

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER SESSION, 1995

FILED
February 7, 1996
C.C.A. NO. 02C01-9503-CC-00074
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

TRAVIS LEE HARDY,)

Appellant.)

C.C.A. NO. 02C01-9503-CC-00074

HARDIN COUNTY

HON. C. CREED MCGINLEY
JUDGE

(Revocation of Community
Corrections Sentence)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF HARDIN COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Defendant, Travis Lee Hardy, appeals as of right from a judgment of the trial court revoking his community corrections sentence and requiring him to serve in confinement the sentence previously imposed. The revocation was predicated on the Defendant's failure to make his monthly payment for his fines and court costs, his failure to make a monthly payment for restitution, and his failure to pass a random drug and alcohol screening.

The Defendant contends that the trial court erred in revoking the sentence. We disagree and affirm the judgment of the trial court.

On August 26, 1992, the Defendant was convicted of one count of the sale of cocaine over .5 grams. Tenn. Code Ann. § 39-17-417. On the same day, he entered a guilty plea to one count of driving on a revoked license. Tenn. Code Ann. § 55-50-504. The trial court sentenced the Defendant to serve nine years in the Tennessee Department of Correction and to pay \$2,304.00 in court costs and fines and \$125.00 to the Twenty-fourth District Judicial Task Force in restitution on the cocaine charge. The trial court suspended the sentence, ordering the Defendant to serve one year in the county jail, with the remaining eight years to be served in the community corrections program. The court then imposed a six-month concurrent sentence for the driving on a revoked license offense. The court ordered that the fines and court costs were to be paid on a schedule arranged by the community correction officer.

As part of the community corrections sentence, the Defendant read and signed a behavioral agreement, thereby acknowledging that failure to comply with any of the conditions would lead to a revocation of the sentence. The agreement set forth the

terms of the sentence and included the specific provisions that the Defendant would pay his court costs and fines, pay restitution to the drug task force, find employment, obey all laws, meet with a program staffer on a regular basis, and not partake of any intoxicants.

On December 4, 1994, the community corrections program issued a violation report on the Defendant for three violations: First, he had tested positive for marijuana in a random drug and alcohol screening; second, he had failed to pay court costs in November; and third, he had failed to make restitution to the drug task force in November.

After conducting a hearing on February 14, 1995, the trial court found that the Defendant had failed to comply with the conditions of the community corrections program. The trial court revoked the Defendant's suspended sentence and ordered him to serve the remainder of his sentence in the Tennessee Department of Correction. The Defendant now appeals that judgment.

Even in a revocation hearing, the accused is guaranteed certain basic rights by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by Article I, Section 8 of the Tennessee Constitution. See Gagnon v. Scarpelli, 411 U.S. 778, 786 (1993); State v. Wade, 863 S.W.2d 406, 408 (Tenn. 1993). The minimum rights include: (1) a written notice of the alleged violation that justifies the revocation of the accused's community corrections sentence; (2) the disclosure of the evidence that supports the alleged violation; (3) the opportunity to be heard in person and present evidence in support of his or her defense; (4) the right to confront the State's witnesses; and (5) a neutral and detached trier of facts introduced by the respective parties to the proceeding. Gagnon, 411 U.S. at 786; Wade 863

S.W.2d at 408; State v. Jimmie C. Ray, No. 01-C-01-9501-CR-00022, Davidson County, slip op. at 3 (Tenn. Crim. App., Nashville, filed Aug. 4, 1995).

In a revocation proceeding, the State carries the burden of establishing the violation by a preponderance of the evidence. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). The trial court has the discretion to revoke the community corrections sentence upon a finding that the defendant has violated the conditions of the agreement; the trial court may then order the defendant to serve his sentence in confinement. Harkins, 811 S.W.2d at 82; Ray, slip op. at 4. However, before a trial court may revoke a community corrections sentence, the record must contain sufficient evidence to permit the trial court to make an intelligent and conscientious decision. Harkins, 811 S.W.2d at 82; Ray, slip op. at 4. When revoking a community corrections sentence, the trial court must place its findings of fact and the reasons for the revocation on the record. Ray, slip op. at 4-5; see Gagnon, 411 U.S. at 786.

In State v. Harkins, the Tennessee Supreme Court held that an abuse of discretion standard of appellate review should be used to address the revocation of a community corrections sentence. Harkins, 811 S.W.2d at 82. To find an abuse of discretion by the trial court, the reviewing court must establish 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." Id.

Considering the record before us, we conclude that substantial evidence exists to establish that the Defendant violated the terms of his community corrections sentence. The evidence in the record reflects that the Defendant had three violations of his sentence by testing positive for marijuana, failing to pay restitution, and by failing to make his monthly payment for court costs and fines.

In revoking the sentence, the trial court found that the Defendant had failed to live up to the terms of the behavioral agreement he signed. Although the court acknowledged that the Defendant had completed a drug rehabilitation program since his violation, the trial court still found that the Defendant could not abide by the terms of the agreement. Although the Defendant told the court he planned to apply his income tax refund toward the debt, no evidence in the record shows that he did so. Moreover, the court noted that in the extended length of time since the sentence was imposed, the Defendant had only paid one hundred twenty-nine dollars toward his debt for court costs, fines, and restitution. The court further found that the Defendant obviously could not abide by the terms of the sentence, and in light of the need for deterrence, the court believed revocation of the Defendant's community corrections sentence was in order.

We conclude that the record contains ample evidence to support the trial court's finding that the appellant violated the terms of his community corrections sentence. The record reflects that the court made a conscientious decision in revoking the sentence and the judge placed his findings and conclusions on the record. Because we find no abuse of discretion, the judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, JUDGE

JOHN H. PEAY, JUDGE