

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
MAY SESSION, 1999**

<b>STATE OF TENNESSEE,</b>	)	
	)	<b>No. 01C01-9803-CC-0097</b>
<b>Appellee</b>	)	
	)	<b>DICKSON COUNTY</b>
<b>vs.</b>	)	
	)	<b>Hon. Robert E. Burch, Judge</b>
<b>RICHARD VARESE,</b>	)	
	)	<b>(Revocation of Probation)</b>
<b>Appellant</b>	)	

For the Appellant:

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For the Appellee:

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

AFFIRMED

**David G. Hayes**  
Judge

## OPINION

The appellant, Richard Varese, appeals from a judgment of the Dickson County Circuit Court revoking his probation. In his only issue on appeal, the appellant contends that the trial court abused its discretion by ordering that his original four year sentence be reinstated.

Finding no abuse of discretion, we affirm.

On December 1, 1993, the appellant pled guilty to one count of conspiracy to sell methamphetamine and one count of possession of marijuana. For each conviction, the appellant received a suspended sentence of two years, with each sentence to run consecutive to the other, for an effective four year suspended sentence. On November 10, 1997, a probation violation report was filed alleging that the appellant violated the conditions of his probation by being convicted of driving on a revoked license, leaving the state without the permission of his probation officer, failing to report to his probation officer as required, and failing to pay his probation fees and court costs.<sup>1</sup> On January 30, 1998, a revocation hearing was held at which time the trial court found that the appellant had violated the conditions of his probation by committing the crime of driving on a revoked license and by failing to report to his probation officer for three months.<sup>2</sup> However, the court found the proof insufficient to support a violation based upon the appellant leaving the state without permission. Additionally, the court determined that the appellant's failure to pay his probation fees and court costs were not grounds for a

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<sup>1</sup>The alleged violations occurred after the appellant had successfully completed approximately three and one-half years of his probated sentence.

<sup>2</sup>Although the appellant conceded that he violated these two conditions of his suspended sentence, he testified that his driver's license was revoked for noncompliance with the Financial Responsibility Act by failing to provide verification of automobile insurance. He explained that, at the time, he was unable to afford the insurance. Additionally, the appellant stated that the reason for his missed meetings with his probation officer was because he was unable to leave his place of employment which was also a condition of his probation, *i.e.*, that he maintain employment.

finding of probation violations. Accordingly, the trial court revoked the appellant's suspended sentence and reinstated his original four year sentence in the Department of Correction.

The appellant concedes the propriety of the trial court's ruling on the issue of revocation. However, he contends that the trial court abused its discretion in reinstating his original four year TDOC sentence.

Upon finding, by a preponderance of the evidence, that a defendant has violated the conditions of probation, a trial court retains the discretion to revoke the defendant from a suspended sentence. Tenn. Code Ann. §§ 40-35-310, -311(d) (1997). If the trial court determines that revocation is proper, two sentencing options are available to the trial court: (1) cause execution of the original judgment as it was originally entered or (2) modify the defendant's conditions of supervision, including extending the defendant's probationary period for up to two years. See Tenn. Code Ann. §§ 40-35-308; -310; -311; State v. Bowling, 958 S.W.2d 362, 363 (Tenn. Crim. App. 1997); State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

In the case before us, the trial court was statutorily authorized to reinstate the appellant's original four year Department of Correction sentence. See Tenn. Code Ann. § 40-35-310. Although we may have reached a different result under the facts, this court does not reconsider sentencing principles on appeal in probation revocation proceedings as our review is not *de novo*, but is governed by an abuse of discretion standard. See State v. Seymour, No. 03C01-9709-CR-00375 (Tenn. Crim. App. at Knoxville, Dec. 8, 1998); State v. McLemore, No. 03C01-9709-CC-00406 (Tenn. Crim. App. at Knoxville, Jul. 28, 1998). Based on the record before us, we cannot conclude that the trial court abused its discretion in ordering the appellant to serve the terms of his original sentence. The judgment of the trial court is affirmed.

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DAVID G. HAYES, Judge

CONCUR:

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JERRY L. SMITH, Judge

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NORMA MCGEE OGLE, Judge