

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

January 16, 2013 Session

STATE OF TENNESSEE v. MATTHEW BRIAN GRAHAM

Appeal from the Circuit Court for Rutherford County

No. F-65687; F-66167 Hon. Don R. Ash

No. M2012-01824-CCA-R3-CD-Filed July 30, 2013

Appellant, Matthew B. Graham, pled guilty to attempted abuse of a child, under 8 years of age, in violation of Tennessee Code Annotated, section 39-15-401, a Class E felony. On the same day, he pled guilty to three informations, each charging him with possession of a controlled substance in violation of Tennessee Code Annotated, section 53-11-402. Appellant received a two-year sentence in the Tennessee Department of Correction for the attempted child abuse and each of the possession of a controlled substance pleas. Appellant's total effective sentence was 8 years, to be suspended on state supervised probation. Appellant violated his probation and was ordered to serve the remainder of his 8 year sentence in the Tennessee Department of Correction. Appellant filed a motion to modify sentence to allow him to go back on probation. The trial court denied the motion. We affirm the trial court's denial of the motion to modify the sentence.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

PAUL G. SUMMERS, Sr.J., delivered the opinion of the Court in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, Jr., J., joined.

Luke A. Evans and Heather Parker, Murfreesboro, Tennessee, for the Defendant-Appellant, Matthew B. Graham.

Robert E. Cooper, Jr., Attorney General and Reporter; Meredith Devault, Assistant Attorney General; William Whitesell, District Attorney General; Laural Hemenway, Assistant District Attorney General for the Appellee, State of Tennessee.

MEMORANDUM OPINION

Pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals

This appeal was filed seeking review of the trial court's denial of a motion to modify sentence after the trial court revoked the appellant's probation for one count of attempted child abuse and three counts of controlled substances crimes. Prior to filing this appeal, the appellant had a pending appeal on the trial court's original ruling in which it revoked the appellant's probation and ordered the remainder of his sentence into execution.

On October 10, 2012, the Tennessee Court of Criminal Appeals issued an opinion on the appellant's appeal of the trial court's violation of probation, in which it unanimously affirmed the trial court in all respects. *State v. Matthew Brian Graham*, No. M2011-01878-CCA-R3-CD (Tenn. Crim. App. Oct. 10, 2012).

Issues before this Court are essentially the same legal issues that this Court ruled on in its prior holding. It is clear from the record on appeal that the trial court provided the appellant a full hearing on the matter prior to revoking his probation. There was no abuse of discretion in the trial court's revocation of probation.

The trial court's denial of the appellant's motion to modify sentence was within the sound discretion of the trial court. *State v. Ruiz*, 204 S.W.3d 772 (Tenn. 2006). Consistent with the Court's prior opinion in this case, this Court finds no error in the trial court's denial of the appellant's motion to modify sentence, and the decision of the trial court is affirmed in all respects.

PAUL G. SUMMERS, Senior Judge