

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 4, 2019

FILED

11/08/2019

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. QUINTERRIO MURRELL

**Appeal from the Circuit Court for Madison County
No. 17-619 Donald H. Allen, Judge**

No. W2019-00315-CCA-R3-CD

Defendant, Quinterrio Murrell, appeals the trial court's revocation of his probation, arguing that the trial court abused its discretion in ordering that he serve his four-year sentence in confinement. Upon our review of the record, we affirm the judgment of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT L. HOLLOWAY, JR., JJ., joined.

George Morton, District Public Defender; and Gregory D. Gookin, Assistant Public Defender, for the appellant, Quinterrio Murrell.

Herbert H. Slatery III, Attorney General and Reporter; David H. Findley, Senior Assistant Attorney General; Jody Pickens, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On February 20, 2018, Defendant pled guilty to one count of identity theft and received a sentence of four years. Defendant received credit for time served, and the remainder of his sentence was suspended to probation, to be supervised by Community Corrections. On October 30, 2018, a probation violation warrant was issued, alleging that Defendant had violated the rules of Community Corrections by not being home on various dates and by failing to report for two scheduled meetings with his probation officer. A probation violation hearing was held on January 14, 2019.

Megan New, a probation officer with Corrections Management Corporation, testified that she began supervising Defendant in August 2018. Defendant's probation had been transferred from Madison County to Hardeman County in April 2018 because Defendant lived in Bolivar, Tennessee. Ms. New met with Defendant weekly. However, Defendant missed two of his scheduled meetings, one with his previous supervisor, Crystal Brown, on June 26 and one with Ms. New on September 25. Ms. New testified that Defendant signed the rules of Corrections Management, which included being on house arrest "[u]nless performing community service, work or counsel[ing]."

Fayette County Sheriff Bobby Riles testified that he assisted Corrections Management in conducting curfew checks. Sheriff Riles was provided with Defendant's address and conducted weekly curfew checks from May until October 2018. However, Sheriff Riles never came into contact with Defendant even though he checked at various times and on various days. Several times, people at the residence told Sheriff Riles that they did not know Defendant. On cross-examination, Sheriff Riles agreed that Ms. New told him that Defendant was coming to his weekly meetings at her office, but Sheriff Riles never met Defendant at Ms. New's office to ask where he had been.

Defendant testified that he was twenty-two years old and was living in Hardeman County with his grandmother. Defendant testified that he reported weekly to his probation officer. As for not being home during the curfew checks, Defendant explained that he was either assisting his sick grandmother by going "to the pharmacy and stuff" or else he was asleep. Defendant testified that he would try to let Ms. New know when he would leave the house by texting her. Defendant testified that he was paying his supervision fees, had never failed a drug screen, and had not picked up any new charges. In response to the court's questions, Defendant agreed that he was not working. Defendant stated that "[h]alf of the time" he was absent during the curfew checks, he was running errands for his grandmother. As far as the missed late-night curfew checks, Defendant claimed that he and his grandmother were already in bed.

Ms. New was recalled and testified that Sheriff Riles was conducting curfew checks at the correct address for Defendant. She testified that on one occasion, Defendant texted her after a missed curfew check and stated that he had gone to the pharmacy, even though he was not allowed to do that without prior approval. Ms. New testified that Defendant was laid off from his job about the time that she began supervising him and that he had not provided her proof of any other employment or job offers. Ms. New testified that when she asked Defendant about missing the curfew checks, he told her that he had been home but was either asleep or did not hear the sheriff knock. One time, Defendant said that he saw the sheriff but did not come outside, and another time Defendant said that he had been at the grocery store for his grandmother. Ms. New testified that she never gave Defendant permission to be away from his home on the various dates on which Sheriff Riles had conducted curfew checks.

The trial court found that Defendant had violated his probation by missing two of his scheduled meetings with his probation officer, even though he had made his other weekly appointments. The trial court also found that Defendant was absent from his home during multiple curfew checks over the course of six months, even though Defendant was on house arrest and was not allowed to leave the house without permission from his probation officer. The trial court accredited Ms. New's testimony that Defendant never sought permission from her to leave his home and only once texted her after the fact. The trial court considered the curfew violations to be "a serious matter[,] especially on this many occasions." The trial court found it "hard to believe" Defendant's excuse of running errands for his grandmother when one of the curfew checks occurred close to midnight. Based on Defendant's violation, the trial court revoked his probation and ordered that he serve his four-year sentence. Based on his young age, the trial court recommended that Defendant be considered for boot camp, with the possibility that he could be "released after maybe five or six months." Defendant filed a timely notice of appeal.

Analysis

On appeal, Defendant argues that the trial court abused its discretion by revoking his probation and ordering that he serve his sentence in confinement. According to Defendant, even though he admitted being absent from his home during the curfew checks, he "had obeyed the great majority of his terms of supervision for approximately a year before his new arrest." Defendant contends that "[t]he trial court should have ordered [Defendant] to serve a period of 'shock incarceration'" before reinstating him to probation. The State responds that the trial court did not abuse its discretion in revoking Defendant's probation. We agree with the State.

When a trial court finds by a preponderance of the evidence that a defendant has violated the conditions of probation, the court "shall have the right . . . to revoke the probation." T.C.A. § 40-35-311(e)(1). After revoking a defendant's probation, the trial court is authorized to order a defendant to serve the balance of his original sentence in confinement, return a defendant to probation with modified conditions as necessary, or extend the period of probation by no more than two years. T.C.A. §§ 40-35-308, -310. The revocation of probation rests in the sound discretion of the trial court and will not be overturned by this Court absent an abuse of that discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991); *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995); *see also State v. Pollard*, 432 S.W.3d 851, 864 (Tenn. 2013) (holding that an abuse of discretion standard with a presumption of reasonableness applies to all sentencing decisions). An abuse of discretion occurs when the "record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of

probation has occurred.” *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980); *see also State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001).

In this case, there is substantial evidence in the record to support the trial court’s finding that Defendant violated the terms of his probation; Defendant admitted as much. Despite his excuses, Defendant admitted either being absent from home or simply not answering the door during each of the weekly curfew checks that occurred over the course of six months. Defendant acknowledged being on house arrest and not having his probation officer’s permission to leave the house. “[A d]efendant’s admission that he violated the terms of his probation, alone, constitutes substantial evidence to support the revocation of probation.” *State v. Ross Pruitt*, No. E2015-01494-CCA-R3-CD, 2016 WL 3342356, at *4 (Tenn. Crim. App. June 8, 2016) (citing *State v. Christopher Nathaniel Richardson*, No. M2006-01060-CCA-R3-CD, 2007 WL 776876, at *4 (Tenn. Crim. App. Mar. 15, 2007), *no perm. app. filed*, *no perm. app. filed*; *see State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999). The trial court also found that Defendant missed two of his scheduled meetings with his probation officer. The fact that Defendant attended most of his scheduled meetings and complied with other rules of probation is irrelevant. As this Court has previously stated, “There need be only one violation of the conditions of his probation to support revocation.” *State v. Nicholas Clower*, No. M2011-01145-CCA-R3-CD, 2012 WL 1744499, at *5 (Tenn. Crim. App. May 16, 2012) (quoting *State v. Phillip Thomas Wilcox*, No. M2002-00667-CCA-R3-CD, 2003 WL 21047133, at *2 (Tenn. Crim. App. May 9, 2003), *perm. app. denied* (Tenn. Oct. 13, 2003)), *no perm. app. filed*. Moreover, the trial court did not abuse its discretion in revoking Defendant’s probation and ordering that he serve his sentence in confinement with a recommendation that he be considered for placement in a boot camp program. This Court has “repeatedly cautioned that ‘an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing.’” *State v. Casey Dupra Drennon*, No. M2014-02366-CCA-R3-CD, 2015 WL 6437212, at *2 (Tenn. Crim. App. Oct. 23, 2015) (quoting *State v. Jeffrey A. Warfield*, No. 01C01-9711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App. Feb. 10, 1999), *perm. app. denied* (Tenn. Jun. 28, 1999)), *no perm. app. filed*; *see also State v. Timothy A. Johnson*, No. M2001-01362-CCA-R3-CD, 2002 WL 242351, at *2 (Tenn. Crim. App. Feb. 11, 2002), *no perm. app. filed*. Defendant is not entitled to relief.

Conclusion

Based on the foregoing, we affirm the judgment of the trial court.

TIMOTHY L. EASTER, JUDGE