IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL SESSION, 1997

STATE OF TENNESSEE,	)	**C.C.A. NO. 03C01-9607-CR-00269**
Appellee,	)	
	)	**KNOX COUNTY**
VS.	)	
	)	**HON. RICHARD R. BAUMGARTNER**
TRAVIS DEWAYNE WEAVER,	)	**JUDGE**
Appellant.	)	**(Direct Appeal-Probation Revocation)**

FOR THE APPELLANT:

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OPINION FILED _____

REVERSED AND REMANDED

JERRY L. SMITH, JUDGE

OPINION

Appellant Travis Dewayne Weaver pleaded guilty in the Knox County Criminal Court to one count of attempted sale of cocaine and to one count of possession of a deadly weapon during the commission of a felony. As a Range I standard offender, Appellant received a sentence of three years for attempted sale of cocaine and one year for possession of a deadly weapon, all of which was to be served on probation. Regarding the conviction for attempted sale of cocaine, Appellant also received a fine of $26.50 for criminal injuries and $525.75 for court costs. On the conviction for possession of a deadly weapon, the court imposed fines of $26.50 for criminal injuries, $33.50 in court costs, and $2,000.00. On July 29, 1994, a probation violation warrant issued for Appellant. Following a probation revocation hearing held on November 3, 1994, the trial court revoked Appellant's probation and sentenced him to intensive supervisory probation. A second probation violation warrant issued on December 15, 1995. On February 16, 1996, the trial court held a probation revocation hearing. The court revoked Appellant's intensive supervisory probation and ordered Appellant to serve the entirety of his original sentence incarcerated in the Tennessee Department of Corrections. The court accorded Appellant seventy-nine days of jailtime credit toward his four-year sentence.

In this direct appeal, Appellant contends that: (1) his procedural due process rights were violated, (2) the evidence is insufficient to buttress the conclusion that he violated the terms of his probation, and (3) the trial court abused its discretion in revoking his probation and in reinstating his original sentence.

After a review of the record, we reverse the judgment of the trial court and remand to that court for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

After entry of Appellant's guilty plea, the trial court sentenced Appellant to four years of total probation. The salient terms of Appellant's probation provided that Appellant:

> (1) shall not fraternize with any person who has a criminal reputation;
>
> (2) shall not possess or own a firearm or weapon;
>
> (3) shall accept any clinical supervision and treatment recommended;
>
> (4) shall perform 96 hours of community service per year;
>
> (5) shall be in his residence by 8:00 p.m; and
>
> (6) shall attend day treatment in the Community Corrections Program

On July 29, 1994, a probation violation warrant issued for Appellant for failure to perform the required community service and failure to participate in day treatment in the Community Corrections Program. The trial court ordered that appellant be placed on intensive supervisory probation.

The second probation violation warrant alleged that Appellant had violated the terms of his probation agreement by (1) being arrested for the December 3, 1995 incident; (2) failing to report this arrest; (3) being in possession of a weapon as a convicted felon; and (4) violating his curfew.

At Appellant's February 16, 1996 probation revocation hearing, the State called two witnesses: Officer David Zavona and Ms. Pam Harwell, Appellant's probation officer. Officer Zavona testified that at approximately 10:30 P.M. on December 3, 1995, he received a call that some individuals were driving around in a red convertible firing shots. Appellant was the driver of the red convertible. Jimmy Colquitt, one of the passengers, had a criminal record and was a convicted felon. After Officer Zavona

informed Appellant of the nature of the stop, Appellant offered to "clear this up right now" and told the officer that the gun was in the vehicle. During his search of the automobile, Officer Zavona found a partially loaded Glock 19 under the driver's seat. Officer Zavona stated that the gun recently had been fired and that he found a spent shell casing lying on the front seat. Both Appellant and his two passengers were arrested for possession of a firearm. Moreover, Appellant was arrested for driving on a revoked license and possession of stolen merchandise. Appellant neglected to inform his probation officer of the arrest.

Pam Harwell testified that although she has had to remind Appellant to report with her, Appellant generally had done well under intensive probation. She averred that until the most recent arrest, Appellant had been a fairly successful probationer. Ms. Harwell further stated that when she contacted Appellant regarding the second alleged probation violation, Appellant's only response was that the gun belonged to one of the passengers. Ms. Harwell testified that Appellant assured her that he would turn himself in on this second probation violation warrant as soon as he had made arrangements for the care of an elderly relative. Subsequently, Appellant turned himself in on this warrant.

II. MINIMUM DUE PROCESS REQUIREMENTS IN PROBATION REVOCATION

In Practy v. State, this Court enunciated the constitutionally-mandated procedural due process standards applicable to a probation revocation proceeding. 525 S.W.2d 677, 679-80 (Tenn. Crim. App. 1974) (citing Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) and Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972)). The Practy Court then enumerated the "`minimum requirements of due process'" as first set forth by the United States Supreme Court in Morrissey:

> `(a) written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied upon and reasons for revoking [probation or] parole.'
> Id. at 680 (quoting Morrissey, 92 S.Ct. 2604). (emphasis added)

The case of State v. Billy Carter is squarely in point with the case sub judice. C.C.A. No. 03C01-9506-CR-00159, Sullivan County (Tenn. Crim. App., Knoxville, April 16, 1996). In Carter, as in this case, the trial court failed to set forth any oral or written findings of fact in support of its decision to revoke Appellant's probation. Id. at 5. In Carter, we concluded that the lack of both written and oral findings of fact necessitated the conclusion that the Appellant had been denied due process of law; therefore, we vacated the lower court's revocation of his probation. Id. at 5, 7. In this case, as in Carter, "the only statement entered by the trial court is a fill-in-the-blank form order which contains the bare conclusion that the Appellant has violated the terms and conditions of his probation." Id. at 4.

We must agree with Appellant's contention that the trial court erred by failing to make any written findings of fact stating the evidence relied upon and the reasons for its decision to revoke Appellant's probation. cf. State v. Delp, 614 S.W.2d 395, 397 (Tenn. Crim. App. 1980) (finding no denial of due process where the trial court substantially complied with the final Gagnon requirement by making oral findings of fact). Because the trial court made no written or oral findings of fact setting forth the basis upon which it predicated its decision to revoke Appellant's probation, we reverse the judgment for entry of such findings.

The judgment of the trial court is therefore reversed and remanded for further proceedings consistent with this opinion. Following the trial court's entry of appropriate

findings in accordance with Practy, this Court will examine Appellant's remaining issues should he further appeal.

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JERRY L. SMITH, JUDGE

CONCUR:

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JOE G. RILEY, JUDGE

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CHRIS CRAFT, SPECIAL JUDGE