

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED
November 30, 1999
Cecil CROWS ON, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
 APPELLEE)
)
 VS.)
)
 FREDERICK TURNER)
)
 APPELLANT)

C.C.A. NO. 03C01-9906-CR-00222
GREENE COUNTY NO. 96CR624
HON. JAMES E. BECKNER, JUDGE

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED
JOE H. WALKER, III, Sp. JUDGE

OPINION

Appellant appeals as a matter of right the order entered by the trial court revoking probation.

Appellant entered a plea of guilty in January, 1997, to possession of a schedule II controlled substance with intent to sell, a B felony, and received a sentence of nine years as a standard offender. He also entered a plea of guilty to possession of schedule VI controlled substance more than 10 pounds, with intent to sell, a D felony, and received a sentence of four years as a standard offender, and a plea of guilty to a misdemeanor, concurrent to the nine year sentence.

Appellant went through the boot camp program in the Department of Corrections, and then was released to be followed under supervised probation in Greene County. After his release he had a problem with his cocaine addiction, and as a result tested positive for drug use. He did not perform his community service work as required under the terms of his probation.

After a hearing the trial court found that the appellant had been on probation for misdemeanor offenses two times previously, and his probation was revoked each time for violating the terms of his probation. Appellant continued to use drugs after he was released from boot camp, and did not perform his community service. The court ordered his probation revoked, and reinstated "the sentence to be served 100%."

The order entered by the trial court states that on May 7, 1999, "probation revoke, sentence reinstated, 100% of the original sentence, subject to any credits given by the Department of Corrections."

The defendant appeals this order as being vague, or ambiguous.

The state responds that it has no objection to the entry of an order of clarification so as to comply with the provisions of T.C.A. 40-35-311(d).

T.C.A. 40-35-310. Revocation of suspension of sentence, provides:
The trial judge shall possess the power, at any time within the maximum time which was directed and ordered by the court for such suspension, after proceeding as provided in § 40-35-311, to revoke and annul such suspension, and in such cases the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension, and shall be executed accordingly;...

T.C.A. 40-35-311. Procedure to revoke suspension of sentence or probation, provides:
(d) The trial judge may enter such judgment upon the question of such charges as the trial judge may deem right and proper under the evidence adduced before the trial judge.
(e) If the trial judge should find that the defendant has violated the conditions of probation and suspension by a preponderance of the evidence, the trial judge shall have the right by order duly entered upon the minutes of the court, to revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310;...

The trial judge has the authority to do what the statute allows. Therefore, the trial court by its order revoked probation, reinstated the original sentence, and then indicated that the appellant should get credit for time served with the Department of Corrections on that sentence.

The indication by the trial judge that the sentence was 100%, was meant only as an indication that, as the trial judge stated, any further relief must come from the Department of

Corrections, and not from the trial court. The judgment of sentence would be as originally entered, nine years as a standard offender, with credit for time served.

This court finds that the trial court held a hearing as required, and found by a preponderance of the evidence that the defendant had violated the conditions of probation. There was ample evidence for that finding by the trial court. Probation was revoked, and the original sentences and judgments rendered by the trial court were reinstated to be in full force and effect from the date of the revocation of the suspension.

The judgment of the trial court is affirmed.

JOE H. WALKER, Sp. JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

ALAN E. GLENN, JUDGE

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JUDGMENT

Came the appellant, Frederick Turner, by counsel, and the state, by the Attorney General, and this case was heard on the record on appeal from the Criminal Court of Greene County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the

judgment of the trial court.

Our opinion is hereby incorporated in this judgment as if set out verbatim.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is AFFIRMED, and the case is remanded to the Criminal Court of Greene County for execution of the judgment of that court and for collection of costs accrued below.

It appears that appellant is indigent. Costs of appeal will be paid by the State of Tennessee.

PER CURIAM

DAVID G. HAYES, JUDGE
ALAN E. GLENN, JUDGE
JOE H. WALKER, III, Sp. JUDGE