

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY 1997 SESSION

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9602-CC-00052
 Appellee,)
) Madison County
 V.)
) Honorable Franklin Murchison, Judge
)
 JIM B. STAFFORD,) (Revocation of Probation)
)
 Appellant.)

FOR THE APPELLANT:

George Morton Googe
District Public Defender

Daniel J. Taylor
Assistant Public Defender
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FOR THE APPELLEE:

Charles W. Burson
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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Jim B. Stafford, appeals the trial court's revocation of his probation. Upon review, we affirm.

The appellant was convicted of aggravated burglary, theft over \$1,000.00, forgery, and uttering a forged instrument. He was sentenced to six years. All but thirty days of his sentence were suspended. He was ordered to serve the balance on supervised probation.

A probation revocation hearing was held. Proof was adduced that the appellant: (1) failed to report, (2) moved without notifying his probation officer, (3) failed to provide his probation officer with requested information, and (4) failed to make restitution payments. The appellant argues that his failure to abide by the terms and conditions of his probation was simply a misunderstanding caused by a lack of communication.

Trial judges have the authority to revoke probation upon finding violations of probation conditions. Tenn. Code Ann. § 40-35-310 (1990). The existence of a violation need only be supported by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311(d) (1990 and Supp.). To uphold a probation revocation, we must find that the trial judge has not acted arbitrarily and has exercised a conscientious judgement in making the revocation decision. State v. Smithson, C.C.A. No. 01C01-9411-CC-00385, slip. op. at 2 (Tenn. Crim. App. April 20, 1995); Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980).

Trial judges assess witness credibility at probation revocation hearings. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). A judge's findings

carry the weight of jury verdicts. Id. To show abuse of discretion, the appellant must demonstrate that the record is devoid of evidence supporting the judge's finding of a violation of a probation condition. Id.

The appellant has not carried his burden, and the record supports the revocation. The trial judge made a conscientious decision in revoking appellant's probation. The revocation was not arbitrary, and we find no abuse of discretion. Moreover, the appellant's sentence was proper. The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

THOMAS T. WOODALL, Judge