IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STACY STEWART, v. STATE OF TENNESSEE.

Direct Appeal from the Criminal Court for Davidson County
No. 98-I-124 Steve R. Dozier, Judge

No. M1999-00684-CCA-MR3-CD - Decided April 7, 2000

The appellant, Stacy E. Stewart, pled guilty in the Davidson County Criminal Court to one (1) count of the sale of less than 0.5 grams of cocaine. The trial court sentenced him to three (3) years, suspended upon service of 180 days in the local workhouse. Approximately three (3) months after his release, a warrant was issued alleging that the appellant had violated the terms of his probation in that he failed to report to a probation officer, and that he had committed misdemeanors while on probation. After an evidentiary hearing, the trial court revoked the appellant's probation. On appeal, the appellant contends that the trial court revoked his probation without him having received notice of the conditions of his probation, and that as a result, he was denied due process of law. We conclude that there is substantial evidence to support the appellant's contentions with respect to adequate notice of the requirement that he report to a probation officer. However, we affirm the decision to revoke probation since the appellant is presumed by law to be on notice of the condition that he conform his conduct to the requirements of the criminal law during probation, and the record is clear that appellant in fact committed crimes while on probation.

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

SMITH, J., delivered the opinion of the court, in which HAYES, J., and OGLE, J. joined.

Dwight E. Scott, Nashville, Tennessee, for appellant, Stacy E. Stewart

Paul G. Summers, Attorney General and Reporter and Marvin E. Clements, Jr., Assistant Attorney General, Nashville, Tennessee, for appellee, State of Tennessee.

OPINION

I.

In July 1998, the appellant entered a guilty plea to one (1) count of the sale of less than 0.5 grams of cocaine, a Class C felony. The trial court sentenced him as a Range I, Standard Offender, to three (3) years, suspended upon service of 180 days in the local workhouse. The appellant was

released in December of 1998, and approximately three (3) months later, the state issued a warrant alleging that the appellant had violated the conditions of his probation.

At the revocation hearing, the appellant's probation officer, Donna Jackson, testified that, since his release in December 1998, the appellant never contacted the probation office, never reported to her as his probation officer, never paid any required fees and never gave her proof that he was gainfully employed. In addition, Jackson stated that the appellant had "picked up" two charges for criminal trespass since his release. Jackson testified that, although the appellant had been placed on probation on four (4) prior occasions, there was nothing in her file to indicate whether any probation officer or counselor met with the appellant to explain the conditions of his probation. Moreover, she acknowledged that the appellant did not sign his probation order.

The appellant testified that when he was released, no one instructed him to locate his probation officer or to report to the probation office. Although the appellant knew that he would be placed on probation when he was released, no one ever explained to him the terms of his probation. He also acknowledged pleading guilty to one charge of criminal trespass and one of simple drug possession.

The trial court determined that the appellant understood that he would be placed on probation upon his release. The court further concluded that, because he had been placed on probation several times previously, the appellant knew that he should report to the probation office. The trial court found that the appellant had violated the terms of his probation and, as a result, ordered the appellant to serve his remaining sentence.[1]

From the trial court's order revoking his probation, the appellant now brings this appeal.

II.

The appellant asserts that the trial court erred in revoking his probation. He argues that no probation officer met with him to discuss and explain the terms and conditions of his probation. He claims that, because due process mandates that he be informed of the terms and conditions of his probation, the trial court denied him due process of law by revoking his probation.

A defendant who is granted probation has a liberty interest that is protected by due process of law. Practy v. State, 525 S.W.2d 677, 680 (Tenn. Crim. App. 1974). Additionally, "it is fundamental to our system of justice through due process that persons who are to suffer penal sanctions must have reasonable notice of the conduct that is prohibited." State v. Stubblefield, 953 S.W.2d 223, 225 (Tenn. Crim. App. 1997) (citing United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed.898 (1954); State v. Ash, 729 S.W.2d 275, 279 (Tenn. Crim. App. 1986)).

While the record does reflect substantial proof that no state official ever notified the appellant of his duty to report to a probation officer, we need not address whether the appellant received adequate constitutional notice of this ground for probation revocation. This Court has held that a defendant is presumed to be on notice that, as a condition of probation, he is required to conform his conduct to the requirements of the criminal laws of this state. Id. at 225. In Stubblefield, this Court stated:

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[1]The trial court did not specify the precise reason or reasons for revoking the appellant's probation.

> unlike other conditions of probation that may be imposed, the defendant is deemed to have notice that his or her conduct must conform to the requirements of the law from the time of the law's enactment. *See* State v. Stone, 880 S.W.2d 746 (Tenn. Crim. App. 1994) (revocation proper for criminal acts occurring before probationary period begins). Also, the Criminal Sentencing Reform Act of 1989 puts citizens on notice that criminal history, through conduct or by convictions, may enhance a sentence or result in imposition of a sentence to confinement. *See, e.g.*, T.C.A. §§ 40-35-103 --108, -114(1), and -311.

Id. Thus, notwithstanding the appellant's allegation that he never received actual notice of the requirements that he report to a probation officer, he is presumed to have notice that he must abide by the criminal laws of this state.

A trial court has the power to revoke a defendant's suspended sentence "at any time within the maximum time which was directed and ordered by the court for such suspension, after proceeding as provided in § 40-35-311 . . ." Tenn. Code Ann. § 40-35-310. Tenn. Code Ann. § 40-35-311(a) provides, in pertinent part:

> Whenever it comes to the attention of the trial judge that any defendant, who has been released upon suspension of sentence, has been guilty of any breach of the laws of this state . . . the trial judge shall have the power to cause to be issued under such trial judge's hand a warrant for the arrest of such defendant as in any other criminal case.

In this case, the appellant's probation officer testified that he was arrested on two (2) criminal trespass charges, and the probation violation warrant alleges that the appellant was convicted of those charges. Moreover, at the revocation hearing, the appellant acknowledged that he pled guilty to criminal trespass and another charge of simple possession.

This Court's standard of review for a trial court's revocation of probation is abuse of discretion, rather than *de novo*. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). The trial court's action will be overturned only if the record contains no substantial evidence to support revocation. Id.; State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

Because there is sufficient evidence that the appellant violated the criminal laws of this state while released on probation, the record fully supports the revocation of the appellant's probation. Furthermore, because the appellant is deemed to be on notice, as a matter of law, that he must conform his conduct to the requirements of the criminal law, we conclude that revocation of probation was proper even absent actual notice of this condition of probation. In making this

determination, we need not decide whether the appellant received actual notice of the need to report to a probation officer.[2]

III.

We conclude that the record contains sufficient evidence to support the revocation of probation based on the appellant's criminal conduct while on probation. Accordingly, the judgment of the trial court is affirmed.

[2] Although we elect not to make a determination as to whether the appellant received notice of the requirement that he report to a probation officer, we caution the state to ensure that every defendant released on suspension of his sentence receive actual notice of the terms and conditions of such release. In addition, good law practice dictates that the state should be prepared at any revocation hearing to provide sufficient proof of such actual notice in the form of documentation or otherwise.