

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FEBRUARY SESSION, 2000

FILED
February 29, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)

Appellee,)

V.)

BRIAN KEITH EREXSON,)

Appellant.)

NO. M1999-0119-CCA-RUC-1

SUMNER COUNTY

HON. JANE WHEATCRAFT, JUDGE

(PROBATION VIOLATION)

FOR THE APPELLANT:

DAVID A. DOYLE

District Public Defender

REGAN R. COTHRON

Assistant Public Defender

STEVE GLASER

Assistant Public Defender

117 East Main Street

Gallatin, TN 37066

FOR THE APPELLEE:

PAUL G. SUMMERS

Attorney General & Reporter

DAVID H. FINDLEY

Assistant Attorney General

2nd Floor, Cordell Hull Building

425 Fifth Avenue North

Nashville, TN 37243

LAWRENCE RAY WHITLEY

District Attorney General

SALLIE WADE BROWN

Assistant District Attorney General

113 West Main Street

Gallatin, TN 37066-2803

OPINION FILED _____

AFFIRMED

THOMAS T. WOODALL, JUDGE

OPINION

Defendant Brian Keith Erexson entered a guilty plea to two counts of assault in the Sumner County Criminal Court and the trial court imposed a sentence of eleven months and twenty-nine days of intensive probation for each conviction, with the sentences to run consecutively to each other and to a sentence that was imposed in another case. Following a subsequent hearing, the trial court revoked Defendant's probation, and Defendant challenges that revocation in this appeal. After a review of the record, we affirm the judgment of the trial court.

BACKGROUND

Approximately six months after Defendant was sentenced to probation, a probation violation warrant was filed and executed. The violation warrant alleged that Defendant had violated his probation by failing to remain employed, failing to maintain curfew, failing to attend anger management classes, failing to pay probation supervision costs, failing to make restitution payments, and using marijuana.

During the revocation hearing, Helen Howard, Defendant's probation officer, testified that Defendant had been fired from his job because of sporadic attendance. Howard also testified that Defendant had only attended two out of twenty-six anger management classes and he had also admitted in a signed document to using marijuana. Howard further testified that Defendant was one month behind in his probation fees and he had failed to make any restitution payments. Finally, Howard testified that it had been very hard to monitor Defendant's compliance with his curfew because he frequently changed his place of residence and he did not always report where he was living.

Defendant testified that he was currently in jail for a probation violation in another case. Defendant also testified that while he had been in jail, he had been

attending Alcoholics Anonymous meetings, anger management classes, job readiness classes, and GED classes. On cross-examination, Defendant admitted that he had been fired from his job because of sporadic attendance, he had failed to attend anger management classes before he was put in jail, and he had a drug problem. Defendant also responded to a question from the prosecutor by admitting that before he was placed in jail, he “didn’t do anything [he was] supposed to do on probation.”

ANALYSIS

Defendant contends that the trial court abused its discretion when it revoked his probation. We disagree.

The circumstances upon which probation can be revoked are specified in Tennessee Code Annotated section 40-35-311(e):

If the trial judge should find that the Appellant has violated the conditions of probation and suspension by a preponderance of the evidence, the trial judge shall have the right by order duly entered upon the minutes of the court, to revoke the probation and suspension of sentence and cause the Appellant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310; provided, that in case of such revocation of probation and suspension, the Appellant has the right to appeal.

Tenn. Code Ann. § 40-35-311(e) (Supp. 1999). The Tennessee Supreme Court has stated that under this provision:

The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment.

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991) (citations omitted). Thus, “[t]he revocation of a suspended sentence is committed to the sound judicial discretion of the trial judge, and his decision on the matter will not be reversed on appeal unless

it appears that the trial judge has acted arbitrarily in the matter." State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App.1981) (citations omitted).

Defendant initially contends that the trial court abused its discretion by failing to consider the fact that he had been attending rehabilitation classes in jail as evidence that he is a good candidate for release into the community. However, Defendant's activities after his confinement in jail for the previous probation violation are simply not relevant to the determination the trial court was required to make in this case: whether Defendant's probation should be revoked because he violated the probation requirements. In short, the trial court was not required to consider Defendant's activities in jail when determining whether to revoke probation.

Defendant also claims that the trial court abused its discretion because it revoked his probation based on the commission of the assaults for which he pled guilty and was placed on probation, rather than on any probation violation. This assertion is inaccurate. The record indicates that after the trial court found that Defendant had violated the requirements of probation, the trial court stated, "He has done absolutely nothing except beat people that are less strong than he is." Contrary to Defendant's assertion, this statement does not indicate that the trial court based its revocation on the conduct for which Defendant was placed on probation. Rather, it appears that the comment was simply made out of frustration over Defendant's disregard for the requirements of his probation. In fact, it is absolutely clear that the trial court revoked Defendant's probation because Defendant had failed to comply with the requirements, not because he committed the assaults.

In this case, there is ample evidence that Defendant violated the requirements of his probation. Defendant admitted at the revocation hearing that he had a drug problem and the record contains a signed document in which Defendant admitted to using marijuana during the period of probation. The evidence introduced during the revocation hearing indicates that Defendant only attended two out of the required

twenty-six anger management classes and Defendant admitted during the revocation hearing that he had not attended the classes. Finally, the evidence in the record indicates that Defendant has failed to pay all of the required probation costs and has failed to pay any restitution. Under these circumstances, we conclude that the trial court did not abuse its discretion when it revoked Defendant's probation.

Accordingly, the judgment of the trial court is AFFIRMED.

THOMAS T. WOODALL, Judge

CONCUR:

JOE G. RILEY, Judge

JAMES CURWOOD WITT, JR., Judge