

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON  
APRIL 1996 SESSION

**FILED**  
May 17, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 ) C.C.A. No. 02C01-9508-CC-00227  
 Appellee, )  
 ) Madison County  
V. )  
 ) Hon. Franklin Murchison, Judge  
 )  
JOHNNY CHARLES BUCK, JR., ) (Probation Revocation)  
 )  
 Appellant. )

FOR THE APPELLANT:

George Morton Googe  
District Public Defender  
(On Appeal)

Pamela Drewery  
Asst. Public Defender  
227 W. Baltimore Street  
Jackson, TN 38301  
(At Revocation Hearing)

FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

## OPINION

The appellant, Johnny Charles Buck, Jr., was placed on intensive probation for his effective four-year sentence for convictions of criminal impersonation, forgery, aggravated assault, possession of a deadly weapon where alcohol is sold, and evading arrest.<sup>1</sup> During his probationary period, four probation violation warrants were filed against the appellant. Following a revocation hearing, the trial judge revoked the appellant's probation. From this revocation, he appeals. We affirm the trial judge's decision.

The first probation violation warrant charged that the appellant failed to report, failed to attend drug and alcohol treatment, and failed to pay fines and costs. A second warrant alleged that the appellant had used marijuana. The third warrant cited the appellant's arrest for unauthorized use of his employer's vehicle, evading arrest, failure to obey curfew, failure to pay fines, and failure to perform the required community service work. Finally, the fourth warrant again alleged that the appellant had used marijuana.

The proof at the hearing indicated that appellant, while under the intensive probation program, would be subject to one home curfew check per week. Over a seven month period, the appellant missed nine of his curfew checks. He was arrested on a probation violation warrant and appeared in court. The appellant missed three additional curfew checks after his appearance in court.

Another condition of appellant's probation was that he report to his probation officer twice a week and two weekends of the month. The probation officer testified that the appellant last reported in November 1994. He further indicated that the appellant was erratic in keeping his appointments and curfew.

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<sup>1</sup>See Tenn. Code Ann. §§ 39-16-301, 39-14-114, 39-13-102, 39-17-1305 and 39-16-603 (1991) respectively.

Although one drug screen was inadmissible, the appellant tested positive for marijuana on another drug screen while on probation. The probation officer instructed the appellant to attend a drug and alcohol program but he attended only two meetings. Because the appellant failed to report, no other drug screens were conducted.

The appellant had also been ordered to perform 200 hours of community service. He was first assigned to Food Bank where after two and one half hours of work was requested not to return. Next, he was to be placed at a sports complex but asked not to be sent there. Finally, appellant was placed at the Humane Shelter but again failed to report for service.

Although the appellant had brought check stubs to his probation officer as evidence of employment, he made a single fifty dollar payment on his fines totaling \$889. This payment was made on the day of the hearing.

At the conclusion of his testimony, the probation officer indicated that continued probation would be futile. He said that even though he had continually urged the appellant to comply with the conditions of his probation, the appellant simply did not follow the rules.

The trial court found that the appellant had violated his probation in "very substantial ways," i.e., failure to report, failure to perform community service, failure to pay fines and costs, failure to abide by his curfew, and continued drug use. The court concluded that although given a number of chances on probation, the appellant was not going to follow the rules.

The appellant now claims that the trial court erred in revoking his probation. He argues that the trial court should have considered periodic confinement, work release, or other alternative sentencing programs. In support

of his argument, the appellant submits that he reported four or five times a month before the revocation hearing, that he reported to his probation officer that he was working, and even made a payment on his fines on the day of court. However, we find that this is too little too late. The appellant had been given numerous opportunities to redeem himself and prove to the court that he could abide by the terms and conditions of probation. Yet, each time, he failed.

The appellant also suggests that the trial court had the alternative to modify the terms and conditions of probation such as extending the period of probation or increasing the conditions of supervision. Because the appellant was on the highest form of intensified probation,<sup>2</sup> such a claim has no basis.

The trial court has the authority to revoke probation and reinstate the original sentence, if it finds, by a preponderance of the evidence, that the probationer has violated the conditions of his or her probation. Tenn. Code Ann. § 40-35-311(d) (1990). The revocation of a suspended sentence rests in the sound discretion of the trial judge and will not be overturned absent an abuse of that discretion. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). For this Court to find an abuse of discretion and reverse the trial court's revocation of probation, it must be demonstrated 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. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Here, the evidence amply supports the trial court's decision. We find no abuse of discretion.

**AFFIRMED**

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PAUL G. SUMMERS, Judge

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<sup>2</sup>The probation officer testified that appellant began his probation on the 4C intensified probation program. However, due to three prior probation violation reports, appellant had already been elevated to the 1C program -- the top level of intensive probation.

CONCUR:

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JOSEPH M. TIPTON, Judge

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JERRY L. SMITH, Judge