetamine being found in defendant's possession during a search of the stopped vehicle. Defense counsel agreed that the State could produce such evidence at trial. The State recited defendant's prior criminal history,

listing a possession of methamphetamine conviction in 2016, and other prior felony and misdemeanor convictions dating back to 1997.

¶ 9 After the State recited defendant's criminal history, the circuit court stated, "your attorney has negotiated a favorable plea agreement for you," then ensured defendant understood that if he violated the terms of his probation, he would face the range of penalties about which he was earlier admonished. The circuit court accepted the plea agreement, and entered judgment of conviction, then sentenced defendant in accordance with the terms of the agreement, noting that a "Certificate of Conditions" was being entered by the court. The circuit court thereafter admonished defendant of his appeal rights, which defendant stated he understood.

¶ 10 A copy of the complete terms of defendant's probation was included in the aforementioned certificate of conditions entered by the circuit court, which was signed by defendant and which is included in the record on appeal. Of relevance to this appeal, the certificate stated that within 30 days of being released from custody, defendant was required to undergo a substance abuse evaluation, and was required to successfully complete any recommended treatment within 12 months. The certificate also required defendant to report to the probation department as directed.

¶ 11 Approximately 16 months later, on December 28, 2023, the State filed a petition for revocation of probation (petition). Therein, the State alleged defendant violated the terms of his probation in two ways. First, the State alleged defendant failed to report as directed for probation appointments on June 27, 2023, July 28, 2023, August 18, 2023, August 24, 2023, September 21, 2023, and October 26, 2023. Second, the State alleged defendant was released from custody on April 20, 2023, but failed to provide proof that he completed his required substance abuse evaluation within 30 days thereafter.

¶ 12 At a hearing held on March 4, 2024, defendant appeared without counsel. He stated that he had received a copy of the petition and understood the allegations against him. He requested the appointment of counsel to assist him, and the same conflict public defender who represented him during his guilty plea proceedings was appointed to represent him during proceedings on the petition.

¶ 13 At a hearing held on April 11, 2024, defendant failed to appear, although his counsel was present. Later that day, defendant appeared, and the circuit court held the previously scheduled status hearing, setting the hearing on the petition for May 28, 2024. On May 28, 2024, defendant again failed to appear. The circuit court stated that it did not know if it was true, but that the clerk had informed the court that defendant had called and stated that he was at a hospital being tested for COVID. The State asked that the case "proceed *in absentia*." Following discussion with the parties, the circuit court stated that it was "inclined to give [defendant] the benefit of the doubt," and continued the case until June 18, 2024.

¶ 14 On June 18, 2024, defendant was not present when the circuit court called the case. The circuit court passed the case. Defendant still was not present when the case was called again. The State indicated that it was ready to proceed and had a witness present. Defense counsel stated that she wished to "place an objection on the record." The circuit court reviewed, for the record, defendant's previous attendance issues, then asked defense counsel if she had spoken with defendant about the hearing. Defense counsel stated that she had spoken to defendant the day before and reminded him of the hearing date and time. The circuit court stated that on January 5, 2022, defendant had been admonished about trial *in absentia*. The circuit court proceeded with the hearing, asking the State to call its first witness.

¶ 15 Shannon Shumard testified that she was defendant's probation officer. She testified that to the best of her knowledge, defendant was living in Macon County, and that the probation office there was "monitoring" defendant's probation for the De Witt County probation office. She testified that she received notice that defendant was directed to appear, but failed to do so, for probation appointments on the six dates alleged in the petition. Shumard testified that it was her understanding that defendant was released from custody on April 20, 2023, and was required to provide proof of completion of a substance abuse evaluation within 30 days after that. She testified that she did have verification that defendant completed his substance abuse evaluation, but that defendant did not complete the evaluation until January 3, 2024. She agreed that defendant did not provide proof that he completed the evaluation within 30 days of his release from custody. She testified that treatment was recommended, but that defendant had not completed it.

¶ 16 On cross-examination, Shumard agreed that it was possible defendant rescheduled his probation appointments and attended them on different days, but testified that she had no record of that occurring. When asked if it was "commonplace for the probation department to indicate whether those dates were rescheduled, or do they just send you the dates that [a probationer has] missed," Shumard testified, "Typically—it could go either way, actually." She clarified that she believed it depended upon which department, and which probation officer, was involved, and "how thorough they want to be with their reporting."

¶ 17 Shumard reiterated that her verification of defendant's completion of the substance abuse evaluation showed that it was completed on January 3, 2024. She denied that defendant told her that he received a substance abuse evaluation while in the Illinois Department of Corrections (IDOC), but agreed that if he had done so, he would not have been required to do another one if the first one had "been done within the time frame of his De Witt County case." She denied that

defendant provided her with any type of verification that he completed a substance abuse evaluation while in the custody of IDOC. Shumard testified that she only met one time with defendant—on April 20, 2023, the date on which defendant was released from custody and began parole—and that "all the information" she provided was from Macon County's probation department.

¶ 18 When questioned by the circuit court, Shumard clarified that defendant was originally in the custody of Macon County, but was transferred to IDOC, then released from IDOC on parole on April 20, 2023. She testified that defendant was in custody the entire time prior to April 20, 2023, at which point defendant reported to her office to begin probation in "his De Witt County case." She reiterated that the substance abuse evaluation was completed in January of 2024.

¶ 19 Following Shumard's testimony, the State rested. Defense counsel stated that, given defendant's absence, she had "nothing further to be able to put on on his behalf." Following argument from the parties, the circuit court found that the State had proven the two allegations in the petition by a preponderance of the evidence. The circuit court ordered the preparation of a presentence investigation report (PSI). Subsequently, due to delays, a new request for a PSI was filed by the circuit court.

¶ 20 Between December 2, 2024, and December 10, 2024, defendant filed five motions on his own behalf. At defendant's sentencing hearing, which was held on December 16, 2024, the circuit court noted the motions, but stated that it would not consider them because defendant was represented by counsel. The court pointed out that one of the motions alleged "ineffectiveness with respect to his representation during predisposition proceedings." The court stated, "[w]e're well beyond that here," but added that "[t]he only possible relevant allegation" contained in defendant's motion was that defense counsel "failed to return his attempts at communication." The circuit court

stated that the allegations in the petition were "the most uncomplicated allegations imaginable," and that defendant failed to appear at the hearing on the petition. The circuit court found that defendant's "claims of ineffectiveness lack merit at this stage," and stated that it would not "go any further with that."

¶ 21 Thereafter, the parties agreed that after reviewing the PSI and the proceedings in the case, defendant was entitled to a total of 137 days of credit for time spent in pretrial custody. Neither party presented evidence at the hearing. Defendant made a statement in allocution, in which he contended that he did not violate the terms of his probation, claiming that he completed a substance abuse evaluation in IDOC and that he provided proof of that to the probation office "literally" as soon as he left IDOC. Defendant also contended that he made up any appointments he missed with his probation officer. Defendant thereafter stated that he gave proof of his IDOC substance abuse evaluation directly to Shumard, who "took a copy of it on her Xerox."

¶ 22 The circuit court gave Shumard, who was present at the hearing, the opportunity to respond. Shumard stated that the only documentation she had was for the evaluation that was completed on January 3, 2024. Shumard added that she also did not have any documentation of any treatment being completed, and agreed with the circuit court that her position was stated in defendant's PSI. The circuit court stated that it would consider the PSI as well.

¶ 23 In aggravation, the State asked the circuit court to consider defendant's long criminal history, dating back to 1997, which included "crimes of violence, crimes involving substance abuse." The State also argued that jail time, probation, and other sentencing alternatives had been tried with defendant before, and had "not curbed his criminal activity." The State asked the court to consider the need for deterrence, revoke defendant's probation, and sentence defendant to "an extended term" of five years in IDOC.

¶ 24 In mitigation, defense counsel asked the circuit court to consider that defendant's most recent cases were not violent, but were for drug possession, consistent with a personal addiction, not with distribution of drugs. She contended that defendant believed he had complied with the terms of his probation, and even completed a second substance abuse evaluation. She argued that a sentence to IDOC would not be helpful, and that defendant had employment opportunities available to help him support his family. She asked the court to sentence defendant to time in the county jail, another term of probation, or an alternative such as drug court.

¶ 25 The circuit court stated that it had considered the PSI, the statutory factors in aggravation and mitigation, the arguments of the parties, and defendant's statement in allocution. The court noted defendant's repeated failures to appear in the case, and the factors it found in mitigation and aggravation, including defendant's "lengthy" prior criminal history, which the circuit court described as "the elephant in the room" as far as factors in aggravation. The circuit court noted that defense counsel "negotiated a very favorable plea agreement for" defendant, with no sentence to IDOC, but that defendant did not take advantage of it. The court stated that it believed a sentence to a term of probation would deprecate the seriousness of defendant's offense, and that defendant would not comply with probation. The court sentenced defendant to 3.5 years in IDOC, to be followed by a 6-month term of mandatory supervised release, with defendant to receive 137 days of credit for time already served. The court revoked defendant's probation and informed defendant of his appeal rights.

¶ 26 On December 23, 2024, defendant filed a notice of appeal on his own behalf. On December 27, 2024, he filed an additional motion on his own behalf, asking the circuit court for additional days of credit against his sentence. On January 7, 2025, defendant filed five more motions on his

own behalf, including one in which he again complained of defense counsel's effectiveness and requested a hearing with regard to it.

¶ 27 On January 15, 2025, the circuit court entered an order in which it struck defendant's notice of appeal. The circuit court's order also struck defendant's motions as untimely, with the exception of "those motions or allegations pertaining to the sentence imposed or the sentencing hearing," with regard to which the circuit court stated defendant should have assistance of counsel. At a hearing held on January 16, 2025, at which counsel was present but defendant was not, the circuit court stated that the stricken motions were "not relevant or appropriate for a post-sentencing motion," and were "otherwise untimely." The court stated that although it believed it was "unusual" to hold a preliminary *Krankel* inquiry after sentencing, it would bring defendant back to "see what, if any, allegations he has regarding ineffective assistance of counsel for purposes of the sentencing hearing." The court continued that if those allegations did not have merit, the court would allow defendant to consult with defense counsel on the "allegations of improper sentencing hearing or motions to reconsider," to determine if those motions needed to be amended by counsel.

¶ 28 At a hearing held on February 19, 2025, at which defendant and counsel were present, the circuit court noted that some of defendant's allegations of ineffective assistance of counsel involved activity that took place "years ago," prior to defendant entering his plea of guilty. The court asked defendant if he wished to raise allegations of ineffective assistance of counsel related to the proceedings on the petition. Defendant stated that he believed defense counsel should have objected to the probation revocation hearing being held *in absentia*, and should have requested a continuance of the hearing, because defendant had COVID and tried to call in to notify the court of that fact. He claimed that Shumard did not testify truthfully, but that her testimony "was never questioned." He contended that he did not violate the terms of his probation, Shumard's "false"

testimony notwithstanding. Defendant also claimed that because the hearing was held *in absentia*, he did not have the opportunity to cross-examine Shumard. He further claimed that although he informed counsel that Shumard did not testify truthfully, counsel "did not raise that question at all." Defendant also raised numerous issues involving matters that occurred prior to his entry of his guilty plea.

¶ 29 The circuit court stated that it had made a finding that defendant's entry into his guilty plea agreement was knowing and voluntary. The court stated that defendant's allegations of ineffective assistance of counsel had "nothing to do with the allegations in the [p]etition to [r]evoke or the revocation proceedings." The court noted that defendant had not filed a postconviction petition challenging defendant's guilty plea. The court ruled that defendant's "claims of ineffective assistance of counsel have no merit, and no further inquiry is necessary." The court continued the matter so that defendant could confer with counsel to determine if counsel needed to file an amended postsentencing motion. The court stated that it would note in a docket entry that a "*Krankel* inquiry" was conducted, and that it found that defendant's "claims of ineffective assistance lack merit."

¶ 30 At a hearing held on May 1, 2025, defense counsel confirmed that she had not filed any amended motions. She stated that she had "spent substantial time tracking the days" defendant had been in custody in this case, in Macon County and in De Witt County, and that she and defendant agreed that defendant was not entitled to "any additional days of credit for the sentence." She stated that defendant still wished to receive credit for time he spent as a trusty while in the custody of the Macon County jail, from May 29, 2022, to August 17, 2022, an issue raised by defendant in one of the motions he filed on his own behalf. She contended that pursuant to "730 ILCS 5/3-6-3(a)(4.2), if the [c]ourt finds that he should receive trusty credit, it appears that he would just be

entitled to an additional half-day of credit for those dates that I've previously cited that are on the judgment."

¶ 31 Defendant thereafter offered sworn testimony that while he was in the Macon County jail, he served as a trusty, "serving food at the institution." He testified that during the day he worked in the kitchen, and at night he worked as a cleaner. He testified that not all inmates had the opportunity to be a trusty, and that he was 1 of 16 trusty inmates selected out of 300 total inmates in the jail. He testified that he did not receive credit for his time as a trusty when he was sentenced in his Macon County case, because he "didn't know it was a thing at the time." On cross-examination, defendant agreed that he did not file a motion in his Macon County case seeking the credit.

¶ 32 Following defendant's testimony, and argument from defense counsel, the State asked the circuit court to deny the request for credit, stating that defendant had provided no documentary evidence to support his claims. The State also contended that even if the court accepted defendant's testimony as true, the time defendant spent as a trusty would have been in defendant's Macon County case, rather than in this case. The State argued that therefore "the proper remedy would be to file a similar motion *** in the Macon County case for the Macon County judge to review that within that cause." The State further argued that it did not believe the circuit court had "the authority to grant additional time that [defendant] might be entitled to from another county."

¶ 33 The circuit court stated that it had reviewed the statute, and further stated that, as the State pointed out, there was "no documentary evidence of [defendant's] work as a" jail trusty. The court stated that it did not "know what Macon County refers to as a trusty or if they, in fact, referred to" defendant as a trusty. The court stated that it was "unable to determine whether to give much

weight to the time frame of May 29 through August 17 of 2022 in terms of whether [defendant] was, in fact, involved in those activities he says he was involved in."

¶ 34 The circuit court noted that a case interpreting the statute stood for the proposition that the credit requested by defendant was available only to inmates in IDOC, not to inmates in pretrial custody in a county jail. The court stated that accordingly, it did not "appear" that a request made pursuant to the section was "a matter for the [c]ourt to decide." The court added, "And even if it were, I'm finding that I don't have the facts in front of me to make that finding and that those requests should have been properly made in Macon County where they may have been properly considered with Macon County witnesses." The circuit court therefore denied defendant the credit he requested. The court also briefly discussed defendant's motions that had not been called for hearing, concluding that none of those motions had merit either. On May 16, 2025, defendant filed a timely notice of appeal.

¶ 35 II. ANALYSIS

¶ 36 As noted above, OSAD has filed a *Finley* motion to withdraw as counsel. In the legal memorandum that accompanies its motion, OSAD raises six potential issues, which we discuss in detail below. However, OSAD concludes that none of these potential issues have arguable merit. For the reasons that follow, we agree. We therefore grant OSAD's motion to withdraw, and we affirm the judgment of the circuit court of De Witt County.

¶ 37 The first issue OSAD considered raising is whether the circuit court erred when it denied defense counsel's oral motion for additional sentencing credit pursuant to section 3-6-3(a)(4.2) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(4.2) (West 2022)) for time that defendant claimed to have served as a trusty while incarcerated in the Macon County jail. OSAD first contends the circuit court's denial was appropriate because the additional sentencing credit "was

not included in the plea agreement," which specifically provided for 90 days of presentence credit. In support of this proposition, OSAD points to *People v. Wells*, 2024 IL 129402, ¶ 24, wherein the Illinois Supreme Court held that if a fully negotiated plea agreement represents the complete and final expression of the parties' agreement, there is a presumption "that every material right and obligation is included and neither party may unilaterally seek modification of the agreement." Accordingly, where there exists "no ambiguity in what the parties intended the sentence and credit to be," "the parties are bound by the terms of the written agreement," and a defendant "is not entitled to additional credit not included in the agreement." *Id.* However, *Wells* is not applicable to this case, because defendant is not requesting credit against the sentence he agreed to in his original negotiated plea agreement; he is requesting credit against the 3.5-year sentence he received following the revocation of his probation, a sentence that was not part of any plea agreement, and was not negotiated by defendant, but was imposed strictly by the circuit court.

¶ 38 In the alternative, OSAD contends the circuit court's denial of the requested credit was proper because in the case referred to by the circuit court, *People v. Williamson*, 2024 IL App (3d) 220501, ¶¶ 23-26, our colleagues in the Third District examined section 3-6-3(a)(4.2) and concluded that it applies solely to individuals serving a sentence in IDOC, not individuals in presentence custody in a county jail. However, subsequent to OSAD's filing of its *Finley* motion, our colleagues in the Second District disagreed—in an opinion filed on July 13, 2026—with the reasoning employed by the *Williamson* court, and concluded that "the statute's plain language, as well as extrinsic aids, support that section 3-6-3(a)(4.2) permits prisoners sentence credit for engaging in the listed activities while in custody prior to sentencing." *People v. Duddleston*, 2026 IL App (2d) 250365, ¶ 87. The court specifically held "that sentence credit under section 3-6-3(a)(4.2)(A) is available to prisoners regardless of whether they engage in the described activities

while in IDOC or while in custody prior to sentencing." *Id.* ¶ 89. Accordingly, there now exists a split of authority in the appellate court with regard to this question.

¶ 39 However, we need not weigh in on that split of authority, because the circuit court provided an alternative, independent reason for its denial of credit to defendant: that defendant had not met his burden to show that, under the facts of this case, he was entitled to the credit. Indeed, the circuit court specifically stated that although it did not believe defendant's request was permissible pursuant to *Williamson*, "even if it were, I'm finding that I don't have the facts in front of me to make that finding and that those requests should have been properly made in Macon County where they may have been properly considered with Macon County witnesses." Thus, the circuit court made it clear that its ruling was not dependent on the holding in *Williamson*, which means that as long as the circuit court's ruling was supported by the evidence, it may be upheld regardless of whether the court in *Williamson*, or the court in *Duddleston*, is correct.

¶ 40 In support of its factual finding, the circuit court stated that, as the State pointed out, there was "no documentary evidence of [defendant's] work as a" jail trusty. The court stated that it did not "know what Macon County refers to as a trusty or if they, in fact, referred to" defendant as a trusty. The court stated that it was "unable to determine whether to give much weight to the time frame of May 29 through August 17 of 2022 in terms of whether [defendant] was, in fact, involved in those activities he says he was involved in." As the parties and the circuit court noted, the only evidence supporting defendant's request for the credit was his own uncorroborated testimony. The circuit court clearly did not find defendant's testimony to be credible enough to, by itself, support the request for credit. In light of defendant's failure to provide sufficient credible factual support for his request, we agree with OSAD's ultimate conclusion that no issue of arguable merit could be raised that the circuit court erred in denying defendant's request for additional sentencing credit.

¶ 41 The second issue OSAD considered raising is whether defendant's due process rights were violated when the circuit court held the probation revocation proceedings *in absentia*. As OSAD correctly notes, it is well established "that a defendant's due process rights are not violated by holding a probation revocation proceeding *in absentia*, as long as [that defendant has] been admonished pursuant to section 113-4(e) of the Code of Criminal Procedure of 1963 and ha[s] been given notice of the hearing date." *People v. Sherrod*, 279 Ill. App. 3d 383, 387 (1996) (citing *People v. Hall*, 134 Ill. App. 3d 836 (1985)). Section 113-4(e) states that if a defendant enters a plea of not guilty in a case, the circuit court must advise that defendant "at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence." 725 ILCS 5/113-4(e) (West 2022).

¶ 42 In this case, the circuit court's January 5, 2022, *in absentia* admonishment of defendant tracked section 113-4(e) nearly verbatim, with the circuit court stating "if you fail to appear in court when required by the [c]ourt, your failure to appear would constitute a waiver of the right to confront witnesses against you and trial could proceed in your absence." Thus, it is indisputable that defendant was properly admonished in this case.

¶ 43 It is equally indisputable that in this case, defendant had notice of the date of the hearing. At the hearing, after recounting defendant's previous attendance issues in this case, the circuit court specifically asked defense counsel if she had spoken with defendant about the hearing. Defense counsel stated that she had spoken to defendant the day before, reminding him of the date and time of the hearing. Moreover, at no point in the proceedings in the circuit court did defendant contend that he did not have notice of the hearing. Although one of defendant's later allegations

of ineffective assistance of defense counsel was based on his belief that defense counsel should have objected to the probation revocation hearing being held *in absentia*—which, we note, she did—and that defense counsel should have requested a continuance of the hearing, he never claimed that he did not have notice of the hearing. For these reasons, we agree with OSAD that no issue of arguable merit could be raised that defendant's due process rights were violated when the circuit court held the probation revocation proceedings *in absentia*.

¶ 44 The third issue OSAD considered raising is whether defendant received ineffective assistance of counsel at the probation revocation hearing when counsel failed to object to hearsay testimony during that hearing. As OSAD notes, to prevail on a claim of ineffective assistance of counsel, a "defendant must allege facts demonstrating (1) that counsel's performance fell below an objective standard of reasonableness and (2) that counsel's deficient performance so prejudiced the defendant that he was denied a fair trial." *People v. Tucker*, 2017 IL App (5th) 130576, ¶ 26. Each of these two elements must be satisfied. *Id.* ¶ 27. Accordingly, "a court may resolve an ineffective assistance claim based upon only the prejudice component because a lack of prejudice renders irrelevant the issue of counsel's performance." *Id.* The prejudice component is met if a defendant shows "there is a reasonable probability that, but for his attorney's deficient performance, the result of the proceedings would have been different." *Id.* ¶ 26. For purposes of an ineffective assistance of counsel analysis, "[a] reasonable probability is one that sufficiently undermines confidence in the outcome of the proceeding." *Id.*

¶ 45 In this case, Shumard's testimony that she received notice from the Macon County probation department that defendant was directed to appear, but failed to do so, for probation appointments on the six dates alleged in the petition, was clearly based on hearsay, rather than any firsthand knowledge she had, particularly in light of her testimony that she met with defendant

personally only one time, when he first reported for probation on April 20, 2023. Defense counsel did not raise a hearsay objection; accordingly, no attempt to invoke a hearsay exception was made by the State. The foregoing notwithstanding, Shumard's testimony that she never received verification that defendant completed his substance abuse evaluation within 30 days of his release from custody, and that the only verification she ever received showed that the evaluation was completed on January 3, 2024, was not hearsay, as it was based on her firsthand knowledge of what she did and did not receive.

¶ 46 Accordingly, even if defense counsel had objected to the hearsay portion of Shumard's testimony, the circuit court had sustained the objection, and the circuit court had ultimately ruled that the State had not proven the failure-to-appear allegations in the petition, the circuit court still could have found, as we discuss in more detail below, that the State met its burden to prove, by a preponderance of the evidence, the allegation that defendant violated the terms of his probation because he failed to obtain his substance abuse evaluation within 30 days of his release from custody. Thus, defendant cannot show that he was prejudiced by defense counsel's failure to object to the hearsay portions of Shumard's testimony, because he cannot show that there is a reasonable probability that, but for defense counsel's failure to object, the result of the probation revocation proceedings would have been different. We agree with OSAD that no argument to the contrary would have arguable merit.

¶ 47 The fourth issue OSAD considered raising is whether the State proved, by a preponderance of the evidence, that defendant violated the terms of his probation. When the State files a petition to revoke a defendant's probation on the basis of an alleged violation of the terms of that probation, "[t]he State has the burden of going forward with the evidence and proving the violation by the preponderance of the evidence." 730 ILCS 5/5-6-4(c) (West 2022). A defendant's failure to

comply with a single term of the conditions of the defendant's probation "may be sufficient to revoke probation even when the defendant has substantially complied with all other terms." *People v. Bell*, 219 Ill. App. 3d 264, 266 (1991). This court will not disturb the circuit court's determination to terminate probation unless the determination was against the manifest weight of the evidence presented to the circuit court. *Id.* "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 48 Here, as discussed above, even if we were to conclude that the State failed to meet its burden to prove the failure-to-appear allegations because those allegations were supported only by hearsay testimony, the circuit court still could have found that the State met its burden to prove, by a preponderance of the evidence, the allegation that defendant violated the terms of his probation because he failed to obtain his substance abuse evaluation within 30 days of his release from custody on April 20, 2023. Shumard's testimony with regard to the latter allegation was not hearsay. Instead, it was based upon her firsthand knowledge of what documentation she received and what she did not, as well as on what defendant did or did not tell her. Defense counsel, when cross-examining Shumard, specifically asked Shumard if defendant told her that he received a substance abuse evaluation while in IDOC. Shumard answered, "No." Defense counsel thereafter asked Shumard if defendant provided her with any type of verification that he completed a substance abuse evaluation while in the custody of IDOC. Shumard again answered, "No." She testified multiple times that the only verification she ever received showed that defendant completed the substance abuse evaluation on January 3, 2024, which was well beyond the 30-day requirement of his probation. No evidence to the contrary was provided. We therefore agree with

OSAD that there would be no arguable merit to a claim that the State failed to prove, by a preponderance of the evidence, that defendant violated his probation.

¶ 49 The fifth issue OSAD considered raising is whether the circuit court abused its discretion when it imposed defendant's 3.5-year sentence. As OSAD correctly notes, the imposition of a sentence is left to the sound discretion of the circuit court, and a reviewing court will not alter the circuit court's sentence unless the circuit court has abused its discretion. *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15. "The abuse of discretion standard has been viewed as the most deferential standard of review available with the exception of no review at all." *Id.* We give such great deference to the circuit court because it "is in the best position to consider the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *Id.* We will not find an abuse of discretion unless the circuit court's sentencing decision is arbitrary, fanciful, or unreasonable, or unless no reasonable person would take the view adopted by the circuit court in its decision. *Id.* ¶ 26. Moreover, we may not overturn a sentence merely because we might have weighed the pertinent statutory factors differently. *Id.*

¶ 50 Sentences are presumed to be proper, and if a circuit court's sentence "falls within the statutorily prescribed range, it will not be found to be excessive or an abuse of discretion unless the sentence greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *Id.* ¶ 28. We have held that the spirit and purpose of the law are promoted if the circuit court's sentence reflects the seriousness of the offense, while also giving sufficient consideration to the defendant's rehabilitative potential. *Id.* Moreover, "if mitigating evidence is presented at the sentencing hearing, a reviewing court presumes the [circuit] court took that evidence into consideration, absent some contrary evidence." *Id.* ¶ 29. There is no requirement that the circuit court recite or assign a value to each factor presented at the sentencing hearing, and

the defendant bears the burden to affirmatively establish that a sentence was based on improper considerations. *Id.*

¶ 51 As OSAD correctly notes, defendant faced an extended-term sentence of up to 10 years of imprisonment. The State recommended a sentence of five years of imprisonment. The circuit court sentenced defendant to 3.5 years. Thus, defendant's sentence was well within the statutorily prescribed range, and no arguably meritorious contention could be raised that his sentence was excessive. Moreover, we do not believe defendant's sentence greatly varied from the spirit and purpose of the law prohibiting the possession of methamphetamine, or was manifestly disproportionate to the nature of defendant's offense. In addition, the circuit court considered only appropriate factors when sentencing defendant. The court stated that it had considered the PSI, defendant's statement in allocution, the factors in aggravation and mitigation, and the arguments of counsel.

¶ 52 In mitigation, the court acknowledged that defendant had no new drug charges since April 2022, that his most recent convictions were for nonviolent offenses, and the court found that defendant did not believe or contemplate that his conduct would cause or threaten serious harm. In aggravation, the court noted, as "the elephant in the room," defendant's "lengthy" criminal history. The circuit court also found that previously imposed alternatives to imprisonment were unsuccessful, that placing defendant on probation again would deprecate the seriousness of the offense, and that in any event, defendant would not comply with the terms of probation. The circuit court specifically stated that it was sentencing defendant for the offense of possession of methamphetamine, not for his conduct while on probation. For all of these reasons, OSAD is correct that no issue of arguable merit could be raised with regard to defendant's 3.5-year sentence.

¶ 53 The sixth and final issue OSAD considered raising is whether the circuit court erred when it struck the motions defendant filed on his own behalf, as well as whether the circuit court's preliminary *Krankel* inquiry was adequate. As OSAD correctly notes, the majority of the motions that were stricken by the circuit court pertained to matters that took place in this case prior to defendant entering into his fully negotiated plea agreement with the State, or pertained to the guilty plea itself. "In an appeal from an order revoking a defendant's probation, the court cannot consider the correctness of the underlying judgment of conviction unless that judgment is void." *People v. Dieterman*, 243 Ill. App. 3d 838, 841 (1993).

¶ 54 In this case, there is nothing in the record that would arguably support the contention that the underlying judgment of conviction, arising from defendant's plea of guilty, is void. As the circuit court repeatedly noted, defense counsel negotiated a favorable plea deal for defendant. Not surprisingly, defendant did not move to withdraw that favorable plea, instead reaping the benefits of the plea agreement, including a term of probation rather than a sentence to IDOC. As the *Dieterman* court pointed out, the filing of a timely motion to withdraw a guilty plea is a jurisdictional prerequisite to a review of a defendant's guilty plea. *Id.* Because defendant failed to timely move to withdraw his guilty plea, and because the judgment on his guilty plea was not void, the circuit court did not err in striking defendant's motions pertaining to the underlying judgment in this case. No contention to the contrary would have arguable merit.

¶ 55 We turn then to the motions that alleged ineffective assistance of defense counsel with regard to the revocation proceedings and the sentencing of defendant. Pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny, when a defendant raises a claim of ineffective assistance of counsel, the circuit court does not automatically appoint new counsel to represent the defendant. *People v. Shamhart*, 2016 IL App (5th) 130589, ¶ 32. Instead, the circuit court holds a

preliminary inquiry in which it examines the factual basis of the defendant's claim. *Id.* If the circuit court determines the defendant's claim is without merit, or involves only matters of trial strategy, the circuit court should deny the defendant's claim without appointing new counsel. *Id.* If, on the other hand, the defendant's allegations show possible neglect of the case, new counsel should be appointed to represent the defendant at a full hearing on the defendant's claims. *Id.*

¶ 56 In this case, the circuit court conducted an inquiry into defendant's claims, but found that none of the claims merited a full hearing. With regard to defendant's claim that defense counsel was ineffective for failing to object to the probation revocation hearing being held *in absentia*, and for failing to ask for a continuance, the former claim is factually incorrect. As explained above, defense counsel did object, stating—after the State announced that it was ready to proceed and had a witness present—that she wished to "place an objection on the record."

¶ 57 As to the latter claim, the circuit court, when evaluating defendant's claim during the preliminary *Krankel* inquiry, could have concluded that defendant could not show that he was prejudiced by defense counsel's failure to request a continuance, because defendant could not demonstrate that the outcome would have been different if defense counsel had requested one. *People v. Tucker*, 2017 IL App (5th) 130576, ¶ 26 (prejudice component of ineffective assistance of counsel claim is met if a defendant shows "there is a reasonable probability that, but for his attorney's deficient performance, the result of the proceedings would have been different"). The circuit court, well aware of the circumstances surrounding the State's request to proceed *in absentia*, would have known that it was not required to grant a continuance, and in light of those circumstances in all probability would not have been inclined to grant a continuance if asked to do so.

¶ 58 As described above, on May 28, 2024, defendant failed to appear at the originally scheduled revocation hearing. The State asked at that time that the case "proceed *in absentia*," but the circuit court, following discussion with the parties, stated that it was "inclined to give [defendant] the benefit of the doubt," and continued the case until June 18, 2024. When, on that date, defendant again failed to appear, the circuit court made its decision to allow the State to proceed *in absentia*, after the court reviewed, for the record, defendant's previous attendance issues, asked defense counsel if she had spoken with defendant about the hearing, and learned that counsel had spoken to defendant the day before, reminding him of the date and time of the hearing. Under these circumstances, we agree with OSAD that no issue of arguable merit could be raised that the circuit court should have found that further proceedings on this ineffective assistance of counsel claim were warranted.

¶ 59 With regard to defendant's allegation that defense counsel was ineffective because she did not question the veracity of Shumard's testimony, or adequately cross-examine Shumard, this allegation is not factually correct either. Defense counsel did cross-examine Shumard, including pointedly asking Shumard if defendant told Shumard he completed his substance abuse evaluation in IDOC, and if defendant provided verification to Shumard that he completed his substance abuse evaluation in IDOC. The fact that Shumard did not answer defense counsel's questions the way defendant wishes she did is not defense counsel's fault. OSAD is correct that no issue of arguable merit could be raised that the circuit court should have held additional *Krankel* proceedings with regard to any of defendant's allegations of ineffective assistance of defense counsel.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, the motion of appointed counsel to withdraw is granted, and the judgment of the circuit court is affirmed.

¶ 62 Motion granted; judgment affirmed.