IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

AUGUST SESSION, 1996

FILED

February 25, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	**C.C.A. NO. 01C01-9512-CC-00431**
	)	
Appellee,	)	
	)	
	)	**ROBERTSON COUNTY**
VS.	)	
	)	**HON. JOHN H. GASAWAY, III**
GILL AUSTIN,	)	**JUDGE**
	)	
Appellant.	)	(Sentencing Issues)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF ROBERTSON COUNTY

FOR THE APPELLANT:

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OPINION FILED ________________________

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant appeals from an order of the trial court which denied the Defendant's "motion to correct an illegal sentence," and also denied the Defendant's "motion for street time." We find no error and affirm the judgment of the trial court.

On February 18, 1992, the Defendant entered a plea of guilty to the Class B felony offense of selling cocaine. By judgment entered on the same day, he was found guilty of the offense and was sentenced to eight years in the Tennessee Department of Correction, to be served as a Range I standard offender. The entire sentence was suspended and the eight years was ordered to be served on probation. By order entered on May 10, 1993, the Defendant was found to be in violation of his probation. His probation was revoked and the eight-year sentence was ordered to be served in confinement in the Tennessee Department of Correction.

On February 13, 1995, the Defendant filed a "motion to correct an illegal sentence." The Defendant argues that his sentence of eight years in the Department of Correction is illegal because effective July 1, 1992, Tennessee Code Annotated section 39-17-417(c) was amended to provide that selling cocaine in an amount of less than .5 grams is a Class C felony with a Range I sentence of three to six years.

Obviously, the eight-year sentence which the Defendant received was not an illegal sentence. At the time the Defendant was convicted and sentenced, the Tennessee General Assembly had not yet enacted the legislation which reduced the crime of selling a small quantity of cocaine from a Class B felony to a Class

C felony. The legislation which subsequently passed was not effective until July 1, 1992, some four months after the Defendant was convicted and sentenced under the prior law. The Defendant's attorney concedes that he has found no legal authority to support the Defendant's argument. We find that the Defendant's argument is totally without merit and conclude that the trial judge correctly denied the Defendant's motion.[1]

The Defendant also filed a "motion for street time," in which he asked the trial judge to credit his eight-year sentence with the time that he spent on probation between the time of his original sentencing and the time his probation was revoked. In support of this motion, the Defendant cites the statute which authorizes the parole board, upon revocation of parole, to allow all or part of the inmate's time spent on parole to be considered as service of the sentence.[2] We conclude that this statute is clearly inapplicable to probation revocation.

If the trial judge determines that a defendant has violated the conditions of his probation, Tennessee law authorizes the trial judge to revoke the probation and "cause the Defendant to commence the execution of the judgment as originally entered or otherwise in accordance with § 40-35-310." [3] Tenn. Code Ann. § 40-35-311(d). We believe the statutes are clear, and we note that this court has held that an inmate is not entitled to credit on his sentence for time spent on probation. Young v. State, 539 S.W.2d 850, 855 (Tenn. Crim. App.), perm. to appeal denied, id. (Tenn. 1976). We therefore cannot conclude that the trial judge erred by denying the Defendant's "motion for street time."

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[1]We note that from this record we are unable to determine the amount of cocaine the Defendant was convicted of selling. At the time the Defendant committed the crime, the sale of any amount of cocaine was a Class B felony. Thus, even if the Defendant's argument had merit, we could not conclude that he was entitled to the relief which he seeks.

[2]Tenn. Code Ann. § 40-28-122(a).

[3]"[I]n such cases the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension, and shall be executed accordingly . . . ." Tenn. Code Ann. § 40-35-310. The trial judge obviously retains the authority to again suspend all or any portion of the sentence and set reasonable conditions of probation in conjunction therewith.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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JOSEPH M. TIPTON, JUDGE