

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
DECEMBER SESSION, 1996

FILED

March 11, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee)

vs.)

GUY WILLIAM RUSH,)

Appellant)

No. 03C01-9603-CC-00087

SULLIVAN COUNTY

Hon. Frank L. Slaughter, Judge

(Sale of marijuana over one-half ounce,
three counts; Sale of cocaine over .5
grams)

For the Appellant:

Leslie S. Hale
Asst. Public Defender
P. O. Box 839
Blountville, TN 37617

Stephen M. Wallace
District Public Defender

For the Appellee:

Charles W. Burson
Attorney General and Reporter

Susan Rosen
Assistant Attorney General
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

H. Greeley Wells, Jr.
District Attorney General

Edward E. Wilson
Asst. District Attorney General
Blountville, TN 37617

OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Guy William Rush, appeals as of right from the order of the Sullivan County Criminal Court revoking his probation. The appellant presents one issue for our review. He contends that the trial court abused its discretion in revoking his sentence of probation.

After reviewing the record, we affirm the judgment of the trial court.

I. Background

On November 16, 1992, the appellant pled guilty to three counts of sale of marijuana over one-half ounce and to one count of sale of cocaine over .5 gram. Pursuant to a plea agreement, the trial court imposed an effective sentence of nine years with the Department of Correction. On July 12, 1993, the Tennessee Department of Correction transferred the appellant to supervised probation status, after his completion of the Department's boot camp program. On October 2, 1995, a violation of probation warrant was issued for the appellant alleging a violation of Rule 2, "failure to obey all federal, state and local laws." Specifically, the warrant alleged as follows:

Patrolman John Rose SCSD, took out an Affidavit of Complaint that there was probable cause to believe that the defendant committed the offense of 2nd Degree Attempted Murder and an Aggravated Assault on or about 10-01-95 in Sullivan County, Tennessee. Essential facts taken from the Affidavit are that the defendant stabbed with a knife Tina Rush and attempted to stab Wendy Crowe, all occurring at the 'Station Bar' . . . in Bristol, Tennessee.

The proof at the probation violation hearing revealed that, on October 1, 1995, Tina Rush, the appellant's ex-wife, and her friend, Wendy Crowe, went to the Station Bar between 2:30 and 3:00 p.m. Around 8:00 p.m., Ms. Rush noticed the arrival of the appellant and his friend, Larry "Pete" Gross. Within minutes after their arrival, Gross became involved in a fight with another patron, and

Gross and the appellant were ordered to leave the establishment. Between 8:15 and 8:30 p.m., Ms. Rush, Ms. Crowe, and Jimmy Cullop, Ms. Rush's boyfriend, attempted to leave the Bar but noticed that the appellant was still in the parking lot. Despite Ms. Rush's attempts to avoid him, the appellant approached her and inquired as to whether she was going to drop a custodial interference charge which she had filed against him. Ms. Rush told the appellant that "[she] [did not] want no [sic] trouble" and warned him that she "had mace." Although the record is not entirely clear as to what transpired next, at some point Ms. Rush sprayed the appellant with pepper spray and the appellant stabbed Ms. Rush with a knife in the right arm, under her left breast, and twice in her back. Additionally, when Ms. Crowe attempted to stop the attack on Ms. Rush, the appellant "wildly" jabbed at Crowe, although contact was not made.

Deputy John Rose of the Sullivan County Sheriff's Department responded to the dispatch to the Station Bar. Upon arriving, he immediately observed the appellant in the center of the parking lot with his hands outstretched and holding a folding knife in his right hand. Rose described the weapon as having a three inch blade and a tool-type instrument, which resembled an ice pick. Ms. Rush testified that her liver was punctured by one of the knife wounds. As a result, she was hospitalized for three days and was advised that it would take six months for the wound to her liver to heal. Moreover, her activities and her diet have been restricted since the injury to her liver. At the conclusion of the hearing, despite inconsistencies in the testimony, the trial court revoked the appellant's probation, finding that the conduct of the appellant constitutes a violation of the law and a violation of the terms of his probation.

II. Revocation of Probation

The appellant contends that the trial court abused its discretion by

revoking his probation, because the evidence at the probation hearing was insufficient to support a violation of Rule 2. Specifically, the appellant denies committing any offense against either Ms. Rush or Ms. Crowe, contending that he was acting in self-defense.

Upon finding that a defendant has violated the conditions of his probation, a trial court may revoke a sentence of probation. See State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991); Tenn. Code Ann. § 40-35-311(d) (1990). A trial court may revoke a sentence of probation if the court finds that the defendant has violated the conditions of his probation by a preponderance of the evidence. Tenn. Code. Ann. § 40-35-311(d). Inconsistencies in the testimony of witnesses is for the determination of the trial judge. Bledsoe v. State, 387 S.W.2d 811, 814 (1965); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980).

On appeal, the findings of the trial court have the weight of a jury verdict. Delp, 614 S.W.2d at 398. The judgment of the trial court revoking probation will not be disturbed absent an abuse of discretion. Harkins, 811 S.W.2d at 82 (citation omitted). In order for the reviewing court to find that the trial court abused its discretion, it must be established that the record contains no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred. Id. (citations omitted).

The proof in the record overwhelmingly establishes that the appellant, armed with a weapon, knowingly stabbed Ms. Rush, resulting in serious injury, and attempted to stab Ms. Crowe with the intent to inflict bodily injury. Accordingly, we conclude that the record supports the trial court's finding that the appellant violated Rule 2 of the Rules of Probation. The judgment of the trial court revoking the appellant's probation is affirmed.

DAVID G. HAYES, Judge

CONCUR:

DAVID H. WELLES, Judge

THOMAS T. WOODALL, Judge