IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 18, 2023 at Nashville

STATE OF TENNESSEE v. ROGER JAY HOLLOWELL

Appeal from the Circuit Court for Carroll County
No. 20CR130 Bruce Irwin Griffey, Judge

No. W2022-01434-CCA-R3-CD

The defendant, Roger Jay Hollowell, appeals the Carroll County Circuit Court's order revoking his community corrections sentence and ordering him to serve in confinement the balance of his sentence for his guilty-pleaded conviction of possession of .5 grams or more of methamphetamine with intent to deliver. Discerning no error, we affirm.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and TIMOTHY L. EASTER, JJ., joined.

M. Todd Ridley (on appeal) and Timothy D. Nanney (at trial), Assistant District Public Defenders, for the appellant, Roger Jay Hollowell.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Neil Thompson, District Attorney General; and Deven Wilson Whitfield, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Carroll County Grand Jury charged the defendant with one count of possession of .5 grams or more of methamphetamine with intent to deliver and one count of burglary. Pursuant to a plea agreement with the State, on June 14, 2021, the defendant pleaded guilty to the charge of possession of .5 grams or more of methamphetamine with intent to deliver with an agreed sentence of one year to serve followed by seven years in community corrections, and the State dismissed the burglary charge. In lieu of the one year of jail time, the defendant was permitted to enter a rehabilitation program "of not less than [one] year for which he shall receive day for day credit upon successful completion."

On July 25, 2022, a community corrections violation warrant issued, alleging that the defendant had violated the terms of his release by incurring new charges for driving on a revoked license and second-offense driving under the influence ("DUI").

At the September 2022 revocation hearing, Brenda Phillips, the assistant program manager at the 24th Judicial District Community Corrections Program, testified that the defendant began his community corrections supervision on April 7, 2022, after successfully completing a rehabilitation program. She said that the defendant violated the terms of his release by garnering new charges. On August 17, 2022, the defendant pleaded guilty to DUI (first offense), and a certified copy of the conviction was exhibited to Ms. Phillips' testimony. Ms. Phillips said that when the defendant was placed on supervision, she "went over the rules with him," and the defendant signed a form stating that he understood the rules of supervision. Rule number eight required the defendant to obey all laws. Ms. Phillips said that the defendant understood that garnering new charges was a violation of the terms of his supervision. She acknowledged that the defendant reported to supervision as required.

During cross-examination, Ms. Phillips said that the community corrections program had "been keeping up with" the defendant "since the day he was sentenced, but he started reporting to us on" April 7, 2022. She said that he began his rehabilitation program at Buffalo Valley on September 22, 2020, and moved to a rehabilitation program at Recovery on Wildview on December 15, 2020, where he remained until successfully completing the program on April 7, 2022. The defendant committed the new offenses on June 25, 2022. She said that while on community corrections, the defendant was required to report twice per week and that he had not missed any of those appointments. She also said that the defendant did not fail any drug screens during his period of supervision. Ms. Phillips said that people who complete rehabilitation for substance abuse often relapse and said that when that happens, "[i]f they come talk to us, we schedule them to go to outside meetings and intensive out-patient treatment." She said that nothing in the defendant's file indicated that he sought help for a relapse. She acknowledged that the defendant continued to report to community corrections even after his arrest for DUI.

The defendant testified that he successfully completed a three-month rehabilitation program at Buffalo Valley and successfully completed a second program at Recovery on Wildview. He said that while completing the second program, "my mother had passed away, and my sister was taking it really hard." He said that he went to rehabilitation to treat a drug addiction. He said that he had not had any relapse with drugs but acknowledged that he used alcohol "[t]hat one time, . . . it wasn't a regular thing." He said that he had "hit a bad spot," in part because of his mother's passing. He also said that he "had lost my job and was having a bad time, . . . and I drank." Since his arrest for DUI, he had contacted Recovery on Wildview and said that "they have a bed waiting for me

right now" for him to return to their rehabilitation program. He also said that he had "a job waiting" for him at the Vietti Foods factory.

Upon questioning by the court, the defendant said that he had one prior felony conviction of forgery from approximately 10 years prior and that he had been convicted of driving on a suspended license after his driver's license was suspended "[f]or failure to pay child support." He acknowledged that he also had a prior DUI from "lots of years ago" and that, in the present case, he was permitted to plead to the lesser charge of first-offense DUI.

The trial court found that the defendant had violated the terms of his release, revoked his community corrections, and ordered the defendant to execute the remainder of his sentence in confinement. The court stated, "this [c]ourt sees way too many [v]ehicular [h]omicides where people have lost their lives, because somebody consumed alcohol while operating a motor vehicle. There is nothing in the record that convinces the [c]ourt that the disposition of this case should be anything other than a full revocation."

In this timely appeal, the defendant contends that the trial court abused its discretion by ordering the defendant to serve the balance of his sentence in confinement, arguing that the trial court failed to consider all relevant factors, relied on evidence not in the record, and ignored the State's recommended sentence. The State argues that the trial court did not err.

Our review of a trial court's community corrections revocation is similar to our review of a trial court's probation revocation. *State v. Harkins*, 811 S.W.2d 79, 83 (Tenn. 1991). Revocation of a community corrections sentence requires a two-step consideration by the trial court. *See State v. Dagnan*, 641 S.W.3d 751, 753 (Tenn. 2022) (concluding "that a probation revocation proceeding ultimately involves a two-step inquiry"); *State v. Clinton D. Braden*, No. M2022-00733-CCA-R3-CD, 2023 WL 196130, at *2 (Tenn. Crim. App., Nashville, Jan. 17, 2023) ("The two-step consideration put forth in *Dagnan* also applies to community correction revocation hearings." (citations omitted)). "The first is to determine whether to revoke [community corrections], and the second is to determine the appropriate consequence upon revocation." *Dagnan* at 753 (footnote omitted). Our supreme court has held that "these are two distinct discretionary decisions, both of which must be reviewed and addressed on appeal." *Id.* at 757-58. "Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden." *Id.* at 758.

If the evidence is sufficient to show a violation of the terms of supervision in a community corrections placement, the trial court may, within its discretionary authority, revoke the community corrections sentence and require the defendant to serve his sentence

in confinement "less any time actually served in any community-based alternative to incarceration." T.C.A. § 40-36-106(e)(4). Furthermore, when the trial court does not alter "the length, terms or conditions of the sentence imposed," *id.* § 40-36-106(e)(2), the court is not required to hold a sentencing hearing. As another option, however, the trial "court may resentence the defendant to any appropriate sentencing alternative, including incarceration . . . . [, and] resentencing shall be conducted in compliance with [Section] 40-35-210." *Id.* § 40-36-106(e)(4); *see, e.g.*, *State v. Samuels*, 44 S.W.3d 489, 493 (Tenn. 2001) (observing that the trial court must conduct a sentencing hearing before imposing "a new sentence" following a community corrections revocation).

The appellate standard of review of a community corrections revocation is "abuse of discretion with a presumption of reasonableness so long as the trial court places sufficient findings and the reasons for its decisions as to the revocation and the consequence on the record." *Dagnan*, 641 S.W.3d at 759; *see also State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Reams*, 265 S.W.3d 423, 430 (Tenn. Crim. App. 2007). "It is not necessary for the trial court's findings to be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision." *Dagnan* at 759 (citations omitted). If the trial court fails to place its reasoning for a revocation decision on the record, this court may either "conduct a de novo review if the record is sufficiently developed for the court to do so" or "remand the case to the trial court to make such findings." *Id.* (citing *State v. King*, 432 S.W.3d 316, 327-28 (Tenn. 2014). Generally, "[a] trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

Here, the defendant concedes that he violated the terms of his community corrections sentence by committing a new offense, and the record supports the trial court's revoking the defendant's release. In ordering the defendant to serve the remainder of his sentence in confinement, the trial court considered the defendant's criminal record and the public safety concerns related to DUI. The defendant conceded at the hearing that he had a prior felony conviction and a prior DUI conviction. The trial court made clear that the impetus for the fully-incarcerative sentence was the fact that the defendant had committed a second DUI and the general dangers and public safety concerns related to DUI. That DUI and vehicular homicides by DUI are a public safety concern are facts within the common knowledge, and the court did not err by considering these public safety concerns. *See State v. Rhodes*, 917 S.W.2d 708, 714 (Tenn. Crim. App. 1995) ("Unquestionably, [the] vehicular assault [statute] reflects the legislature's appreciation of the substantial risk of and actual degree of harm that results from DUI caused injury.") The trial court heard the evidence of the defendant's success in the rehabilitation programs, his general compliance with the terms of his supervision, and that he had a position in a rehabilitation

program and employment lined up if he were to be returned to community corrections. The court, nonetheless, rejected these positive factors as reasons to return the defendant to community corrections, a decision squarely within the discretion of the trial court. *See* T.C.A. § 40-36-106(e)(4). Finally, the court was free to reject the State's recommendation of a short period of confinement followed by a return to community corrections. Consequently, the trial court did not err by revoking the defendant's sentence of community corrections and ordering him to serve the remainder of his sentence in confinement.

Accordingly, the judgment of the trial court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE