

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1997 SESSION

FILED
July 29, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

LISA GOURLEY HUTCHINSON,

Appellant.

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C.C.A. NO. 03C01-9609-CC-00332

BLOUNT COUNTY

HON. D. KELLY THOMAS, JR.,
JUDGE

(Probation revocation)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The defendant was indicted on January 31, 1994, on numerous charges of passing bad checks. She pled guilty to all the charges and was sentenced. In case #8140, the subject of this appeal, she was sentenced to eleven months, twenty- nine days. That sentence was to be served under full probation following the conclusion of the other sentences. She served ninety days on the other sentences and was then released and placed on probation. While on probation for the other sentences, she violated her conditions of probation and was incarcerated for forty-five days. After being released on April 10, 1996, she continued to be on probation and as a condition of her probation was ordered to live at the Dismas House.

Because the defendant failed to live at the Dismas House and failed to report to her probation officer, a warrant was issued for her arrest on April 23, 1996. Following a hearing on May 20, 1996, the trial court revoked the defendant's probation and ordered execution of her sentence. The defendant now appeals arguing that the trial court erred by ordering her to serve her entire sentence. We do not agree, and therefore, affirm the judgment below.

When a trial judge finds that a probationer has violated the conditions of his or her probation, the trial judge has the authority to revoke probation. See T.C.A. § 40-35-310. In this case, there is no dispute as to whether a violation occurred because the defendant admitted that she did not fulfill her conditions of probation. The only issue is whether the trial court erred by reinstating her full sentence.

Tennessee Code Annotated § 40-35-311(d) grants trial judges the discretionary authority "to commence the execution of the judgment as originally entered." Thus, it is clearly within the trial court's discretion to revoke a defendant's probation and

order the original sentence to be served. See State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Although the defendant admits that she violated her probation, she argues that regardless of the violation she should remain on probation because she has obtained a job and housing. She contends that the trial court should have sentenced her to thirty days in jail rather than ordering her to serve her full sentence. We do not agree.

At the revocation hearing, the defendant testified that after her release from jail on April 10, 1996, she did not go immediately to the Dismas House because she went to the hospital instead to be treated for two cysts that had gone untreated while she was in jail. She was treated and released that same day. She testified that she had then decided to go home rather than to the Dismas House because she had been told that she would have to find a job within ten days in order to reside there. She further testified that she had felt she would be unable to do this because she lacked transportation and because she was on medication for the cysts.

The defendant testified that on April 17, 1996, she had called her probation officer to say that she could not keep her appointment with him. She testified that the officer had asked her if she were living at the Dismas House. She testified that while she had been talking to the officer, she had also been talking to her husband and that when she said "yes" she was talking to her husband and not the officer. She stated that the conversation on April 17 was the last contact she had with her probation officer. She testified that at the time of the hearing, she had worked out her transportation problems, had obtained a job as a cook, and had been living with her parents.

At the conclusion of the testimony, the trial judge stated:

It's clear from the proof that [the defendant] has

violated her probation. She violated the court order. And the history of her case is that she was sentenced in a large number of worthless checks. She served 90 days in jail and was released on probation. And she violated the terms of her probation. And then that violation, instead of ordering her to serve all the rest of this sentence, I allowed her to serve a short time in jail.

And I guess recognizing that she wasn't to the point where she could live on her own and function on probation, I wanted her in an environment where she would be supervised. And that's why I ordered that she live at Dismas House and then be on probation. And she refused to go to Dismas House. So, obviously, that step isn't going to work either.

One of the functions of a probation officer is to keep in touch with a person when they're on probation and to assure me that the person should be on probation and shouldn't be in custody. And she wouldn't allow [her probation officer] to do that.

Thus, the trial judge, in his discretion, determined that the defendant should serve her full sentence. It is not the function of this Court to substitute its judgment for that of the trial court. Finding no abuse of discretion, we affirm the judgment of the court below.

JOHN H. PEAY, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

J. CURWOOD WITT, JR., Judge