

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs November 13, 2013

STATE OF TENNESSEE v. COREY BRIAN AUSTIN

**Appeal from the Circuit Court for Hardin County
No. 9343 C. Creed McGinley, Judge**

No. W2013-00634-CCA-R3-CD - Filed November 20, 2013

The defendant, Corey Brian Austin, appeals the trial court's revocation of his probation and reinstatement of his eight-year sentence in the Department of Correction. On appeal, he argues that the trial court erred in revoking his probation. Following our review, we affirm the judgment of the trial court.

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

ALAN E. GLENN, J., delivered the opinion of the Court, in which ROBERT W. WEDEMEYER and ROGER A. PAGE, JJ., joined.

Guy T. Wilkerson (at hearing) and Frankie Stanfill (on appeal), Assistant Public Defenders, for the appellant, Corey Brian Austin.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Senior Counsel; Hansel J. McCadams, District Attorney General; and Ed N. McDaniel, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

On January 4, 2011, the defendant pled guilty to initiation of process to manufacture methamphetamine, a Class B felony, and was sentenced as a Range I, standard offender to eight years, suspended to probation after service of 120 days. A probation violation report was filed on October 18, 2012, based on the defendant's failure to submit to a drug screen on October 15, 2012. The defendant's probation officer also noted in the report that the defendant had been arrested for DUI in December 2011 and that he had "miss[ed] meetings with probation almost on a monthly basis and had to be reminded with letters and phone calls

about his appointments. There was suspicion by this officer that the [defendant] was again using meth and when he was asked to submit to a drug screen, the [defendant] left the premises and could not be found.”

At the February 14, 2013 revocation hearing, the defendant admitted he had violated the terms of his probation and requested placement in a rehabilitative facility. At the conclusion of the hearing, the trial court revoked the defendant’s probation and ordered his eight-year sentence into effect.

ANALYSIS

The defendant argues that the trial court abused its discretion in revoking his probation and that because he provided proof of a job opportunity and was willing to enter a rehabilitation program, the proof was insufficient to show that he violated his probation. The State responds that there was substantial evidence to support revocation of the defendant’s probation. We agree with the State.

A trial court is granted broad authority to revoke a suspended sentence and to reinstate the original sentence if it finds by the preponderance of the evidence that the defendant has violated the terms of his or her probation and suspension of sentence. Tenn. Code Ann. §§ 40-35-310, -311 (2010). The revocation of probation lies within the sound discretion of the trial court. State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991); State v. Stubblefield, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). To show an abuse of discretion in a probation revocation case, “a defendant must demonstrate ‘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.’” State v. Wall, 909 S.W.2d 8, 10 (Tenn. Crim. App. 1994) (quoting State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). “The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial court to make a conscientious and intelligent judgment.” Harkins, 811 S.W.2d at 82 (citing State v. Milton, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984)).

In ordering the defendant’s sentence into effect, the trial court found that the defendant had violated his probation by failing to provide a drug screen and that he had been “uncooperative and unresponsive to supervision.” The defendant admitted that he had violated the terms of his probation. We cannot conclude that the trial court abused its discretion in ordering the defendant’s entire sentence placed into effect as such action was within the court’s authority. See Tenn. Code Ann. §§ 40-35-310, -311(e). Indeed, this court has previously held that “an accused, already on probation, is not entitled to a second grant

of probation or another form of alternative sentencing.” State v. Jeffrey A. Warfield, No. 01C01-9711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App. Feb. 10, 1999), perm. app. denied (Tenn. June 28, 1999); see also State v. Markquittton Sanders, No. M2010-02212-CCA-R3-CD, 2011 WL 4529655, at *2 (Tenn. Crim. App. Sept. 29, 2011), perm. app. denied (Tenn. Nov. 17, 2011).

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgment of the trial court revoking the defendant’s probation and ordering him to serve his original sentence in confinement.

ALAN E. GLENN, JUDGE