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Opinion No. 01-079

De novo trials in Circuit Court of convictions in General Sessions Court

QUESTIONS

1. Are all appeals of convictions in general sessions courts reviewed *de novo*?

2. Is review of a guilty plea in general sessions court *de novo*?

3. Is a circuit court judgment after a *de novo* trial subject to remand for enforcement by the general sessions court?

4. Is a judgment revoking probation in general sessions court subject to *de novo* review in circuit court?

5. If a criminal court enters judgment in a revocation of probation case appealed from general sessions court, is the criminal court "the trial court" and "the trial judge" as provided in Tenn. Code Ann. §40-35-311 for future revocation purposes?

6. If the answer to question 5 is "no," is the general sessions court "the trial court" and "trial judge" as provided in Tenn. Code Ann. §40-35-311 even though the circuit court has entered the probation order?

OPINIONS

1. Yes, all appeals of convictions in general sessions courts are reviewed *de novo* in circuit courts.

2. A defendant who pleads guilty to a small offense in sessions court has no right to appeal, but a defendant who pleads guilty to a misdemeanor offense greater than a small offense in general sessions court may seek *de novo* review of only the sentence imposed in circuit court.

3. No, a circuit court judgment entered after appeal from a general sessions court judgment will be enforced by the circuit court.

4. Yes, a circuit court will review *de novo* an appeal of a revocation of probation from general sessions court.

5. Yes, a judgment entered in circuit court revoking probation after appeal from general sessions court makes the circuit court "the trial court" and "trial judge" for future revocation purposes as provided in Tenn. Code Ann. §40-35-311.

6. Because the answer to question 5 is yes, question 6 is pretermitted.

ANALYSIS

1. Rule 5(a), Tenn. R. Crim. P., provides that a defendant who is convicted of a small offense after a trial in general sessions court has a right to a *de novo* trial without a jury in the circuit or criminal court. A defendant charged with a misdemeanor of greater magnitude than a small offense who is found guilty after a trial in general sessions court has the right to appeal the guilty judgment or the sentence imposed or both to the circuit or criminal court for a trial *de novo*. Rule 5(c)(2), Tenn. R. Crim. P.; Tenn. Code Ann. §27-3-131(a). A defendant who appeals a verdict of guilty or the sentence imposed for a misdemeanor offense of greater magnitude than a small offense in general sessions court may demand a jury trial at the time of filing an appeal under Tenn. Code Ann. §27-5-108(c). That statutory provision mandates that any appeal "shall be heard *de novo* in the circuit court."

2. Rule 5(b), Tenn. R. Crim. P., permits no appeal from a guilty plea to a small offense in general sessions court. *See* Advisory Commission Comments ("no appeal from the judgment in a case in which a guilty plea is entered"). Rule 5(c)(1) provides that a defendant who pleads guilty to other than a small offense in general sessions court after expressly waiving the right to an indictment or a presentment and a trial by jury with the permission of the district attorney general or the district attorney general's representative may appeal only the sentence imposed. All appeals taken from the general sessions court to the circuit court are reviewed *de novo*. Tenn. Code Ann. §27-5-108(c). *See also Ware v. Meharry Medical College*, 898 S.W. 2d 181, 184 (Tenn. 1995)(entirely new trial referred to as a *de novo* appeal).

3. A judgment entered in circuit court after appeal from a judgment entered in general sessions court will be enforced by the circuit court. *Roberts v. State*, 212 Tenn. 25, 367 S.W. 2d 480, 481 (1963)(appeal from sessions court to criminal court "abrogated the judgment" of the general sessions court). *See also Ware*, 898 S.W. 2d at 184 (*de novo* appeal differs from other appellate proceedings in that parties given "entirely new trial as if no other trial had occurred and as if the case had originated in the circuit court").

4. An appeal of a general sessions court's revocation of probation to circuit court will be

reviewed *de novo*. Tenn. Code Ann. §27-5-108(c).

5. A judgment revoking probation entered in a circuit court that is appealed from general sessions court makes the circuit court "the trial court" and "trial judge" for purposes of Tenn. Code Ann. §40-35-311. *See Roberts*, 367 S.W. 2d at 481; *Ware*, 898 S.W. 2d at 184.

6. Because the answer to question 5 is yes, question 6 is pretermitted.

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