

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 23, 2020

FILED

07/21/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ISAIAH KEMP

Appeal from the Circuit Court for Sevier County
No. CR-24028-II James L. Gass, Judge

No. E2019-01784-CCA-R3-CD

The defendant, Isaiah Kemp, appeals from the revocation of the probationary sentence imposed for his 2018 Sevier County Circuit Court guilty-pleaded conviction of passing worthless checks in an amount of \$1,000 or more but less than \$10,000, arguing that the trial court erred by ordering that he serve the balance of his sentence in confinement. Discerning no error, we affirm.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Samantha A. McCammon, Sevierville, Tennessee, for the appellant, Isaiah Kemp.

Herbert H. Slatery III, Attorney General and Reporter; Ruth Anne Thompson, Assistant Attorney General; James B. Dunn, District Attorney General; and Ronald C. Newcomb, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Sevier County Grand Jury charged the defendant with one count of passing worthless checks in an aggregate amount of \$1,000 or more but less than \$10,000 based upon his passing six checks totaling \$2,200 drawn on a closed account. On May 30, 2018, the defendant pleaded guilty as charged, and the trial court imposed a sentence of four years' supervised probation.

At his initial report date on June 6, 2018, the defendant tested positive for the use of amphetamines, methamphetamine, hydromorphone, oxycodone, and oxymorphone. The defendant failed to meet with a forensic social worker on June 13, 2018, as directed and then failed to meet with his probation officer on June 22, 2018. A probation violation

warrant issued on July 23, 2018, alleging that the defendant violated the conditions of his probation by testing positive for drugs and failing to report. The trial court revoked the defendant's probation but ordered him returned to probation following the service of 60 days' incarceration.

On January 9, 2019, a probation violation warrant issued, alleging that the defendant violated the terms of his probation by failing to report a new arrest for drug possession and failing to report as required. On April 22, 2019, the trial court revoked the defendant's probation and ordered him returned to probation following the service of 120 days' incarceration.

A third violation warrant issued on May 28, 2019, alleging that the defendant violated the terms of his probation by failing to report a new arrest for aggravated assault and by "act[ing] in an assaultive behavior and result[ing] in the Knox charges of assault." At the violation hearing, the defendant conceded that he violated the terms of his probation but asked the trial court to permit him to enter in-patient drug rehabilitation. The defendant told the court that he became addicted to opioids following a workplace injury and that his legal troubles stemmed from that addiction. He admitted that he had violated the terms of his probation but insisted that, on those previous occasions, he "didn't have the structure or the support system" following his reinstatement to probation and that, as a result, he immediately turned to the use of methamphetamine to "curb[] my appetite" and to prevent his "wondering where I was going to sleep at night." He said that he wanted to enter into in-patient rehabilitation and that his mother "was willing to pay for a halfway house followed after the rehab."

The defendant insisted that he had reported his new charges to his probation officer. The defendant said that his probation officer "faxed a letter to Crossville Mission Bible Training Center approving me going to the rehab out there." Before he could enter that facility, he had to get a physical at the health department, "and that took 30 days." In the interim, the defendant moved in with his brother in Cookeville with the permission of his probation officer. He was unable to complete the physical, explaining,

Then this is some Jerry Springer stuff right here. My brother's wife was cheating on him, and I caught her and told my brother, and I got kicked out of the house. I had to hitchhike back from Cookeville to here, and then when I came here, that's when I got arrested from violation. So -- and then I got another rehab set up and stuff ready to go.

The trial court revoked the defendant's probation, observing that "this is your third violation in this case." The court found that, in addition to the charges in this case,

the defendant had a history of criminal convictions. The court also found that the defendant had “a history of being unable to comply with the law in this case and upon your release into society.” The court ordered the defendant to serve the balance of his sentence in confinement.

In this timely appeal, the defendant argues that the trial court erred by ordering him to serve the remainder of his sentence. The State asserts that the trial court did not err.

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.*; *see also Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). Following a revocation, “the trial judge may order the original judgment so rendered to be in full force and effect from the date of the revocation of the suspension, and that it be executed accordingly.” T.C.A. § 40-35-310(a). In other words, “[t]he trial judge retains the discretionary authority to order the defendant to serve the original sentence.” *Reams*, 265 S.W.3d at 430 (citing *State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995)).

In the present case, the defendant acknowledged that he violated the terms of his probation, and the defendant does not contend otherwise on appeal. Instead, the defendant argues that a sentence other than confinement would have been more appropriate under the circumstances here presented. The law is well-settled, however, that the trial court does not abuse its discretion by choosing incarceration from among the options available after finding that the defendant has violated the terms of his probation. Consequently, we affirm the order of the trial court.

JAMES CURWOOD WITT, JR., JUDGE