

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 26, 2023

FILED

09/29/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. EUGENE W. JONES**

**Appeal from the Criminal Court for Knox County  
No. 120988 Hector Sanchez, Judge**

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**No. E2023-00155-CCA-R3-CD**

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Defendant, Eugene W. Jones, appeals the trial court's order revoking his probationary sentence for unlawful possession of a firearm by a convicted felon with a previous conviction for a violent felony and simple possession of marijuana. Following our review of the entire record and the briefs of the parties, we find no abuse of discretion and 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 ROBERT H. MONTGOMERY, JR., and TIMOTHY L. EASTER, JJ., joined.

Richard C. Stooksbury III, Knoxville, Tennessee, for the appellant, Eugene W. Jones.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Willie Lane, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual and Procedural Background**

On March 23, 2022, Defendant pled guilty to one count of unlawful possession of a firearm by a convicted felon with a previous violent felony conviction and one count of simple possession of marijuana. Pursuant to the agreement, Defendant received concurrent sentences of eight years with an eighty-five percent release eligibility date, suspended to probation after the service of seven months in jail for the firearm conviction and eleven months and twenty-nine days for the marijuana conviction.

On June 30, 2022, a probation violation warrant was issued alleging that Defendant violated his probation for “fail[ure] to report to probation after being released from Split Confinement” and “[two] home visits were unsuccessful. The defendant has made his whereabouts unknown and has absconded from probation.” An amended probation violation warrant was issued on December 6, 2022, alleging that Defendant had violated his probation by committing the offenses of evading arrest with risk of death or injury, speeding, theft of property over \$10,000, driving on a revoked license, and possession of unlawful drug paraphernalia.

A probation revocation hearing was held on January 5, 2023. At the hearing, the parties and the trial court addressed only the probation violation stemming from Defendant’s new charges. Jeffrey Dewayne Bean, the service manager at Ole Ben Franklin Motors, testified that on November 11, 2022, he noticed a ramp in the lot that was not present the day before. Mr. Bean reviewed the security camera footage from the night prior and witnessed a man, who he identified in court as Defendant, walking through the lot until he chose a “gold-ish or something, Grand Caravan” from the lot. The video showed Defendant loading his property into the van and then driving the car out of the lot over the curb, causing damage to the front of the car. Mr. Bean estimated the value of the vehicle to be about \$17,000.00. The vehicle was returned by police a few weeks later with “knives, a lady’s purse with her driver’s license, a check from IHOP, a registration to another vehicle, clothes, [and] a cell phone.” The check from IHOP was made out to Stephanie Fama, whose driver’s license was in the purse found in the van. Mr. Bean stated that he was never shown a lineup, but that “when you put [the security camera footage] on the computer, where everything’s clear, it’s clear as a bell. That is [Defendant].”

Officer Hunter Messer with the Knoxville County Sheriff’s Office (“KCSO”) testified that he was assisting another officer with a traffic stop when he “observed a van that was possibly stolen and ... [they] identified the driver as [Defendant] who officers knew had multiple warrants.” Officer Messer pursued the van for about ten to twelve minutes during which “[t]he driver, [Defendant] had went into oncoming traffic multiple times, reached speeds over a hundred miles an hour[,] and disregarded multiple traffic and stop signs.” Officer Messer ended the pursuit when the van entered the highway using the wrong on-ramp. Officer Messer confirmed that it was dark during the pursuit, but clarified that he was “positive [the driver] was [Defendant]” because there were “several [...] blue lights or headlights all shining in the [Defendant’s] direction.” The van was later found abandoned. Officer Messer agreed that Defendant was arrested with Stephanie Fama, whose driver’s license was found in the van, one week after the van was recovered.

After hearing arguments, the trial court stated that “this is kind of a two-prong hearing. The first matter is whether or not [D]efendant’s in violation of the terms and

conditions of his probation. And the second matter is what to do with [D]efendant if he is in fact found in violation.” As for the first prong, Defendant argued that there were identity issues and denied that he stole the vehicle. He also argued that the charges were not convictions. The court found “by a preponderance of the evidence that [Defendant] is in fact in violation[] of the terms and condition[s] of his probation.” In support of its finding, the court noted that Mr. Bean identified Defendant in court as the man on the surveillance footage, Ms. Fama’s driver’s license was found in the van when it was returned to Ole Ben Franklin Motors, Officer Messer testified about the pursuit that occurred during the attempted recovery of the van, and finally, that Defendant was arrested with Ms. Fama on November 30, 2022, just a week after the pursuit and recovery of the van.

After finding that Defendant was in violation of his probation, the court heard arguments from both parties as to the consequences for the violation. The State argued that Defendant should be incarcerated for the remainder of his sentence because the violation warrant was filed within one year of Defendant’s being placed on probation and the evading arrest charge indicated that “[Defendant] is a danger. To put him back out on the streets, [Defendant] would remain a danger.” Counsel for Defendant argued that:

[I]f Mr. Jones were to go to trial and be convicted, [the State] may have some valid points. But at this point, he’s just facing charges. They’re pending. We still haven’t had a preliminary hearing as Your Honor knows.

\* \* \*

I do believe this is a defensible case. . . . I would ask Your Honor to hold any ruling about the manner of service until a later time when we can have the preliminary hearing and we can see the discovery together, [Defendant] and myself.

Because if he were - - if he is innocent of these charges, I would hate to see him be sent to prison for the remaining time that he owes on the eight-year sentence.

The court found that “the only recourse” was to order Defendant to serve his sentence in confinement. The court noted:

[T]he criminal court can proceed on a revocation hearing based on conduct and is not bound by any sort of determining whether or not the defendant has been afforded a preliminary hearing on the matter at this point.

What the [c]ourt takes into consideration is the fact that two people independently positively identified this individual as the one who was operating the Dodge van that was stolen from the lot.

Defendant now appeals the trial court's ruling.

### **Analysis**

Defendant asserts that the trial court erred by revoking Defendant's probation and by sentencing Defendant to serve the balance of his sentence incarcerated. Specifically, Defendant claims the trial court abused its discretion by proceeding with Defendant's probation revocation hearing prior to his preliminary hearing on his new charges because "it foreclosed on the presumption of [Defendant's] innocence and the due process . . . of having a preliminary hearing in lower court [to] determine whether the state could make the burden of probable cause." Defendant further argues that the trial court abused its discretion by ordering him to serve the remainder of his eight-year sentence in confinement because "[t]he court could have sentenced Mr. Jones to split confinement, a sanction, or held [Defendant] in custody until he was afforded a preliminary hearing on these matters so that his pending cases could either be dismissed, resolved, or moved beyond the point of mere allegations." The State responds that the trial court properly exercised its discretion in revoking Defendant's probation and ordering him to serve the remainder of his eight-year sentence in confinement. We agree with the State.

It is within a trial judge's discretionary authority to revoke a defendant's probation upon a finding by the preponderance of the evidence that a defendant has violated the conditions of his or her probation. See T.C.A. § 40-35-311(d)(1); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); see also *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). A violation of probation need not be established beyond a reasonable doubt; instead, the proof must be "sufficient to allow[] the trial judge to make a conscientious and intelligent judgment." *Harkins*, 811 S.W.2d at 82. If the trial court finds that a defendant has violated his or her probation by "commit[ing] a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, absconding, or contacting defendant's victim in violation of a condition of probation," the trial court has discretion to "revoke the probation and suspension of sentence . . . and cause the defendant to commence the execution of the judgment as originally entered ..." or impose other discretionary consequences as provided by statute. T.C.A. §§ 40-35-311(e) (2); -308(c)(1), (2); -310 (2022).

We review the trial court's decision to revoke probation for 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.” *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022). “In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred.” *State v. Farrar*, 355 S.W.3d 582 (Tenn. Crim. App. 2011) (quoting *Harkins*, 811 S.W.2d at 82); see *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980); see also *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010) (“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.” (citing *State v. Jordan*, 325 S.W.3d 1, 38-40 (Tenn. 2010))).

A trial court must engage in a “two-step consideration” when determining whether to revoke a defendant’s probation. As explained by the Tennessee Supreme Court “[t]he first [step] is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation.” *Dagnan*, 641 S.W.3d at 757. If a trial court finds by a preponderance of the evidence that a defendant violated his or her probation, then it is within the trial court’s discretionary authority to revoke the defendant’s probation. T.C.A. § 40-35-311(e)(1), (2); *Dagnan*, 641 S.W.3d at 756; *State v. Beard*, 189 S.W.3d 730, 734-35 (Tenn. Crim. App. 2005).

In accordance with the first *Dagnan* consideration, based on the testimony of Mr. Bean and the surveillance footage showing Defendant stealing the Dodge van, as well as Officer Messer’s testimony regarding the pursuit of the van and positive identification of Defendant, the trial court explicitly found by a preponderance of the evidence that Defendant violated his probation by committing new crimes while on probation.

Defendant’s assertion that the trial court erred by relying on Defendant’s mere arrest and therefore “foreclosed on the presumption of [his] innocence and [violated his] due process [rights]” by proceeding with his revocation hearing prior to his preliminary hearing for his new charges is misplaced. “[A] trial court may not rely upon mere arrest or accusation to revoke probation, [but] it may properly revoke a defendant’s probation upon a finding by the preponderance of the evidence that the defendant has committed a breach of the laws of this state.” *State v. Vaughn*, No. M2004-00552-CCA-R3-CD, 2005 WL 366889, at \*2 (Tenn. Crim. App. Feb. 16, 2005) (citing *Harkins*, 811 S.W.2d at 83 n.3). Further, “[c]riminal conduct that is the basis of pending charges may serve as the basis for a revocation of a [probationary] sentence.” *State v. Adams*, No. E2010-00083-CCA-R3-CD, 2010 WL 4324302, at \*3 (Tenn. Crim. App. Nov. 1, 2010); see *State v. Tharpe*, No. E2022-01304-CCA-R3-CD, 2023 WL 5094831, at \*2 (Tenn. Crim. App. Aug. 9, 2023) (affirming trial court’s revocation of the defendant’s probation when the revocation hearing was held prior to the preliminary hearing over objection of defense counsel.).

Moving to the second prong of *Dagnan*, the trial court made sufficient findings to support its decision to order Defendant to serve the balance of his sentence in confinement. When considering the consequence of a revocation of probation, a trial court may consider “the number of revocations, the seriousness of the violation, the defendant’s criminal history, and the defendant's character.” *Dagnan*, 641 S.W.3d at 759 n. 5. “[A]n accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing.” *State v. Shelton*, No. E2022-00875-CCA-R3-CD, 2023 WL 2261081, at \*3 (Tenn. Crim. App. Feb. 28, 2023), *perm. app. denied* (Tenn. June 29, 2023) (citing *State v. Warfield*, No. 01C01-9711-CC-00504, 1999 WL 61065, at \*2 (Tenn. Crim. App. Feb. 10, 1999); see *State v. Brumfield*, No. M2015-01940-CCA-R3-CD, 2016 WL 4251178, at \*3 (Tenn. Crim. App. Aug. 10, 2016); see also *State v. Johnson*, No. M2001-01362-CCA-R3-CD, 2002 WL 242351, at \*2 (Tenn. Crim. App. Feb. 11, 2002). The trial court considered and credited the testimony of two witnesses who identified Defendant committing the crimes alleged and noted that “[w]hat [Defendant] has done he could have easily been before the [c]ourt on a homicide charge. His willful and reckless disregard for the law after pleading guilty on March of 2022 certainly concerns this court.”

Based on the record, we conclude that the trial court did not abuse its discretion in finding Defendant in violation of his probationary sentence and ordering Defendant to serve the balance of his sentence in confinement. Defendant is not entitled to relief.

### CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

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JILL BARTEE AYERS, JUDGE