

OPINION

The defendant pled guilty to aggravated burglary on October 19, 1993. On December 9, 1993, the trial court sentenced the defendant to three years with the Department of Correction, ordering him to serve four months incarceration with the remainder of the sentence to be intensive probation. The defendant was also ordered to make restitution to the victim and to serve two hundred hours of community service. On May 22, 1995, the trial court revoked the defendant's probation, finding that he had done "practically nothing" to meet the conditions of his probation. Accordingly, the trial court ordered the defendant to serve one hundred twenty days in the county jail to be followed by reinstatement to intensive probation. In this appeal as of right, the defendant challenges the revocation, alleging that the trial court abused its discretion in revoking his probation. We find that the defendant's issue lacks merit, and the judgment of the trial court is therefore affirmed.

The relevant facts in the present case arose after the defendant had begun intensive probation in the spring of 1994. The defendant was first assigned to a community service task on April 21, 1994. He completed no work on this assignment. As a result, he was reassigned to a different project on September 12, 1994, but completed very little work on this task as well. The defendant was repeatedly warned by his probation officer about the dire consequences of not performing his community service work as assigned. On December 14, 1994, a violation of probation warrant was issued for the defendant. The warrant alleged that the defendant had completed only four hours of community service work during an eight month period of time, even though he was instructed to complete ten hours each month. The defendant was arrested, brought before the trial court, and appointed legal counsel on January 13, 1995.

On January 13, 1995, the defendant reported to his probation officer,

Richard Byrd. According to Byrd, the defendant stated that he was then living with his girlfriend in Hermitage and that he was working at Hermitage Bowling Alley. Byrd instructed the defendant to complete a written report with the new information. During their meeting, Byrd never told the defendant that he was required to continue reporting twice weekly as he had done in the past, nor did Byrd tell him not to report any longer. On the report which he filled out on January 13, the defendant listed his address as that of his father in Hendersonville. Byrd called the defendant's father to confirm the defendant's place of residence and learned that the defendant was not living with his father in Hendersonville and that the defendant's girlfriend actually lived in Greenbrier rather than Hermitage. Byrd also called Hermitage Bowling Alley and learned that the defendant had applied for employment but had never worked there.

As it turned out, January 13, 1995, was the last day on which the defendant reported to his probation officer. Given the defendant's failure to report and the apparently false information which he provided on January 13, 1995, an amended violation of probation warrant was issued on May 15, 1995. The amended warrant alleged that the defendant had violated his probation by failing to advise his probation officer of his place of residence and his place of employment, by providing a report with an erroneous place of residence and an erroneous employer, by failing to report in a timely and consistent manner as instructed, and by failing to pay restitution in a timely and consistent manner as instructed.

A revocation hearing was conducted on May 22, 1995. In response to the alleged violations, the defendant provided the following explanation. He stated that he had not completed more community service work because there was no work to be done for the park in Hendersonville to which he was originally assigned. Since the defendant did not have a car, he could not travel to another location to complete community service work. Moreover, the defendant did not have time for community service work because

he had been working at Nashville Machine Company for the past seven and a half months in order to earn money to pay his fines and restitution. As far as the erroneous address and employment information, the defendant stated that it had been a simple misunderstanding. The defendant testified that he had told his probation officer on January 13, 1995, that he was living in Greenbrier but intended to move to Hermitage and to work a second job at the Hermitage Bowling Alley to earn more money to pay for his restitution and fines. He applied for an apartment in Hermitage but was turned down. As a result, the defendant never moved to Hermitage or acquired a second job at the bowling alley. Instead, he continued to live in Greenbrier with his girlfriend. With regard to restitution, the defendant testified that he had recently made a seven hundred dollar (\$700) payment and that he could immediately pay the remaining three hundred dollars (\$300) which he owed.

Upon cross-examination, the defendant admitted that he had stopped reporting to his probation officer as of January 13, 1995. He stated, however, that he had been under the impression that his probation supervision was going to be transferred to Greenbrier. He believed that he would begin intensive probation in Greenbrier as soon as his court matters were resolved.

After hearing all of the testimony, the trial court revoked the defendant's probation, ordering him to serve one hundred twenty days in jail to be followed by reinstatement to intensive probation. In so ruling, the trial court made the following findings:

As I've said so many times before, probation is a privilege. In fact, this defendant was given a break. At the time that he was sentenced, he was given three years. He only did four months of that and was placed on supervised probation. He has been on probation a year and a month, and he has done practically nothing.

It is of even greater concern to me that what the Public Defender says constitutes misunderstandings I find is simply

the defendant was untruthful with his probation officer concerning his place of employment and where he was living. The Court is not going to sit by and tolerate that.

The passages quoted above constitute the entirety of the trial court's findings in the present case.

In this appeal as of right, the defendant argues that the trial court abused its discretion in revoking his probation. More specifically, the defendant claims that since the judgment form does not state that he must work ten hours of community service per week, but rather states only that he must complete a total of two hundred hours of work, he has not violated the community service condition of his probation. Furthermore, he contends that he has not violated the restitution condition of his probation because he has now paid all but three hundred dollars (\$300) of the one thousand six hundred ten dollars (\$1610) in restitution which he originally owed. With respect to his failure to report to his probation officer and his providing of apparently false information relating to his residence and employment, the defendant argues that the trial court may not properly consider these circumstances because they occurred after the original probation violation warrant was issued in December of 1994, comparing his case to that of State v. Roscoe Sacra, C.C.A. No. 88-278-III, Robertson County (Tenn. Crim. App. filed June 29, 1989, at Nashville).

When a trial judge finds that a probationer has violated the conditions of his or her probation, the trial judge has the authority to revoke probation. See T.C.A. § 40-35-310. In determining whether or not to do so, the trial judge need not find beyond a reasonable doubt that a violation of the terms of probation has occurred. The existence of a violation need only be supported by a preponderance of the evidence. T.C.A. § 40-35-311(d).

In probation revocation hearings the credibility of the witnesses is for the determination of the trial judge. Bledsoe v. State, 215 Tenn. 553, 387 S.W.2d 811, 814 (1965); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). On review, the findings of the trial judge have the weight of a jury verdict. Delp, 614 S.W.2d 398; Carver v. State, 570 S.W.2d 872, 875 (Tenn. Crim. App. 1978). We will not disturb the judgment of the trial judge in the absence of an abuse of discretion. For this Court to find an abuse of the trial court's discretion, the defendant must demonstrate "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).

In the present case, the defendant attacks each ground alleged to support the revocation of his probation. First with regard to community service, the defendant claims that he is not required to work ten hours each month because the judgment form specifies only that he work a total of two hundred hours. He maintains that there remains a sufficient period of his probation during which he can fulfill the outstanding community service hours. The defendant's argument, however, ignores the condition of his probation that he carry out all instructions given by his probation officer. The defendant was instructed and repeatedly warned to complete ten hours of community service work each month in furtherance of the community service ordered on his judgment. While an occasional slight deficiency due to extraordinary circumstances might be understandable, it is clear from this record that the defendant has simply ignored the required community service work for nearly his entire probationary period. The defendant's complaint is therefore without merit.

With regard to the other alleged violations, namely failure to pay restitution, failure to report, and furnishing false information relating to residence and place of employment, the defendant endeavors to compare his case to that of State v. Roscoe Sacra, C.C.A. No. 88-278-III, Robertson County (Tenn. Crim. App. filed June 29, 1989,

at Nashville). In Sacra, the defendant's probation was revoked for failure to pay restitution. A panel of this Court reversed the revocation, holding that the trial court's reliance on facts which succeeded the issuance of the revocation warrant was contrary to the requirements of fundamental fairness and constituted an abuse of discretion. See Sacra, C.C.A. No. 88-278-III, Robertson County (Tenn. Crim. App. filed June 29, 1989, at Nashville).

The defendant's case, however, is quite different from Sacra. In the case at bar, the original probation violation warrant was issued in December of 1994. This warrant alleged only that the defendant had failed to complete community service work as instructed. The defendant therefore contends that the trial court improperly considered the other alleged violations in support of revocation. The defendant's contention, however, ignores the fact that an amended warrant alleging the other pertinent violations was issued on May 15, 1995. Thus, the trial court could properly consider any facts supporting the violations listed in the May of 1995 warrant which occurred before the issuance of the warrant, namely the defendant's failure to report since January 13, 1995, and his providing erroneous residence and employment information on the same date. The defendant's comparison of his situation to Sacra is misplaced.

Having resolved the Sacra contention against the defendant, it is obvious from the record that the defendant failed to report to his probation officer as originally instructed from January 13, 1995, to May 22, 1995. Moreover, the trial court specifically found that the defendant had been untruthful with his probation officer regarding his residence and place of employment. These circumstances are clearly indicative of violations of the conditions of the defendant's probation.

For the reasons set out in the foregoing discussion, we find that there is

substantial evidence in the record to support the trial court's conclusion that the defendant violated the conditions of his probation by failing to perform community service work as instructed, by failing to report to his probation officer as instructed, and by providing false information concerning his residence and place of employment to his probation officer. The judgment of the trial court is hereby affirmed.

JOHN H. PEAY, Judge

CONCUR:

DAVID G. HAYES, Judge

WILLIAM M. BARKER, Judge