

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2007

STATE OF TENNESSEE v. DAVID LYNNON ALFORD

**Appeal from the Circuit Court for Blount County
No. C-15636 D. Kelly Thomas, Jr., Judge**

No. E2006-01101-CCA-R3-CD - Filed March 5, 2007

The defendant's probation officer obtained a probation violation warrant alleging that the defendant failed to provide his probation officer a valid address, failed to report to his probation officer, failed to pay court costs and failed to enter and complete ETHRA Domestic Violence Class. Following a hearing, the trial court revoked the defendant's probation and ordered him to serve his originally-imposed eleven-month, twenty-nine-day sentence with a release eligibility of thirty-five percent. We have reviewed the record on appeal and affirm the judgment of the trial court.

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

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and J. CURWOOD WITT, JR., J., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, David Lynnon Alford.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Mike Flynn, District Attorney General and Ellen Berez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 10, 2005, the defendant pled guilty to one count of domestic assault and one count of child abuse and neglect. The trial court sentenced him to concurrent sentences of eleven months, twenty-nine days and placed the defendant on supervised probation.

Roger Montgomery was assigned as the defendant's probation officer in October of 2005. The defendant met with Montgomery in October, November and December of 2005 and January of 2006. Following their January 11, 2006, meeting, Montgomery never saw or heard from the defendant again. Montgomery attempted to mail the defendant a letter to the address the defendant

had provided, but it was returned on March 21, 2006 and stamped, "No Such Number." In January of 2006, Montgomery received a call that the defendant had been arrested in Knoxville. Upon further investigation, Montgomery discovered that the arrest was actually a citation. On May 3, 2006, the defendant was convicted of misdemeanor possession and casual use of drugs as a result of this citation.

On March 31, 2006, Montgomery obtained a probation violation warrant. This warrant alleged that the defendant had violated four conditions of his probation, "Rule #4: In that the subject has not provided his probation officer a valid address. Rule #9: In that the subject has not reported to his probation officer since January 11, 2006 and his current whereabouts are unknown. Rule # 11: In that the subject has not paid court cost. Rule #13: In that the subject has failed to enter and complete ETHRA Domestic Violence Class."

The trial court held a hearing on the probation violation warrant on May 22, 2006. Montgomery testified about the returned letter and the telephone call concerning the defendant's arrest in Knoxville. Montgomery also stated that the defendant never enrolled in a Domestic Violence Intervention class, as required by his probation conditions, and that the defendant still owed both court costs and supervision fees.

The defendant also testified at the hearing. The defendant had been living with his mother throughout his probationary period. When asked what his mother's address was, the defendant was unable to tell the court her address. The defendant also stated that he was not supporting himself by working but was awaiting reinstatement of disability benefits. The defendant had been on disability because he lost his leg in a shooting accident. At some point, after losing his leg, the defendant was on probation for a drug charge which was revoked, and the defendant was sent to prison for three years. When he was sent to prison, his disability benefits ceased and, at the time of the hearing, had not been reinstated following his release.

The defendant stated that he stopped coming to his meetings with Montgomery because he did not have a way to get from Knoxville to Blount County. He admitted that he did not attempt to call or write Montgomery to explain his situation. He also testified that he and his wife had been talking on the telephone and sometimes seeing each other. He stated they were trying to reconcile. On cross-examination, the State reminded the defendant that under the terms of his probation, he was not to have any contact with his wife.

At the conclusion of the hearing, the trial court revoked the defendant's probation and stated:

[The defendant] is not a person who just came in and pled on this case and is being tried for violating probation. [The defendant] is a person who did a three-year drug sentence in the penitentiary, got out on parole, and then pled this. And was allowed to plead out and take straight probation. And it is against that backdrop that he has stopped reporting for the months of February and March. Picked up a new

conviction for simple possession in May. And didn't give his probation officer an appropriate address. Not concerned enough about that to even know what it is.

So, I'm going to order that his probation is revoked. . . .

ANALYSIS

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. Tenn. Code Ann. § 40-35-310 & -311. After finding a violation of probation and determining that probation should be revoked, a trial judge can: (1) order the defendant to serve the sentence in incarceration; (2) cause execution of the judgment as it was originally entered, or, in other words, begin the probationary sentence anew; or (3) extend the probationary period for up to two years. See Tenn. Code Ann. §§ 40-35-308(c) & -311(e); State v. Hunter, 1 S.W.3d 643, 647-48 (Tenn. 1999). The decision to revoke probation rests within the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). An abuse of discretion is shown if the record is devoid of substantial evidence to support the conclusion that a violation of probation has occurred. Id. The evidence at the revocation hearing need only show that the trial court exercised a conscientious and intelligent judgment in making its decision. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

This Court finds no abuse of discretion on the part of the trial court. There was ample evidence including testimony from both Montgomery and the defendant himself showing that the defendant violated the terms of his probation. This evidence supports the trial court's decision.

Therefore, this issue is without merit.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE