

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1997 SESSION

FILED
September 2, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee)
)
 V.)
)
 JAMES HARRIS,)
)
 Appellant)

NO. 01C01-9606-CC-00277
RUTHERFORD COUNTY
HON. JAMES K. CLAYTON, JR.,
JUDGE
(Probation)

FOR THE APPELLANT

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OPINION FILED: _____

AFFIRMED IN PART; REVERSED IN PART

William M. Barker, Judge

Opinion

The appellant, James Harris, appeals as of right the extension of his probationary sentence and the court-ordered payment schedule for his court costs and fine. We have reviewed the record on appeal and find that the trial court erred in extending the appellant's probation beyond the length of the original sentence. We also find that the trial court acted well within its discretion when it ordered the appellant to pay his court costs and fine on a payment schedule. Accordingly, we reverse the trial court's decision to extend the appellant's probationary sentence and we affirm the trial court's decision to instate a payment schedule for the appellant.

On August 3, 1995, the appellant pled guilty to simple possession of cocaine. The Rutherford County Circuit Court sentenced the appellant to serve eleven months and twenty-nine days at seventy-five percent. The trial court also ordered the appellant to pay three hundred thirty-eight dollars (\$338.00) in court costs and seven hundred fifty dollars (\$750.00) in fines. The appellant's sentence was accredited with time served and on January 26, 1996, the appellant completed seventy-five percent of his eleven months and twenty-nine day sentence.

On January 29, 1996, at a sentence suspension hearing, the trial court ordered the appellant to begin paying the fines and the court costs beginning February 15, 1996. It also extended the appellant's probation for one full year to give the appellant an opportunity to pay those fines and court costs. The appellant now appeals.

The appellant first argues that the trial court erred when it extended his probation for one year. The State concedes to the appellant's argument and we agree. The trial court, in the absence of a probation violation, cannot extend a defendant's probationary term beyond the length of the original sentence imposed by the trial court. See Tenn. Code Ann. § 40-35-308 (1990); State v. Conner, 919 S.W.2d 48, 51 (Tenn. Crim. App. 1995).

The appellant also complains that the trial judge did not have the authority to order a payment schedule for the appellant's fine and court costs. Pursuant to this payment schedule, the appellant was required to pay fifty dollars (\$50.00) per month until the whole sum was paid. We fail to see that the appellant has suffered any prejudice in this respect. The trial judge was well within his discretion to order the appellant to pay the entire sum when he was released from confinement. Instead, the trial court arranged a payment schedule to facilitate the appellant with an opportunity to make his payments. Indeed, the trial court's action ran in the appellant's favor.

Accordingly, we reverse the trial court's order of any probation that is beyond the appellant's original sentence. With regard to the appellant's payment schedule, we do not find that he has suffered any prejudice and affirm that portion of the trial court's judgment.

WILLIAM M. BARKER, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

THOMAS T. WOODALL, JUDGE