

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 6, 2020

FILED

11/10/2020

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JEFFREY BRIAN GWALTNEY

Appeal from the Circuit Court for Lauderdale County
Nos. 10125, 9789, 9054 & 8933 Joseph H. Walker, III, Judge

No. W2019-02311-CCA-R3-CD

The trial court revoked the community corrections sentence of the Defendant, Jeffrey Brian Gwaltney, and ordered that he serve the remainder of his sentence in confinement. On appeal, the Defendant contends that, while he did violate his alternative sentence, the trial court's full revocation of his fifteen-year sentence was excessive and constituted an abuse of discretion. After review, 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 JOHN EVERETT WILLIAMS, P.J., and ROBERT L. HOLLOWAY, JR., J., joined.

Bo Burk, District Public Defender, Somerville, Tennessee, and David S. Stockton, Assistant Public Defender, Covington, Tennessee, for the appellant Jeffrey Brian Gwaltney.

Herbert H. Slatery III, Attorney General and Reporter; Jonathan H. Wardle, Assistant Attorney General; Mark E. Davidson, District Attorney General; and Julie K. Pillow, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises originally from the Defendant's 2010 conviction for theft. For this conviction, the trial court sentenced him to a community corrections sentence. In 2011, he was convicted of aggravated burglary and possession of burglary tools, and the trial court sentenced him again to community corrections. In 2013, he violated his community corrections sentence and was transferred to supervised probation. In 2014, the Defendant was convicted of burglary of an automobile, aggravated burglary, and theft, and the trial court sentenced him to twelve years of community corrections, after he

served twelve days in confinement. In 2016, the Defendant was convicted of aggravated burglary and theft, in an offense that occurred when he broke into someone's home and took a bottle of Hydrocodone and an Amazon tablet computer. The State asserted at the hearing that the Defendant was a career offender, as reflected by his plea. The trial court sentenced him to fifteen years of community corrections, to be served concurrently with his other community corrections sentences. He was also ordered to long-term rehabilitation for a minimum of six months as part of the plea agreement.

On September 11, 2019, law enforcement officers arrested the Defendant, and he was charged with driving under the influence ("DUI"), driving on a revoked license, and not wearing a seatbelt. Shortly thereafter, on September 23, 2019, the Defendant's supervising case officer filed an affidavit alleging that the Defendant had violated his community corrections sentence as evidenced by his arrest. The affidavit went on to state that the Defendant had also twice tested positive for drugs and only attended seven of the required ten Narcotics Anonymous meetings; violated his house arrest by not being home on eight occasions; failed to attend six weekly meetings with his case supervisor; failed to make court payments; failed to pay supervision fee; and failed to complete any of his required community service.

During the week before October 15, 2019, the Defendant pleaded guilty to DUI, second offense, as evidenced by the trial court's October 15, 2019 order.

On October 15, 2019, the trial court held a hearing on the petition alleging that the Defendant violated his community corrections sentence. At the hearing, the following occurred: The Defendant's case officer, Lindsey McCraw, testified about the Defendant's convictions, sentence, and violations. She said that he had not abided by the terms of his community corrections sentence. Ms. McCraw testified that the Defendant had not done any of his required community service hours. Further, pursuant to the community corrections rules, he was under house arrest and required to remain at home unless performing community service, working, or attending classes or counseling. On several occasions when Ms. McCraw checked on the Defendant, he was not at home. He clearly was not performing community service at this time, as he had not completed any of his hours, and she ensured that he was also not working at his place of employment. Ms. McCraw testified that the Defendant was not meeting his financial obligation to the court.

Ms. McCraw testified that the Defendant tested positive for THC, the substance in marijuana, on March 12, 2019, and on July 13, 2019. As a result, she asked him to attend ten Narcotics Anonymous meetings. He attended seven of the ten. Ms. McCraw testified that the Defendant had missed six scheduled appointments and that he had failed to pay his supervision fee. He also received a new charge for DUI and driving while his license

was revoked. He had since pleaded guilty to DUI. Ms. McCraw asked that the trial court revoke the Defendant's community corrections sentence and order him to serve his sentence in confinement.

During cross-examination, Ms. McCraw testified that the Defendant told her that he had tested positive for marijuana because he used CBD oil. She said that, based on State regulations, legal CBD oil would be unlikely to make him test positive. Ms. McCraw agreed that the Defendant maintained employment while she supervised him.

During redirect examination, Ms. McCraw testified that her predecessor, Ms. Linda Jenkins, had also filed a separate affidavit swearing that the Defendant had violated his community corrections sentence. The Defendant had appeared before the trial court, which determined that he had in fact violated his community corrections sentence on those previous occasions also.

The Defendant testified that he had been on house arrest for a long period of time. He explained that if he was not at home when Ms. McCraw checked on him then he was a short distance away caring for an ailing neighbor. He explained that any meetings that he missed with his community corrections officer were "excusable" because he was sick or had a death in his family. He said that he would call Ms. McCraw and inform her that he was going to miss a meeting. He expressed disbelief that he had missed as many meetings as she said, and he said "I don't know where they are digging all this up at, because I've never missed seeing her."

The Defendant testified that he completed eleven Narcotics Anonymous classes, and he had proof of the same. He said that Ms. McCraw had signed off that he had gone to eleven meetings. About his DUI, he explained that he lived with his mother and father, who have health issues. His father asked him to drive the car to the grocery store. When the Defendant did so, he was not wearing his seatbelt. He said that he "wasn't out there driving recklessly." He said that he was driving under his "medication" drug called "Lyrica," of which he took 900 milligrams a day.

The Defendant said that he was no longer using illegal drugs or alcohol. He said that he had done "three hard years out there on this house arrest," and felt that the consequences for this violation were too severe.

The Defendant agreed that he had not completed any of the community service hours, but he explained that it was difficult for his father to give him a ride to and from a location where he could do those hours. He said that he now had that worked out and would be able to complete his hours if released. The Defendant said he was paying what he could toward his fees but that the additional fees kept "piling up on [him]." The

Defendant said that he “abide[d] by the rules and regulations” of his community corrections sentence. He complained that Ms. McCraw never informed him that he was not complying with the regulations when he met with her. He was “shock[ed]” that Ms. McCraw pursued and kept up and criminalized [him] like [he] was a nobody,” when he had been making an effort to comply with the requirements. He again said that he had made his weekly meetings with Ms. McCraw and that he did not “know where she pulled all that up,” by saying that he had missed meetings.

The Defendant conceded that his blood alcohol test had not yet been returned from the day he was arrested for DUI. He then conceded that he “had maybe a beer after work and that was it.” The Defendant agreed that the community corrections regulations required that he not drink to “excess,” so he was allowed to have a beer at home. He also agreed that doing so was not likely a good idea. The Defendant discussed what changes he would make if he were returned to community corrections in order to better comply with the regulations governing his sentence.

During cross-examination, the Defendant conceded that he had consumed alcohol and driven a car while subject to community corrections regulations prohibiting that conduct. He agreed the officer who detained him said that he smelled of an intoxicant, had watery eyeballs, and performed poorly on his field sobriety tasks. He pleaded guilty before his blood test results were returned.

The Defendant said that, while alcohol had been a problem for him for a long period of time, he only now drank a beer a day. He said that he also no longer committed crimes. The Defendant agreed that his license had been revoked for most of his adult life, in part because he had been convicted of vehicular homicide in 1995.

The Defendant said that he was at home on the occasions that Ms. McCraw said he was not. He explained that he was likely in a back bedroom when the officer was out front honking her horn and did not hear the officer. The Defendant denied that he would have been somewhere other than home or work. He agreed that he was somewhere other than home or work when he was arrested for DUI.

The Defendant maintained that he tested positive for THC because of his use of CBD oil, despite the prosecutor’s assertion that CBD oil does not contain the active component THC. The Defendant said that he deserved another chance because he had ceased his use of opiates and cocaine, decreased his alcohol consumption, and maintained employment.

When the State reminded him that he had been convicted of DUI, the Defendant said “[t]hat was driving under my medication. It was no drugs involved, no alcohol

involved.” The State reminded the Defendant that the officer had smelled alcohol on his person, and the Defendant said that he had only consumed one beer. He conceded that he had mixed his other medication with alcohol.

The Defendant’s father testified that sometimes he and the Defendant’s mother asked the Defendant to go to the store for them. He agreed that he knew that the Defendant did not have a driver’s license and that he would not ask this of the Defendant again. The Defendant’s father testified that the Defendant’s girlfriend lived close by and sometimes the Defendant would be at his girlfriend’s house when officer’s came to check on him. He said that he understood now that the Defendant could not be at his girlfriend’s house.

Based upon this evidence the trial court found:

The [D]efendant has a prior history. In 1995, vehicular homicide . . . 2002, habitual traffic offender . . . [i]n 2010 in May, burglary, theft . . . [i]n October 2010, theft That’s when the [D]efendant first went on Community Corrections in 2011 . . . aggravated burglary, three years, supposedly with restitution. Possession of burglary tools, that was consecutive to the two for an effective five-year sentence on Community Corrections.

In 2013 in September, the revocation hearing was held, and the [D]efendant was given some time in jail with his credit, was transferred to supervised probation. In 2014 . . . the [D]efendant entered pleas to attempted auto burglary, aggravated burglary, theft. The aggravated burglary was a 12-year sentence. The theft 8 years to run concurrent but consecutive to the other sentences. Placed on Community Corrections again.

While on Community Corrections in January of 2016, he was arrested for aggravated burglary again and theft. He entered a plea He was a career offender, entered a plea for 15 years as a career offender to do 180 days in jail, then long-term rehab by furlough order, then on Community Corrections in February of 2017.

The Court finds that while on community corrections, he was not at home on the times shown . . . [and] testified to by the officer. Hadn’t made payment on cost as shown . . . and testified to. Tested positive for illegal drugs March 12, 2019, July 13, 2019. Missed weekly meetings as shown . . . and testified to by Officer Ms. McCraw. In arrears on supervision fees

and was arrested September 11 of 2019 on new charges of driving without a license, driving under the influence. Last week, entered a plea of guilty to the charges and is currently serving that sentence. Pled guilty to DUI second.

And he hadn't completed any of the required 100 hours of community serve this time. That is for the time he was put back on Community Corrections after the [2016] conviction [for aggravated burglary and theft]. The Court finds that while on Community Corrections [the Defendant] did not comply with the rules, and Community Corrections is revoked. [He has been given multiple opportunities.

It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court abused its discretion when it revoked the Defendant's community corrections sentence. He asserts that the full revocation of his fifteen-year sentence is "excessive and constitutes an abuse of discretion." The State contends that the trial court was within its discretion when it revoked the Defendant's community corrections sentence. We agree with the State.

The decision to revoke a community corrections sentence rests within the sound discretion of the trial court. *State v. Harkins*, 811 S.W.2d 79, 82-83 (Tenn. 1991) (applying the probation revocation procedures and principles contained in Tennessee Code Annotated section 40-35-311 to the revocation of a community corrections placement based upon "the similar nature of a community corrections sentence and a sentence of probation"); *see also State v. Pollard*, 432 S.W.3d 851, 864 (Tenn. 2013) (holding that an abuse of discretion standard with a presumption of reasonableness applies to all sentencing decisions). To establish an abuse of discretion, the defendant must show that there is no substantial evidence in the record to support the trial court's determination regarding the violation. *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2000) (citing *Harkins*, 811 S.W.2d at 82). A violation of probation or community corrections need only be proven by a preponderance of the evidence. *See* T.C.A. § 40-35-311(e)(1) (2019); *see also* T.C.A. § 40-36-106(e)(3)(B) (2019). If the evidence is sufficient to show a violation of the terms of supervision, the trial court may, within its discretionary authority, revoke the community corrections sentence and require the defendant to serve his sentence in confinement "less any time actually served in any community-based alternative to incarceration." T.C.A. § 40-36-106(e)(4) (2019).

The record contains overwhelming evidence presented during the revocation

hearing to prove that the Defendant violated the conditions of his community corrections sentence. The Defendant tested positive for THC, failed to make weekly meetings, failed to be at home when checked upon, and committed the offense of DUI. By his own admission, the Defendant has been unable to comply with multiple opportunities to complete an alternative sentence. The trial court did not abuse its discretion when it revoked the Defendant's community corrections sentence and ordered him to serve the remainder of his sentence in confinement. The Defendant is not entitled to relief.

III. Conclusion

After a thorough review of the record and the applicable law, we affirm the trial court's judgment.

ROBERT W. WEDEMEYER, JUDGE