

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

AT JACKSON

APRIL SESSION, 1995

September 6, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
 APPELLEE)
)
 V.)
)
)
 SANDRA ANN CAPERTON)
)
 APPELLANT)

NO. 02C01-9412-CC-00294
HARDIN COUNTY
HON. C. CREED MCGINLEY, JUDGE
(Revocation of Probation)

FOR THE APPELLANT:

Richard DeBerry
Asst. Dist. Public Defender
P.O. Box 663
Camden, TN 38320

FOR THE APPELLEE:

Charles W. Burson
Attorney General

George P. Linebaugh
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

G. Robert Radford
District Attorney General

John Overton
Asst. Dist. Attorney General
Hardin County Courthouse
Savannah, TN 38372

AFFIRMED

OPINION FILED: _____

JERRY SCOTT, PRESIDING JUDGE

OPINION

Charged with theft of more than \$10,000.00, the appellant entered a plea of guilty to theft of more than \$1,000.00 but less than \$10,000.00, for which she received a sentence of three years in the state penitentiary as a Range I standard offender. She was placed on probation and agreed to comply with numerous conditions, including the payment of restitution in the amount of \$10,359.62 to be paid at the rate of \$75.00 per week.

After four months on probation a probation violation warrant was issued because she had only paid a total of \$290.00. Her probation officer contacted her and the appellant told him she had been unable to pay the restitution due to reduced hours at her place of employment. He instructed her to mail her last "pay-stub" directly to his office for verification of her income. She provided a photocopy of her pay-stub for the period ending March 20, 1994. It showed that her year-to-date gross earnings were \$2,130.08. It appeared to the officer that the pay-stub had been altered, so he contacted the appellant by telephone and she told him that her gross income was actually in excess of \$3,700.00 during the first three months of the year. Her employer confirmed that her pay was at the higher level.

At the probation revocation hearing, the probation officer and the appellant were the only witnesses. He recounted his steps in verifying her payments, testifying that by the time of the hearing she had paid a total of \$445.00. She testified that she did not alter the pay-stub, but could offer no explanation as to why or by whom it was altered. She suggested a reduction in the amount of the restitution. The trial judge revoked her probation.

If the trial judge finds by a preponderance of the evidence that the

probationer has violated the terms of her probation, he has the right to revoke probation and cause the probationer to commence the service of the sentence as originally entered. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn.Crim.App. 1991), citing Tenn. Code Ann. § 40-35-311(d).

From this evidence it is clear that the trial judge did not err when he found that the appellant had violated her probation by nonpayment of the agreed upon restitution and by misleading her probation officer as to her earnings. The trial judge properly revoked her probation and the judgment is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

JOB B. JONES, JUDGE

JOHN H. PEAY, JUDGE