IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs September 26, 2006

STATE OF TENNESSEE v. SCOTT NOLAN TABOR

Direct Appeal from the Criminal Court for Cumberland County
No. 7043B Lillie Ann Sells, Judge

No. E2005-02535-CCA-R3-CD Filed October 6, 2006

The appellant, Scott Nolan Tabor, pled guilty in the Cumberland County Criminal Court to theft of property valued ten thousand dollars or more but less than sixty thousand dollars and received a four-year sentence to be served on supervised probation. Subsequently, the trial court revoked the appellant's probation and ordered that he serve his entire sentence in confinement. On appeal, the appellant claims that the trial court erred by ordering him to serve his sentence in confinement and that the trial court had no jurisdiction to revoke his probation. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and J.C. MCLIN, JJ., joined.

David Brady and John B. Nisbet, III (on appeal) and Joe L. Finley, Jr. (at trial), Cookeville, Tennessee, for the appellant, Scott Nolan Tabor.

Paul G. Summers, Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; William Edward Gibson, District Attorney General; and Gary McKinzie, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that on March 14, 2003, the appellant pled guilty to theft of property and received a four-year sentence to be served on supervised probation. On August 3, 2005, the appellant's probation officer submitted a probation violation report, alleging that the appellant had violated his probation by being arrested on July 27, 2005, for criminal simulation. The next day, the trial court signed a probation violation warrant. On August 25, 2005, the appellant's probation

officer alleged that the appellant also had violated probation by failing to report since July 21, 2005. The trial court amended the original warrant to reflect this second violation.

At the appellant's probation revocation hearing, Mark Ledbetter from the Tennessee Board of Probation and Parole testified that he was the appellant's probation officer. Although the appellant pled guilty to felony theft and received a probation sentence in March 2003, Ledbetter did not begin supervising the appellant's probation until February 2005 because the appellant had been serving time in confinement for a prior probation revocation. When that prior sentence expired, Ledbetter met with the appellant and they went over the rules of the appellant's probation in the instant case. In August 2005, Ledbetter filed a probation violation report, alleging that the appellant had violated his probation by being arrested on July 27, 2005, for criminal simulation. The appellant was arrested for the probation violation but posted bond. Thereafter, the appellant failed to show up for an August 8, 2005 meeting with Ledbetter. Ledbetter testified that he had not seen the appellant since July 21, 2005.

Officer Sam Causey of the Crossville Police Department testified that on July 27, 2005, someone used a counterfeit twenty-dollar bill at the Elmore Shell gas station. Officer Causey investigated the case and, as a result of his investigation, went to the Heritage Inn motel. Officer Causey knocked on the door of a motel room, and the appellant answered the door. The appellant stepped outside, and Officer Causey saw a copy machine on a table in the room. He also noticed a clear plastic trash bag outside the room and saw what appeared to be a crumpled-up twenty-dollar bill in the bag. Officer Causey asked to search the room, but the appellant stated that he could not give consent because the room was not his. Officer Causey obtained a search warrant, searched the room, and found a printer or copy machine that had been used to photocopy money. The police also found a paper cutter and a few counterfeit bills in various stages of completion.

On cross-examination, Officer Causey testified that the motel room had been rented to Diane Wyatt and that he arrested the appellant, Wyatt, and another individual. He stated that the copy machine had been purchased at Wal-Mart but that he did not know who bought it. He stated that Wyatt had passed the counterfeit twenty-dollar bill at the Elmore Shell station and that to his knowledge, the appellant had not passed any of the counterfeit money. The trial court concluded that the appellant had violated his probation and ordered that he serve his four-year sentence in confinement.

II. Analysis

The appellant does not claim that the trial court erred by revoking his probation but simply contends, without any explanation, that the court's ordering him to serve his entire four-year sentence in confinement is too harsh. However, as this court has repeatedly stated, upon finding by a preponderance of the evidence that the appellant has violated the terms of his probation, the trial court is authorized to order an appellant to serve the balance of his original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310, -311(e). The evidence established that the appellant violated his probation by being arrested for criminal simulation and by failing to report to his probation officer. Therefore, the trial court could order him to serve his entire sentence in confinement.

The appellant also claims that the trial court was without jurisdiction to revoke his probation. According to the record before us, Judge Leon Burns accepted the appellant's guilty plea, sentenced the appellant, and issued the probation violation warrant against him. However, Judge Lillie Ann Sells presided over the appellant's probation revocation hearing, revoked the appellant's probation, and ordered that he serve his sentence in confinement. As noted in the appellant's brief, Tennessee Code Annotated section 40-35-311(b) provides that when a defendant is arrested for a probation violation, "the trial judge granting such probation and suspension of sentence, the trial judge's successor, or any judge of equal jurisdiction who is requested by such granting trial judge to do so" shall conduct a probation revocation hearing. The appellant contends that because nothing in the record indicates that Judge Burns requested that Judge Sells preside over his revocation hearing, this court should reverse the trial court's revocation of his probation and remand the case in order for Judge Burns to conduct a revocation hearing. However, the appellant did not raise this issue below, and the issue is waived. See Tenn. R. App. P. 36(a).

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE