

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL SESSION, 1996

**FILED**  
September 30, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )

Appellee, )

VS. )

HOWARD LUROY  
WILLIAMSON, Jr., )

Appellant. )

C.C.A. NO. 02C01-9507-CC-00201

MADISON COUNTY

HON. FRANKLIN MURCHISON  
JUDGE

(Direct Appeal)

FOR THE APPELLANT:

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OPINION FILED \_\_\_\_\_

AFFIRMED

JERRY L. SMITH, JUDGE

## OPINION

Appellant Howard Luroy Williamson, Jr. pled guilty to one count of robbery in the Madison County Circuit Court. As a Range I standard offender, he received a sentence of three years in the Tennessee Department of Correction. The trial court suspended this sentence in favor of a three-year period of probation. However, during the probationary period, Appellant's probation officer filed several probation violation reports. As a result of the alleged violations, the trial court conducted a probation revocation hearing. Following the hearing, the trial court revoked Appellant's probation and ordered the imposition of the original three-year sentence of confinement. In this appeal, Appellant presents the following issue for review: whether the trial court erred in revoking his probation and in imposing the original three-year sentence of confinement.

After a review of the record, we affirm the judgment of the trial court.

Upon a finding by a preponderance of the evidence that a defendant has violated the conditions of probation, a trial court may revoke probation and order the imposition of the original sentence. Tenn. Code Ann. 40-35-310, -311(d) (1990 & Supp. 1995). The decision to revoke probation rests in the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The trial court must adduce sufficient evidence at the probation revocation hearing to make an intelligent decision. Id. Furthermore, the trial court must exercise conscientious judgment in making its decision rather than acting arbitrarily. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). In order for a reviewing court to find that a trial court has abused its discretion,

the record must be devoid of substantial evidence which would support the conclusion that a violation of probation occurred. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

At Appellant's probation revocation hearing on March 14, 1995, both Appellant and his probation officer testified. The proof showed that this was Appellant's second probation revocation hearing for his robbery conviction. At the conclusion of Appellant's first probation revocation hearing on June 14, 1994, Appellant was sentenced to sixty days incarceration for failing to regularly report to his probation officer, for testing positive for cocaine use, for a subsequent assault conviction, and for curfew violations. The trial court delayed Appellant's incarceration until September 13, providing him with another opportunity to demonstrate that he could abide by the conditions of his probation. However, on June 22, just eight days following the hearing, Appellant again tested positive for cocaine use. Furthermore, from July until October, Appellant only reported twice for his weekly meetings with his probation officer. He also failed to report an October 6 arrest for burglary and theft to his probation officer.

Appellant testified that his failure to regularly report to his probation officer was due to his clinically-diagnosed mental breakdown and to a heavy dosage of medication that prevented him from "mov[ing] around much." He theorized that the prescribed medication could have been the cause for his positive drug screen and maintained his innocence with regard to his burglary and theft arrest. He conceded that he made no effort to contact his probation officer and explain his situation.

Based on the foregoing evidence, the trial court found that Appellant had violated his probation after being given numerous chances to show he could successfully complete a probationary sentence. Appellant's probation was revoked and the trial court ordered the imposition of his original three-year sentence of confinement. The record is replete with uncontested evidence of Appellant's numerous and flagrant violations of the conditions of his probation under these circumstances the trial judge did not abuse his discretion in revoking Appellant's probation.

Appellant also contends that the trial court abused its discretion in ordering the imposition of his original three-year sentence of confinement. Appellant argues that, in light of the sentencing principles of the Tennessee Criminal Sentencing Reform Act of 1989, the trial court should have ordered incarceration for only a portion of the sentence and probation for the balance of the sentence. However, at this point in time, Appellant's reliance on these statutory sentencing principles is misplaced. While the consideration of statutory sentencing principles is mandatory in determining a criminal defendant's original sentence, reference to these principles is not necessary in determining the appropriate sanction following revocation of probation. See State v. Taylor, No. 02C01-9504-CC-00108, 1996 WL 218332, at \*2 (Tenn. Crim. App. May 1, 1996). As stated previously, the appropriate standard of review here is abuse of discretion. The record reveals that the trial court was within its discretion in ordering the imposition of Appellant's original three-year sentence of confinement.

Accordingly, the judgment of the trial court is affirmed.

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JERRY L. SMITH, JUDGE

CONCUR:

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PAUL G. SUMMERS, JUDGE

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JOSEPH M. TIPTON, JUDGE