

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER 1995 SESSION

FILED
November 29, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 v.)
)
 MICHAEL SCOTT WILLOUGHBY,)
)
 Appellant.)

No. 03C01-9503-CR-00086
Knox County
Hon. Mary Beth Leibowitz, Judge
(Revocation of Probation)

For the Appellant:

Mark E. Stephens
District Public Defender
and
Leslie Nassios
1209 Euclid Avenue
Knoxville, TN 37921

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
Michelle L. Lehmann
Counsel for the State
450 James Robertson Parkway
Nashville, TN 37243-0493

Randall E. Nichols
District Attorney General
and
Robert L. Jolley
Assistant District Attorney General
City-County Building
Knoxville, TN 37902

OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Michael Scott Willoughby, appeals as of right from the revocation of his probation by the Knox County Criminal Court. He asserts that the trial court should have taken measures less drastic than outright revocation, such as "Intensive Supervision Probation," given that his problems stem from the "disease of alcoholism." We affirm the revocation.

In March 1994, the defendant pled guilty to voluntary manslaughter and was sentenced to six years. The sentence was suspended and the defendant was placed on supervised probation for six years. The conditions of probation required that he obey the laws and not use intoxicants to excess.

As early as May 1994, evidence of the defendant's substance abuse was obtained and he was sent to treatment facilities for withdrawal and treatment. In late June 1994, the defendant was released and then admitted into another treatment center. He received his first weekend pass on or about September 10, 1994. On September 11th, the defendant was arrested for disorderly conduct and public intoxication. Later, an alcoholic beverage was found in his room at the treatment center. Various people connected with the defendant's treatment and probation supervisions saw him intoxicated on September 12th and 13th. A revocation warrant was filed.

The trial court found that the defendant had been through numerous treatment programs and had shown that full time supervision would be needed to prevent him from drinking. It recalled that his manslaughter offense was committed while he claimed to be drunk. It also noted that the defendant was not truthful about his condition with a treatment doctor and a probation officer. It concluded that the

defendant represented a substantial risk to himself and to others if left on probation in any form, and it revoked his probation.

The decision to revoke probation is left to the sound discretion of the trial court. This means that its decision will be upheld if there is any substantial evidence in the record to support it. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The evidence amply supports a finding that the defendant violated conditions of his probation and the ultimate determination that revocation was necessary. The trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

John H. Peay, Judge

David G. Hayes, Judge