

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 11, 2023 Session

FILED
07/19/2023
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Appellate Courts

STATE OF TENNESSEE v. JIMMY L. COBBLE

Appeal from the Criminal Court for Putnam County
No. 2021-CR-676 Wesley Thomas Bray, Judge

No. M2022-00598-CCA-R3-CD

The Defendant, Jimmy L. Cobble, pleaded guilty to vehicular assault and driving under the influence (“DUI”), fifth offense in exchange for a concurrent sentence of one year in jail followed by seven years of supervised probation. After a violation report was filed and a hearing held, the trial court revoked the Defendant’s probation, determining that he materially violated the terms of his probation sentence by testing positive for methamphetamine and amphetamine and by admitting to using heroin and fentanyl. It ordered the Defendant to serve the remainder of his sentence in confinement. On appeal, the Defendant asserts that the trial court abused its discretion when it failed to consider alternatives to him serving the duration of his eight year sentence in confinement. After review, we affirm the trial court’s judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and MATTHEW J. WILSON, J., joined.

Brennan M. Wingerter, Assistant Public Defender – Appellate Director (on appeal), Franklin, Tennessee; Craig P. Fickling, District Public Defender; and Benjamin D. Marsee (at the hearing), Assistant Public Defender, Cookeville, Tennessee, for the appellant, Jimmy L Cobble.

Jonathan Skrmetti, Attorney General and Reporter; T. Austin Watkins, Senior Assistant Attorney General; Bryant C. Dunaway, District Attorney General; and Beth E. Willis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

On January 13, 2022, the Defendant pleaded guilty to vehicular assault and DUI, fifth offense. Pursuant to the plea agreement, the Defendant received concurrent split confinement sentences of one year in jail followed by seven years on supervised probation. The Defendant was ordered to report to jail nine days later, on January 22, 2022.

On February 14, 2022, the Defendant's probation officer filed a Probation Violation Report indicating that the Defendant had committed a "[t]echnical" violation of probation after the January 13, 2022 guilty plea hearing, but before reporting to jail on January 22, 2022 to serve his one year of incarceration. The conditions of probation prohibited the Defendant from using intoxicants, narcotic drugs, or marijuana. The report alleged that the Defendant had violated this condition by testing positive for methamphetamine and amphetamine during a scheduled intake on January 18, 2022. The Defendant also admitted to his probation officer that he had used heroin and fentanyl the day before.

The trial court issued a violation of probation warrant and subsequently held a hearing on the violation on April 14, 2022. The parties presented the following evidence: The Defendant's probation officer, Daniel Bacon, testified that the Defendant pleaded guilty on January 13, 2022, but was not required to report to jail until January 22, 2022. The trial court ordered the Defendant to be supervised in the interim between sentencing and his date of entry into jail. Consequently, the Defendant had a scheduled intake with Mr. Bacon on January 18, 2022. The Defendant submitted to a drug test and tested positive for methamphetamine and amphetamines. Additionally, the Defendant signed a voluntary admission that he had used heroin, fentanyl, and marijuana on January 17, 2022. The trial court admitted into evidence a copy of the lab results of the January 18, 2022 drug test.

Mr. Bacon testified that he met with the Defendant at the Defendant's residence on January 20, 2022. Mr. Bacon revealed the result of the drug test and referenced the Defendant's admission to heroin, fentanyl, and marijuana. The Defendant responded that he used drugs because he was going to jail. Upon further questioning, Mr. Bacon stated that the Defendant never denied methamphetamine use when confronted with the positive result for methamphetamine.

On cross-examination, Mr. Bacon agreed that, as a part of the plea agreement, following the Defendant's service of one year in jail, the Defendant was to complete a long term treatment program. Mr. Bacon agreed that the Defendant reported to jail on January 22, 2022, as required.

The Defendant testified that he was a drug addict, but he denied knowing that he had used methamphetamine. On cross-examination, the Defendant admitted that he had more than ten prior felony convictions but stated that he had pleaded guilty as a Range II offender. The Defendant recalled that, when Mr. Bacon confronted him with the drug test result, he told Mr. Bacon, “I don’t understand how I could test positive for meth when I admitted using heroin and fentanyl.” The Defendant had no explanation for why the testing showed methamphetamine in his system. He confirmed that he used only heroin and fentanyl and that “[it] was not [his] understanding that the meth was mixed in with anything,” yet he admitted to using “street drugs.” He admitted that he had used methamphetamine several years before.

After hearing the evidence, the trial court made the following findings:

The court finds that [the Defendant] is in violation of his probation for his positive test in Exhibit 1 for the use of methamphetamine. The court also looks to Exhibit 2, his admission. The court finds Mr. Bacon to be credible. The court does not find [the Defendant] however to be credible.

We look at [the Defendant’s] record. [Defendant], you’re looking at eight years with one year split. [I]t’s important sometimes to remove someone from the community when[] that person can’t be corrected. And obviously the statements that you made to your probation officer maybe it leans to you being mildly correctable. I will give you some credit that you did still turn yourself in when you were supposed to, that you did admit to your drug use. Whether or not that drug use is completely honest or not, this court doesn’t have to determine because we have Exhibit 1, which is a use of methamphetamine while you are under supervision, which is a violation of your probation. As a result of that Exhibit 1 test for methamphetamine and Exhibit 2, I revoke you to serve all of your sentence.

That’s the order of the court.

It is from this judgment that the Defendant appeals.

II. Analysis

The Defendant asserts that the trial court abused its discretion when it ordered the Defendant to serve his full sentence in confinement. The State responds that the trial court properly exercised its discretion when it ordered that he serve his full service in confinement. We agree with the State.

A trial court's authority to revoke a suspended sentence is derived from Tennessee Code Annotated section 40-35-310 (2019), which provides that the trial court possesses the power "at any time within the maximum time which was directed and ordered by the court for such suspension, . . . to revoke . . . such suspension" and cause the original judgment to be put into effect. A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2019). "In probation revocation hearings, the credibility of witnesses is to be determined by the trial judge." *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If a trial court revokes a defendant's probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310 (2018); see *State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999).

The judgment of the trial court in a revocation proceeding, including the consequences of the revocation, is entitled to a presumption of reasonableness unless there has been an abuse of discretion. See *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022); see also *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App. 1995). The credibility of the witnesses is for the determination of the trial judge. *Bledsoe v. State*, 387 S.W.2d 811, 814 (Tenn. 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. *Carver v. State*, 570 S.W.2d 872, 875 (Tenn. Crim. App. 1978). For this Court to find an abuse of discretion by the trial court in a probation revocation case, a 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." *Delp*, 614 S.W.2d at 398.

"[P]robation revocation is a two-step consideration on the part of the trial court." *Dagnan*, 641 S.W.3d at 757. "The first is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation." *Id.* Both steps are "two distinct discretionary decision, both of which must be reviewed and addressed on appeal." *Id.* at 757-58. "Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy [a trial court's] burden" to exercise discretion in each step of the process. *Id.* at 758.

Affording the trial court a presumption of reasonableness, we cannot conclude that the record contains no substantial evidence to support the trial court's revocation. The record in this case supports the trial court's finding that the Defendant violated his probation. First, the Defendant admitted to illegal drug use, which was a violation of the conditions of probation. Additionally, a toxicology report confirms the presence of

methamphetamine in his system. The Defendant violated the terms of his probation sentence as the trial court correctly determined.

Next, the trial court is to consider the proper consequence for the violation. We agree with the State that the trial court's reasoning "could have been more robust." Nonetheless, the record supports the trial court's judgment. The trial court found the probation officer's testimony credible. The probation officer testified that, when confronted with the drug test results indicating methamphetamine and amphetamines, the Defendant did not deny methamphetamine use but merely explained he did so "because [] he was going to jail" and therefore "didn't believe that there was an issue." The trial court found the Defendant not credible. The Defendant claimed that, although he had used methamphetamine in the past, he had no knowledge or explanation for why the drug test indicated methamphetamine. The trial court did not find the Defendant's explanation credible in light of the drug test results. The trial court noted that "sometimes . . . it's important . . . to remove someone from the community when[] that person can't be corrected." The record evinces evidence of the Defendant's lack of amenability to rehabilitation. The Defendant pleaded to DUI, fifth offense, had numerous felony convictions, and when allowed to plead guilty as a Range II offender and, given a period of time to report to jail, used that time to engage in illegal drug use. The trial court found full revocation appropriate based on the Defendant's lack of amenability to correction, as evidenced by his admission to having illegally used drugs and testing positive for illegal drug use, all within a few days after entering his guilty plea.

The record reflects that the Defendant violated the terms of his probation by using illegal drugs while on probation. Accordingly, the trial court was justified in revoking the Defendant's probation, and it was within the trial court's authority to order the Defendant to serve his original sentence upon revoking the Defendant's probation sentence. The Defendant is not entitled to relief.

II. Conclusion

Based on the foregoing reasoning and authorities, we affirm the trial court's judgment.

ROBERT W. WEDEMEYER, JUDGE