IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs November 27, 2007

STATE OF TENNESSEE v. SHERRY HUFF

Direct Appeal from the Circuit Court for Blount County
Nos. C-14544, C-14891 Jon Kerry Blackwood, Judge

No. E2007-00236-CCA-R3-CD - Filed March 6, 2008

The appellant, Sherry Huff, pled guilty in the Blount County Circuit Court to three counts of fraudulently obtaining food assistance, three counts of fraudulently obtaining temporary assistance, and one count of aggravated assault. She received a total effective sentence of three years. The appellant was granted probation which was subsequently revoked. On appeal, the appellant challenges the revocation of her probation. Upon review of the record and the parties' briefs, we affirm the trial court's revocation of the appellant's probation.

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

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which, ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Stacey Nordquist, Maryville, Tennessee (at trial), and J. Liddell Kirk, Knoxville, Tennessee (on appeal), for the appellant, Sherry Huff.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Rocky Young, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On February 28, 2005, the appellant pled guilty to aggravated assault, a Class C felony; three counts of fraudulently obtaining food assistance in an amount over $100, a Class E felony; and three counts of fraudulently obtaining temporary assistance for a dependant child in an amount over $100, a Class E felony. The appellant was sentenced to two years for each Class E felony conviction. The sentences were suspended, and the appellant was placed on probation. The trial court also sentenced the appellant to three years for the aggravated assault conviction

and ordered the appellant to serve thirty days of her aggravated assault conviction in the Blount County Jail, followed by supervised probation.

Thereafter, on January 11, 2006, the trial court revoked the appellant's probation based upon the appellant's new arrests for theft and various traffic violations and her failure to pay probation fees. The trial court ordered the appellant to serve eighty days in the Blount County Jail followed by release into the Community Corrections Program. On August 7, 2006, the trial court ordered the appellant to complete a substance abuse treatment program at Centerpoint.

On October 23, 2006, based upon the appellant's stipulated violation of her community corrections sentence, the trial court revoked the community corrections sentence and ordered her to "report to intensive probation for the balance of her sentence." Subsequently, on December 11, 2006, a probation violation warrant was issued against the appellant.

At the probation violation hearing, the appellant's probation officer, Marcus Miller, testified that he met with the appellant on October 27, 2006, four days after she was released from jail. Miller recalled that the appellant was "pretty enthusiastic" because she had been released from jail and was "clean from drugs." The appellant requested and received a drug test, which was negative for controlled substances.

The next meeting was scheduled for November 7, 2006. The appellant missed the meeting, but she came in the next day. The appellant said that she had missed the appointment because she had been ill. During her next appointment on November 14, 2006, the appellant admitted that after drinking excessively, she had a "blackout," and that she "probably or maybe used cocaine." Miller and the appellant agreed that the appellant would attend daily Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings.

The appellant missed her next meeting, which was scheduled for November 21, 2006; however, she came in the next day. The appellant told Miller that she had missed the previous day's appointment because her daughter, who provided the appellant's transportation, had wrecked her truck. Miller said that the appellant depended upon other people to provide transportation to her probation meetings. Miller tried to get a urine sample from the appellant, but she was unable to provide one. The appellant's next meeting was scheduled for November 28, 2006. On that day, Miller saw the appellant briefly in the lobby. When Miller was ready for the appellant's interview, the appellant was nowhere to be found. Miller saw the appellant the next day, on November 29. The appellant claimed that the person who had brought her to the office the previous day had to leave because of an emergency.

During the November 29, 2006, meeting, the appellant tested positive for cocaine and opiates. Miller recalled that the appellant "made a verbal admission that, yes, in fact she had relapsed. And she also made a written admission that she [had] used." Miller gave the appellant a sheet containing various treatment options available in the area.

On November 30, 2006, the appellant called Miller and said that she had attended an AA meeting that day. She admitted that she needed help because she was using drugs. When the

appellant next reported on December 5, 2006, she told Miller that she had "stayed clean" and attended AA meetings. However, her drug test that day was positive for cocaine and opiates. Miller told the appellant that she had provided too small a urine sample to send to a laboratory for further testing, but if she wanted further testing, she could submit another sample the next day. The appellant did not return to provide another sample.

The appellant next called Miller on December 12, 2006, at which time Miller informed her that a probation violation warrant had been issued. Miller testified that he did not believe the appellant would benefit from another probationary sentence, citing her past failures and lack of motivation.

The appellant testified that she was thirty-seven years old and had three children. Her oldest daughter, Sierra, was nineteen years old, and she often took the appellant to her probation appointments. The appellant stated that when she was released from jail on October 23, 2006, she went to live with her ex-husband who drank daily and frequented bars. She began drinking again and had a "full-blown relapse." The appellant said that if she were released from jail, she would live with a high school friend who did not drink or use drugs.

The appellant acknowledged telling Miller that she may have used cocaine while drinking. She explained, "I'm not certain that I did use cocaine. I just know from my past history if I drink and I black out, normally I would use cocaine. I can't say that I did use cocaine. I don't know."

The appellant said that she called various treatment centers. When she called Cornerstone, she learned that the treatment was "very expensive." She was scheduled for an interview at Centerpoint when she learned that a probation violation warrant had been issued.

The appellant said:

> I know this isn't my first violation, but I feel like after rehab, it is my first violation. That's the way I look at it. It's my first relapse. In treatment, you're taught that a relapse is growth. . . . I'm just saying I just feel like this should be looked at like a first violation.

She acknowledged that she had violated probation on two previous occasions. However, she alleged that her alcohol and drug use reduced significantly after treatment.

At the conclusion of the hearing, the trial court stated:

> There's only going to be one thing that's going to make you stop drinking. And this probably won't. But the only thing that's going to make you stop drinking is when that nineteen-year-old daughter of yours gets to be forty years old and she will be able to say, well, all of you know my mama was a drunk. You understand that?

. . . .

> You've got a daughter more responsible than you, and she's going to have to tell the world that she was brought up by a drunk. Now, you go back, because I'm revoking your probation, and you live with that every day you're in jail, that your daughter is going to have to explain to the world that her mama was a drunk. If that don't make you stop drinking, then nothing in the world will make you stop drinking, than that.
>
> And then think about the other two. When they grow up they'll say, well, yeah, Mama was a drunk, too, so what can you expect out of us.

On appeal, the appellant challenges the revocation of her probation. Specifically, the appellant maintains that the trial court did not make specific findings "that the condition of being a 'drunk' was a violation of any term of probation in this case, or what being a 'drunk' meant, or what act or acts the court found to have occurred. [Therefore], the trial court's order of revocation must be an abuse of discretion."

II. Analysis

Upon finding by a preponderance of the evidence that the appellant has violated the terms of his probation, a trial court is authorized to order an appellant to serve the balance of her original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310 and -311(e) (2006); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Furthermore, probation revocation rests in the sound discretion of the trial court and will not be overturned by this court absent an abuse of that discretion. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). An abuse of discretion exists when "the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred." State v. Conner, 919 S.W.2d 48, 50 (Tenn. Crim. App. 1995).

In the instant case, the trial court revoked the appellant's probation based upon her continued abuse of alcohol. In fact, the appellant admitted that her consumption of alcohol caused a "blackout." Abstaining from alcohol was a condition of the appellant's probation. This violation alone was sufficient basis to revoke the appellant's probation. Moreover, we note that Miller's testimony reflects that the appellant failed two drug screens and failed to keep appointments, which are other violations of a condition of probation. Despite the continued largess of the trial court in granting the appellant alternative sentencing, the appellant repeatedly failed to comply with the terms of alternative sentencing. We conclude that the trial court acted within its authority in ordering the appellant to serve the balance of her sentence in confinement.

III. Conclusion

Finding no error, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE