

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 11, 2023

FILED

10/09/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. TAYLOR JENKINS LITTRELL

Appeal from the Circuit Court for Carroll County
No. 20CR135 Bruce Irwin Griffey, Judge

No. W2022-01433-CCA-R3-CD

The Appellant, Taylor Jenkins Littrell, appeals the Carroll County Circuit Court's order revoking his probation and ordering him to serve the remainder of his four-year sentence in confinement. The Appellant alleges that the trial court abused its discretion by: (1) admitting a blood alcohol report in violation of his confrontation rights; and (2) ordering him to serve the remainder of his sentence in confinement. Finding no reversible error, we affirm the trial court's judgment.

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

CAMILLE R. McMULLEN, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JILL BARTEE AYERS, JJ., joined.

Tas Gardner, District Public Defender; Brennan M. Wingerter and Brian D. Wilson, Assistant District Public Defenders, for the Appellant, Taylor Jenkins Littrell.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; Neil Thompson, District Attorney General; and Deven Whitfield, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The Appellant pled guilty to statutory rape on April 13, 2021, and was sentenced to four years suspended to supervised probation. On June 24, 2022, he was arrested for driving under the influence (DUI) in Henry County after crashing his car into a soybean field. A probation violation report was filed, alleging that the Appellant failed to obey the laws of Tennessee (Rule 1) and used intoxicants to excess (Rule 8). A probation revocation hearing was held on September 30, 2022.

At the hearing, Trooper Jeremy Byars testified that he responded to the crash at 12:01 a.m. The Appellant had traveled off the right edge of the road, overcorrected to the left, and ended in a soybean field. There were no other cars involved. When Trooper Byars arrived, he smelled a strong odor of alcohol on the Appellant. The Appellant was “very talkative” and spoke for approximately ten minutes about the crash. The Appellant had bloodshot eyes and his speech was “slurred a little bit.” Trooper Byars saw several beer cans in the Appellant’s car. He later acknowledged on cross-examination that it was possible that the Appellant consumed the beer after the crash, and put the empty cans in his car. However, the Appellant stated that he was “coming from dinner” and had consumed at least two margaritas.

Based on the evidence of intoxication, Trooper Byars conducted field sobriety tests. During the horizontal gaze nystagmus test, the Appellant showed “definite clues of impairment.” During the walk and turn test, the Appellant “performed horribly[.]” The Appellant “took approximately eleven [] steps on the first nine [] steps.” Therefore, Trooper Byars arrested him for DUI. The Appellant then consented to provide a blood sample, which was sent to the Tennessee Bureau of Investigation Crime Laboratory (“TBI”).

The Appellant’s counsel objected to the admission of the TBI blood alcohol report because there was “no reliability established[.]” The trial court overruled the objection without explanation and admitted the report into evidence. The report indicated that the Appellant’s blood alcohol level was .189. Trooper Byars testified that the legal limit is .08.

On cross-examination, Trooper Byars stated that the Appellant admitted he “probably [did not] need to be driving that night.” And though Trooper Byars did not include it in his report, the Appellant also admitted to drinking a malt liquor beverage while he was driving. Trooper Byars could not remember the specific signs of impairment he observed during the field sobriety tests beyond what he testified to on direct examination.

Arlesa Michelle Wade, the Appellant’s probation officer, testified that the Appellant violated the terms of his probation by failing to obey the laws of Tennessee. This was the Appellant’s first violation. The only other issue he had was “unstable housing.” On cross-examination, Wade stated that the Appellant had been “reporting and passing drugs screens.” He also reported employment, but had not provided any verification.

The trial court summarized the applicable law and heard arguments from both parties regarding whether a violation had occurred. During arguments, the Appellant’s counsel stated, “I want to continue to extend my objection on the entrance of this lab report,

because there's no affidavit here showing the qualifications of who [] did the lab and nothing there to prove reliability[.]” The court then explained its reasons for admitting the report, stating:

[The report] should be admitted and the only reason this would not be normally admitted in a trial is because the State has not had the opportunity to subpoena and call the [TBI] Lab expert to come in and testify to this. The [c]ourt finds the evidence is reliable and the defendant is certainly [welcome] to provide any evidence he wishes to challenge that result, but [he] has not done so.

The court found that the Appellant violated the terms of his probation based on the blood alcohol report and Trooper Byars' testimony, which it found persuasive.

The court then heard arguments regarding the appropriate disposition. The Appellant requested that the court “allow [him] to go into rehabilitation as a partial revocation.” Instead, the court revoked the Appellant's probation and ordered him to serve the remainder of his sentence in confinement, stating:

[T]he conduct [the Appellant] engaged in . . . could have easily resulted in the death of innocent people. This [c]ourt sees vehicular homicide cases way too frequently.

While [the Appellant] has not appeared to show any other problems concerning his supervision, the [c]ourt, simply, cannot overlook the conduct in this case and the irresponsibility he has [shown][.] [The Appellant's] conduct indicates that he is unable to comply with the conditions of the [c]ourt[.]

The Appellant filed a timely notice of appeal, and this case is now properly before this court for review.

ANALYSIS

On appeal, the Appellant argues that the trial court abused its discretion by: (1) admitting the blood alcohol report in violation of his confrontation rights; and (2) ordering him to serve the remainder of his sentence in confinement. The State responds, and we agree, that the court did not abuse its discretion and any error in admitting the report was harmless.

Appellate courts review a trial court's revocation of a defendant's probationary sentence under an abuse of discretion standard 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." State v. Dagnan, 641 S.W.3d 751, 759 (Tenn. 2022). "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). If the trial court fails to place sufficient reasoning on the record, the appellate court may remand the case to the trial court to make such findings, or, if the record is sufficient to do so, conduct a de novo review. Dagnan, 641 S.W.3d at 759 (citing State v. King, 432 S.W.3d 316, 327-28 (Tenn. 2014)).

In assessing an alleged violation of probation, the trial court must determine whether the preponderance of the evidence shows that the defendant violated the conditions of his release. State v. Beard, 189 S.W.3d 730, 734-35 (Tenn. 2005) (citing Tenn. Code Ann. § 40-35-311(e)). Upon finding that it does, the court must make two distinct discretionary decisions. Dagnan, 641 S.W.3d at 757-58. The court "must determine (1) whether to revoke probation, and (2) the appropriate consequence to impose upon revocation." Id. at 753. Once the court decides to revoke a defendant's probation, it may: (1) order confinement; (2) order the sentence into execution as initially entered; (3) return the defendant to probation on modified conditions as necessary; or (4) extend the probationary period by up to two years. See State v. Hunter, 1 S.W.3d 643, 646-47 (Tenn. 1999); Tenn. Code Ann. §§ 40-35-308, -310, -311.

The Appellant first alleges that the trial court abused its discretion in finding that a violation occurred. He argues that the court's admission of the blood alcohol report violated his confrontation rights, and, without it, the evidence is insufficient to establish by a preponderance of the evidence that he violated a condition of his probation. The State does not address the admissibility of the report and argues only that "[t]o the extent the trial court improperly admitted the lab report, any error was harmless because the remaining evidence of the [Appellant's] violation was overwhelming." We agree with the State.

Both the United States Constitution and the Tennessee Constitution protect a defendant's right to confront witnesses against him. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. This right, however, does not extend to probation revocation hearings. State v. Walker, 307 S.W.3d 260, 265 (Tenn. 2009) (citing Morrissey v. Brewer, 408 U.S. 471, 481-89 (1972)). In probation revocation hearings, only the minimum requirements of due process must be met. State v. Wade, 863 S.W.2d 406, 408 (Tenn. 1993) (citing Gagnon v. Scarpelli, 411 U.S. 778, 786 (1973)). These requirements include a "conditional right to confront and cross-examine adverse witnesses." Id. Under this conditional right, the

admission of hearsay evidence does not violate the defendant's constitutional rights if the trial court finds that: (1) there is "good cause" to deny the right to confront and cross-examine an adverse witness; and (2) the evidence is reliable. Id. at 409.

Though the trial court in this case found that the blood alcohol report was reliable, it made no specific finding that good cause justified the denial of the Appellant's right to confront and cross-examine the technician who prepared the report. The court acknowledged the good cause requirement and discussed that the report would ordinarily be inadmissible because the State did not present the technician. It did not, however, make a specific finding of good cause, nor does the record support such a finding. The record is silent as to why the technician was not presented. The admission of the report, therefore, violated the Appellant's due process rights. See Wade, 863 S.W.2d at 409 (holding that good cause was not shown when the record provided no explanation as to why the technician was not presented).

The admission of the report, however, was harmless beyond a reasonable doubt. Tenn. R. App. P. 36(b). A non-structural constitutional error does not require reversal if the State demonstrates "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24 (1967); see also State v. Allen, 69 S.W.3d 181, 190 (Tenn. 2002). Without the blood alcohol report, there is still sufficient evidence to establish the Appellant violated the terms of his probation by a preponderance of the evidence. Trooper Byars testified that the Appellant, after crashing his car, exhibited signs of intoxication, failed field sobriety tests, admitted to consuming alcohol, and had empty beer cans in his car. Therefore, the outcome would not have been different had the report been excluded, and the Appellant is not entitled to relief. See State v. Gribbins, No. M2005-01992-CCA-R3-CD, 2006 WL 1916811, at *6 (Tenn. Crim. App. June 14, 2006), no perm. app. filed (holding that the erroneous admission of the lab report was harmless because the other evidence was sufficient to establish the defendant violated the terms of his probation); see also State v. Cline, No. M2000-01674-CCA-R3-CD, 2001 WL 1379877, at *4 (Tenn. Crim. App. Oct. 30, 2001), no perm. app. filed.

The Appellant next alleges that the trial court abused its discretion when it ordered him to serve the remainder of his sentence in confinement. He contends that the trial court's decision was based on a clearly erroneous assessment of the proof because, in equating the Appellant's conduct to vehicular homicide, the trial court considered "what might have happened . . . instead of what actually happened." The State responds that the trial court merely highlighted the seriousness of the conduct and did not equate it to vehicular homicide. Therefore, the State argues, and we agree, that the court did not abuse its discretion.

Because the trial court provided sufficient findings, we afford its determinations a presumption of reasonableness and review for an abuse of discretion. See Dagnan, 641 S.W.3d at 759. After determining that the Appellant violated the terms of his probation, the court was authorized to order that he be confined for the remainder of his sentence. See Hunter, 1 S.W.3d at 647. This court has repeatedly held that “an accused, already on probation, 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), no perm. app. filed; see also State v. Warfield, No. 01C01-9711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App. Feb. 10, 1999), perm. app. denied (Tenn. June 28, 1999). The court, therefore, did not abuse its discretion when it ordered the Appellant to serve the remainder of his sentence in confinement.

Contrary to the Appellant’s contention, the court’s determination was not based on a clearly erroneous assessment of the proof. The court’s statement that the Appellant’s conduct could have resulted in death was merely highlighting the seriousness of driving under the influence—a permissible consideration under Dagnan. 641 S.W.3d at 760 n.5 (“Relevant considerations might be . . . the number of revocations, the seriousness of the violation, the defendant’s criminal history, and the defendant’s character.”). Accordingly, the Appellant is not entitled to relief.

CONCLUSION

Based on the above reasoning and analysis, we affirm the trial court’s judgment.

CAMILLE R. MCMULLEN, PRESIDING JUDGE