

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1996 SESSION

STATE OF TENNESSEE,)	
)	
Appellee,)	No. 02C01-9601-CC-00036
)	
v.)	Madison County
)	
CECIL WAYNE FOWLER,)	Hon. Franklin Murchison, Judge
)	
Appellant.)	(Probation Revocation)

For the Appellant:

Pamela Drewery
Assistant District Public Defender
227 West Baltimore
Jackson, TN 38301
(AT TRIAL)

George Morton Googe
District Public Defender
and
Pamela J. Drewery
Assistant District Public Defender
227 West Baltimore
Jackson, TN 38301
(ON APPEAL)

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
Sarah M. Branch
Assistant Attorney General of Tennessee
450 James Robertson Parkway
Nashville, TN 37243-0493

James G. (Jerry) Woodall
District Attorney General
and
Don Allen
Assistant District Attorney General
P.O. Box 2825
Jackson, TN 38302-2825

OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Cecil Wayne Fowler, appeals as of right from the revocation of his probation by the Madison County Circuit Court. He contends that the trial court abused its discretion by revoking his probation.

In 1991, the defendant pled guilty to introducing drugs into a county jail and received a five-year suspended sentence. The defendant violated the terms of his probation, and the trial court placed him in an intensive probation program. Then, the defendant violated the terms of the intensive probation program and was placed in a community corrections program. After the defendant failed to comply with the terms of the community corrections program, his sentence was revoked and he was transferred to the Department of Correction. The Department of Correction placed him in the boot camp program, see T.C.A. § 40-20-201, and then, effective November 9, 1994, placed him on probation. See T.C.A. § 40-20-206. In September 1995, the trial court revoked the defendant's probation because it found that he had failed to report, failed to perform community service work, violated his curfew, and used drugs.

The defendant's probation officer testified that the defendant missed a total of seventeen mandatory office visits between June 7 and July 27, 1995. He further explained that the defendant had a curfew as a condition of his probation and that on more than five occasions, the defendant failed to be home during his curfew hours. He testified that the defendant was required to perform eight hours of community service each month but that to his knowledge the defendant had not completed any community service work. He also recalled that the defendant failed four drug screens that he had administered to him.

During cross-examination, the officer testified that the defendant was working during the two months he missed the seventeen office visits and that the

defendant reported to him sporadically before that time. He said that he was qualified to test the defendant for drugs and that he did not send the tests to anyone else to verify the results. He also testified that he had noticed a slight change in the defendant's attitude or efforts since his last court appearance.

During his testimony, the defendant blamed his employment for the office visits he missed and said that he showed the probation officer proof of his employment. He also said that he completed twenty-eight or thirty hours of community service work. The defendant conceded that he had used drugs while he was on probation and said that he was trying to change his habits by working hard and attending Alcoholics Anonymous classes.

The defendant contends that the trial court abused its discretion by ordering that the defendant serve his entire sentence in the Department of Correction without considering less severe alternatives. However, if the trial court found by a preponderance of the evidence that the defendant violated a condition of his probation, it was within the court's discretion to revoke the defendant's probation and cause execution of the judgment as it was originally entered. T.C.A. §§ 40-35-310, -311(d); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If the record contains substantial evidence to support the trial court's conclusion that the defendant violated a condition of his probation, no abuse of discretion will be found. Mitchell, 810 S.W.2d at 735.

The record in this case contains substantial evidence to support the trial court's conclusion that the defendant has repeatedly refused to comply with the

conditions of his release. We hold that the trial court did not abuse its discretion in revoking the defendant's probation. The judgment of the trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Joe B. Jones, Presiding Judge

Jerry L. Smith, Judge