

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER SESSION, 1995

FILED

December 28, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

JODIE POPE,)

Appellant.)

C.C.A. NO. 02C01-9505-CR-00120

SHELBY COUNTY

HON. L.T. LAFFERTY
JUDGE

(Probation Revocation)

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE
CRIMINAL COURT OF SHELBY COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant appeals from the judgment of the trial court which found him to be in violation of the terms of his probation. He argues that the trial court abused its discretion. We affirm the judgment of the trial court.

On December 17, 1990, the Defendant entered pleas of guilty to three counts of possession of a controlled substance with intent to sell or deliver. In exchange for his guilty pleas, he agreed to accept and was sentenced to three concurrent five-year sentences. After the Defendant served about six months, the trial court suspended the balance of his sentence and placed him on probation for five years. About six months thereafter, a probation violation warrant was filed, and subsequently, on July 9, 1993, the trial court found the Defendant had violated the terms of his probation and revoked his suspended sentence. On October 22, 1993, the trial court again suspended the remainder of the Defendant's sentence and placed him on probation for five years.

On July 27, 1994, a probation violation warrant was again issued against the Defendant. The warrant alleged numerous violations of the conditions of his probation. The trial court conducted an evidentiary hearing on the probation violation charges on November 3, 1994. At the conclusion of the hearing, the court found the Defendant to be in violation of the terms of his probation and revoked his suspended sentence. It is from this order of the trial court revoking the Defendant's suspended sentence that the Defendant appeals.

"In determining whether to revoke probation, the trial judge need not find a violation of the terms of the probation has occurred beyond a reasonable doubt. The

evidence need only show the trial judge has exercised conscientious judgment in making the decision rather than acting arbitrarily." Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980), perm. to appeal denied, id. (Tenn. 1981). "In reviewing the findings of the trial judge, the judgment of the trial court is given the weight of a jury verdict." Id.

Both the granting and revocation of a suspended sentence rest in the sound discretion of the trial judge. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The trial judge has a duty at probation revocation hearings to adduce sufficient evidence to allow him to make an intelligent decision. Id. The fact that the Defendant was not convicted of any of the offenses with which he was charged does not mandate dismissal of the probation violation warrant. State v. Delp, 614 S.W.2d 395, 396-97 (Tenn. Crim. App. 1980), perm. to appeal denied, id. (Tenn. 1981).

The judgment of the trial court will not be disturbed on appeal unless it appears that there has been an abuse of discretion. For an appellate court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that 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. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

When a trial judge grants a suspended sentence, that judge demonstrates a certain amount of confidence that the Defendant will lead a lawful life. When the Defendant's subsequent actions violate that confidence, certainly the trial judge again exercises discretion in whether or not the suspended sentence should be revoked. Davenport v. State, 214 Tenn. 468, 474, 381 S.W.2d 276, 279 (1964); Thompson v. State, 198 Tenn. 267, 269, 279 S.W.2d 261, 262 (1955). The Defendant's subsequent actions may indicate that the initial decision to suspend the sentence was a mistake.

All probationers are deemed to be on notice that they are not to engage in unlawful activity or otherwise conduct themselves inconsistently with good citizenship if they are granted probation instead of incarceration. Roberts v. State, 546 S.W.2d 264, 265 (Tenn. Crim. App. 1976).

At the probation violation hearing, the Defendant's probation officer testified that the Defendant had violated the terms of his probation in the following particulars: He tested positive for cocaine on a drug screen; he attended his drug counseling meetings only sporadically; he subsequently refused to take further drug screens and admitted to the probation officer that he was using cocaine; he then turned down any further drug treatment programs; he changed his residence without notifying his probation officer; he made no payments or arrangements to make payments on his court costs; and he failed to report to his probation officer as directed. The Defendant admitted that he had not paid his court costs because he was unable to do so but denied violating any other conditions of his probation.

From our review of this entire record, we cannot conclude that the trial judge acted arbitrarily in revoking the Defendant's probation. To the contrary, this record clearly contains substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation had occurred. This Defendant blatantly violated the confidence placed in him by the trial judge.

The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

WILLIAM M. BARKER, JUDGE