

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE SESSION, 1996

FILED
August 2, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

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| STATE OF TENNESSEE, |) | C.C.A. NO. 02C01-9509-CC-00257 |
| |) | |
| Appellee, |) | |
| |) | |
| |) | MADISON COUNTY |
| VS. |) | |
| |) | HON. FRANKLIN MURCHISON |
| TERRY MOORE, |) | JUDGE |
| |) | |
| Appellant. |) | (Sale of Marijuana) |

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

FOR THE APPELLANT:

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OPINION FILED _____

APPEAL DISMISSED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. The Defendant appeals from an order of the trial court revoking his probation and ordering him to serve his entire two-year sentence in the Department of Correction. Because we have determined that the issues presented on appeal are now moot, we dismiss the appeal.

The Defendant pleaded guilty to selling marijuana on September 25, 1990. The trial judge sentenced him to serve two years as a Range I offender. The sentence was suspended and the Defendant was placed on probation for the full two-year period. The Defendant's first probation violation report was filed with the trial court July 22, 1991. It alleged that the Defendant had failed to report to his probation officer, failed to pay the fees he owed, and had not provided proof that he had paid any of the restitution he owed. At his revocation hearing the trial judge told him to start reporting regularly and provide proof of payment. A second probation violation report was prepared on September 2, 1992. It alleged that the Defendant had tested positive for drug use and had not paid any of his fees up to that point. A warrant was issued September 9, 1992, for the Defendant to be in court June 21, 1994. Pursuant to an order filed on February 15, 1995, the Defendant's probation was revoked and he was ordered to serve his sentence of two years.

This case was submitted to this court for decision on June 4, 1996. The issues raised in this appeal are whether the trial court erred in revoking the

Defendant's probation and ordering him to serve his entire two-year sentence in the Tennessee Department of Correction instead of another form of alternative correction, and whether the trial court erred in refusing to hear the Defendant's "Motion for Reduction of Sentence," which was filed after the revocation of the Defendant's probation. It came to the attention of this court that the Defendant was released on determinate probation July 31, 1995 and is no longer in the custody of the Tennessee Department of Correction. Suggesting that the issue raised in this appeal was moot, this court entered an order on June 6, 1996 advising the Defendant that this appeal would be dismissed unless the Defendant filed an affidavit within fourteen days showing why this court should consider the appeal on the merits. An affidavit was filed by the Defendant's attorney in which he stated that the Defendant had not responded to the attorney's attempts to contact him.

The doctrine of justiciability prompts courts to stay their hand in cases that do not involve a genuine and existing controversy requiring the present adjudication of present rights. McIntyre v. Traughber, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). The concept of mootness deals with the circumstances that render a case no longer justiciable. Id. A moot case is one that has lost its character as a present, live controversy. A case will generally be considered moot if it no longer serves as a means to provide relief to the prevailing party. Id. The two most recognized exceptions to the mootness rule include issues of great public interest and importance to the administration of justice and issues capable of repetition yet evading review. Id. Whether to take up cases that fit into one of the recognized exceptions to the mootness doctrine is discretionary with the appellate courts. Id.

In the case sub judice, it is obvious that this court cannot provide any meaningful relief to the Defendant even if we determine that the trial court erred by revoking the Defendant's probation. A reversal of the trial court's order revoking the Defendant's probation would serve only to unnecessarily confuse and complicate the Defendant's status. We decline to consider this appeal on the merits.

This appeal is accordingly dismissed.

DAVID H. WELLES, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

JERRY L. SMITH, JUDGE