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State v. Carter

Court of Criminal Appeals of Tennessee, At Knoxville

May 18, 2004, Assigned on Briefs ; May 27, 2004, Filed

No. E2003-02172-CCA-R3-CD

Reporter

2004 Tenn. Crim. App. LEXIS 469 *; 2004 WL 1196107

STATE OF TENNESSEE v. ANTHONY LEBRON CARTER

Subsequent History: Appeal denied by Tenn. v. Anthony Lebron Carter, 2004 Tenn. LEXIS 962 (Tenn., Nov. 15, 2004)

Prior History: [*1] Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed. Direct Appeal from the Criminal Court for Hamilton County. Nos. 237672, 239201. Rebecca J. Stern, Judge.

Disposition: Judgment of the Criminal Court Affirmed.

Core Terms

probation, trial court, probation violation, probation officer, revocation, revoked, judgment of the trial court, fail to submit, test positive, credit card, aggravated, marijuana, occasions, arrested, sentence, specimen, robbery, curfew, missed, theft

Case Summary

Procedural Posture

Defendant appealed a judgment of the Criminal Court for Hamilton County (Tennessee), revoking his probation. Defendant had pled guilty to aggravated burglary and simple robbery. He received an effective sentence of six years' intensive probation after serving 11 months and 29 days in the county workhouse.

Overview

Three probation violation reports were filed, alleging numerous probation violations. Defendant's probation officer testified defendant was arrested for aggravated robbery and tested positive for marijuana, defendant ceased meeting with his probation officer, defendant was arrested for theft over \$ 500 and other charges, and defendant also violated probation by failing to submit a

DNA specimen, missing curfew on several occasions, and leaving the state without permission. A police officer testified that he questioned defendant about the theft of credit cards, and defendant admitted that he used these cards to purchase goods. The trial court found defendant had used the stolen credit cards, missed curfews, failed to submit a DNA specimen, and tested positive for marijuana on two occasions. The appellate court held that the specific violations found by the trial court were clearly supported by substantial evidence in the record. The trial court, therefore, did not abuse its discretion in revoking defendant's probation.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

Criminal Law & Procedure > ... > Sentencing Alternatives > Probation > General Overview

Criminal Law & Procedure > ... > Probation > Revocation > General Overview

Criminal Law & Procedure > ... > Probation > Revocation > Standards

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > General Overview

HN1 Abuse of Discretion, Evidence

The appellate court reviews revocation of probation

under an abuse of discretion standard of review. In order for the appellate court to find that the trial court abused its discretion, the record must contain no substantial evidence to support the trial court's conclusion that a probation violation occurred.

Counsel: Ardena J. Garth, District Public Defender (at hearing and on appeal); and Donna Robinson Miller, Assistant District Public Defender (on appeal), for the appellant, Anthony Lebron Carter.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; William H. Cox, III, District Attorney General; and Mary Sullivan Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

Judges: JOE G. RILEY, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and ALAN E. GLENN, J., joined.

Opinion by: JOE G. RILEY

Opinion

The defendant, Anthony Lebron Carter, appeals the revocation of his probation. We affirm the judgment of the trial court.

The defendant pled guilty on March 19, 2002, to aggravated burglary and simple robbery. He received an effective sentence of six years intensive probation after serving eleven months and twenty-nine days in the county workhouse. Three probation violation reports were [*2] filed in the Hamilton County Criminal Court in April, May and June 2003, alleging numerous probation violations. On August 4, 2003, a probation revocation hearing was conducted; the trial court revoked the defendant's probation; and this appeal ensued.

The defendant's probation officer testified the defendant was arrested on April 19, 2003, for aggravated robbery and tested positive for marijuana on April 23 and April 30. On May 7, the defendant ceased meeting with his probation officer. On June 26, the defendant was arrested for theft over \$ 500 and other charges. The probation officer testified the defendant also violated probation by failing to submit a DNA specimen, missing curfew on several occasions, and leaving the state without permission.

Officer Ralph Freeman of the Chattanooga Police Department testified that he questioned the defendant

about the theft of credit cards in June 2003. The defendant admitted that he used these cards to purchase goods in Hamilton County and in the state of Georgia.

The trial court found the defendant had used the stolen credit cards, missed curfews, failed to submit a DNA specimen, and tested positive for marijuana on two occasions. The trial [*3] court revoked the defendant's probation and ordered him to serve the balance of his sentence in incarceration.

HN1 [↑] This court reviews revocation of probation under an abuse of discretion standard of review. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order for this court to find that the trial court abused its discretion, the record must contain no substantial evidence to support the trial court's conclusion that a probation violation occurred. *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

The specific violations found by the trial court are clearly supported by substantial evidence in the record. The trial court, therefore, did not abuse its discretion in revoking the defendant's probation. We affirm the judgment of the trial court.

JOE G. RILEY, JUDGE

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