

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 12, 2023

FILED
09/22/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CEDRIC KONARD MITCHELL

**Appeal from the Circuit Court for Giles County
Nos. CR-14908, CR-15052 Russell Parkes, Judge**

No. M2022-00948-CCA-R3-CD

The Defendant, Cedric Konard Mitchell, appeals the trial court’s revocation of his ten-year sentence for two counts of domestic assault and one count of aggravated assault in case numbers 14908 and 15052. On appeal, he argues that the trial court erred by fully revoking his probation and ordering him to serve the remainder of his ten-year sentence in confinement. Following our review, we affirm the judgment of the trial court.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and MATTHEW J. WILSON, JJ., joined.

Brandon E. White (on appeal), Columbia, Tennessee, and Beverly White (at revocation hearing), Pulaski, Tennessee, for the appellant, Cedric Konard Mitchell.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Brent A. Cooper, District Attorney General; and Caleb Bayless, Brittany Spears, and Jonathan Davis, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

On October 28, 2019, the Defendant pleaded guilty to domestic assault in case number 14908 and pleaded guilty to domestic assault and aggravated assault in case number 15052, for which he received an effective ten-year-sentence ordered to be served on supervised probation. This appeal involves revocation proceedings arising from the Defendant’s fourth probation violation warrant in this matter. This fourth warrant was issued in December 2021, and an amended probation violation warrant was issued in April

2022. A probation revocation hearing commenced on April 26, 2022, and after a continuance, concluded on June 28, 2022.

At the April 26, 2022 probation revocation hearing, Mr. Kenneth Jones testified that on December 4, 2021, he observed an incident involving a man he identified as the Defendant. Mr. Jones explained that he was driving a car, and his daughter was sitting in the front passenger seat. He said that as he was driving, “this little skinny girl c[ame] running out in the road chased by” the Defendant. Mr. Jones stopped his car, and the Defendant tackled the girl on the road approximately ten feet in front of Mr. Jones’s car. The Defendant and the girl “did a rollover” and ended up on the side of the road. Mr. Jones’s daughter called 911. The girl broke free from the Defendant, opened the front passenger side door, and “belly dived in” on top of Mr. Jones’s daughter. The Defendant ran to follow the girl, grabbed her by her ankles, and tried to pull her out of the car. Mr. Jones’s daughter held her phone in one hand and tried to pull the girl away from the Defendant with her other hand. Mr. Jones informed the Defendant that his daughter was on the phone with a 911 operator and that police would be arriving at the scene soon. After hearing this, the Defendant released the girl’s ankles and ran away. The girl then completely entered Mr. Jones’s car and slammed the door behind her. A few moments later, the girl left the car, ran across the street, and got into a truck.

At the June 28, 2022 probation revocation hearing, Tennessee Department of Correction (“TDOC”) Probation Officer Irene Young testified that she supervised the Defendant. She first described the allegations contained in the Defendant’s December 2021 violation of probation warrant. First, the warrant alleged that the Defendant violated Rule One: “I will obey all laws of the United States and any states I may be as well as any ordinances.” Ms. Young said the Defendant violated this rule when the Pulaski Police Department arrested him for domestic assault related to the incident described earlier by Mr. Jones.

The warrant alleged that the Defendant violated Rule Five: “I will report immediately within 72 hours after release from my sentence to probation officer.” Ms. Young said that the Defendant was released from the Madison County Jail in Alabama on November 29, 2021, and that he failed to report to his probation officer.

The warrant alleged that the Defendant violated Rule Fourteen: “I will not engage in any assaultive, abusive, threatening or intimidating behavior, nor will I participate in any street gang activities defined by [Tennessee Code Annotated section] 40-35-121.” Ms. Young explained that the Defendant “engaged in assaultive, abusive, threatening, and intimidating behavior as evidence[d] by his arrest for domestic assault.”

Ms. Young explained that the amended warrant filed in April 2022 alleged additional violations of Rules One and Fourteen based on the Defendant's recent arrest by the Giles County Sheriff's Department on charges of sexual battery, aggravated sexual battery, and attempted aggravated rape.

At the conclusion of the proof, the trial court recounted the procedural history of the Defendant's cases and noted that the Defendant pleaded guilty to aggravated assault and two counts of domestic assault and was originally placed on supervised probation for an effective term of ten years on October 28, 2019. This sentence was to be served consecutively to the Defendant's sentence in case number 14999, in which the Defendant pleaded guilty to violation of a conditional bond and received a ninety-day sentence to be served in confinement.

On April 29, 2020, the Defendant pleaded guilty to violating his probation and was ordered to serve an additional ninety days in jail. On August 25, 2020, the Defendant pleaded guilty to a second violation of probation and served 250 days incarcerated. On June 2, 2021, the Defendant pleaded guilty to a third violation of probation and was sentenced to a partial one-year probation revocation, and his probationary period was extended by two years. The court found that the current warrant involved the Defendant's fourth violation of probation.

Turning to the allegations in the instant warrant and its amendment, the trial court found that the Defendant violated Rule Five by failing to report after his November 27, 2021 release from the Madison County, Alabama jail. The court found that the Defendant violated Rule One by being arrested for domestic assault. The court also found that the Defendant violated Rule Fourteen by engaging in assaultive behavior, as evidenced by Mr. Jones's testimony.

Regarding the amended warrant and the Defendant's arrest in Giles County for sexual battery, aggravated sexual battery, and attempted aggravated rape, the court found that the State failed to present any proof to support these allegations beyond the arrest itself. Thus, the trial court declined to revoke the Defendant's probation on these grounds.

The court considered the Defendant's history of supervision and noted that every time the Defendant's probation was revoked, the Defendant re-offended "a very short period" after being released. The court noted that the Defendant had not been released for "any extended period of time without assaultive or abusive behavior" and without failing to report. The court found that the Defendant had already served multiple periods of incarceration, but these did not prevent the Defendant from violating the terms of his

probation. The trial court ordered a full revocation and ordered the Defendant to serve the remainder of his sentence in confinement.

The Defendant filed a timely notice of appeal.

II. ANALYSIS

On appeal, the Defendant argues that the trial court erred by ordering him to serve the remainder of his sentence in confinement. Specifically, the Defendant contends that the trial court should have reinstated the Defendant to probation on the basis that his failure to report was a technical violation and because the proof did not establish that he engaged in assaultive behavior. The Defendant asks this court to reverse the decision of the trial court, reinstate his probation, and order his immediate release from the TDOC. The State responds that the trial court did not err, arguing that the trial court properly revoked the Defendant's probation because the Defendant failed to report to his probation officer for a fourth time and because he engaged in assaultive behavior when he tackled a girl and tried to drag her from a car.

Appellate courts review a trial court's revocation of probation decision for an 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 consequences 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 a trial court fails to state its findings and reasoning for the revocation on the record, appellate courts may conduct a de novo review if the record is sufficiently developed, or the appellate court may remand the case for the trial court to make such findings. *Dagnan*, 641 S.W.3d at 759 (citing *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014)).

Probation revocation is a two-step consideration requiring trial courts to make two distinct determinations as to (1) whether to revoke probation and (2) what consequences will apply upon revocation. *Id.* at 757. A trial court may revoke a defendant's probation upon finding by a preponderance of the evidence that a defendant has violated the conditions of probation. Tenn. Code Ann. §§ 40-35-310, -311(e) (2021) (subsequently amended). No additional hearing is required for trial courts to determine the proper consequences for a revocation. *Dagnan*, 641 S.W.3d at 757. The trial court's findings do not need to be "particularly lengthy or detailed but only sufficient for the appellate court to

conduct a meaningful review of the revocation decision.” *Id.* at 759 (citing *State v. Bise*, 380 S.W.3d 682, 705-06 (Tenn. 2021)).

“The trial judge may enter judgment upon the question of the charges as the trial judge may deem right and proper under the evidence adduced before the trial judge.” Tenn. Code Ann. § 40-35-311(d)(1). “Notwithstanding subdivision (d)(1), the trial judge shall not revoke probation, whether temporarily . . . or otherwise, based upon one (1) instance of technical violation or violations.” *Id.* § 40-35-311(d)(2). Accordingly, the probation statute provides for two categories of probation violations, technical and non-technical, with differing penalties for both. *State v. Walden*, No. M2022-00255-CCA-R3-CD, 2022 WL 17730431, at *3 (Tenn. Crim. App. Dec. 16, 2022) (citing Tenn. Code Ann. § 40-35-311(e)(2)).

The following are classified as non-technical violations: a defendant’s commission of a new felony or a new Class A misdemeanor, a zero tolerance violation as defined by the department of correction community supervision matrix, or absconding. Tenn. Code Ann. § 40-35-311(e)(2). Once a trial court determines that a defendant has committed a non-technical violation of probation, the trial court may: (1) order confinement 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 the remainder of the unexpired term to a sentence of probation. *See id.* §§ 40-35-308(c)(1), (2); -310; - 311(e)(1), (2).

A technical violation “means an act that violates the terms or conditions of probation but does not constitute” an enumerated non-technical violation. *Id.* § 40-35-311(d)(3). As stated, a trial court may not revoke a defendant’s probation, temporarily or otherwise, based upon one instance of a technical violation. *Id.* § 40-35-311(d)(2). A trial court may revoke a defendant’s probation based upon a second or subsequent technical violation and impose a temporary term of incarceration not to exceed: (1) fifteen days for a first revocation, (2) thirty days for a second revocation, (3) ninety days for a third revocation, or (4) the remainder of the sentence for a fourth or subsequent revocation. *Id.* § 40-35-311(e)(1)(A). Alternatively, upon a second or subsequent technical violation, a trial court may revoke a defendant’s probation and resentence a defendant to a term of probation that includes participation in community-based alternatives to incarceration. *Id.* § 40-35-311(e)(1)(B).

Here, the trial court acted within its discretion in revoking the Defendant’s probation and ordering him to serve the remainder of his sentence in confinement. The Defendant’s failure to report is a technical violation. As such, the Defendant argues that his probation should be reinstated. However, the record shows that this is the Defendant’s fourth

technical probation violation after being released from confinement, and the trial court was therefore statutorily authorized to order the Defendant to serve the remainder of his sentence in incarceration. *See id.* § 40-35-311(e)(1)(A)(iv) (stating that a trial court may revoke the remainder of a defendant’s sentence for a fourth or subsequent technical violation).

In addition to finding the Defendant had committed a fourth technical violation, the trial court found that the Defendant violated the terms of his probation by engaging in assaultive behavior. The trial court credited Mr. Jones’s testimony, which showed that the Defendant chased a girl and tackled her in the street. The girl escaped from the Defendant and jumped into Mr. Jones’s car. The Defendant pursued the girl, attempting to pull her from Mr. Jones’s car by her ankles.

After finding that the Defendant violated the terms of his probation, the trial court considered the Defendant’s previous probation violations and periods of incarceration. The court stated that the Defendant had not been released for “any extended period of time without assaultive or abusive behavior” and without failing to report. The trial court concluded that the Defendant’s previous time spent incarcerated did not prevent him from violating the terms of his probation again and then ordered the Defendant to serve the remainder of his sentence in incarceration. The trial court first found that the Defendant had violated the terms of his probation and then stated its reasons for fully revoking the Defendant’s probation. *See Dagnan*, 641 S.W.3d at 757. The trial court did not abuse its discretion.

III. CONCLUSION

Accordingly, the Defendant is not entitled to relief, and the judgment of the trial court is affirmed.

KYLE A. HIXSON, JUDGE