

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1997 SESSION

FILED
July 29, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

JAMES CLEMMONS,

Appellant.

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C.C.A. NO. 03C01-9608-CR-00290

HAMILTON COUNTY

HON. DOUGLAS A. MEYER,
JUDGE

(Probation revocation)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

On February 15, 1995, the defendant pled guilty to assault and kidnapping. He agreed to a suspended sentence of eleven months, twenty-nine days for the assault conviction and a suspended sentence of six years on the kidnapping conviction. He additionally agreed to supervised probation for the full six years, to perform fifty days of service with Public Works, and to pay twenty-five dollars (\$25) a month restitution for a total of three hundred dollars (\$300).

The defendant was then arrested on June 10, 1995, for an alleged assault against Paulette Ware. Because of this arrest and the defendant's failure to comply with other probation requirements, a probation revocation hearing was held on November 1, 1995. After the hearing, the trial court revoked the defendant's probation and ordered him to serve his sentence. The defendant now appeals and argues that the trial court erred in revoking his probation. After a review of the record, we affirm the judgment of the court below.

When a trial judge finds that a probationer has violated the conditions of his or her probation, the trial judge has the authority to revoke probation. See T.C.A. § 40-35-310. In determining whether or not to do so, the trial judge need not find beyond a reasonable doubt that a violation of the terms of probation has occurred. The existence of a violation need only be supported by a preponderance of the evidence. T.C.A. § 40-35-311(d).

In probation revocation hearings the credibility of the witnesses is for the

determination of the trial judge. Bledsoe v. State, 215 Tenn. 553, 387 S.W.2d 811, 814 (1965); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). On review, the findings of the trial judge have the weight of a jury verdict. Delp, 614 S.W.2d 398; Carver v. State, 570 S.W.2d 872, 875 (Tenn. Crim. App. 1978). We will not disturb the judgment of the trial judge in the absence of an abuse of discretion. For this Court to find an abuse of the trial court's discretion, the defendant must demonstrate "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." State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

In this case, the defendant claims that his probation was erroneously revoked because the prosecution presented no substantial evidence of probation violations. On the contrary, the prosecution presented more than sufficient evidence.

At the revocation hearing, Sandra Caldwell, the defendant's probation officer, testified that when she initially met with the defendant in March of 1995, she specifically warned him to stay out of trouble because one arrest for a violent crime would result in revocation of his probation. She further testified that the defendant failed to report to her, as is required, after April 1995. Then, in June 1995, the defendant was arrested on assault charges and failed to report the arrest to Caldwell. Caldwell also testified that the defendant had not performed any of his public service work, had not paid any of his probation fees, and had not paid any of his restitution. However, Caldwell did testify that while the defendant had been ordered to perform fifty days with Public Works, he had been given eighteen months in which to complete the fifty days. At the time of the hearing, the defendant still had a significant amount of time left to perform the mandatory work days. Caldwell also testified that the June 1995 arrest report showed

an address different from the one the defendant had reported to her.

The defendant also testified at the hearing. He testified that he had been injured on his job at M & M's when one of the lines broke loose on the machine he was operating and he inhaled a large amount of fumes. He testified that because of the injury he was unable to continue to work and therefore was unable to pay any of his fees. He also stated that he had not paid any amount because his probation officer never told him how much to pay. The defendant further testified that although he was injured to the point that he could not work, he did not seek medical attention. He testified that in the week prior to the hearing, he had started to work part-time as the dispatcher for his family's cab business. He testified that he thought he could pay the entire restitution amount by February 1996. As to why he had not performed any of his days with Public Works prior to his injury, the defendant testified that he had been working seven days a week and that he had spoken to someone at Public Works about his inability to schedule a time to perform his required service.

As to the assault charge, the defendant testified that he had no explanation for his failure to report the arrest. He testified that the charges were dropped in August 1995. He further testified that the victim, Paulette Ware, had been instructed to pay the court costs, but that he volunteered to pay the costs instead.

The defendant's brother testified that the defendant had been working part-time for the cab business and that he could take a small portion out of the defendant's check every month to pay the restitution and probation fees.

Paulette Ware then testified as to the circumstances surrounding the defendant's arrest in June 1995. She testified that she and another girl had been "into it" and the defendant had tried to separate them. However, the warrant for the defendant's arrest recited an entirely different story. In the warrant, an officer stated that Ware had said the defendant struck her with his fist on the left side of her face causing a large knot to appear under her eye. She had further told the officer that the defendant dragged her into the house and continued to beat her with his fists once inside the house. At the hearing, Ware testified that the officer must have fabricated the entire story.

After hearing this evidence, the trial judge stated that he did not believe Ware's testimony and that he thought the defendant was a danger to others. Finding that the defendant had "violated good behavior," the court revoked his probation.

We find that in this case there was substantial evidence to support the trial court's conclusion that the defendant violated the terms of his probation. He had been arrested on assault charges, had failed to report the arrest to his probation officer, and had failed to meet with his probation officer as required.¹ The fact that the assault charge was ultimately dismissed does not alter our conclusion. See State v. Wall, 909 S.W.2d 8 (Tenn. Crim. App. 1994)(affirming revocation where evidence consisted of a dismissed assault charge against the defendant and the defendant's admission that he had left the state to visit his children).

Thus, for the foregoing reasons, we affirm the trial court's order revoking

¹We do not rely on the defendant's failure to pay restitution and other fees as reason for revocation. See Bearden v. Georgia, 461 U.S. 660 (1983); Massey v. State, 929 S.W.2d 399 (Tenn. Crim. App. 1996). Nor do we rely on his failure to perform the required fifty days of service at Public Works since the time for performing these days had not expired.

the defendant's probation.

JOHN H. PEAY, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

J. CURWOOD WITT, JR., Judge