

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1995 SESSION

**FILED**

**February 29, 1996**

**Cecil Crowson, Jr.**

**Appellate Court Clerk**

STATE OF TENNESSEE, \* C.C.A. # 02C01-9504-GC-00109  
Appellee, \* MADISON COUNTY  
VS. \* Hon. Franklin Murchison, Judge  
JOSEPH SHANE POWELL, \* (Revocation of Probation)  
Appellant. \*

For Appellant:

George Morton Googe  
District Public Defender  
26th Judicial District

Pamela J. Drewery  
Asst. Public Defender  
227 W. Baltimore  
Jackson, TN 38301

For Appellee:

Charles W. Burson  
Attorney General & Reporter  
450 James Robertson Parkway  
Nashville, TN 37243-0493

George Linebaugh  
Counsel for the State  
Criminal Justice Division  
450 James Robertson Parkway  
Nashville, TN 37243-0493

Don Allen  
Asst. District Attorney General  
P.O. Box 2825  
Jackson, TN 38301

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

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The defendant, Joseph Shane Powell, entered guilty pleas to several theft and burglary charges arising out of both Madison and Chester Counties. The trial court approved a plea agreement which provided for an effective sentence of twelve years. The defendant was ordered to serve six months in jail and the balance of the sentence was to be served on probation. During the first year, the defendant was placed on intensive probation. At the end of this first year, the defendant was moved to regular probation. Two years later, the trial court revoked the probation and reinstated the twelve-year sentence.

In this appeal of right, the defendant claims the trial court abused its discretion by revoking the probation and reinstating the full twelve-year sentence, instead of imposing less severe alternatives. We find no error and affirm the judgment.

Among the several other conditions of probation, the defendant's probation order required the defendant (1) to obey the law and report any arrests; (2) to "procure the consent of his Probation Officer" before changing his personal residence, or before leaving the county of his residence; (3) to report to his probation officer as instructed; (4) to refrain from using narcotic drugs; and (5) to pay supervision fees and restitution. At the revocation hearing, the state argued the defendant violated all of these conditions of probation.

The probation officer, Vicki Warsham, testified she has been supervising the defendant since November 1, 1992. She acknowledged that the defendant "reported fairly well at the beginning." She related that the defendant acquired a commercial driver's license and that he had timely made some of his monthly payments until January of 1994. Warsham testified that the defendant's conduct deteriorated beginning in early 1994 and that the defendant "absconded from February the 9th, 1994, until he was picked up on the absconder warrant in October of 1994." During this period of time, the defendant was arrested for DUI, possession of marijuana, and contributing to the delinquency of a minor. He pled guilty to the possession and contributing charges, and the state dropped the DUI charge.

Warsham testified that the defendant failed to report either his arrest or his subsequent convictions. She related that the defendant had moved from the county without permission, failed to report the move, and had been delinquent on his required payments since January of 1994. On cross-examination, Warsham acknowledged that that she had recommended in her probation violation report that the defendant be returned to intensive probation or Community Corrections, rather than have the twelve-year sentence reinstated.

The defendant admitted he had violated the terms of his probation. He acknowledged having a drug problem and explained that he had pled guilty to possession of marijuana

and contributing to the delinquency of a minor so as to avoid a DUI conviction and thus keep his commercial driver's license. The defendant claimed he was unaware that the guilty pleas could result in a revocation of his probation. He explained that he had been homeless and without work for a time and had moved out of the county in order to live with a relative who could provide transportation to work. He contended that he was too embarrassed about this situation to inform his probation officer and could not afford his probation payments. The defendant also testified that he recently received his GED.

At the conclusion of the proof, the trial court found that the defendant "violated the terms and conditions of his probation in substantial ways" and "never did bother to come back until he was arrested." Based upon the defendant's unauthorized departure and the misdemeanor convictions, the trial court revoked probation and ordered the sentence to be served in the Department of Corrections.

When a probation revocation is challenged, the appellate courts have a limited scope of review. If the trial judge finds by a preponderance of the evidence "that the defendant has violated the conditions of his probation," the trial judge has the right to revoke probation. Tenn. Code Ann. § 40-35-311(d). The Sentencing Commission Comments to § 40-35-310 provide that "[u]pon revocation, the original sentence imposed can be placed into effect." The determination by the trial court if conscientiously made, is

entitled to an affirmance; the record must merely demonstrate that there is substantial evidence to support its conclusions. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). In order to reverse, this court must find that the trial judge acted arbitrarily or otherwise abused its discretionary authority. Id; see also State v. Williamson, 619 S.W.2d 145, 147 (Tenn. Crim. App. 1981).

Here, there is no dispute that the defendant violated the terms of probation. Because the defendant readily admitted the violations, the revocation was neither arbitrary nor capricious. A violation of any one of the conditions of probation would warrant revocation of probation. While a twelve-year sentence to the Department of Corrections may have been onerous, it is exactly what the defendant agreed to serve in the event of his failure to comply with the probationary terms. Thus, we hold that the trial court did not abuse its discretion in requiring service of the entire term.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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John H. Peay, Judge

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David H. Welles, Judge

