

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1999 SESSION

**FILED**

November 10, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, \* C.C.A. # 03C01-9812-  
CR-00428

Appellee,

\* SULLIVAN COUNTY

VS.

\* Hon. R. Jerry Beck, Judge

JAMIE LEE HATCHER,

\* (Aggravated Assault)

Appellant.

\*

For Appellant:

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(on appeal)

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

AFFIRMED

GARY R. WADE, PRESIDING JUDGE

## OPINION

The defendant, Jamie Lee Hatcher, entered a plea of guilt to aggravated assault. The trial court imposed a sentence of six years as an alternative to the Department of Correction. The sentence included three months in a halfway house and six hundred hours of community service followed by intensive probation. After a period of one year, the defendant was transferred to regular probation which, after the issuance of an arrest warrant for violation of the terms, was revoked by the trial court.

In this appeal of right, the defendant argues that the trial court abused its discretion by the revocation of probation. We find no error and affirm the judgment of the trial court.

The defendant was indicted for especially aggravated robbery and theft under \$500.00 for an incident occurring August 2, 1995. On March 11, 1996, the defendant pled guilty, by agreement of the state and the approval of the trial court, to a single count of aggravated assault. The defendant completed a term of three months at the John R. Hay House before his release on intensive probation. The conditions of probation included promises to "obey the laws of the ... state" and to refrain from the "use [of] intoxicants of any kind to excess, or use or have in my possession narcotic drugs or marijuana." Approximately six months after being released to regular probation, the defendant was charged with two separate counts of driving under the influence and speeding. In a routine drug test during the same period of time, he tested positive for marijuana. The defendant pled no contest to charges that he had violated the terms of his probation and the trial court ordered the remainder of his term to be served in the Department of Correction.

The defendant, who was twenty at the time he committed the crime of aggravated assault, was twenty-three at the time of the revocation hearing. During the hearing, following the no-contest plea, it was established that the defendant had completed an "underage drinking class" and a period of probation as conditions for

the dismissal of two charges he had faced in juvenile court some years earlier. He maintained that he had also successfully completed a period of probation on his first DUI offense at age eighteen, had met the guidelines of his intensive probation for the aggravated assault, and had followed the rules of his probation for over a year before two additional charges of DUI and his failure to pass a drug screen. He reasoned from this that he had demonstrated rehabilitative qualities. During his period of incarceration before the revocation hearing, the defendant underwent occasional periods of "shaking" and "cold sweat." He submitted that "every time I've ever got in trouble was because I was drinking."

The defendant, who is married and has a small child, asked to continue on probation in order to help take care of his wife, his child, and his parents, with whom he planned to reside. His mother was afflicted with cancer of the liver and his father, who had suffered a heart attack, had been subjected to open heart surgery on two occasions.

The trial court ordered revocation because the defendant "just had too many offenses...." It observed that the defendant had not been successful at prior efforts of rehabilitation and, despite the support of his family, had failed to benefit by an alternative sentence. Commenting that the defendant had "just run out of room for the court to maneuver," the trial judge pointed out that there were alcoholic treatment programs available in the department of correction.

Trial courts are authorized to revoke probation upon any breach of the laws of the state. Tenn. Code Ann. § 40-35-311(a). A judgment of revocation cannot be disturbed unless the trial court abused its discretionary authority. State v. Williamson, 619 S.W.2d 145 (Tenn. Crim. App. 1981). Before there can be a finding of abuse of discretion, it must be established that the record contains no substantial evidence to support the conclusion that the terms and conditions of probation have been violated. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

Here, three separate violations of the terms of probation occurred within a thirty-day period. While the violations may have resulted, as the defendant suggests, from his episodic abuse of alcohol, a judgment of revocation may not be overturned so long as a trial court has conscientiously exercised its responsibilities in considering the various sentencing alternatives. The record demonstrates a lengthy term of alcohol abuse on the part of the defendant. Despite several prior opportunities, he has not taken advantage of available rehabilitative programs. In our view, the trial court acted appropriately under these circumstances and did not abuse its discretionary authority.

Accordingly, the judgment is affirmed.

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Gary R. Wade, Presiding Judge

CONCUR:

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Jerry L. Smith, Judge

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James Curwood Witt, Jr., Judge