

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

<p><b>FILED</b></p> <p>January 17, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p><b>STATE OF TENNESSEE,</b></p> <p style="padding-left: 40px;">Appellee,</p> <p>V.</p> <p><b>JOHN McCLOUD,</b></p> <p style="padding-left: 40px;">Appellant.</p>	<p>)</p> <p>) C.C.A. No 01C01-9505-CR-00136</p> <p>)</p> <p>) Sumner County</p> <p>)</p> <p>) Hon. Thomas Goodall, Judge</p> <p>) (By Interchange)</p> <p>)</p> <p>) (Revocation of Probation)</p> <p>)</p>
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FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
Judge

**OPINION**

Appellant, John McCloud, appeals the trial court's revocation of his probation. We affirm.

Appellant was charged with aggravated burglary and theft over \$1,000.00. He plead guilty to aggravated trespass of a habitation and theft under \$500.00. He received consecutive sentences of 11 months and 29 days. Both sentences were suspended and appellant was placed on supervised probation. He was also ordered to perform "300 hours of public service work" and pay \$ 1,322.00 in restitution.

The first probation violation warrant was issued alleging failure to: report, perform public service work, pay fees, pay restitution, and pay court costs. A hearing was held in October 1993, and the warrant was dismissed. On August 12, 1994, a second warrant was issued. The 1994 warrant avers that the appellant: (1) "did not report in July, 1994," (2) "has not paid probation fees," and (3) although paying restitution, "has not performed any Public Service Work."

On March 6, 1995, a probation revocation hearing was held. Proof was adduced that the appellant: (1) had not reported to his probation officer since July of 1994, (2) had not paid fees, and (3) had not performed any ("[n]one, zero") public service work. Appellant testified that he last reported in December of 1994. Appellant conveyed that his failure to show up for public service work was due to his fear of being arrested.

Trial judges have the authority to revoke probation upon finding violations of probation conditions. Tenn. Code Ann. § 40-35-310 (1990). The existence of a violation need only be supported by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311(d) (1990). To uphold a probation revocation, we must find that the trial judge has not acted arbitrarily and has exercised a

conscientious judgment in making the revocation decision. State v. Smithson, No. 01C01-9411-CC-00385, slip. op. at 2 (Tenn. Crim. App. Apr. 20, 1995); Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980).

Trial judges assess witness credibility at probation revocation hearings. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). A judge's findings carry the weight of jury verdicts. Id. To show abuse of discretion, the appellant must demonstrate that the record is devoid of evidence supporting the judge's finding of a violation of a probation condition. Id.

Appellant has not carried his burden and the record supports the revocation. Accordingly, we hold that the trial judge made a conscientious decision in revoking appellant's probation. The action was not arbitrary and we find no abuse of discretion. The judgment of the trial court is

**AFFIRMED.**

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PAUL G. SUMMERS, Judge

CONCUR:

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JOE B. JONES, Presiding Judge

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JOSEPH M. TIPTON, Judge