

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 25, 2014

STATE OF TENNESSEE v. ADAM SHARP

Appeal from the Criminal Court for Knox County
Nos. 92782, 95696 Bob R. McGee, Judge

No. E2013-00685-CCA-R3-CD - Filed March 11, 2014

The Defendant, Adam Sharp, appeals the Knox County Criminal Court's orders revoking his community corrections sentences for his automobile burglary conviction in case number 92782 and his aggravated burglary and reckless endangerment convictions in case number 95696. On appeal, the Defendant contends that the trial court abused its discretion by ordering him to serve his effective eight-year sentence in confinement. We affirm the judgments of the trial court.

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

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Ben H. Houston, II, Knoxville, Tennessee, for the appellant, Adam Sharp.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Debbie Malone, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 2, 2009, the Defendant pleaded guilty to burglary of a vehicle, received judicial diversion, and was placed on probation for five years in case number 92782. A probation violation warrant was filed on April 22, 2010, alleging that the Defendant was arrested for theft on April 10, 2010, and that he was in arrears on his probation fees and court costs. The warrant was amended on July 22, 2010, to include the allegations that the Defendant was arrested on July 13, 2010, for aggravated burglary, reckless endangerment, and failure to appear, that he had failed to provide proof of employment since February 2010, and that he admitted an addiction to pain medication and needing treatment. On October 6,

2010, the Defendant was charged by information with aggravated burglary and reckless endangerment in case number 95696.

On October 6, 2010, pursuant to a negotiated plea agreement, the Defendant admitted violating his probation in case number 92782, and the trial court revoked his judicial diversion and sentenced him to two years as a Range I, standard offender. In case number 95696, the Defendant pleaded guilty to aggravated burglary and reckless endangerment. The trial court sentenced him to concurrent terms of six years for aggravated burglary and two years for reckless endangerment. The court ordered the effective six-year sentence in case number 95696 and the two-year sentence in case number 92782 be served consecutively on enhanced probation, for an effective eight-year sentence.

On May 10, 2011, a probation violation warrant was filed, alleging that the Defendant was cited for driving on a suspended license on May 2, 2011, failed to report the citation to his probation officer, failed to maintain employment, failed to pay court costs and supervision fees, admitted using and tested positive for oxycotin, suboxone, and hydrocodone on multiple occasions, failed to report to his probation officer, was discharged by the halfway house for non-compliance, and failed to provide a DNA sample as required by law. The warrant was amended on December 8, 2011, to allege that the Defendant was arrested in Sevier County for attempt to commit aggravated burglary and theft valued at \$1000 or more but less than \$10,000 and was arrested in Knox County for failure to appear regarding the driving on a suspended license charge. At the April 26, 2012 probation revocation hearing, the Defendant submitted to the revocation. The trial court revoked the Defendant's probation in each case. The Defendant was evaluated by the Community Alternatives to Prison Program, and on October 25, 2012, the court placed the Defendant on community corrections for an effective eight years.

On November 6, 2012, a community corrections violation warrant was issued, alleging that the Defendant left the halfway house without permission on November 3, 2012, and failed to report his leaving to his community corrections officer. The warrant also alleged that the Defendant was drug tested on November 6, 2012, and that he admitted using "Opana," although he initially denied any drug use. The Defendant allegedly absconded from community corrections after November 6. On January 31, 2013, the Defendant admitted the violation, and the trial court referred him to the local drug court and "re-referred" him to the Community Alternative to Prison Program for the purpose of determining his eligibility to participate in each program. The court withheld its ruling regarding sentencing until the Defendant could be evaluated. This violation warrant is the subject of this appeal.

At the community corrections revocation hearing, the Community Alternatives to Prison Program's and local drug court's evaluations were received as an exhibit. The community corrections report showed that the Defendant was not an appropriate candidate for community corrections supervision. The report noted that community corrections personnel had evaluated the Defendant twice previously for the same offenses and stated that community corrections had "nothing else to offer" the Defendant. The drug court's report showed that the Defendant was ineligible for drug court placement because he was previously convicted of a violent crime. The report stated his previous conviction for reckless endangerment prevented his acceptance into the drug court. The report recommended various substance abuse treatment centers.

Shelia Sharp, the Defendant's mother, testified that after the Defendant was placed on community corrections, she was diagnosed with cervical and uterine cancer. She discussed her diagnosis briefly with the Defendant when he was in confinement and discussed her diagnosis in detail after the Defendant was released. She said the Defendant's great-grandmother was ill around the same time. She believed the health-related news overwhelmed the Defendant. She said the Defendant was born prematurely and was a nervous child. She said he paced a lot and repeated himself routinely. She said the Defendant was dealing with child support issues regarding his four-year-old daughter and had not seen his daughter in over a year at the time of his relapse. She believed the health-related news and the issues related to his daughter contributed to his relapse and said she would support her son "1000%" if he were permitted to return to community corrections.

On cross-examination, Ms. Sharp testified that she loved her son. She agreed that she supported her son since his first arrest in 2009 and that by 2010, the Defendant had violated his judicial diversion. She agreed she had supported the Defendant during the previous four years. She said the Defendant's behavior depended upon the situation. She agreed the Defendant had been arrested in Knox and Sevier Counties since he received judicial diversion. She agreed the Defendant underwent in-patient substance abuse treatment and had the benefit of a halfway house, although he was discharged for non-compliance. She agreed the Defendant tested positive for drugs following his release from the halfway house.

The Defendant submitted a March 13, 2013 letter of recommendation from Jeff Hunter, Director of FOCUS Group Prison Ministries. The letter stated that the Defendant was a student in good standing with the Focus Christian Academy Exodus Project and was taking a weekly class at the Knox County Detention Facility. Mr. Hunter asked the trial court to provide the Defendant "an opportunity . . . [to] help him reach his full growth potential."

The trial court discussed the procedural history of the Defendant's cases and noted the numerous opportunities he had been afforded. The court noted that the Defendant failed to complete judicial diversion and to comply with the terms of his probation and that he received substance abuse treatment but continued to use drugs. The court noted the six previous convictions for breaking and entering into cars and theft. The court found that the Defendant was a drug addict and that it had attempted to use every form of probation to help him. The court stated that the Defendant's inability to "break the cycle" was unfortunate. The court ordered the Defendant to serve his sentences in confinement. This appeal followed.

The Defendant contends that the trial court abused its discretion by revoking his community corrections sentences and ordering him to serve his sentences in confinement. The State contends that the trial court properly ordered him to serve his sentences in confinement. We agree with the State.

A trial court may revoke a community corrections sentence upon its finding by a preponderance of the evidence that a defendant violated the conditions of release. T.C.A. § 40-35-311(e) (2010) (probation revocation); *see* T.C.A. § 40-36-106(e)(3)(B) (2010) (stating that community correction revocation proceedings shall be conducted pursuant to Tennessee Code Annotated section 40-35-311). A trial court, upon revoking a community corrections sentence, "may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed . . ." T.C.A. § 40-36-106(e)(4). We will not disturb the trial court's judgment on appeal absent an abuse of discretion. *See State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App 1995) (citing *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991)).

It is undisputed that the Defendant violated the conditions of his community corrections sentences and that he admitted the violations. The Defendant received judicial diversion on October 2, 2009, after pleading guilty to burglary of a vehicle. Eight months later, the Defendant was arrested for aggravated burglary, reckless endangerment, and failure to appear. The Defendant admitted to his probation officer that he continued to use drugs. After pleading guilty to aggravated burglary and reckless endangerment in October 2010, the Defendant was cited for driving on a suspended license seven months later. He admitted to continuous drug use, was dismissed from the halfway house, and failed to report to his probation officer. Seven months later, the Defendant was arrested for attempt to commit aggravated burglary and theft. The Defendant's probation was revoked, and the trial court ordered the Defendant to serve his sentence on community corrections rather than serving his sentences in confinement. Less than one month later, the Defendant left the halfway house without permission and failed to report to his community corrections officer. When

he reported days later, he tested positive for Opana and ultimately absconded from supervision. Given the Defendant's inability to comply with the terms of his community corrections sentences and the numerous opportunities provided by the trial court for the Defendant to remain on some form of probation, we conclude that the court did not abuse its discretion by ordering the Defendant's sentences into execution. The Defendant is not entitled to relief.

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE