

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 12, 2023

FILED

10/17/2023

Clerk of the
Appellate Courts

**STATE OF TENNESSEE v. CEDRIC D. MARSHALL, ALIAS EDWARD
DEPRIEST**

Appeal from the Criminal Court for Davidson County
Nos. 2020-D-1853, 2020-D-2023, 2020-I-239, 2020-I-269 Steve Dozier, Judge

No. M2022-01579-CCA-R3-CD

The defendant, Cedric D. Marshall, appeals the Davidson County Criminal Court's order revoking his community corrections sentence and resentencing him to an effective sentence of seven years' incarceration for his guilty-pleaded convictions of evading arrest, burglary, and theft of property. Because the defendant's notice of appeal is untimely, we dismiss the appeal.

Tenn. R. App. P. 3; Appeal Dismissed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which KYLE A. HIXSON and MATTHEW J. WILSON, JJ., joined.

Barry Gearon (at hearings), and Jay Umerley (on appeal), Nashville, Tennessee, for the appellant, Cedric D. Marshall.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Jennifer Charles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In case 2020-I-239, the defendant was charged by information with one count of evading arrest by motor vehicle. The defendant pleaded guilty as charged and was sentenced as a Range II offender to three years suspended to unsupervised probation. In case 2020-I-269, the defendant was charged by information with one count of burglary. The defendant pleaded guilty as charged and was sentenced as a Range I offender to three years suspended to unsupervised probation to run concurrently with case 2020-I-239.

In October 2020, the Davidson County Grand Jury charged the defendant in case 2020-D-1853 with one count of theft of property valued at \$2,500 or more but less than \$10,000. Also in October 2020, the Davidson County Grand Jury charged the defendant in case 2020-D-2023 with four counts of theft of property (merchandise) valued at \$1,000 or less, two counts of theft of property (merchandise) valued at \$2,500 or more but less than \$10,000, and three counts of burglary. As a result of garnering these new charges, the trial court revoked the defendant's probation in cases 2020-I-239 and 2020-I-269 and ordered him to execute those sentences.¹

On March 18, 2021, the defendant entered best interest guilty pleas pursuant to *Hicks v. State*, 983 S.W.2d 240 (Tenn. Crim. App. 1998), in cases 2020-D-1853 and 2020-D-2023, and on April 29, 2021, the trial court sentenced him to an effective sentence of three years and six months in each case to be served on Community Corrections with completion of the Davidson County Drug Court ("Drug Court") and the court aligned the sentences concurrently with each other. The court also "suspend[ed]" the defendant's sentences in cases 2020-I-239 and 2020-I-269, placed him on Community Corrections, and ordered him to complete Drug Court for the remainder of those sentences.² The court aligned the sentences in all four cases concurrently to each other.

On July 8, 2022, a Community Corrections violation warrant issued in all four cases, alleging that the defendant violated the rules of the Drug Court. On August 24, 2022, the trial court held a Community Corrections revocation hearing.

At the hearing, Kara Tansil, an employment counselor with the Drug Court, testified that the defendant "had multiple incident reports" while in the program. She said that one requirement of the third phase of the program was that the defendant "get[] a job and keep[] a job" but that the defendant "did not follow these rules exactly. He went through . . . two jobs and a training program." Another requirement of the third phase was that the defendant "give[] a certain percentage of [his] check" to the Drug Court, but the defendant refused to comply, "saying that he was not going to give us money." Ms. Tansil said that the defendant told her that "it was his money and we could send him to jail because he's not fixing to give it to us." She said that the defendant "also had falsified his time . . . leaving the facility and coming back to the facility, which is obviously a violation of policy." "[H]e was kind of coming in whenever he wanted[]" and went places to which he was not authorized to go. Ms. Tansil said that the defendant was resistant to treatment by

¹ The judgment in case 2020-I-239 reflects that the defendant's sentence was "placed into effect by agreement."

² The judgment in case 2020-I-239 notes that the defendant's sentence was "suspended" but indicates that the defendant was to be placed on Community Corrections and not probation supervised by Community Corrections.

failing to participate in group sessions “unless he was specifically directed to.” She said that the defendant was made aware of the rules when he began the program and that she and other staff met with him multiple times “to explain that he ha[d] to follow the program rules.”

On cross-examination, Ms. Tansil said that the defendant entered the Drug Court program on May 3, 2021, and was dismissed on July 7, 2022. She acknowledged that the defendant passed every drug test and never absconded. She said that the defendant quit two jobs, claiming that they were “physically demanding” before joining a four-week training program at Goodwill. He was in the training program at the time that he was dismissed from Drug Court. She said that the defendant made one payment to the Drug Court but otherwise refused to comply with that requirement.

At the close of the evidence, the trial court found that the defendant violated the terms of his Community Corrections placement and scheduled a sentencing hearing. At the September 15, 2022 sentencing hearing, the defendant argued that he should be subject to probation revocation proceedings under Tennessee Code Annotated section 40-35-311 and that his failure to follow the Drug Court rules were merely technical violations as defined in that statute. The State argued that the rules for technical violations under Code section 40-35-311 do not apply to Community Corrections revocation proceedings. The trial court took the matter under advisement.

In its written order of September 20, 2022, the trial court found that Code section 40-35-311 was inapplicable to the defendant because he had not been placed on probation following a Community Corrections sentence. The court also found that cases 2020-I-239 and 2020-I-269 were ineligible for resentencing because the original sentences were probationary sentences originating under Code section 40-35-303(c) and ordered those sentences into effect. The court resentenced the defendant in case 2020-D-1853 to three years and six months’ incarceration and in case 2020-D-2023 to an effective three years and six months’ incarceration. The sentence in case 2020-D-2023 was aligned concurrently to cases 2020-I-239 and 2020-I-269 and consecutively to case 2020-D-1853 for a total effective sentence of seven years to be served in confinement.

The defendant filed an untimely notice of appeal on November 8, 2022, reiterating his argument that the probation revocation proceedings outlined in Code section 40-35-311, specifically those relating to technical violations, should also apply to Community Corrections revocation proceedings under Code section 40-36-106. The State argues that the appeal should be dismissed for failure to timely file the notice of appeal and, in the alternative, that the trial court did not err by revoking the defendant’s Community Corrections sentences and resentencing him to a fully-incarcerative sentence.

Tennessee Rule of Appellate Procedure 4 requires a notice of appeal to “be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from.” Tenn. R. App. P. 4(a). In criminal cases, however, “the ‘notice of appeal’ document is not jurisdictional and the timely filing of such document may be waived in the interest of justice.” *Id.* Here, the defendant’s notice of appeal was late by 19 days, and the defendant provided no explanation or request for this court to waive the timely filing requirement. The defendant also did not respond to the State’s argument for dismissal of this appeal for the untimely filing. Because the State challenges the untimely notice of appeal and because the defendant has provided no reason or explanation for his delay, we conclude that the interests of justice do not warrant our waiver of the 30-day filing requirement.

Accordingly, the appeal is dismissed.

JAMES CURWOOD WITT, JR., JUDGE