

COURT OF CRIMINAL APPEALS OF TENNESSEE

State of Tennessee v. Troy McLemore

C.C.A. No. 03C01-9709-CC-00406 · No. C.C.A. No. 03C01-9709-CC-00406 · Decided July 28, 1998

SUMMARY

The Tennessee Court of Criminal Appeals affirmed the revocation of Troy McLemore’s probation following his admission that he had used illegal drugs and his failure to comply with other probation conditions. The court held that the drug use constituted substantial evidence supporting revocation and that the trial court had discretion to order split confinement rather than intensive probation or Community Corrections. The court also concluded that resentencing principles did not need to be reconsidered after the probation violation was established.

CASE DETAILS

COURT	Court of Criminal Appeals of Tennessee
WRITING FOR THE COURT	Curwood Witt; Joseph M. Tipton; Joe G. Riley
JURISDICTION	Tennessee
DECIDED	July 28, 1998
DOCKET	C.C.A. No. 03C01-9709-CC-00406
DISPOSITION	affirmed
PROCEDURAL POSTURE	Troy McLemore appealed the Blount County Circuit Court's order revoking his probation and ordering him to serve five months and six days in the county jail followed by six months of intensive probation with drug treatment.
STANDARD OF REVIEW	An order revoking probation is reviewed for abuse of discretion. An abuse of discretion exists when the record contains no substantial evidence supporting the trial court's conclusion that a probation violation occurred. The violation itself need only be established by a preponderance of the evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Troy McLemore v. State of Tennessee

TOPICS

- probation
- criminal procedure
- standard of review
- sentencing
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

probation and sentencing

QUESTIONS PRESENTED

1. Whether substantial evidence supported the trial court's revocation of McLemore's probation.
2. Whether the trial court erred by ordering McLemore to serve part of his sentence in county jail rather than imposing intensive probation or Community Corrections.

HOLDINGS

1. The trial court properly revoked McLemore's probation because his admission that he used illegal drugs constituted substantial evidence that he violated the conditions of probation.
2. After revoking probation, the trial court had discretionary authority to require execution of the original sentence and was not required to reconsider the general sentencing principles before ordering split confinement.

KEY QUOTATIONS

“In order for an abuse of discretion to occur, the reviewing court must find that the record contains no substantial evidence sufficient to support the conclusion of the trial judge that the violation of the terms of probation has occurred.” (at 2)

“The trial judge retains the discretionary authority to order the defendant to serve the original sentence.” (at 3)

“Contrary to the defendant's assertion, the court is not required at this stage to reconsider the principles of sentencing after finding that the defendant has violated the terms of probation.” (at 4)

FACTUAL BACKGROUND

McLemore pleaded guilty to burglary and theft of property in 1994 and received an effective two-year sentence involving confinement and probation. His sentence was extended by consent after he failed to satisfy financial obligations. During the extended probationary term, he failed a drug screen and admitted using marijuana a few days before the revocation hearing; he also had not paid court costs, restitution, and probation fees and had not pursued affordable rehabilitation programs identified by his probation officer.

PROCEDURAL HISTORY

McLemore pleaded guilty in 1994 to burglary and theft of property and received an effective two-year sentence of confinement and probation. After he failed to satisfy financial obligations, the sentence was extended by consent for an additional year. During the extended term, the State alleged drug use and failure to pay court costs, restitution, and probation fees. The trial court found a probation violation and imposed split confinement; the Court of Criminal Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991)
- State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)
- State v. Duke, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995)
- State v. Michael Emler, No. 01C01-9512-CC-00424, slip op. at 4 (Tenn. Crim. App., Nashville, Nov. 27, 1996)
- State v. Mitzi Ann Boyd, No. 03C01-9508-CC-00246, slip op. at 3 (Tenn. Crim. App., Knoxville, Nov. 1, 1996)
- State v. Marty Miller, No. 03C01-9602-CC-00056, slip op. at 8 (Tenn. Crim. App., Knoxville, Mar. 4, 1997)
- State v. Melvin Griffin, No. 01C01-9503-CC-00090, slip op. at 2 (Tenn. Crim. App., Nashville, Nov. 16, 1995)
- State v. Yvonne Burnette, No. 03C01-9608-CR-00314, slip op. at 4 (Tenn. Crim. App., Knoxville, July 25, 1997), perm. app. denied (Tenn. 1998)
- State v. Howard Luroy Williamson, Jr., No. 02C01-9507-CC-00201, slip op. at 4 (Tenn. Crim. App., Jackson, Sept. 30, 1996)
- State v. Stevie Q. Taylor, No. 02C01-9504-CC-00108, slip op. at 5 (Tenn. Crim. App., Jackson, May 1, 1996)