



violated a condition of probation. T.C.A. § 40-35-311(e). The decision to revoke probation rests within the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). 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 (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.; State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997). 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, rather than acting arbitrarily. Gregory, 946 S.W.2d at 832; State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

On appeal, the appellant concedes that he violated the terms and conditions of his probation. However, he contends he was unaware he was on supervised probation because the trial court did not file the probation order outlining the terms and conditions of his probation until October 8, 1998. Accordingly, he argues “[t]his is not a case of a non-cooperating probationer willfully ignoring his responsibilities under the grant of his probation.” Despite the probation order not being filed until after he was arrested on the subsequent charges, the judgments in this case clearly reflect that the appellant was placed directly on probation and ordered to pay restitution and costs. Furthermore, the appellant testified during the hearing that he knew he was not supposed to break the law while on probation. During arguments at the hearing, appellant’s counsel agreed that the appellant should not be allowed to disregard the law completely, but argued that “something less than serving his four year sentence would be in order.” The trial judge apparently agreed.

Having reviewed the record in light of the appellant’s argument, we find that the evidence fully supports the trial court’s action. The appellant has simply failed to show how the trial court abused its discretion.

Accordingly, the state's motion is granted. It is hereby ORDERED that the judgement of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals. Costs of this appeal shall be assessed to the state.

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JOE G. RILEY, JUDGE

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DAVID G. HAYES, JUDGE

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JOHN EVERETT WILLIAMS, JUDGE