

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 7, 2002

STATE OF TENNESSEE v. JODY ALAN FERGUSON

**Direct Appeal from the Circuit Court for Obion County
No. 0-44, 0-192, 9-340 William B. Acree, Jr., Judge**

No. W2001-02786-CCA-R3-CD - Filed May 29, 2002

On November 9, 1999, the Appellant, Jody Alan Ferguson, pled guilty to nine counts of forgery in the Obion County Circuit Court and was sentenced to two years of community corrections after service of thirty days confinement in the county jail. On March 9, 2000, Ferguson pled guilty to four counts of forgery and received an effective sentence of two years in the Tennessee Department of Correction. Ferguson's placement in the community corrections program was revoked and his nine two-year sentences were ordered to be served in the Department of Correction concurrently with his March 9th sentences. On June 21, 2000, Ferguson was granted determinate release by the Department of Correction for the series of two-year sentences imposed on November 9, 1999, and March 9, 2000, and he was returned to supervised probation. On June 26, 2000, Ferguson again pled guilty to two counts of forgery and received concurrent two-year suspended sentences to be served concurrently to all outstanding sentences previously imposed.¹

On August 28, 2001, probation violation warrants were issued against Ferguson. The warrants alleged that Ferguson had violated the following conditions: (1) failed to report to the probation officer; (2) failed to pay supervision fees; (3) failed to pay restitution and court costs; and (4) failed to perform community service work. On November 9, 2001, the trial court revoked Ferguson's probationary status and ordered him to serve the remainder of his two-year sentences in the Tennessee Department of Correction.

On appeal, Ferguson does not contest the trial court's finding that he violated the terms of his probation. Rather, Ferguson argues that the trial court abused its discretion by not again placing him on probation or community corrections. After review, we find no error and affirm the judgment of the trial court.

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

¹The nine forgeries pled to on November 9, 1999, occurred in August of 1999; the four forgeries pled to on March 9, 2000, occurred in September of 1999; and the two forgeries pled to in June of 2000, occurred in October of 1999.

DAVID G. HAYES, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Joseph P. Atnip, District Public Defender; William K. Randolph, Assistant Public Defender, Dresden, Tennessee, for the Appellant, Jody Alan Ferguson.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; John H. Bledsoe, Assistant Attorney General; Thomas A. Thomas, District Attorney General; Kevin McAlpin, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Factual Background

The Appellant's revocation proceedings are governed by two separate revocation statutes. Revocation proceedings involving determinate release by the Department of Correction, pursuant to Tennessee Code Annotated § 40-35-501(a)(3), are governed by the provisions of Tennessee Code Annotated § 40-35-501(a)(7), which provides in part: "Any defendant whose probation has been revoked pursuant to this subsection is not eligible for release on the same sentence pursuant to the terms of subdivision (a)(3)." Accordingly, the trial court, after finding that a violation had occurred, was without authority to grant any form of release as to those sentences imposed on November 9, 1999, and March 9, 2000.

The revocation proceeding involving the suspended sentences imposed on June 26, 2000, is governed by the provisions of Tennessee Code Annotated § 40-35-311. Upon a finding by the trial court that a violation has occurred, the court may: (1) revoke probation and suspension of sentence and order execution of the judgment as originally entered, Tennessee Code Annotated § 40-35-310; (2) modify or impose additional conditions of supervision, Tennessee Code Annotated § 40-35-308(a), (b); or (3) extend the period of probation for any period not in excess of two years, Tennessee Code Annotated § 40-35-308(c).

The standard of review upon appeal of an order revoking probation is the abuse of discretion standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn.1991). In order for an abuse of discretion to occur, the reviewing court must find that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the terms of probation has occurred. *Id.* at 82; *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App.1980).

In this appeal, the Appellant does not contest the grounds utilized by the trial court in finding that he had violated the terms of his probation. Thus, the only question before us is whether the trial court abused its discretion by ordering the Appellant to serve the remainder of his sentence

incarcerated. In denying his request for probation or placement in a community corrections program, the trial court found:

In listening to [the Appellant] testify, and observing him, and his demeanor and things that he's saying, it appears to the Court that his attitude is that he could care less whether or not he complies with the conditions of his probation. He's been given two chances: first of all, when he was placed on probation to begin with, and secondly, when he was allowed to do that after being violated. And I don't think any of that has done any good, and I don't think it has registered with [the Appellant]. And I do not see any need at all or any reason to allow him to remain on probation.

We agree with the trial court's reasoning. We cannot conclude from the record before us that the trial court abused its discretion by denying the Appellant's request for an additional period of probation for the sentences imposed on June 26, 2000.

The Appellant additionally argues that the trial court erred by failing to grant his request for community corrections. There is no authority in the Criminal Sentencing Reform Act of 1989 for the imposition of a community corrections sentence following revocation of probation. *See State v. Bowling*, 958 S.W.2d 362, 364 (Tenn. Crim. App. 1997); *see also State v. Bruce Cole*, No. 02C01-9708-CC-00324 (Tenn. Crim. App. at Jackson, June 11, 1998). As previously noted, the trial court, following revocation, is limited to the three options provided by Tennessee Code Annotated § § 40-35-310, 40-35-308(a), (b) or 40-35-308(c). This issue is without merit.

CONCLUSION

After review, we find that the trial court did not abuse its discretion by denying the Appellant's request for probation or placement in a community corrections program. The trial court's order revoking probation and ordering service of the original sentences in the Department of Correction is affirmed.

DAVID G. HAYES, JUDGE