

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER SESSION, 1995

FILED

February 13, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 v.)
)
 LANNY FUSON,)
)
 Appellant.)

No. 01-C-01-9505-CC-00133

Coffee County

Hon. Gerald L. Ewell, Sr., Judge

(Revocation of Probation)

For the Appellant:

Campbell Smoot
District Public Defender
and
Rachel E. Willis
Assistant Public Defender
605 E. Carroll St.
P.O. Box 260
Tullahoma, TN 37388

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
George Linebaugh
Counsel for the State
Criminal Justice Division
450 James Robertson Parkway
Nashville, TN 37243-0493

C. Michael Layne
District Attorney General
P.O. Box 147
Manchester, TN 37355

OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Lanny Fuson, appeals as of right from the revocation of his probation by the Coffee County Circuit Court. He contends that the trial court abused its discretion by revoking his probation.

On November 19, 1993, the defendant pled guilty to theft over \$1,000.00 and received a four-year sentence. The sentence was suspended and probation imposed after he served ninety days. He was then convicted in Kentucky of charges that were pending at the time of the theft conviction. Vickie Farrar, the defendant's probation officer, testified that the defendant escaped while he was serving his sentence on the Kentucky convictions. She said that he was apprehended in Florida approximately six weeks after the escape and that he did not contact her while he was on escape status. The defendant did, however, write her a letter after he was extradited back to Coffee County. In the letter, the defendant apologized for leaving Kentucky and asked her not to revoke his probation.

It was within the trial court's discretion to revoke the defendant's probation if it found by a preponderance of the evidence that the defendant violated a condition of his probation. T.C.A. §§ 40-35-310, -311(d); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If the record contains substantial evidence to support the trial court's conclusion that the defendant violated a condition of his probation, no abuse of discretion will be found. Id.

There was substantial and uncontroverted evidence to support the trial court's conclusion that the defendant violated the conditions of his probation. By

escaping and leaving Kentucky without notifying his probation officer, the defendant violated the first and fifth conditions of his probation:

(1) I will obey the laws of the United States, or any State in which I may be, as well as any municipal ordinances.

...

(5) I will inform my probation officer before changing my residence or employment. I will get the permission of my probation Officer before leaving the State.

We hold that the trial court did not abuse its discretion in revoking the defendant's probation. The judgment of the trial court is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Joe B. Jones, Presiding Judge

Paul G. Summers, Judge _____