

NOTICE
Decision filed 03/27/23. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2023 IL App (5th) 210302-U

NO. 5-21-0302

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,)	Lawrence County.
)	
v.)	No. 17-CF-112
)	
BRIAN CARRIE,)	Honorable
)	Robert M. Hopkins,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* Cause remanded where the circuit court failed to substantially comply with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), when it failed to admonish defendant as to several provisions of the rule.
- ¶ 2 Defendant, Brian Carrie, pleaded guilty to aggravated battery (720 ILCS 5/12-3.05(c) (West 2016)) in the Lawrence County circuit court and was sentenced to 12 months' probation. Upon failing a drug test, the State initiated probation revocation proceedings based upon defendant's amphetamine and methamphetamine use. Defendant admitted to violating his probation as alleged by the State, and ultimately, the court sentenced him to 30 months in prison. Defendant appeals, arguing that the court failed to substantially comply with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), where it failed to admonish defendant as to several provisions

of the rule, including the minimum prison sentence he faced for admitting to a violation of his probation. We agree with defendant and reverse and remand for further proceedings.

¶ 3 I. Background

¶ 4 On October 24, 2017, the State charged defendant by two count information. Count I alleged that on October 21, 2017, defendant committed the offense of aggravated battery (720 ILCS 5/12-3.05(c) (West 2016)), wherein defendant, in committing a battery, while Dana Cornwell was at Bottoms Up Liquor in Lawrenceville, Lawrence County, Illinois, a public place of accommodation, knowingly made physical contact of an insulting nature with Dana Cornwell, in that defendant struck Dana Cornwell in the face. Count II alleged that on October 21, 2017, defendant committed the offense of assault (*id.* § 12-1(a)), wherein defendant knowingly swung his hand at Abby Worstel, thereby placing Abby Worstel in reasonable apprehension of receiving a battery. On November 8, 2017, following a hearing, defendant waived the right to a preliminary hearing.

¶ 5 A. Guilty Plea

¶ 6 On January 30, 2019, the circuit court held a hearing on defendant's negotiated guilty plea. According to the State, defendant would enter a plea of guilty to count I of the information, aggravated battery. In exchange, the State recommended that defendant receive 12 months of felony probation. The State would dismiss count II of the information pursuant to the plea agreement.

¶ 7 Defendant pleaded guilty and waived the right to a jury trial. Relevant to this appeal, the circuit court admonished defendant that the offense of aggravated battery "is ordinarily punishable in this state upon a conviction by a fine of up to \$25,000 or incarceration for up to five years in the Department of Corrections with an addition of one year of mandatory supervised release." The

court admonished defendant on his right to a trial by jury and his right to counsel. The court asked defendant whether his plea was freely and voluntarily made, and whether defendant was threatened or coerced. Following a factual basis from the State, the court found sufficient factual foundation for the plea. The court sentenced defendant for the offense of aggravated battery to 12 months of probation.

¶ 8 B. First Petition to Revoke Probation

¶ 9 On April 25, 2019, the Lawrence County Probation Division reported that defendant tested positive for the presence of amphetamine and methamphetamines. On May 22, 2019, the State filed a petition charging violation of conditions of probation, wherein defendant provided a positive test for amphetamine and methamphetamines on April 25, 2019. On August 14, 2019, the State filed an amended petition charging violation of conditions of probation, wherein defendant provided a positive test for amphetamine and methamphetamines on April 25, 2019 (previously filed on May 22, 2019), and defendant provided an additional positive test for amphetamine and methamphetamines on August 1, 2019.

¶ 10 On August 21, 2019, the circuit court held a hearing on the petition to revoke probation. Defendant, through counsel, waived his right to a hearing and admitted the violation as alleged. The following colloquy occurred between the court and defendant:

“THE COURT: *** You have a right to a hearing on that petition. You have a right to require the State to prove the allegations by a preponderance of the evidence. My understanding is, at this time, on advice of counsel, it’s your intention to waive your rights to that hearing and to admit the violation as alleged. Is that your intention?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you doing that freely and voluntarily?

THE DEFENDANT: Yes, your Honor.

THE COURT: There being no objection, the Court finds that the defendant has freely, knowingly and voluntarily waived his right to a hearing on the PTR and admits the allegation. Accordingly, he is found to have violated, as alleged.”

¶ 11 On January 29, 2020, the circuit court resentenced defendant for the offense of aggravated battery to 18 months of probation.¹

¶ 12 C. Second Petition to Revoke Probation

¶ 13 On March 5, 2020, the Lawrence County Probation Division reported that defendant provided a positive test for the presence of amphetamine and methamphetamine. On June 4, 2020, the State filed a petition charging violation of conditions of probation, wherein defendant tested positive for amphetamine and methamphetamine on March 5, 2020. On August 19, 2020, the circuit court resentenced defendant for the offense of aggravated battery to a term of 18 months of probation.²

¶ 14 D. Third Petition to Revoke Probation

¶ 15 On March 17, 2021, the State filed a petition charging violation of conditions of probation, wherein defendant tested positive for amphetamine and methamphetamine on February 23, 2021. The same day, the circuit court held a hearing on the State’s petition. Defendant waived his right to a hearing and admitted to the positive test. The court kept defendant in custody, noting that “this is the fourth violation of probation” defendant had for “positive tests.”

¶ 16 On March 31, 2021, the circuit court entered an order staying proceedings and referring defendant to drug court. On May 28, 2021, the State filed an amended petition charging violation of conditions of probation, wherein defendant tested positive for amphetamine and

¹The record on appeal lacks a transcript from this resentencing hearing.

²The record on appeal lacks a transcript from this resentencing hearing. There is likewise no transcript for any hearing on the June 4, 2020, petition to revoke probation.

methamphetamine on February 23, 2021, and April 20, 2021. The amended petition noted that defendant tested positive for amphetamine and benzodiazepine on April 22, 2021.

¶ 17 On June 2, 2021, the circuit court held a hearing on the petition to revoke regarding the positive tests on April 20 and April 22, 2021. Defendant admitted to the use leading to the positives. The following colloquy occurred between the court and defendant:

“THE COURT: Mr. Carrie, you understand you have a right to a full, open, and contested hearing on the Petition Charging Violation of Conditions of Probation? Do you understand that?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: You have a right to require the State to prove these allegations by a preponderance of the evidence. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: But it is your intention, at this time, on advice of your attorney, to give up your right to that hearing and to admit those violations?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And are you doing that freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions on that?

THE DEFENDANT: No, Your Honor.”

¶ 18 On June 30, 2021, the matter proceeded to resentencing. Upon considering the arguments of the parties and the factors in aggravation and mitigation, the court sentenced defendant to 30 months in prison with one year mandatory supervised release.

¶ 19 The court granted late notice of appeal.

¶ 20

II. Analysis

¶ 21 On appeal, defendant argues that the circuit court failed to properly admonish him pursuant to Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), when it failed to advise him of the minimum penalty he would face if his probation were revoked. Having carefully considered the record, we agree.

¶ 22 Specifically, defendant argues that during the first petition to revoke probation, the circuit court failed to comply with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), where the court failed to advise him of his right to counsel, the right to confront and present witnesses, the minimum and maximum sentences for the underlying offense, and whether defendant's admission resulted from additional promises or coercion. During the third petition to revoke probation hearing, defendant argues that the court again failed to advise defendant of his right to counsel, the right to confront and present witnesses, and the minimum and maximum sentences for the underlying offense. Defendant additionally argues that the court failed to determine whether defendant's admission resulted from additional promises or coercion. We address each hearing in turn.

¶ 23 A trial court's compliance with Rule 402A is reviewed *de novo*. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046 (2007). Illinois Supreme Court Rule 402A requires, in pertinent part, that where a defendant admits to a violation of probation, there must be substantial compliance with the following:

“(a) Admonitions to Defendant. The court shall not accept an admission to a violation, or a stipulation that the evidence is sufficient to revoke, without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant understands the following:

(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.

(b) Determining Whether Admission Is Voluntary. The court shall not accept an admission to a violation, or a stipulation sufficient to revoke without first determining that the defendant's admission is voluntary and not made on the basis of any coercion or promise. If the admission or tendered stipulation is the result of an agreement as to the disposition of the defendant's case, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the agreement, or that there is no agreement, and shall determine whether any coercion or promises, apart from an agreement as to the disposition of the defendant's case, were used to obtain the admission.

(c) Determining Factual Basis for Admission. The court shall not revoke probation, conditional discharge or supervision on an admission or a stipulation without first determining that there is a factual basis for the defendant's admission or stipulation.

(d) Application of Rule 402. The provisions of Rules 402(d), (e), and (f) shall apply to proceedings on a petition to revoke probation, conditional discharge or supervision." Ill. S. Ct. R. 402A (eff. Nov. 1, 2003).

¶ 24 “[S]ubstantial compliance, meaning a specific and affirmative showing in the record that the defendant understood each of the required admonitions, is all that is required under Rule 402A to satisfy due process.” *Ellis*, 375 Ill. App. 3d at 1046. “[T]he goal of the Rule 402A admonitions is ‘to ensure that [the] defendant understood his admission, the rights he was waiving, and the

potential consequences of his admission.’ ” *Id.* (citing *People v. Dennis*, 354 Ill. App. 3d 491, 496 (2004)).

¶ 25 First, turning to the August 21, 2019, hearing, defendant argues that the circuit court failed to comply with Rule 402A, where the court failed to advise him of his right to counsel, the right to confront and present witnesses, the minimum and maximum sentences for the underlying offense, and whether defendant’s admission resulted from additional promises or coercion. The record reflects that the court merely inquired as to whether defendant, on the advice of his counsel, intended to waive his rights to a hearing on the petition to revoke probation. The court inquired as to whether defendant did so freely and voluntarily. Defendant agreed. The court did not, however, admonish defendant as to the minimum or maximum sentence he faced for admitting to a violation of his probation, advise him of the right to counsel, and the right to confront and present witnesses. Although the court did not expressly ask defendant whether his admission was the result of coercion or promises, defendant noted that his decision was made freely and voluntarily. Nonetheless, the court failed to comply with Rule 402A, where there was no mention whatsoever of the sentencing range, defendant’s right to counsel, or defendant’s right to confront and present witnesses.

¶ 26 Next, turning to the June 2, 2021, hearing, defendant argues that the circuit court again failed to advise defendant of his right to counsel, the right to confront and present witnesses, and the minimum and maximum sentences for the underlying offense. Defendant additionally argues that the court failed to determine whether defendant’s admission resulted from additional promises or coercion. The record reflects that the court advised defendant that he had the “right to a full, open, and contested hearing on the Petition Charging Violation of Conditions of Probation.” Moreover, the court admonished defendant that he had a right to require the State prove the

allegations by a preponderance of the evidence. The court inquired whether defendant gave up his right to a hearing freely and voluntarily. Similar to the first petition to revoke hearing, in the June 2, 2021, hearing, the court plainly failed to comply with Rule 402A, where there was no mention of defendant's sentencing range nor his right to counsel.

¶ 27 The State responds, arguing that the circuit court substantially complied with the requirements of Rule 402A. In support, the State argues that when defendant pleaded guilty, the court advised that a conviction for aggravated battery included incarceration for “up to five years.” While “a defendant facing probation revocation is entitled to fewer procedural protections than a defendant facing an original criminal prosecution, one of the explicit procedural protections to which a probation revocation defendant is entitled is a clear explanation of the sentencing range he faces.” *Ellis*, 375 Ill. App. 3d at 1048. In the instant case, the court failed to provide defendant with the applicable sentencing range at both the August 21, 2019, hearing and the June 2, 2021, hearing. Therefore, the court failed to substantially comply with the requirements of Rule 402A.

¶ 28

III. Conclusion

¶ 29 For the foregoing reasons, the judgment of the circuit court of Lawrence County is reversed and the cause remanded with directions to allow defendant to withdraw his admissions to the petition to revoke probation and for further proceedings consistent with this disposition, as necessary.

¶ 30 Reversed and remanded with directions.