

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs June 5, 2002

STATE OF TENNESSEE v. KEITH DWAYNE GUTHRIE

**Circuit Court for Henry County
No. 13069**

No. W2001-01910-CCA-R3-CD

ORDER - Filed March 19, 2003

In this appeal the appellant was convicted of theft of property over \$500 and sentenced to two (2) years on community corrections. Approximately three (3) months later he was convicted of vandalism of property valued under \$500. At the time of his arrest on the vandalism charge the appellant was intoxicated. As a result of his conduct while on community corrections his sentence to this program was revoked. He was re-sentenced to one (1) year of continuous incarceration followed by one (1) year of community corrections.

In this appeal the appellant maintains that his re-sentence to a year of continuous confinement is erroneous because it circumvents the general rule under Tennessee law that a felon who received a sentence of two years or less must be released from confinement on his or her release eligibility date. Tenn. Code Ann. § 40-35-501(a)(3). The State concedes that the re-sentence is erroneous and has asked us to reverse and remand this case for a new sentencing hearing. We agree that the sentence of one (1) year followed by one year of community corrections is improper in this case because it circumvents the provisions of Tenn. Code Ann. § 40-35-501(a)(3). State v. John W. Hill, C.C.A. No. 01C01-9802-CC-00072 (Tenn. Crim. App. at Nashville, Feb. 25, 1999).

It is therefore ORDERED, that the case be remanded to the Circuit Court of Henry County for re-sentencing in accordance with the principles announced in State v. Hill, *supra*. Costs of this appeal shall be taxed to the State of Tennessee.

JERRY L. SMITH, JUDGE

JOSEPH M. TIPTON, JUDGE

JAMES CURWOOD WITT, JR., JUDGE