

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

FILED

November 4, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

MITZI ANN BOYD,

Appellant.

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C.C.A. # 03C01-9508-CC-00246

SULLIVAN COUNTY

Honorable Arden L. Hill, Judge

(Probation Revocation)

For Appellant:

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Mitzi Ann Boyd, appeals as of right from the revocation of her probation. In 1992, the defendant pled guilty to five counts of forgery; the trial court imposed concurrent two-year sentences for each offense, to be served consecutively to a prior sentence. The entire sentence was suspended. In 1995, the trial court revoked the defendant's probation and sentenced her to two years in Community Corrections on the condition that she first serve 45 days in the Sullivan County Jail.

In this appeal, the defendant claims the trial court abused its discretion by revoking the probation and by placing her in Community Corrections. We disagree and affirm the judgment.

Two of the conditions of the defendant's probation were that she "not use intoxicants of any kind to excess" and that she avoid any violations of the law. On August 7, 1994, a police officer stopped the defendant's vehicle for violating a city noise ordinance. After observing the defendant, the officer determined that she was intoxicated. An intoximeter test indicated a blood alcohol content of .23 percent. Thus, the officer also charged the defendant with DUI, second offense. Later, a General Sessions judge ruled that the noise ordinance, the basis for the original detention, was void for vagueness and dismissed both charges.

The defendant contends that these dismissed charges should not be a basis for the revocation of her probation. In response, the state submits revocation was appropriate because the defendant, as a matter of fact, had violated the terms of her probation by using intoxicants to excess. At the hearing, the defendant conceded that she had done so.

When a probation revocation is challenged, the appellate courts have a limited scope of review. If the trial judge finds, by a preponderance of the evidence, "that the defendant has violated the conditions of his probation," probation may be revoked. Tenn. Code Ann. § 40-35-311(d). The Sentencing Commission Comments to Section 40-35-310 provide that "[u]pon revocation, the original sentence imposed can be placed into effect." The determination by the trial court, if conscientiously made, is entitled to an affirmance; the record must merely demonstrate that there is substantial evidence to support its conclusions. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980); see also State v. Williamson, 619 S.W.2d 145, 147 (Tenn. Crim. App. 1981).

Here, the defendant clearly violated the terms of probation. Because the defendant readily admitted that, the revocation was neither arbitrary nor capricious. When the underlying facts constitute a violation, the eventual dismissal of criminal charges arising out of that violation is largely irrelevant. In our view, the trial court did not abuse its discretion in requiring service of a two-year term in Community Corrections.

Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

Joe B. Jones, Presiding Judge

Paul G. Summers, Judge