

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 26, 2018

FILED

07/18/2018

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. IAN KOLB

**Appeal from the Circuit Court for Sevier County
No. 16508-III, 18313-III Rex H. Ogle, Judge**

No. E2017-02208-CCA-R3-CD

The Defendant-Appellant, Ian Kolb, appeals from the revocation of his supervised probation sentence by the Sevier County Circuit Court. On appeal, the Defendant argues that the trial court abused its discretion by ordering him to serve the remainder of his sentence. Upon review, the judgment of the trial court is affirmed.

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

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

Aaron M. Kimsey (on appeal), and Amber D. Haas (at hearing), Assistant Public Defenders, for the appellant, Ian J. Kolb.

Herbert H. Slatery III, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Jimmy B. Dunn, District Attorney General; and Timothy Norris, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 5, 2011, the Defendant entered a guilty plea by information to making a false police report and theft under \$500.00, in exchange for a two-year suspended sentence, forty hours of community service, and \$395.00 in restitution. On August 19, 2013, the Defendant entered a guilty plea to the sale of a schedule II controlled substance, for which he received a suspended sentence of five years, to be served consecutively to his previous charges, for an effective sentence of seven years. The Defendant was also ordered to pay a \$2,000.00 fine and \$80.00 in restitution. At the October 19, 2017 revocation hearing, the Defendant stipulated “that he violated the terms and conditions of probation This is his fourth violation of probation . . . [and that] he hasn’t reported

since November of last year and that he failed a drug screen.” In revoking the Defendant’s probation, the trial court stated,

Mr. Kolb, I hate it for you. I truly do. But I’ve had very few fourth violations since I’ve been on the bench, and you just aren’t going to comply. It’s just not in you to comply. Mr. Kolb, the Court finds that you’re in willful violation of your probation, fourth violation, and I order you to execute your sentence.

It is from that order that the Defendant now timely appeals.

ANALYSIS

On appeal, the Defendant argues that the trial court abused its discretion by revoking his supervised probation and ordering him to serve the remainder of his sentence. He asserts that because he is a non-violent offender, public policy supports reversing and remanding the case for the trial court to consider alternatives to incarceration. The State argues, and we agree, that the trial court properly exercised its discretion in revoking the Defendant’s supervised probation.

Probation revocation rests within the sound discretion of the trial court, and this court will not disturb the trial court’s ruling absent an abuse of that discretion. State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001) (citing State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991)). To establish an abuse of discretion, the defendant must show “that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred.” Harkins, 811 S.W.2d at 82 (citing State v. Gear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Once the trial court decides to revoke a defendant’s probation, it may (1) order confinement; (2) order the sentence into execution as initially entered, or, in other words, begin the probationary sentence anew; (3) return the defendant to probation on modified conditions as necessary; or (4) extend the probationary period by up to two years. See State v. Hunter, 1 S.W.3d 643, 647 (Tenn. 1999) (citations omitted).

There was substantial evidence to support the trial court’s order revoking the Defendant’s probation. At the probation hearing, the Defendant stipulated to violating his probation by not reporting in over a year and failing a drug screen. The Defendant additionally stipulated to three prior probation violations, evincing several prior opportunities to serve his sentence in ways alternative to incarceration. The Defendant does not contest his violation but instead argues that non-violent offenders should not be placed in jail. This would be a compelling argument but for the fact that this is his fourth

violation of probation. As acknowledged by the Defendant, this court has repeatedly cautioned that an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing. State v. Dennis, No. M2010-01596-CCA-R3CD, 2011 WL 1844080, at *3 (Tenn. Crim. App. May 16, 2011) (citations omitted). Consequently, we conclude that the trial court did not abuse its discretion in revoking the Defendant's supervised probation and ordering him to serve the balance of his sentence. The Defendant is not entitled to relief.

CONCLUSION

Based upon the foregoing reasoning and analysis, the judgment of the trial court is affirmed.

CAMILLE R. MCMULLEN, JUDGE