

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs December 3, 2019

FILED

02/19/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DEMETRIUS D. BLAKEMORE

Appeal from the Circuit Court for Madison County
No. 98-98, 98-438, 98-301, 04-673 Roy B. Morgan, Jr., Judge

No. W2019-00555-CCA-R3-CD

The Defendant-Appellant, Demetrius Blakemore, appeals the order of the Madison County Circuit Court revoking his probation in four cases. On appeal, Blakemore argues that the trial court erred in revoking his probation because his probationary period had expired. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and J. ROSS DYER, JJ., joined.

George Morton Googe, District Public Defender, and Jeremy B. Epperson, Assistant Public Defender, for the Defendant-Appellant, Demetrius D. Blakemore.

Herbert H. Slatery III, Attorney General and Reporter; Katherine K. Decker, Assistant Attorney General; Jody Pickens, District Attorney General; and Rolf Hazlehurst, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The Defendant does not contest the fact that he absconded from reporting to his probation officer for almost eleven years, in violation of his probation. Instead, he argues that his probationary period had expired prior to the issuance of the probation violation warrant. Accordingly, we must delve into the facts of each judgment form as presented on appeal to guide our resolution of this issue.

On May 4, 1998, in case number 9898, the Defendant was convicted of robbery and received a sentence of six years and eleven months and twenty-nine days, with five years and one month of intensive probation. On August 12, 1998, in case number 98-

438, the Defendant was convicted of unlawful possession of more than five grams of cocaine with intent to sell, possession of marijuana, unlawful possession of a weapon, theft of property under \$500, and driving on a revoked license, for which he received an effective sentence eight years' probation. Case number 9898 was ordered to be served concurrently to case number 98-438. On September 14, 1999, in case number 99-301, the Defendant was convicted of simple possession of marijuana and sentenced to eleven months and twenty-nine days of probation after service of ninety days in jail. This case was ordered to be served consecutively to case numbers "98-89, 98-438." In the special conditions box, there is a notation that the State agrees not to revoke "98-89, 98-438." On October 18, 2004, in case number 04-673, the Defendant was convicted of reckless endangerment-deadly weapon and reckless driving, for which he received an effective sentence of two years' probation and "time served." The special conditions box of this judgment form contains the following notation, "1. Def. is placed on intensive probation which may be transferred. . . . 3. Def. agrees for probation in 98-98, 99-301, and 98-438 to be revoked and reinstated to intensive probation."

On February 25, 2008, an arrest warrant was issued for the Defendant alleging that in case numbers "04-673, 99-301, 98-438, 98-98" the Defendant had received a suspended sentence and granted probation. The warrant further alleged that the Defendant had violated the terms of his probation by changing his address without informing his probation officer, failing to report as directed in December 2007 and January 2008, and failing to pay supervision fees, fines, and restitution. Almost eleven years later, on January 29, 2019, the Defendant was arrested pursuant to the warrant.

On February 11, 2019, the trial court held a brief hearing concerning the Defendant's probationary status. The State detailed the judgment forms as listed above. The State further advised that it had "found a note on 10/18/2004, Madison County Circuit Court, Division 1," explaining that "Offender was convicted of reckless endangerment and reckless driving and agreed to be revoked and reinstated on Madison County Dockets Number 99-301, 98-438 and 98-98 with a probation expiration date of 10/17/2013." The trial court then asked the Defendant if his previous probation sentences were active, to which the Defendant responded, "yes." The trial court asked the Defendant if he understood that by admitting to violating his probation that the court could revoke his probation, and the Defendant acknowledged that he understood.

The trial court inquired if the parties had an agreement as to the disposition of the case, and they did not. The State then advised the court that the Defendant "obviously absconded at some point" and continued to read a note apparently from the probation officer's report:

[The Defendant] had generally been compliant, reported as required, worked fairly regularly and had had no positive drug screens. In September of 2007, he first mentioned that he was afraid for his life in Jackson. Case file indicates [the Defendant] previously acted as an undercover informant. He changed his residence several times from August to November. His whereabouts are now unknown, possibly Los Angeles, California, where the [Defendant's] wife previously moved.

The trial court again inquired of the Defendant whether he understood the allegations, his rights, and that his sentences had not expired. Neither the State nor the trial court calculated the Defendant's actual sentence to be served, however. After consulting with defense counsel, the Defendant admitted that he failed to report in December 2007 and January 2008. The trial court then advised the Defendant that he could be revoked to serve his original sentence. Once again, the Defendant acknowledged that he understood the circumstances, and he acknowledged that no one had made him any promises. The trial court found that the Defendant "knowingly and voluntarily" admitted the probation allegations. The State then recommended revocation of the Defendant's sentence based on his failure to report as directed for almost eleven years.

Prior to issuing its ruling, the trial court allowed the Defendant to describe what had happened in his own words. According to the Defendant, he had left Tennessee to visit his wife and daughter in Los Angeles, California. He intended to bring them Christmas presents and then return, but ended up staying in California instead. The Defendant was arrested in California for DUI and was on probation in California at the time of the revocation hearing. The trial court found that the Defendant was not a proper candidate for probation, revoked his probation, and ordered him to serve his original sentences. The trial court reasoned that while violations of the terms of probation, such as drug use, could be mitigated by proper supervision, that a probationer who leaves the State is impossible to help since the court has no contact with the probationer. The Defendant filed a timely pro se motion to appeal and was appointed appellate counsel on March 27, 2019.

ANALYSIS

As an initial matter, we acknowledge that the Defendant failed to raise this issue before the trial court, which the State contends constitutes waiver. See Tenn. R. App. P. 36(a). Indeed, the Defendant inexplicably conceded in the trial court that his probationary period remained active. Nevertheless, although not explicitly stated by the Defendant on appeal, we will interpret this issue, whether the trial court erred in revoking

his probation because it had expired, as a challenge to the subject matter jurisdiction of the trial court to act as it did. State v. Almeko Chiffon Woods, No. W2007-02025-CCA-R3-CD, 2008 WL 3983107, at *3 (Tenn. Crim. App. Aug. 28, 2008) (noting that a defendant has no power to waive subject matter jurisdiction) (citing State v. Nick Defillipis, No. M2007-01647-CCA-R3-CD, 2008 WL 2388632, at *3 (Tenn. Crim. App. June 12, 2008), perm. app. denied, (Tenn. Dec. 15, 2008)). Accordingly, we will review this issue on the merits.

The Defendant's argument on appeal is equally as perplexing as his concession to the trial court. The Defendant recounts the four cases as included in the record and argues that because the judgment form from his 2004 guilty plea in case number 04-673 uses the language "revoked and reinstated" rather than "to begin anew," his probation expired no later than August 11, 2007. We disagree.

The record shows that in May 1998, the Defendant entered a guilty plea and received a five-year, one-month term of probation. Three months later, in August 1998, he entered another guilty plea and received an effective term of eight years' probation. These cases were ordered to be served concurrently. Based on these two cases, the Defendant's probationary period ended in August 2006. In September 1999, the Defendant entered yet another guilty plea and received a probationary term of eleven months and twenty-nine days following service of ninety days in jail. This case was ordered to be served consecutively to his 1998 convictions, which the State agreed not to revoke. The addition of this term of probation extended the Defendant's probationary period to August 2007. In October 2004, the Defendant entered yet another guilty plea and received an effective sentence of two years' probation and "time served." However, the special conditions box from the 2004 judgment form specifically noted that his prior cases (98-98, 99-301, and 98-438) were revoked and reinstated to intensive probation. This reset the Defendant's previous probationary period and extended it to October 2013. The arrest warrant alleging that the Defendant had violated the terms of his probation was issued on February 25, 2008, which was well within the probationary period and served to toll the expiration of the Defendant's probationary period. State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (service of a sentence was interrupted by issuance of revocation warrant and effectively extends the trial court's authority over the defendant).

The Defendant has failed to provide any authority in support of his position, and we know of none. Upon revocation of his probationary period in 2004, the trial court had three options (1) order incarceration; (2) order the original probationary period to begin anew; or (3) extend the remaining period of probation for as much as two years. Because the Defendant failed to complete any of his previously imposed terms of probation without committing a new violation, his probationary period was repeatedly revoked and reinstated to begin anew. The State read a note dated October 18, 2004, consistent with

the date of his 2004 guilty pleas and convictions, reflecting that the Defendant's new expiration date for his probationary period was October 2013. Accordingly, we conclude that the trial court had subject matter jurisdiction to revoke his probation and order service of the original sentence. State v. Hunter, 1 S.W.3d 643, 646 (Tenn. 1999); Tenn. Code Ann. § 40-35-310. The Defendant is not entitled to relief.

CONCLUSION

Based on the above reasoning and analysis, the judgments of the trial court are affirmed.

CAMILLE R. McMULLEN, JUDGE