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Opinion No. 03-164

Jurisdiction of Drug Courts Created Pursuant to Tenn. Code Ann. § 16-22-101

QUESTIONS

1. May a drug court created pursuant to Tenn. Code Ann. § 16-22-104 by a Circuit level judge accept participants from another circuit judge by transferring a violation of probation to the drug court for treatment and supervision in the drug court?

2. May a drug court created pursuant to Tenn. Code Ann. § 16-22-104 by a Circuit level judge accept participants from a General Sessions Court by transferring a violation of probation to the drug court for treatment and supervision in the drug court?

3. Whether the transfer of probation above in either scenario is prohibited by lack of subject matter jurisdiction, even if agreed to by the defendant?

4. Whether the transfer of probation between Circuit level judges in the same jurisdiction is prohibited even though it is authorized between counties in Tenn. Code Ann. § 40-35-309?

OPINIONS

1. Yes, if the order of revocation, entered pursuant to a hearing, provides for participation in the Drug Court Treatment Program as a condition of the suspended sentence.

2. Yes, but the transfer of the suspended sentence from a general sessions court to a circuit court would be limited to those situations where the courts have concurrent jurisdiction.

3. No.

4. No.

ANALYSIS

1. "Drug Courts" were created by the General Assembly on July 1, 2003, by the enactment of the "Drug Court Treatment Act of 2003." Tenn. Code Ann. § 16-22-101, *et seq*. (hereinafter referred to as the "Act"). Subsection 103(1) of the Act defines a "drug court treatment program" as follows: "any Drug Court Treatment Program created within the state that follows the general principles referenced in § 16-22-104 and that is established by the judge of a court in Tennessee exercising criminal jurisdiction. A 'Drug Court Treatment Program' shall have the same powers as the court that created it." Subsection 104 outlines the operating principles behind the "Drug Court Treatment Program," which provides for such things as access to treatment and rehabilitation services, monitoring and evaluation, and judicial interaction.

Circuit Courts are courts of general jurisdiction and vested with exclusive original jurisdiction of all crimes and misdemeanors, unless otherwise expressly provided by statute. Tenn. Code Ann. § 16-10-101 and -102. Thus, under the provisions of Tenn. Code Ann. § 16-22-103, a "Drug Court" may be created by a Circuit level judge, and it retains the same powers as the circuit court that created it.

Under the hypothetical posed, the "drug court" would be accepting probationers, who had been adjudicated in violation of their probation by another division of the circuit court, and assuming jurisdiction of the probation. Under the "drug court" statute, a "drug court" is really a treatment program and an extension of the circuit court. Thus, any circuit level judge in a judicial district could craft a sentence for any qualifying offender that involved the offender's participation in the drug court treatment program.

Additionally, a trial court is authorized under Tenn. Code Ann. § 40-35-308 to modify or impose additional conditions of supervision. However, a court cannot make the conditions of supervision more onerous than those originally imposed, except pursuant to a revocation proceeding. Thus, if a probationer satisfied the requirements of participation in the "drug court program," and participation in the program was ordered as a modification of the conditions of probation pursuant to a revocation hearing, then a drug court could assume jurisdiction over the probation by transfer of the probation to the drug court.

2. Only in those cases in which a general sessions and circuit court would have concurrent jurisdiction could probation, after a revocation hearing, be transferred to the drug court. General sessions courts have limited jurisdiction in criminal matters, depending on the type of charge. *See* Raybin, Tennessee Practice, §7.1 (1984). General sessions courts may sentence and impose probation in misdemeanor cases. Tenn. Code Ann. § 40-35-303. If a general sessions court orders probation, the court retains full jurisdiction to conduct revocation proceedings, Tenn. Code Ann. § 16-15-401(b), and later modify a sentence. Tenn. Code Ann. § 40-35-311(c). Thus, a general sessions court has limited concurrent jurisdiction with a circuit court on probation issues.

As long as participation in the "drug court program" was ordered as a condition of the probation after a revocation hearing, the defendant satisfied the criteria for participation in the program, and the case was one where the general sessions and circuit courts had concurrent jurisdiction, then a drug court would be able to accept a transfer of probation for a misdemeanant sentenced to probation in a general sessions court.

3. A defendant cannot waive subject matter jurisdiction. *State ex rel. McMinn v. Murrell*, 170 Tenn. 606, 98 S.W.2d 105 (Tenn. 1935). As circuit courts are courts of general jurisdiction and maintain exclusive original jurisdiction over criminal matters, a circuit court or drug court created by a circuit court would have subject matter jurisdiction over any criminal case in that judicial district.

Additionally, if a general sessions court has subject matter jurisdiction to impose a sentence in a criminal case, which as previously stated would be limited to misdemeanor cases, then a circuit court would also have the same subject-matter jurisdiction, as Tenn. Code Ann. § 16-10-102 provides that circuit courts have jurisdiction over all crimes and misdemeanors.

4. Each judicial district has one circuit court, some with many divisions. *See generally* Tenn. Code Ann. § 16-2-506; Tennessee Decisions (West, 2003). A transfer of probation from one division of a circuit court to another is certainly allowable and may be accomplished by local court rule or by agreement of the judges in the circuit. Therefore, just as a sentence of probation may be transferred from one jurisdiction to another, *see* Tenn. Code Ann. § 40-35-309, there is nothing in our code that would prevent a sentence of probation from being transferred from one division of a circuit court to another.

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