

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY 1999 SESSION

FILED

March 10, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
 Appellee,)
)
 v.)
)
 BRIAN THOMAS KLUEVER,)
)
 Appellant.)

C.C.A. NO. 03C01-9805-CC-00170
BLOUNT COUNTY
Hon. D. Kelly Thomas, Judge
(Denial of Full Probation)

FOR THE APPELLANT:

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AFFIRMED PURSUANT TO RULE 20

OPINION FILED: _____

JAMES CURWOOD WITT, JR.,
JUDGE

OPINION

The defendant, Brian Thomas Kluever, appeals pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure from the trial court's denial of full probation. The defendant pleaded guilty to felony evading arrest, to driving on a suspended license (second offense) and driving while under the influence (first offense). As part of the plea agreement, the defendant agreed to an effective sentence of one year, but the manner of service was left to the discretion of the trial judge. After a sentencing hearing, the trial court ordered the defendant to serve 120 days in jail with the balance of the sentence to be served on probation. The defendant will be eligible for work release after serving 48 hours.

One issue is presented for review. The defendant contends that after a 48-hour period of incarceration and an alcohol treatment program, he should be allowed to serve the balance of the 120 days on the weekend. This court has conducted a *de novo* review of the record pursuant to Tennessee Code Annotated section 40-35-401(d). We conclude that the record supports the trial court's findings.

The trial court denied full probation after the service of the minimum sentence because the defendant had an extensive criminal record, because he had previously received probated sentences, and because he had been convicted of two offenses while he was on bond for these charges. The trial judge concluded that the defendant's prospects for rehabilitation were very slim due to his abuse of alcohol and drugs.

This court has read the briefs of the parties and the law governing the issue presented for review and concludes that no error of law requiring

reversal of the judgment is apparent on the record and that an opinion in this case would have no precedential value . Therefore, we affirm the judgment of the trial court pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

JAMES CURWOOD WITT JR., Judge

CONCUR:

GARY R. WADE , Presiding Judge

NORMA McGEE OGLE, Judge