

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 29, 2023

FILED

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Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. ISAIAH HARRIS**

**Appeal from the Criminal Court for Knox County  
No. 119489 G. Scott Green, Judge**

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**No. E2023-00078-CCA-R3-CD**

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Defendant, Isaiah Harris, appeals the trial court's order revoking his probationary sentence for four counts of attempted second-degree murder and two counts of felony reckless endangerment and ordering him to serve the balance of his sentence in confinement. Following our de novo review of the entire record and the briefs of the parties, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., AND JAMES CURWOOD WITT, JR., J., joined.

J. Liddell Kirk, Madisonville, Tennessee (on appeal), and Michael Graves, Knoxville, Tennessee (at trial), for the appellant, Isaiah Harris.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Charmé P. Allen, District Attorney General; and TaKisha Fitzgerald, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual and Procedural Background**

Defendant pled guilty on May 19, 2022, to four counts of attempted second-degree murder and two counts of felony reckless endangerment. Pursuant to the plea agreement, he was sentenced to concurrent sentences of eight years for each count of attempted murder and two years for each count of reckless endangerment to be served concurrently with each other and consecutively to the attempted murder counts, for an effective ten-year sentence,

suspended to probation after the service of one year in jail with pre-trial jail credits from March 24, 2021 through January 10, 2022.

While it is unclear from the record when Defendant completed his one-year of jail time, a probation violation warrant was issued on August 30, 2022, alleging that Defendant violated the terms of his probation by reporting to “probation intake on 8/25/2022 and test[ing] positive for THC on a field drug screen, to which he admitted use on or about 8/22/2022.” The warrant also alleged that at “intake,” Defendant did not provide a proper address, and “[p]robation officers attempted a home check at the apartment building at [ ]E. Oldham Avenue, going door to door, when the current resident of Apartment #1 stated [Defendant’s] sister lives there but [Defendant] is not permitted on the property.” The violation warrant alleged that Defendant violated the terms of his probation by moving without permission. An amended probation violation warrant was issued against Defendant on October 5, 2022, alleging that he had been “in possession of a firearm during the period of probation.”

A probation revocation hearing was held on December 8 and 14, 2022. At the hearing, Shannon Morris, who worked for the Knoxville Police Department (“KPD”), testified as an expert in the field of digital forensics. She examined two cell phones in this case, a TCL model 5087z and an iPhone, and extracted video files from both phones. From the TCL phone, two videos that had been received on the device from Instagram on September 1, 2022, were extracted. Ms. Morris also extracted data from the iPhone that consisted of internet searches performed on August 28, 29, 31, and September 1, 2022, regarding firearms and ammunition.

The videos from the TCL phone were played for the trial court. The first video showed an unidentified person’s hand holding a semi-automatic pistol, and an unintelligible voice can be heard speaking, seemingly in reference to the weapon. The pistol was then placed on a table with other firearms, and the camera then turned to a young man with dreadlocks, dressed in a white t-shirt and blue jeans, holding a semi-automatic pistol with an attached light. The young man momentarily pointed the light toward the camera, and the video then ended.

The second video depicted an AK-47 style gun being held by an unidentified individual mumbling something undecipherable. The video also showed a table with two pistols lying on top, one of which was a semi-automatic with an attached light.

On cross-examination, Ms. Morris agreed that the videos from the TCL phone were received on September 1, 2022, but she had no way of knowing when the videos were actually made.

Investigator Thomas Turner of the KPD Violent Crimes Unit testified that mid-day on September 2, 2022, he responded to a shooting where the victim was shot and killed off

of Washington Avenue. Defendant and two other men were in the vehicle with the victim. Defendant had been riding in the front passenger seat, and the victim had been riding in the back seat behind Defendant. Investigator Turner testified that the victim was shot from another vehicle that was behind them, and “[a] round penetrated the rear hatch, went through the rear seat and struck [the victim].” Investigator Turner testified that Defendant and the two other occupants were returning to the vehicle when officers initially arrived on the scene.

Defendant and the two men were transported to the police department. Investigator Turner testified:

We had evidence that at least two rounds were fired from inside the vehicle backwards outside the - - to the outside of the vehicle.

\* \* \*

There were bullet defects in the rear hatch that our forensic technicians determined came inside the vehicle and went outside the vehicle. And we also found a shell casing inside the vehicle and one immediately outside the vehicle where it came to rest after the shooting.

A .45 caliber shell casing was found inside the vehicle, and a .40 caliber shell casing was found outside of the vehicle which indicated that two different firearms were used.

Investigator Turner interviewed Defendant who would not give much information about the shooting. Investigator Turner said, “No one claimed that they knew the identity of the victim. No one claimed that they knew who shot at them, why they shot at them, and they all claimed that no one in their vehicle shot back.” Investigator Turner testified that the driver of the vehicle in which the victim was riding was the only one who still had a gun when police made contact with him. The gun was fully loaded and did not appear to have been recently fired. Investigator Turner believed that there had been three or four guns in the vehicle at the time the victim was shot. He explained that the driver still had a gun with him when he came back. “And then two other weapons were fired from inside the vehicle, which would make three. And [the victim] was known to carry a gun from time to time but did not have one on him. So four people, four guns.”

Investigator Turner testified that he had received two cell phones, a TCL and an iPhone, from the victim’s father; the phones had been left at the father’s house on chargers when the victim left that day with other individuals. The victim’s father did not know who the other individuals were. Investigator Turner testified that two videos were recovered from the TCL phone. On one of the videos, he identified the victim holding a gun, and he also identified Defendant holding a black gun with a flashlight. Investigator Turner

testified that the same gun with a flashlight appeared to be the same gun seen lying on a table in the second video. He said that the videos were sent to the phone from Instagram on September 1, 2022.

Investigator Turner also testified that there were Google searches on the iPhone that ranged from August 29, 2022, until September 1, 2022, involving “different sets of the Crip street gang as well as different calibers of ammo and different makes and models of handguns. Specifically, FN15s, Glock 41, Glock 47, Smith and Wesson[.]”

Brian Kauffman, Defendant’s probation officer, testified that Defendant went for probation intake on August 25, 2022, and he met with Defendant on August 29, 2022. Defendant provided a cell phone number that was the same as the number assigned to the iPhone recovered by police at the victim’s house. At their meeting, Mr. Kauffman reviewed the rules of probation with Defendant. When asked how Defendant performed on probation from August 29 to September 2, 2022, Mr. Kauffman replied:

From the 25th when he went through intake, we attempted a home visit on [t]he 25th. He was not present at the address that he provided. When he reported on the 29th, he gave us the same address and we attempted on September 2nd to do a home visit, and he wasn’t there at that time either. And that’s about the most of his probation reporting.

On cross-examination, Mr. Kauffman testified that Defendant tested positive for THC on his initial drug screen during probation intake on August 25. The intake officer sanctioned Defendant at that time and planned to have Defendant complete an alcohol and drug assessment.

At the conclusion of the hearing, the trial court revoked Defendant’s probation and ordered him to serve the balance of his ten-year sentence in confinement with credit for time served, including the one year previously ordered to be served. Specifically, the trial court found:

All right. [Defendant], you know, fool me once, shame on you. Fool me twice, shame on me. I gave you and [Co-defendant Green] both an opportunity at probation in spite of the violent nature of the crimes for which you s[i]t convicted before this Court, and within less than a month, actually a little over a week from the time that you were released from custody you’re in a vehicle where there are multiple firearms.

Your lawyer’s right, can the State actually put a firearm in your hand, no, they can’t. But there was somebody shooting at you all and

you're shooting back and somebody died. And it would just be - - you would be the unluckiest human being to have ever walked on this planet if it was just simply a coincidence that somebody else was using the very cell number that you had told probation was your number looking for ammo within a day or two of when this shooting occurred. Talking about firearms. Sending messages about firearms. And then lo and behold, on another phone the person, your friend who got killed, there are firearms in that video and you're holding one of them with a laser sight that you point at your friend a day before he's murdered.

I just - - I don't understand this. I don't understand the mentality but you're going to be one less person for the next few years that's going to be shooting at anybody else over in East Knoxville. And you're going to be one less person that runs the risk of taking a bullet in East Knoxville.

If you would, stand up, please sir. [Defendant], in docket 119489, based upon the evidence received this Court finds there is simply no question that you are in material violation of the terms and conditions of your probation. And this Court specifically finds that you possessed a firearm, the circumstantial evidence is more than compelling that you possessed a firearm while you were on probation. In fact, within a week of being placed on probation.

The ten-year sentence heretofore probated is now revoked, ordered and executed and served within the Tennessee Department of Correction. You'll receive credit for the time that you've previously served.

You need to do some soul searching. You're still a very young man. You've got a lot of life in front of you. But if you get back out and start doing this stuff again, somebody is either going to put a bullet in you or you're going to spend the rest of your life in prison because you put a bullet into somebody else. I don't know how else to say it.

It is from this ruling that Defendant now appeals.

### **Analysis**

Defendant contends that the trial court abused its discretion "in finding that the preponderance of the evidence established that [he] violated the terms of probation by

possessing or being around firearms while on probation.” Defendant further argues that the trial court abused its discretion by ordering him to serve the balance of his sentence in confinement. The State responds that the trial court properly exercised its discretion in revoking the Defendant’s probation and ordering him to serve the balance of his sentence in confinement.

It is well settled that a trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. *See* T.C.A. §§ 40-35-310, -311(e); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). “The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment.” *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). Upon finding that a defendant has violated probation, the trial court may: (1) order incarceration for some period of time; (2) cause execution of the sentence as it was originally entered; (3) extend the defendant’s probationary period not exceeding one year; (4) return the defendant to probation on appropriate modified conditions; or (5) resentence the defendant for remainder of the unexpired term to a sentence of probation. *See* T.C.A. §§ 40-35-308(c)(1), (2); -310; -311(e)(1), (2) (2021).

In *State v. Dagnan*, our supreme court aimed to “clarify and bring uniformity to the standards and principles applied by the trial courts and appellate courts in probation revocation proceedings” to resolve confusion about the proper procedure for a trial court to follow before revoking a probationary sentence. 641 S.W.3d 751, 757 (Tenn. 2022). The court determined that:

probation revocation is a two-step consideration on the part of the trial court. *See* Tenn. Code Ann. §§ 40-35-308, -310, -311. The first is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation. This is not to say that the trial court, having conducted a revocation hearing, is then required to hold an additional or separate hearing to determine the appropriate consequence. The trial courts are required by statute to hold a revocation hearing. *Id.* § 40-35-311(b). However, there is no such requirement in the statutes or case law for an additional hearing before deciding on a consequence, and we decline to impose one. [The] defendant agrees that requiring a separate hearing solely to determine the consequence for violating probation is not necessary and would be too great of a burden on the trial courts. Still, we emphasize that these are two distinct discretionary decisions, both of which must be reviewed and addressed on appeal. Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden.

*Id.* at 757.

The supreme court explained the standard of review in a decision revoking probation as follows:

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. 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. *See [State v.] Bise*, 380 S.W.3d [682,] 705-06 [(Tenn. 2014)]. "This serves to promote meaningful appellate review and public confidence in the integrity and fairness of our judiciary." *[State v.] King*, 432 S.W.3d [316,] 322 (Tenn. 2014)]. When presented with a case in which the trial court failed to place its reasoning for a revocation decision on the record, the appellate court may conduct a de novo review if the record is sufficiently developed for the court to do so, or the appellate court may remand the case to the trial court to make such findings. *See King*, 432 S.W.3d at 327-28.

*Id.* at 759.

The trial court in this case made sufficient findings to support the revocation of Defendant's probation in accordance with *Dagnan*. The trial court found by a preponderance of the evidence that Defendant violated the terms of his probation by being in possession of a firearm within a week of being placed on probation. The evidence presented at the revocation hearing supports this finding. Investigator Turner testified that Defendant had been riding in a car with the victim and two others with either three or four firearms. After the victim was shot by someone riding behind them in another vehicle, individuals from the car in which Defendant was a passenger returned fire. The shell casings found both inside and outside of the vehicle showed that the shots were fired from two different caliber weapons. Investigator Turner determined that the driver was armed, but his weapon had not been fired. Since the victim was deceased, the trial court properly determined that Defendant and the other passenger were the only persons who could have possibly returned fire from the vehicle. Therefore, it could reasonably be determined that Defendant was in possession of a firearm within a week of being placed on probation. Defendant had gone through probation intake on August 25, 2022, and this shooting occurred on September 2, 2022.

The trial court's finding is further supported by a video sent to the victim's phone from Instagram on September 1, 2022, showing Defendant holding a gun with a laser sight and pointing it at the victim. Although it could not be determined when the video was actually made, there was sufficient evidence in the record for the trial court to find that it was more likely than not that the video was made during Defendant's probationary period. Especially since the search history on Defendant's phone showed that he made several searches from August 29, 2022, until September 1, 2022, involving different calibers of

ammunition and different makes and models of handguns. The trial court properly determined by a preponderance of the evidence that Defendant had violated the terms of his probation.

Turning our attention to the trial court's reasoning for ordering incarceration as a consequence of revocation, we find that the trial court did not make sufficient findings in accordance with *Dagnan*. However, based on our *de novo* review of the record, we conclude that there is ample support for the trial court's determination. Defendant was seen in the video in possession of a weapon and determined to be in possession of a weapon when the victim was shot, within a week of being placed on probation for six felony convictions that included attempted second-degree murder and reckless endangerment. We note that there was also testimony presented at the revocation hearing by Defendant's probation officer that Defendant tested positive for THC on his initial drug screen during probation intake on August 25. The intake officer sanctioned Defendant at that time and planned to have Defendant complete an alcohol and drug assessment. Defendant was also not present at the address he had provided when two home visits were attempted by his probation officer on August 25, and September 2, 2022, the day of the shooting. There was also testimony by Investigator Turner that Defendant did not cooperate with him during his investigation of the victim's death. These facts reflect poorly on Defendant's potential for rehabilitation. *See* T.C.A. § 40-35-103(1) (5). Furthermore, this court has repeatedly held that "an accused, already on [a suspended sentence], is not entitled to a second grant of probation or another form of alternative sentencing." *State v. Brumfield*, No. M2015-01940-CCA-R3-CD, 2016 WL 4251178, at \*3 (Tenn. Crim. App. Aug. 10, 2016) (quoting *State v. Warfield*, No. 01C01-9711-CC-00504, 1999 WL 61065, at \*2 (Tenn. Crim. App. Feb. 10, 1999)); *see also State v. Johnson*, No. M2001-01362-CCA-R3-CD, 2002 WL 242351, at \*2 (Tenn. Crim. App. Feb. 11, 2002).

We conclude that the record supports the trial court's revocation of Defendant's felony probation and imposition of the original sentence. Defendant is not entitled to relief.

### **Conclusion**

For the foregoing reasons, the judgment of the trial court is affirmed.

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JILL BARTEE AYERS, JUDGE