

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY 1997 SESSION

FILED

July 18, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS.)
)
 WILLIAM GLENN ABLES,)
)
 Appellant.)

NO. 02C01-9608-CC-00283

MADISON COUNTY

HON. FRANKLIN MURCHISON,
JUDGE

(Probation Revocation)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

**JOE G. RILEY,
JUDGE**

OPINION

The appellant, William Glenn Ables, appeals the order of the Madison County Circuit Court revoking his probation and requiring him to serve the balance of a six (6) year sentence in the Tennessee Department of Correction. On appeal, he claims that the trial court erred in (1) admitting testimony from appellant's probation officer concerning the results of drug tests; and (2) revoking his probation and ordering him to serve his sentence in confinement. We affirm the judgment of the trial court.

FACTS

In November 1991, appellant pled guilty to one (1) count of aggravated burglary, one (1) count of burglary of a building and seven (7) counts of felony theft. He was sentenced as a Range I, Standard Offender, to concurrent sentences for an effective sentence of six (6) years. Subsequently, he was transferred to boot camp and discharged to regular probation.

In September 1994, his probation was revoked when the trial court found that he had violated the terms of his probation by being convicted of driving under the influence and failing to pay restitution. At that time, he was placed in the Tennessee Department of Correction Intensive Supervision Program.

In April 1996, appellant's probation was revoked once again. The trial court found that he had violated the conditions of the intensive probation program by: (1) using narcotics; (2) violating curfew; (3) failing to pay supervision fees; (4) failing to perform community service work; and (5) failing to pay court costs, fines and restitution. The trial court ordered that appellant serve the balance of his sentence in confinement. From this ruling, he brings this appeal.

TESTIMONY ON DRUG TEST RESULTS

Appellant complains that the trial court erred in allowing his probation officer to testify at the hearing that appellant had tested positive for marijuana on six occasions. He claims that there is no evidence to verify the “nature of the testing process or its reliability.” Therefore, he claims that the revocation of probation based on this testimony amounts to a denial of due process.

Initially, we note that trial counsel made no objection to the testimony at the hearing. Therefore, the issue is waived. Tenn. R. App. P. 36(a); State v. Gregory, 862 S.W.2d 574, 578 (Tenn. Crim. App. 1993).

Furthermore, if there was error in allowing the testimony, it was harmless in light of appellant’s testimony. He candidly admitted that he was using drugs. Moreover, he testified that he violated several of the other enumerated conditions of intensive probation. Allowing the probation officer to testify to the drug test results does not “affirmatively appear to have affected the result” of the hearing. Tenn. R. Crim. P. 52(a). This issue is without merit.

REVOCAION OF PROBATION/CONFINEMENT

In his second assignment of error, appellant argues that the trial court abused its discretion in revoking his probation. He further claims that even if revocation was warranted, the trial court erred in ordering confinement for the balance of the original sentence.

Revocation of probation is subject to abuse of discretion standard of review, rather than a *de novo* standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court that a violation of probation has occurred. Id. Proof of a violation need not be established beyond a reasonable doubt, and the evidence need only show that the trial judge exercised a conscientious and intelligent judgment. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

In the present case, the trial court clearly had a basis for revocation. Appellant's own testimony reveals that he did not comply with the specific conditions of the intensive probation program. He refused to complete the required community service work. He admitted to using marijuana frequently and used any money he earned to perpetuate his habit. His efforts at seeking drug treatment were negligible, at best. Furthermore, he violated his curfew and failed to pay court costs and restitution.

If the trial court finds "that the defendant has violated the conditions of his probation and suspension by a preponderance of the evidence, the trial judge shall have the right . . . to revoke the probation . . . and cause the defendant to commence the execution of the judgment as originally entered. . ." Tenn. Code Ann. § 40-35-311(d); see State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995). The evidence that appellant violated the terms of his probation is overwhelming. The trial court did not abuse its discretion in revoking appellant's probation and reinstating his original sentence. This issue has no merit.

The judgment of the trial court is AFFIRMED.

JOE G. RILEY, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

DAVID H. WELLES, JUDGE