

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Elder and Bray  
Argued at Richmond, Virginia

GARFIELD B. JOHNSON

v. Record No. 1655-97-2

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JAMES W. BENTON, JR.  
DECEMBER 15, 1998

FROM THE CIRCUIT COURT OF PRINCE EDWARD COUNTY  
Richard S. Blanton, Judge

Michael J. Brickhill for appellant.

Michael T. Judge, Assistant Attorney General  
(Mark L. Earley, Attorney General, on brief),  
for appellee.

This appeal arises from a proceeding commenced after Garfield Johnson pled guilty on March 17, 1997 to possessing with the intent to distribute cocaine. Before the trial judge sentenced Johnson pursuant to that plea, Johnson moved to withdraw his guilty plea. The trial judge denied Johnson's motion to withdraw his plea, found him guilty, and sentenced him to prison. Johnson's appeal from that conviction order has been affirmed by this Court today in Johnson v. Commonwealth, Record No. 1587-97-2.

After the trial judge sentenced Johnson pursuant to Johnson's March 17, 1997 guilty plea, the trial judge revoked two previously suspended sentences resulting from Johnson's convictions in 1996. On this appeal, Johnson contends that the

---

\*Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

trial judge erred in revoking the previously suspended sentences. For the reasons that follow, we affirm the judgment.

I.

In 1996, Garfield Johnson pled guilty to possessing with the intent to distribute cocaine, see Code § 18.2-248, and possession of a firearm while in possession of cocaine, see Code § 18.2-308.4. The trial judge found Johnson guilty of both charges and sentenced him to five years in prison for the cocaine offense, with three years and eight months suspended, and to five years in prison on the firearms offense, with all five years suspended. The suspended sentences were conditioned on Johnson's "be[ing] of good behavior for a period of ten (10) years from the date of his release from incarceration . . . [and] pay[ing] all court costs." The trial judge also "placed [Johnson] on supervised probation . . . for a period of ten (10) years from the date of his release from incarceration."

Four months after Johnson was released from prison, he was again arrested and pled guilty on March 17, 1997 to possessing with the intent to distribute cocaine. After the trial judge denied Johnson's motion to withdraw his guilty plea, the trial judge sentenced Johnson to a term of years in prison. The trial judge then revoked the eight years and eight months that had been suspended from Johnson's 1996 convictions.

II.

A trial judge "may, for any cause deemed by [him or her]

sufficient which occurred at any time within the probation period, . . . revoke the suspension of sentence." Code § 19.2-306. "The question of whether to revoke the suspension of a sentence lies within the sound discretion of the trial [judge]." Singleton v. Commonwealth, 11 Va. App. 575, 580, 400 S.E.2d 205, 208 (1991). Absent "a clear showing of abuse of discretion," we will not disturb the decision of the trial judge. Davis v. Commonwealth, 12 Va. App. 81, 86, 402 S.E.2d 684, 687 (1991).

A panel of this Court today affirmed Johnson's 1997 conviction for possessing with the intent to distribute cocaine. See Johnson v. Commonwealth, Record No. 1587-97-2. Therefore, the record clearly establishes that Johnson's conduct "during the probationary period was inconsistent with the terms and conditions of the probation and evidenced h[is] unwillingness to avail h[im]self of the opportunity afforded by the court. Under such circumstances, the judgment of the trial [judge] clearly constituted no abuse of discretion." Connelly v. Commonwealth, 14 Va. App. 888, 890, 420 S.E.2d 244, 245 (1992). See also Patterson v. Commonwealth, 12 Va. App. 1046, 1049, 407 S.E.2d 43, 45 (1991) ("The appeal of the underlying conviction will determine the outcome of the appeal of the revocation proceeding.").

Accordingly, we affirm the trial judge's decision.

Affirmed.