

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 17, 2016

STATE OF TENNESSEE v. GRADY JOE CAREATHERS

Appeal from the Criminal Court for Hamilton County
Nos. 272787, 267580 Don W. Poole, Judge

No. E2015-00904-CCA-R3-CD – Filed March 31, 2016

The Defendant, Grady Joe Careathers, pleaded guilty to aggravated assault in exchange for a probation sentence. Shortly thereafter, the Defendant was arrested for violating the Habitual Motor Vehicle Offender Act, a charge to which he pleaded guilty. At the same time, he entered a guilty plea to violating his probation. Over the next five years, the Defendant admitted to violating his probation sentence on several occasions. At his fifth revocation hearing, the trial court revoked his probation and ordered him to serve the remainder of his sentence in confinement. On appeal, the Defendant contends that the trial court erred by ordering him to serve his sentence in confinement. After review, we affirm the trial court's judgments.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Brandy Spurgin, Chattanooga, Tennessee, for the appellant, Grady Joe Careathers.

Herbert H. Slatery III, Attorney General and Reporter; Clarence E. Lutz, Senior Counsel; M. Neal Pinkston, District Attorney General; and Cameron Williams, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Defendant's shooting of the victim three times, once in the face and twice in the back, on January 14, 2008, in case number 267580. The Defendant pleaded guilty to aggravated assault, which the trial court entered on February 10, 2009. The Defendant was sentenced to eight years, at 35%, to be served on supervised probation. On May 26, 2009, the Defendant's probation officer filed an

affidavit alleging that the Defendant had violated his probation by receiving a new arrest and by failing to pay fees. The report indicated that officers arrested the Defendant on May 5, 2009, for violation of the Habitual Motor Vehicle Offender Act. With regard to this offense, officers stopped the Defendant while he was driving a vehicle with expired tags. They inputted the Defendant's driver information into NCIC, which revealed that the Defendant's driver's license had been revoked and he had been declared an habitual motor vehicle offender. The grand jury indicted the Defendant for this offense in case number 272787.

On October 13, 2009, the Defendant pleaded guilty to violating his probation in case number 267580 and to violating the Habitual Motor Vehicle Offender Act in case 272787. The trial court returned the Defendant to probation in case 267580 with no additional requirements. It sentenced the Defendant to two years for the conviction in 272787, ordering that he serve eight months in confinement and the remainder of the two years on probation. The Defendant's probation sentence in 272787 was ordered to run consecutively to the Defendant's probation sentence in 267580.

On July 16, 2010, the Defendant's probation officer filed an affidavit alleging that the Defendant had violated the terms of his probation in multiple ways. The affidavit alleged that the Defendant had been arrested for criminal trespass on two occasions, February 20, 2010, and April 9, 2010, that he had failed a drug screen by testing positive for cocaine on March 5, 2010, and that he tested positive for marijuana on July 12, 2010. The affidavit further alleged that the Defendant had not paid the required supervision fees. The Defendant pleaded guilty to these violations, and the trial court sentenced him to serve two months in jail followed by outpatient alcohol and drug treatment when he returned to probation.

On September 2, 2011, the trial court issued a warrant for the Defendant's arrest based upon his new arrest for aggravated criminal trespass. On January 11, 2012, the Defendant pleaded guilty to violating his probation. The trial court returned the Defendant to probation, ordering that he complete outpatient treatment.

On November 27, 2012, the Defendant's probation officer issued another probation violation report. It alleged that, on July 19, 2012, the Defendant had pleaded guilty to criminal trespass. It further alleged that the Defendant had another court date to dispose of a second charge of criminal trespass. The report indicated that the Defendant was in custody in Hamilton County on a charge of felony operation of a motor vehicle. The probation violation report indicated that the Defendant had also violated his probation by failing to report these offenses, by failing to report to his probation officer, and by consuming alcohol.

The trial court issued a warrant for the Defendant's arrest and appointed him counsel. On April 4, 2013, the Defendant moved for a mental health evaluation, which

the trial court granted. On July 1, 2013, the trial court ordered the Defendant's probation revoked. It ordered that he serve eleven months and twenty-nine days of incarceration followed by supervised probation.

On January 29, 2015, the Defendant's probation officer filed a probation violation report that alleged that the Defendant had violated his probation by pleading guilty to three crimes on January 26, 2015: public intoxication, criminal trespassing, and public indecency. Additionally, the report indicated that on June 20, 2014, the Defendant's drug screen returned positive for cocaine, opiates, and marijuana. The Defendant signed a form admitting that he had used these drugs. As a result, on October 17, 2014, the outpatient treatment program treating the Defendant dismissed him from treatment. The report further indicated that the Defendant did not inform his probation officer of his recent arrests.

The trial court held a hearing on the allegation that the Defendant violated his probation. During that hearing, the parties stipulated to the allegations contained in the probation violation report. The Defendant then called Thomas Bo Roberts, who testified he worked at Johnson Mental Health Care Center as the criminal justice case manager. He described his division of Johnson Mental Health as an "intensive supervision program" that included twice weekly visits for newly supervised defendants. Mr. Roberts testified that he spoke with the Defendant and explained the rules and procedures of the program to the Defendant. Mr. Roberts explained the program to the trial court, stating that he would require the Defendant to keep his medical and therapeutic appointments until he graduated from the program in ninety days. The program would then return the Defendant to the supervision of his probation officer. Mr. Roberts indicated that the Defendant seemed genuine in his interest in participating in the program. Mr. Roberts indicated that the Defendant's record and the fact that he had received new charges while on probation did not disqualify him from the program. He would, however, be disqualified if he received new charges after being accepted into the program.

Upon questioning by the trial court, Mr. Roberts indicated that the program was not "inpatient" but was based upon a defendant attending appointments. Mr. Roberts said that all of his clients suffered from mental health issues, which was a requirement for admission into the program. He stated that the Defendant did not yet have a mental health diagnosis but that the Defendant said he had received mental health services in the past. Mr. Roberts indicated the Defendant would only be eligible for the program if he had a mental health diagnosis at intake.

Mary Careathers, the Defendant's mother, testified that the Defendant was fifty-one years old and that, when not incarcerated, the Defendant lived with her. While unsure, Ms. Careathers believed the Defendant had been diagnosed as having schizophrenia and bipolar disorder. A "relative" took him to his appointments to get his medication. Ms. Careathers believed that if the Defendant received more consistent

treatment he could successfully complete a probation sentence.

During cross-examination, Ms. Careathers testified that the Defendant had been on probation for an extended period of time and that police officers had arrested him on twelve charges since the inception of his probation. She stated that the Defendant did not get into trouble while incarcerated.

During redirect examination, Ms. Careathers testified that all of the charges for which the Defendant had been arrested were misdemeanors, except one felony driving offense. She said that he had not driven since being charged with that felony.

The Defendant testified that his probated sentences were consecutive sentences of eight years and two years, respectively. The Defendant said mental health professionals had diagnosed him as having schizophrenia and bipolar disorder, and they placed him on Ritalin. He said he committed the acts leading to his arrest when he was using alcohol or drugs or failing to take his prescribed medication. He said that he ceased his medication because he could not afford it. The Defendant believed the Johnson program would help him to get “on track” and to pay for his medications. The Defendant said he understood the requirements of the Johnson program and said his girlfriend would help transport him to and from his appointments.

During cross-examination, the Defendant testified that he was unsure who originally diagnosed him as having mental health disorders nine or ten years ago. He said that in 2008 or 2009 he was diagnosed and prescribed a medication, but he could not remember the name of the medication. He said that he took the medication daily until he was incarcerated most recently and placed on Ritalan. He agreed that, when not incarcerated, he did not always take his medication and that he sometimes drank alcohol and used drugs while taking his medication. The Defendant said that he obtained drugs that he used from “the neighborhood.” He said he only obtained marijuana, but it must sometimes be laced with cocaine because he tested positive for cocaine after smoking it.

The Defendant explained that a drug deal led to his aggravated assault conviction. He and another man wrestled over a gun, and the gun went off and hit the other man in the face. The Defendant said that he had violated his probation five times. He explained that he went to see his sister, who had a seizure disorder and lived in the “westside projects,” to check on her. Police officers arrested him for criminal trespass because he was not supposed to be in the projects. The Defendant said that, a short time later, police officers arrested him for indecent exposure because he urinated in public while intoxicated. The Defendant said that, when officers arrested him, he urinated on himself, and the officers beat him in retaliation. He denied becoming unruly before officers beat him.

Based upon this evidence, the trial court found:

[The Defendant] in 267580 pled guilty to aggravated assault, being charged with attempt[ed] first-degree murder and aggravated assault, pled guilty to aggravated assault on February 11th, 2009, sentence was eight years Department of Corrections, Range I standard offender. Some – a few months after that, some three months after that, a petition was filed indicating he had violated the terms of his probation by being charged with violating Motor Vehicle Offenders Act. This case came before the Court on October 13th, 2009; 272787. He was found he violated probation and pled guilty to violating Motor Vehicle Offenders Act. The sentence was two years consecutive to 267580.

The proof I've heard this morning indicates that [the Defendant] has, in fact, violated his probation again by – I've listed and considered the violation report that was filed, which has been entered by stipulation as Exhibit 1, indicating that he was charged with three misdemeanor offenses in sessions court, pled guilty to those on January 22nd, 2015: Public intoxication, criminal trespassing, and public indecency. I do find that he's violated the terms of his probation by that.

I find he . . . violated probation by failing to notify his probation officer. I find that he violated probation by testing positive for cocaine, opiates, and marijuana. He admitted that usage based upon the revocation petition. He was referred to CADAS for assessment and treatment. He was discharged from CADAS based on a failed drug screen for the usage of cocaine. And quite telling, quite frankly, is the fact that he did not report to the probation office after that; and so he went from then, October, until February the petition was filed indicated he had violated terms of his probation by not going to the probation office. The other things – and I do find all that by a preponderance and the overwhelming evidence.

He's not paid probation fees or court finds, cost and fines. I don't know that he has the ability to do that; so I'm not finding in this, although he did not do that.

I have listened to [the Defendant], his mom, . . . and certainly to Mr. Bo Roberts . . . the Johnson Mental Health Criminal Justice Case Manager. I compliment [defense counsel] on having Mr. Roberts talk to her client. I don't know that we've heard from Mr. Roberts before concerning this.

But clearly then, . . . [the Defendant] has violated the terms of his probation by the overwhelming evidence. And the problem with [the Defendant] is . . . that . . . [this is] in fact, the fifth violation and each time

he's been found to be in violation of his probation and he's been referred back to probation after the service of short sentences; so of the eight-year sentence he's probably served a portion of that sentence already. But at some point in time we have to draw the line and say we can't keep referring you back to probation. I do think [the Defendant] has some problems and difficulties. I want to try to come up with something that might correct that.

But in regard to 267580 I find he violated the terms of his probation. I'm going to order that sentence into execution understanding that a portion of it or a great portion of it has already been served based upon the numerous violations.

I do find in 272787 he's violated the terms of his probation. And I find that but I'm going to order that sentence to be served once again on supervised probation, along with the Johnson Mental Health program that's carried forth that's been indicated that Mr. Roberts has; that he'll be monitored for three months through that program on intensive probation and they will coordinate that with the probation office.

So the first sentence will be ordered into execution. The second sentence he'll be ordered back on supervised probation, along with the Johnson Mental Health program.

It is from these judgments that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court ordering him to serve his sentence in case 267580 was "arbitrary and illogical." The Defendant notes that it was illogical for the trial court, after finding that the Defendant suffered mental health issues, to order him to serve his sentence in confinement. The State counters that the Defendant admittedly failed to comply with the terms of his probation, giving the trial court the authority to order the Defendant to serve his sentence. We agree with the State.

A trial court's authority to revoke a suspended sentence is derived from Tennessee Code Annotated section 40-35-310 (2014), which provides that the trial court possesses the power "at any time within the maximum time which was directed and ordered by the court for such suspension, . . . to revoke . . . such suspension" and cause the original judgment to be put into effect. A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2014). "In probation revocation hearings, the credibility of witnesses is to be determined by the trial judge." *State v. Mitchell*, 810

S.W.2d 733, 735 (Tenn. Crim. App. 1991). If a trial court revokes a defendant's probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. § 40-35-308(a), (c), -310 (2014); see *State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999).

The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless there has been an abuse of discretion. See *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App. 1995). In order for this Court to find an abuse of discretion, "there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred." *Shaffer*, 45 S.W.3d at 554. Further, a finding of abuse of discretion "reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case." *Id.* at 555 (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

In the case before us, the Defendant admitted he had violated his probation sentence. The Defendant's admission, as well as the record, provided substantial evidence to support the trial court's revocation of probation. After the trial court accepted the Defendant's admission, it retained discretionary authority, pursuant to Tennessee Code Annotated section 40-35-310(b), to order the Defendant to serve the balance of one of his sentences in incarceration.

The determination of the proper consequence of a probation violation embodies a separate exercise of discretion. *Hunter*, 1 S.W.3d at 647. Case law establishes 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. 01C019711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App., at Nashville, Feb. 10, 1999), *perm. app. denied* (Tenn. June 28, 1999).

The record reflects that the Defendant violated the terms of his probation by committing additional offenses, testing positive for drugs, and failing to report to his probation officer. The Defendant did not challenge that he violated his probation but asked to attend a mental health program, a request that the trial court granted for one of his sentences. After the Defendant admitted his violation, the trial court retained the authority to order that he serve the balance of both of his sentences in confinement. The trial court, however, ordered the Defendant to serve the balance of one of his sentences in confinement and returned him to probation for the other sentence. The trial court did not abuse its discretion, and the Defendant is not entitled to relief.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the trial

court's judgment.

ROBERT W. WEDEMEYER, JUDGE