

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs July 26, 2023

FILED

08/07/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. DANNY LYNN COLLIER**

**Appeal from the Criminal Court for Sullivan County**  
**Nos. S63581, S61877, S62430 William K. Rogers, Judge**

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**No. E2022-00146-CCA-R3-CD**

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The Defendant, Danny Lynn Collier, appeals the Sullivan County Criminal Court’s ordering him to serve a four-year sentence in confinement after revoking his probation, arguing that the trial court should have elected to place him back on supervised probation. Based on our review, we affirm the judgment of the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which TOM GREENHOLTZ and KYLE A. HIXSON, JJ., joined.

J. Liddell Kirk (on appeal), Madison, Tennessee, and Gene Scott (at revocation hearing), Jonesborough, Tennessee, for the appellant, Danny Lynn Collier.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Assistant Attorney General; Barry P. Staubus, District Attorney General; and Joshua Rose, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

The record reflects that in November 2013, the Defendant pled guilty to one count of violating a motor vehicle habitual offender (“MVHO”) order in case number S61877 and one count of violating a MVHO order in case number S62430 and received two, two-year sentences as a Range I, standard offender.<sup>1</sup> According to the judgments of conviction, the Defendant was to serve the sentences consecutively to each other and to a previous sentence and was to serve the sentences on community corrections. In August 2014, the

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<sup>1</sup> The MVHO Act made it a Class E felony for a defendant to operate a vehicle after being declared a MVHO. Tenn. Code Ann. § 55-10-616(a), (b) (repealed 2019).

Defendant pled guilty to one count of violating a MVHO order in case number S63581 and received a four-year sentence as a Range II, multiple offender. The judgment of conviction shows the Defendant was to serve the sentence consecutively to his previous sentences, for a total effective sentence of eight years in case numbers S61877, S62430, and S63581 and was to serve the sentence on supervised probation.

The Defendant's sentences in all three cases were set to expire on August 10, 2025. On September 12, 2018, he was transferred from community corrections to state probation. On February 14, 2019, his probation was revoked and reinstated.

On January 10, 2020, the trial court issued a probation violation warrant in all three cases based on allegations that the Defendant violated the following rules of probation: Rule 1, by committing driving on a suspended or revoked license, failure to maintain his lane of travel, driving under the influence ("DUI"), violating the implied consent law, and leaving the scene of an accident in Kingsport on August 28, 2019; Rule 6, by failing to report to his probation officer on October 17, 2019; Rule 8, by consuming alcohol to excess on August 28, 2019; Rule 9, by failing to make payments on court costs and probation fees; Rule 10, by failing to observe a special condition of his probation, that he not possess or consume any alcohol, on August 28, 2019; and Rule 14, by behaving in a manner that posed a threat to others or himself in Kingsport on August 28, 2019.

On January 29, 2021, the trial court issued a second probation violation warrant in all three cases based on allegations that the Defendant violated the following rules of his probation: Rule 1, by committing contractor fraud in Washington County on January 6, 2021; Rule 5, by failing to inform his probation officer about his change of address and refusing to divulge his new address to the officer; and Rule 6, by refusing to turn himself in to his probation officer for his January 2020 probation violation warrant when instructed to do so by his probation officer.

The trial court held a probation revocation hearing on November 8, 2021. At the outset of the hearing, the Defendant said he pled "[g]uilty and no contest" to the violations.

Ana Marie Gilger testified for the Defendant that she was an assistant professor at East Tennessee State University and that she met him about a year before the revocation hearing. They became friends, communicated through social media, and went out to dinner. Ms. Gilger also had dinner at the Defendant's house, and he did "handyman work" for her by repairing her roof. Defense counsel asked if Ms. Gilger thought the Defendant was a man of good moral character, and she answered, "Absolutely." She described him as a responsible and very loving parent to his daughter and said he kept "an impeccably clean home."

On cross-examination, Ms. Gilger testified that the Defendant was “up front” with her about his legal problems, including “how many DUI’s he had.” She said that he “turned his life around,” “quit drinking,” and “became a preacher” and that he told her his “whole story.” The State asked if the Defendant told her that he had a 2015 conviction for misapplication of contractor funds in Washington County, and she answered, “I think [we] had discussed his business dealings prior to asking him to repair my roof.” She said, though, that she was unaware he owed \$3,000 in restitution in that case or that he was charged with theft of property valued more than \$1,000 in Hawkins County in 2018. The Defendant told Ms. Gilger that he had a pending contractor fraud case in Washington County, but she was unaware of warrant “holds” for him in Hawkins and Washington Counties and in Scott County, Virginia.

Louise Jennings testified that she had known the Defendant for two years at the time of the revocation hearing and that she met him through his handyman business. The Defendant performed home maintenance for her, such as gutter work, roof work, and painting, and she was satisfied with the work he performed. She said that she had come to know the Defendant personally and acknowledged that he was the sole caretaker for his daughter. Ms. Jennings stated, “I believe he tries to teach her and help her do what’s right.” She acknowledged that the Defendant “had some legal difficulties over the years” and said that she knew he had some pending cases. Defense counsel asked if the Defendant’s legal problems affected her opinion of him, and she responded,

Well, I think he does what’s right. The work that’s been done for me was good at the price that I was given to me as the estimate. He tries to help people, those that are in need besides his family and his daughter. Even those that I think he’s done some work for, I understand he’s tried to help them too.

Ms. Jennings acknowledged that she was requesting the trial court give the Defendant another chance at probation.

On cross-examination, the State asked Ms. Jennings if she knew the Defendant was convicted of misapplication of contractor funds in 2015, and she said, “I think it was mentioned, but I really don’t know it in depth.” She said that she did not know the Defendant was ordered to pay \$3,000 in restitution in that case and that she did not want to give an opinion as to whether the Defendant should be punished for not paying his restitution.

Larry Taylor, the Defendant’s stepfather, testified that he had been married to the Defendant’s mother for thirty-four years. He said that the Defendant no longer consumed alcohol and that he did not think the Defendant ever used illegal drugs. The Defendant had “a good heart” and worked every day. Mr. Taylor acknowledged that the Defendant did a

good job taking care of the Defendant's daughter and that Mr. Taylor was requesting the trial court return the Defendant to probation.

On cross-examination, Mr. Taylor testified that he did not know this was the Defendant's fifth probation violation or that the Defendant picked up new charges while on probation. Mr. Taylor knew the Defendant had warrant holds in Washington County and Scott County, Virginia. However, he did not know the Defendant had a hold in Hawkins County, adding, "I thought Hawkins was over with."

The Defendant testified that he was fifty-seven years old and had health problems. Specifically, the Defendant had stent surgery on his left leg in October 2019. Due to the Covid-19 pandemic, he was still waiting to have stent surgery on his right leg. The Defendant also suffered from chronic obstructive pulmonary disease, bipolar disorder, post-traumatic stress disorder, and manic depression and was awaiting a colonoscopy and endoscopy when he was arrested for violating his probation. The Defendant said he stopped reporting to his probation officer because "[I]f life just went to pieces." He explained that prior to the pandemic, he had twenty-one employees. During the pandemic, people stopped working, and he was left with only two employees. He also had to deal with his health issues.

The Defendant testified that he had a seventeen-year-old daughter and that he had been raising her alone since she was three years old. His daughter was living with a friend while the Defendant was in jail, and the Defendant did not know where she was going to live if he remained incarcerated. The Defendant said that he "kept a good home" for his daughter, that he had focused his entire life on her, and that he had raised "a good young lady, with good values and good morals." He said that despite his pleading guilty to three MVHO orders and agreeing to an eight-year sentence, a judge entered an order allowing him to obtain a driver's license.

Addressing the trial court directly, the Defendant said that he had additional grown children and that he was not much of a father to them. However, his grown children had careers, and the Defendant had two grandchildren. The Defendant said that he had never been addicted to drugs and that he had spent the past eighteen years "working [him]self to death" to give his daughter a better life. He stated that he never meant to harm anyone, that he did volunteer work, and that he had a coffee ministry for the homeless on Friday mornings. The Defendant said he left jail with \$88 in his pocket and built his business, which received the People's Choice award for the number one handyman business and number one paint business in 2020. He said that he had made mistakes but asked that the trial court give him another chance on probation.

On cross-examination, the Defendant testified that he did not remember violating his probation in December 2016 by passing worthless checks but that “I take your word on that.” Another violation of probation was filed in December 2018 for committing theft of property valued more than \$1,000 in Hawkins County. In February 2019, the trial court in that case held a revocation hearing, ordered that the Defendant serve two hundred fifty days in jail, and released him back to probation. The Defendant acknowledged that he violated his probation again in July 2019 by continuing to drive a motor vehicle despite being declared a MVHO but said, “I was providing for my child.”

The Defendant acknowledged that his probation violations in January 2020 and January 2021 were his fourth and fifth violations and that his case for DUI in Kingsport was still pending. The Defendant stated that he did not report to his probation officer because he was afraid of contracting Covid-19 and that “Covid would kill me with my lung condition.” During the pandemic, the Defendant was not doing any volunteer work and was dealing with health problems. He said he did not know why he had warrant holds in Washington County or Scott County, Virginia. The Defendant acknowledged that he had had “chance after chance” in his cases.

On redirect examination, the Defendant testified that he did not tell his probation officer where he was residing because a warrant had been issued for his arrest and he did not have anywhere for his daughter to live. He also did not want to contract Covid-19 in jail. On recross-examination, the Defendant acknowledged that he refused to provide his address to his probation officer. The Defendant said that although his probation officer told him that “it would be another violation,” the Defendant “cared for the safety and welfare of [his] child more.”

The Defendant’s daughter testified that she was seventeen years old and a senior in high school. She said that she usually lived with him full time but that she currently was living with her girlfriend while the Defendant was in jail. She described the Defendant as “[t]he best” father and said he watched over her and provided for her. Even when an arrest warrant was issued for the Defendant, he stayed home with her and took care of her.

At the conclusion of the testimony, defense counsel advised the trial court that the Defendant still owed \$947.95 in court costs in his 2015 Washington County case but that he had paid the \$3,000 in restitution. Defense counsel also advised the trial court that the Defendant still had to serve four years of house arrest in that case after he served his sentences in this case and that his contractor fraud case in Washington County was set for a preliminary hearing in a few weeks. Defense counsel recognized that the Defendant violated the MVHO law but noted that being a MVHO was no longer a crime in Tennessee and requested that the trial court “give him time served on this case and let him go on and deal with his problems.” The State responded that the Defendant was facing incarceration

due to his repeatedly violating probation, not for his violating the MVHO orders, and requested that the Defendant serve his sentences in confinement.

In pronouncing its decision, the trial court noted that the MVHO Act had been repealed, that the Defendant presented character witnesses at the hearing, and that the Defendant was taking care of his seventeen-year-old daughter. However, the trial court also noted that the Defendant “pled guilty” to the violations. The court revoked his probation and stated that “[t]he difficult part of this is to determine how to serve these violations.” The trial court found that this was the Defendant’s fifth violation since 2016. The trial court said that it was “concerned” the violations were for new charges and that the court was “very concerned” the Defendant had warrant holds in Hawkins County, Washington County, and Virginia. The trial court acknowledged that the Defendant had health problems but said that “that has not prevented him from going out and picking up new charges.” The trial court stated that the Defendant got “a break” for his previous probation violation by being ordered to serve two hundred fifty days in confinement and that “apparently he got out and got in to some new charges.” The trial court ordered that the Defendant serve his four-year sentence in case number S63581 in confinement, followed by his two-year sentences in case numbers S61877 and S62430 on supervised probation.<sup>2</sup> Subsequently, the trial court entered a written order, finding “violation of rules #1, 5, 6, 8” and ordering that the Defendant serve his four-year sentence in confinement.

### ANALYSIS

The Defendant acknowledges that he violated his probation but contends that the trial court abused its discretion by ordering him to serve his four-year sentence in case number S63581 in confinement because violating a MVHO order is no longer a crime in Tennessee and because he has a positive work history and influence on his community, has a good social reputation, and has an important role and influence on his teenage daughter’s life. He also asserts that his violations occurred under unusual circumstances, i.e., a global pandemic in which he was trying to protect himself from exposure to Covid-19 and maintain his business while remaining the sole caretaker to his daughter. The State argues that the trial court did not abuse its discretion by ordering that the Defendant serve his four-year sentence in confinement. We agree with the State.

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<sup>2</sup> The Defendant does not challenge on appeal the trial court’s realignment of his sentences upon revocation. Therefore, this opinion does not address the propriety of the trial court’s order in this regard. See *State v. Bristol*, 654 S.W.3d 917, 923-24 (Tenn. 2022) (noting that an appellate court’s authority generally will extend only to those issues presented for review and quoting *United States v. Sineneng-Smith*, --- U.S. ---, 140 S. Ct. 1575, 1579 (2020), for the proposition that the principle of party presentation rests on the premise that the parties “‘know what is best for them, and are responsible for advancing the facts and argument entitling them to relief’”).

A trial court has the discretionary authority to revoke probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his or her probation. *See* Tenn. Code Ann. §§ 40-35-310(a); -311(e)(1); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). The trial court also is vested with the discretionary authority to determine the consequences of a defendant’s violation of his or her probation, among which is the full revocation and execution of the sentence as originally entered. *See* Tenn. Code Ann. §§ 40-35-310(a); - 311(e). “An abuse of discretion occurs when the trial court applies an incorrect legal standard or reaches a conclusion that is illogical or unreasonable and causes an injustice to the party complaining.” *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007) (internal quotation and citation omitted).

There are two types of probation violations: non-technical and technical. *See* Tenn. Code Ann. § 40-35-311(g). A non-technical violation is “a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding.” Tenn. Code Ann. § 40-35-311(e)(2) (2021). Upon finding by a preponderance of the evidence that a defendant has committed a non-technical violation, the trial court may “cause the defendant to commence the execution of the judgment as originally entered, which may be reduced by an amount of time not to exceed the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation.” Tenn. Code Ann. § 40-35-311(e)(2). A technical violation is “an act that violates the terms or conditions of probation but does not constitute a new felony, new class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding.” Tenn. Code Ann. § 40-35-311(d)(3) (2021). A trial court may not revoke probation based on one instance of a technical violation or violations. Tenn. Code Ann. § 40-35-311(d)(2). However, upon a second or subsequent violation, the trial court may revoke probation and order a specified term of incarceration or resentence the defendant for the remainder of the unexpired term. Tenn. Code Ann. § 40-35-311(e)(1).

Four months after the Defendant’s revocation hearing, our supreme court clarified that “probation revocation is a two-step consideration on the part of the trial court.” *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). “The first [step] is to determine whether to revoke probation, and the second [step] is to determine the appropriate consequence upon revocation.” *Id.* Each step is a separate and distinct decision, although there is no requirement that two separate hearings be held. *Id.* at 757. This court must review and address both decisions on appeal. *Id.* at 757-58. As long as the trial court places sufficient findings and the reasons for its decisions as to the revocation and the consequences on the record, this court’s standard of review is abuse of discretion with a presumption of reasonableness. *Id.* at 759.

Here, the trial court first determined whether to revoke probation and then determined the appropriate consequence as required by *Dagnan*. The trial court also put on the record its reasons for revoking the Defendant's probation and ordering him to serve his four-year sentence in confinement. Therefore, this court presumes the judgment of the trial court is reasonable.

The Defendant does not contest the trial court's finding that he violated the terms of his probation. Given that the Defendant "pled guilty" to the violations listed in the probation violation warrants, which included committing DUI, failing to report to his probation officer, refusing to provide his new address to his probation officer, and refusing to turn himself in to his probation officer when ordered to do so, the trial court properly revoked his probation.

The Defendant claims, though, that the trial court abused its discretion in determining the consequence. In considering the appropriate consequence for the violation, our supreme court has stated that the trial court may consider factors such as "the number of revocations, the seriousness of the violation, the defendant's criminal history, and the defendant's character." *Id.* at 759 n.5.

Initially, we note that the repeal of the MVHO Act did not absolve the Defendant of his convictions or sentences. *See State v. DeBerry*, 651 S.W.3d 918 (Tenn. 2022). The record reflects that the trial court considered the Defendant's character witnesses, medical issues, and the fact that he was taking care of his daughter. However, as found by the trial court, the Defendant now has violated his probation five times. Moreover, by his own admission, his current violations resulted from his committing additional crimes, including DUI and absconding from probation. The trial court also considered that the Defendant served two hundred fifty days of confinement for his third probation violation, yet he continued to violate probation. The Defendant himself acknowledged that he has had "chance after chance" at probation. Therefore, we conclude that the trial court did not abuse its discretion by ordering that he serve his four-year sentence in case number S63581 in confinement.

### CONCLUSION

Based upon our review, we affirm the judgment of the trial court.

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JOHN W. CAMPBELL, SR., JUDGE