

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 17, 2016

**STATE OF TENNESSEE v. JAMES DANIEL CRUZE, II**

**Appeal from the Circuit Court for Sevier County  
No. 18299-III Rex Henry Ogle, Judge**

---

**No. E2015-01722-CCA-R3-CD – Filed March 10, 2016**

---

In 2013, the Defendant, James Daniel Cruze, II, pleaded guilty to sale of a Schedule II controlled substance, and the trial court sentenced him to ten years, to be served at 35%, suspended after the service of 365 days. In 2015, the Defendant’s probation officer filed a probation violation report in which he alleged that the Defendant had absconded, thereby violating several of the rules of his probation. After a hearing, the trial court revoked the Defendant’s probation and ordered him to serve the balance of his sentence in confinement. On appeal the Defendant contends that the trial court erred when it ordered that he serve his sentence as a result of what he deems “minor infractions” of his probation. We affirm the trial court’s judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Edward C. Miller, District Public Defender; Amber D. Haas, Assistant Public Defender, Sevierville, Tennessee, for the appellant, James Daniel Cruze, II.

Herbert H. Slatery III, Attorney General and Reporter; Jeffrey D. Zentner, Assistant Attorney General; James Dunn, District Attorney General; and R. Patrick Harrell, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts**

This case arises from the Defendant’s sale of a Schedule II controlled substance, morphine, on May 31, 2012. In September 2013, the Defendant pleaded guilty to this

offense. In accordance with the plea agreement, the trial court entered the following agreed sentence: “10 years as a Range II offender to serve one year day for day, remainder on supervised probation, court costs [and] \$200 fine. Alcohol and Drug Assessment follow recommendation . . . .” The Defendant’s criminal history, submitted at the time of the plea, included, *inter alia*, numerous convictions involving the attempt to obtain or to sell prescription medicine, seven assault-related convictions, and two parole violations.

On July 12, 2015, the Defendant’s probation officer, Stephen Collins, submitted a probation violation report. In it, he alleged that the Defendant had failed to inform him of a change of address, failed to allow him to visit his home, failed to allow a search of his person, property or vehicle, failed to abstain from using alcohol, and failed to participate in an alcohol and drug assessment. In providing how the violations occurred, the Defendant’s probation officer listed:

Rule #5 – Defendant has not provided a current address due to not reporting to probation

Rule #6 – Defendant last reported to the probation office on 03/05/2015. Defendant was instructed to via appointment card mailed on 6/1/15 to offender[’]s last reported address . . . to report on 7/16/2015[.] Defendant did no[t] report for appointment. Defendant has failed to provide a current address to the probation office by failing to report.

Rule #7 – Defendant has failed to make himself available for search by failing to report to the probation office.

Rule #8 – Defendant has failed to make himself available for drug testing by failing to report to the probation office.

Rule #10 – Defendant last provided proof of a court payment on 11/16/14 for \$10.00 with a balance left of \$2871.50. Defendant has failed to provide proof of completing an A&D Assessment.

On July 29, 2015, the trial court issued a warrant for the Defendant’s arrest. On August 17, 2015, the trial court held a hearing on the probation violation issue. At the hearing, the parties presented the following evidence: Michael Gulley testified that he was a probation officer with the Department of Correction, the agency responsible for the Defendant’s supervision. Officer Gulley said that this appeared to be the Defendant’s first violation and that it was based upon the fact that the Defendant did not provide a current address to his probation officer. The records indicated that the Defendant last reported on March 5, 2015, and that he was ordered to report on July 16, 2015. The

Defendant failed to report. By not providing a current address, the Defendant also failed to make himself available for a search and failed to make himself available for drug testing. Further, the Defendant's last payment to the court was in the amount of \$10 and was paid on November 16, 2014. He had an outstanding balance of \$2,871.51. Officer Gulley testified that the Defendant had also failed to complete an alcohol and drug assessment as ordered by the trial court.

During cross-examination, Officer Gulley testified that the report did not indicate that the Defendant had any new arrests. Officer Gulley admitted that the Defendant, who was only two years into a ten-year sentence, technically had seven or eight years remaining to complete an alcohol and drug assessment. Officer Gulley said that, while this was technically accurate, probation officers as a general rule informed probationers to have this completed quickly. Officer Gulley, however, was not personally responsible for the Defendant's supervision and could not, therefore, testify as to whether the Defendant had been so informed.

The Defendant testified that he had resided at his mother's address for the duration of his probation. He said that he did not report in June because he was unaware that he was supposed to report then. He said that he did not have a telephone and could not contact his probation officer. He said he did have a mailing address. The Defendant said that he had suffered two deaths in his family, with his mother and step-father each dying within a week of one another. He had also been bitten by a brown recluse and "about lost most of [his] leg for that." He recounted that he was bedridden for three months as a result of the spider bite. The Defendant said that, but for those circumstances, he would have reported as scheduled.

The trial court noted that the Defendant had a "very significant record," including three DUIs, driving on a revoked license, sale of Oxycontin, criminal trespass, and aggravated assault. The trial court expressed sympathy concerning the deaths in the Defendant's family but stated that these deaths were "no excuse for . . . not letting your probation officer know about things." The trial court found that the Defendant had violated his probation and ordered him to serve the balance of his sentence in confinement. The trial court issued a written order finding that the Defendant had violated his probation by failing to report as instructed, failing to pay his costs, fees and fines, and failing to complete an alcohol and drug assessment. He memorialized his oral finding that the Defendant serve the balance of his sentence in confinement.

## **II. Analysis**

On appeal, the Defendant contends that the trial court erred when it ordered him to serve the balance of his sentence in confinement because his violations were technical in

nature and he had followed the terms of probation for two years. The State counters that the trial court properly revoked the Defendant's probation and ordered him to serve his sentence in confinement. We agree.

A trial court's authority to revoke a suspended sentence is derived from Tennessee Code Annotated section 40-35-310 (2014), which provides that the trial court possesses the power "at any time within the maximum time which was directed and ordered by the court for such suspension, . . . to revoke . . . such suspension" and cause the original judgment to be put into effect. A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2014). "In probation revocation hearings, the credibility of witnesses is to be determined by the trial judge." *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If a trial court revokes a defendant's probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310 (2010); *see State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999).

The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless there has been an abuse of discretion. *See State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App. 1995). In order for this Court to find an abuse of discretion, "there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred." *Shaffer*, 45 S.W.3d at 554. Further, a finding of abuse of discretion "reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case." *Shaffer*, 45 S.W.3d at 555 (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

The Defendant admitted he had violated multiple rules of probation by failing to report. After the trial court accepted the Defendant's admission, it retained discretionary authority, pursuant to Tennessee Code Annotated section 40-35-310(b), to order the Defendant to serve his sentence in incarceration. The determination of the proper consequence of a probation violation embodies a separate exercise of discretion. *State v. Hunter*, 1 S.W.3d 643, 647 (Tenn. 1999). Case law establishes that "an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing." *State v. Jeffrey A. Warfield*, No. 01C019711-CC-00504, 1999 WL 61065, at \*2 (Tenn. Crim. App., at Nashville, Feb. 10, 1999), *perm. app. denied* (Tenn. June 28, 1999).

The record clearly reflects that the Defendant violated the terms of his probation. He failed to report to his probation officer as required. He contends that his violations

were “technical” in nature. According to our standard of review, in order for this Court to conclude that the trial court abused its discretion in a revocation case, the record must be void of any substantial evidence that a violation of the conditions of probation occurred. *See State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). The record herein clearly supports the trial court’s finding that the Defendant violated his probation. Further, once the trial court has found that a defendant has violated the terms of his or her probation, it is vested with the statutory authority to revoke the probation and order a defendant to serve some or all of the original sentence in confinement. *Hunter*, 1 S.W.3d at 644. Under these circumstances, we find no abuse of discretion in the trial court’s revocation of the Defendant’s probation and its ordering the Defendant to serve the balance of his sentence in confinement. *See State v. Kenneth Nathaniel Jones*, No. E2011-02621-CCA-R3-CD, 2012 WL 1581487, at \*4 (Tenn. Crim. App., at Knoxville, May 4, 2012) (holding that a trial court did not abuse its discretion when it found that the defendant had violated the terms of his probation when the violation was “technical” in nature), *no Tenn. R. App. P. 11 application filed*. The Defendant is not entitled to relief on this issue.

### III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the trial court’s judgment.

---

ROBERT W. WEDEMEYER, JUDGE