

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY SESSION, 1996

**FILED**  
March 13, 1996  
Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )

Appellee, )

VS. )

ROBERT ANTHONY MESSER, )

Appellant. )

C.C.A. NO. 03C01-9509-CC-00258

SULLIVAN COUNTY

HON. ARDEN L. HILL  
JUDGE

(Probation Revocation)

ON APPEAL FROM THE JUDGMENT OF THE  
CRIMINAL COURT OF SULLIVAN COUNTY

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

AFFIRMED

DAVID H. WELLES, JUDGE

# OPINION

The Defendant, Robert Anthony Messer, appeals as of right from the judgment of the trial court which found him to be in violation of the terms of his probation. The Defendant argues that the trial judge abused his discretion in revoking the Defendant's probation. We disagree and affirm the judgment of the trial court.

On August 17, 1994, the Defendant entered a plea of guilty to one count of vehicular homicide. He was sentenced to serve three years in the Tennessee Department of Correction, which would be suspended after the service of eight months. On August 22, 1994, the Defendant met with his probation officer and signed the terms of his probation agreement. Two of the terms provided that the Defendant "shall obey the laws of Tennessee and any other state," and that the Defendant would stay away from alcohol of any kind.

On the night of September 11, 1994, less than a week before the Defendant was to report to serve his sentence, he was a passenger in a one-vehicle accident in Virginia. Because the driver of the vehicle, Robert Shelton, had been drinking and because beer was in the car, the driver of the vehicle and the Defendant agreed to report that the vehicle was stolen.

The next morning, Shelton reported that the vehicle was stolen. When an investigating officer questioned the Defendant, he said that the vehicle had been at Shelton's residence on the night of September 11, but was missing when he awoke the next morning. Shelton, however, gave a conflicting statement to the police. The police

subsequently issued a warrant for the Defendant charging that he gave false information to a police officer.

After being contacted by the Virginia authorities about the Defendant's pending charge, the probation officer called the Defendant. After discussing the incident with the Defendant, the probation officer filed the probation violation warrant. Meanwhile, the Defendant served the eight months of incarceration for the vehicular homicide and was released on March 15, 1995.

On May 5, 1995, a probation revocation hearing was held. After hearing the testimony of the Defendant, the probation officer, the Defendant's mother, and the two investigating officers from the Virginia police, the trial court found that the Defendant had violated the terms of his probation and ordered the Defendant to serve the remainder of his three-year sentence in jail. It is from this order that the Defendant appeals.

In deciding whether a condition of probation has been violated, a trial judge need not find that a violation has been proved beyond a reasonable doubt, but rather that the preponderance of the evidence establishes the violation. Tenn. Code Ann. § 40-35-311(d). Thereafter, the record must show that the trial judge has exercised conscientious judgment in making the decision rather than acting arbitrarily. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980) perm. to appeal denied, id. (Tenn. 1981). "In reviewing the findings of the trial judge, the judgment of the trial court is given the weight of a jury verdict." Id.

Once a violation has occurred, the decision of whether to revoke a suspended sentence rests in the sound discretion of the trial judge. State v. Mitchell, 810 S.W.2d

733, 735 (Tenn. Crim. App. 1991). The trial judge has a duty at probation revocation hearings to adduce sufficient evidence to allow him to make an intelligent decision. Id.

For an appellate court to be warranted in finding that a trial judge erred in determining that a violation has occurred, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). If the violation is so supported by the record, the judgment of the trial court revoking probation will not be disturbed on appeal unless it appears that there has been an abuse of discretion.

At the hearing on the probation violation warrant, the Defendant's probation officer, John Edens, testified that he learned from Virginia police officers that the Defendant had been charged with giving false information to a police officer. Edens said that he then called the Defendant. The Defendant told him that he was a passenger in the car when the wreck occurred. The Defendant also told Edens that "he knew it was a violation of his probation to get in the car because of the fact that there were three beers in the car." The probation officer did not remember if the Defendant explained why he had given false information to the police. Edens subsequently issued a probation violation warrant.

At the probation revocation hearing, the Defendant admitted that he falsely told the police that the car had been stolen. The Defendant also admitted on cross-examination that he told his probation officer that the reason he lied to the police was to protect the driver of the car who had been drinking. At the hearing, however, the Defendant denied that he knew beer was in the car before the wreck. He testified that the first time he realized beer was in the car was immediately after the wreck when he smelled beer from the broken bottles.

The trial court found that the Defendant violated term one, that he obey the laws of this State and other states, and term ten, that he not be in the presence of alcohol. Accordingly, the trial court revoked the Defendant's probation.

The State presented sufficient evidence through the testimony of the Defendant's probation officer and Virginia police officers that the Defendant violated the terms of his probation. The Defendant admitted that he gave false information to the police officers investigating the Virginia accident.

The record indicates that the trial court properly listened to all of the evidence and made a conscientious decision in revoking the probation. The Defendant had been sentenced with probation for the crime of vehicular homicide less than a month before he was involved in this wreck. Although he was only a passenger in the wreck in this case, he knowingly gave false statements to police. By doing this, he certainly violated condition one of his probation by failing to obey the laws of this State or any other.

We conclude that the record contains substantial evidence to support the conclusion of the trial judge that the Defendant violated the conditions of his probation. Although the question presents a fairly close call, based on the evidence presented at the revocation hearing, we cannot conclude that the trial court abused his discretion in revoking the Defendant's probation.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JOE B. JONES, PRESIDING JUDGE

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JOHN H. PEAY, JUDGE