

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

06/27/2017

Clerk of the
Appellate Courts

STATE OF TENNESSE v. AUSTIN RANDALL BRITT

**Appeal from the Criminal Court for Sullivan County
Nos. S64828, S65361, and S65474 James F. Goodwin, Judge**

No. E2016-01991-CCA-R3-CD

The defendant, Austin Randall Britt, through counsel, appeals as of right from the Sullivan County Criminal Court's order revoking his probation and ordering him to serve his sentence in the custody of the Department of Correction. The State has filed a motion to affirm the trial court's judgment pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals. Following our review, we conclude that the State's motion is well-taken and affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the Court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Ashley D. Boyer, Blountville, Tennessee, for the appellant, Austin Randall Britt.

Herbert H. Slatery III, Attorney General and Reporter; and Renee W. Turner, Senior Counsel, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On August 11, 2015, the defendant was charged with aggravated burglary, theft of property valued at less than \$500, and felony failure to appear. On September 22, 2015, the defendant was charged with a second count of felony failure to appear. On October 28, 2015, the defendant entered guilty pleas to all counts, receiving an effective sentence of 6 years, and was placed on supervised probation. On July 18, 2016, the

defendant was charged with a probation violation for failing to report to his probation officer. Following a hearing during which the defendant conceded that he had failed to report to his probation officer at any time since his release from custody, the trial court revoked the defendant's probation and ordered him to serve the balance of his sentence in the Department of Correction. The defendant filed a timely notice of appeal from the trial court's judgment.

On appeal, the defendant argues that the trial court abused its discretion by not reinstating him to probation because he failed to report to his probation officer only because his father was gravely ill during the months following his sentencing. The State argues that the trial court did not abuse its discretion in ordering the 6-year sentence served in confinement and that this court should summarily affirm the trial court's judgment. The defendant has not filed a response to the State's motion.

The accepted appellate standard of review of a probation revocation is abuse of discretion. *See State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *see also State v. Reams*, 265 S.W.3d 423, 430 (Tenn. Crim. App. 2007). Generally, “[a] trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010). The 1989 Sentencing Act expresses a burden of proof for revocation cases: “If the trial judge finds that the defendant has violated the conditions of probation and suspension by a preponderance of the evidence, the trial judge shall have the right by order duly entered upon the minutes of the court to revoke the probation and suspension of sentence. . . .” T.C.A. § 40-35-311(e)(1).

Upon a finding by a preponderance of the evidence that the defendant has violated the conditions of probation, the trial court may revoke the defendant's probation and “[c]ause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310.” *Id.* § 40-35-311(e)(1)(A); *see also Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). Following a revocation, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” *Id.* § 40-35-310.

In this case, the defendant admitted violating the terms of probation. This alone is substantial evidence of record to support the trial court's revocation order. *See State v. Michael Emler*, No. 01C01-9512-CC-00424, slip op. at 4 (Tenn. Crim. App., at Nashville, Nov. 27, 1996) (where the defendant admits violation of the terms of probation, revocation by the trial court is not arbitrary or capricious). We cannot say the trial court abused its discretion in revoking probation for the defendant's failure, immediately upon his release from jail, to abide by the terms of his probationary sentence.

Accordingly, we affirm the judgment of the Sullivan County Criminal Court pursuant to Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., JUDGE