

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1998 SESSION

FILED

October 7, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS.)
)
 RICK SCUDDER,)
)
 Appellant.)

NO. 03C01-9708-CC-00368

BLOUNT COUNTY

HON. D. KELLY THOMAS, JR.,
JUDGE

(Probation Revocation)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JOE G. RILEY,
JUDGE

OPINION

The appellant, Rick Scudder, appeals the order of the Blount County Circuit Court revoking his intensive probation and requiring him to serve the balance of a one-year sentence. On appeal, he claims that the trial court erred in revoking his probation and ordering him to serve his sentence in confinement. Finding no merit to these assertions, we affirm the judgment of the trial court.

FACTS

On November 12, 1996, appellant pled guilty to one count of statutory rape, a Class E felony. He was sentenced as a Range I, Standard Offender, to one year. The sentence was ordered suspended immediately, and appellant was placed on intensive probation for two years.

A probation violation report was filed on July 11, 1997. It alleged that appellant violated his intensive probation by: (1) missing his curfew on May 23, 24 and 30, 1997; and (2) failing drug screens for marijuana on May 13, 27 and June 17, 1997.

At the revocation hearing, appellant's probation officer confirmed the alleged violations. The appellant's testimony essentially acquiesced to the charges in the violation report. He admitted his marijuana use. There was no explanation offered regarding the missed curfews. Indeed, the only explanation offered for his lapses was that he "was just having a lot of pressure and stuff and . . . stopped going to . . . [drug rehabilitation follow up] meetings." When cross-examined on this point he said, "I mean, it's just a lot of pressure I felt that was coming from, you know, being on probation and stuff like that." When asked for further clarification, the appellant expressed regret for having pled guilty to the underlying statutory rape charges. He intimated that his plea was given, not as an admission of guilt, but rather to appease his attorney. The court expressed its disbelief of appellant's testimony on this point.

After examining the probation violation report, hearing testimony and noting

the appellant's lack of credibility, the trial court revoked probation and ordered the balance of appellant's sentence to be served in confinement in the Blount County jail.

Appellant appeals this ruling.

REVOCAION OF PROBATION / CONFINEMENT

Revocation of probation is subject to an abuse of discretion standard of review, rather than a *de novo* standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court that a violation of probation has occurred. Id. Proof of a violation need not be established beyond a reasonable doubt, and the evidence need only show that the trial judge exercised a conscientious and intelligent judgment. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). Once the trial court finds "that the appellant has violated the conditions of his probation and suspension by a preponderance of the evidence, the trial judge shall have the right . . . to revoke the probation . . . and cause the defendant to commence the execution of the judgment as originally entered. . ." Tenn. Code Ann. § 40-35-311(d).

In this case, there is a clear basis for revocation in that the appellant admitted his violations. Furthermore, we conclude the trial court committed no error in considering appellant's lack of truthfulness and requiring incarceration rather than an alternative. See State v. Dowdy, 894 S.W.2d 301, 306 (Tenn. Crim. App. 1994).

The judgment of the trial court is AFFIRMED.

JOE G. RILEY, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

THOMAS T. WOODALL, JUDGE