

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on briefs July 18, 2023

FILED

08/28/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DESHAUN WARD

**Appeal from the Circuit Court for Rutherford County
No. 80234 James A. Turner, Judge**

No. M2022-01264-CCA-R3-CD

The Defendant, Deshaun Ward, appeals from the Rutherford County Circuit Court's revocation of the probation that he had received for his negotiated plea to reckless vehicular homicide and two counts of vehicular assault. On appeal the Defendant contends that he did not receive the effective assistance of counsel at his probation revocation hearing. We affirm the judgment of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

Adam Rodrigues, Murfreesboro, Tennessee, for Appellee, Deshaun Ward.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Jennings H. Jones, District Attorney General, and Dana Minor, Assistant District Attorney General, for the appellant, State of Tennessee.

OPINION

In 2017, the Defendant was involved in a car crash that resulted in the death of his friend and injuries to two other individuals. As a result, the Defendant was charged with reckless vehicular homicide and two counts of vehicular assault and entered into a negotiated plea on October 21, 2019. He received a six-year sentence for the vehicular

homicide charge and a four-year sentence for each vehicular assault charge. The sentences ran concurrently for an effective sentence of six years. The trial court ordered the Defendant to serve six months at the Rutherford County Adult Detention Center (RCADC) with the remainder of the sentence to be served on probation.

After his guilty pleas and before reporting to the RCADC, the Defendant tested positive for marijuana on October 31, 2019. While on probation, the Defendant was arrested on August 5, 2021, for domestic assault, interfering with a 9-1-1 call, and child abuse or neglect, and he was released on bond. The Defendant's probation officer prepared a probation violation report, the court issued a violation warrant, and the Defendant was arrested and released on his own recognizance. The report, based on the domestic assault charge, indicated that the Defendant had engaged in "assaultive, abusive, threatening, or intimidating behavior and behaved in a manner posing a threat to others or self."

While the domestic assault charge and the probation violation were pending, the Defendant was arrested on April 21, 2022, for driving under the influence (DUI) and driving on a revoked license, and he was released on bond. The Defendant's probation officer prepared a probation violation report. The court issued a second warrant, and the Defendant was arrested and held without bail pending his revocation hearing. The report, based on the DUI charge, indicated that the Defendant engaged in "assaultive, abusive,

threatening, or intimidating behavior and behaved in a manner posing a threat to others or self.”

At the revocation hearing, a Rutherford County Sheriff’s Office Incident Report prepared by Officer Seth Batsel and a Tennessee Bureau of Investigation (TBI) Official Alcohol Report concerning the DUI charge were received by stipulation as exhibits. According to Officer Batsel’s report, the Defendant was stopped for speeding in excess of 55 miles per hour in a 40 miles per hour zone. The Defendant showed multiple signs of intoxication, including unsteadiness on his feet, an odor of alcohol, slurred speech, and uncooperative behavior. The report also indicated that the Defendant was unable to perform any field sobriety tests. The TBI report indicated that the Defendant had a blood alcohol concentration of .244 percent at the time of his arrest. The Defendant stipulated to the violation based upon the DUI.

Denise Ward Scott, the Defendant’s mother, testified that the Defendant lived with her, that he had made mistakes, and that he had struggled with stress after the 2017 car crash. She stated that the Defendant had tried to change his life through steady, full-time employment at a landscape company and through church membership. She believed that his use of alcohol and marijuana resulted from issues related to the car crash and from the tumultuous relationship he had with the mother of his child.

Walter Ward, the Defendant's father, testified that he was close to his son despite living in North Carolina and seeing him infrequently. Mr. Ward said that the Defendant was very remorseful about the car crash and that the Defendant had become career oriented since the crash. Mr. Ward stated that he would support the Defendant financially and help pay for rehabilitative programs. Mr. Ward stressed that the Defendant was a hard worker and needed another chance.

Shanrekia Ward, the Defendant's sister, testified that the Defendant was very remorseful about the mistakes he had made and that he tried to "learn from" the crash and "better" himself. Ms. Ward said that the Defendant was bothered by the car crash and had difficulty sleeping. She stated that the Defendant loved landscaping work. Ms. Ward stated that she and the family would financially support the Defendant, if necessary.

Monica Mullaney, the Defendant's girlfriend of more than six years, testified that the Defendant was initially struggling with depression and suicidal thoughts after the crash and that the Defendant did his best to move forward. Ms. Mullaney said that the Defendant had "really tried to turn his life around" and avoid making mistakes. According to Ms. Mullaney, the Defendant was caring and "has a lot of potential to have success in his future." On cross-examination, Ms. Mullaney stated that she was not

aware that the Defendant tested positive for marijuana after the car crash. Ms. Mullaney also said that the Defendant did not call her and ask for a ride on the night he was arrested for DUI.

The Defendant's sister-in-law, Effie Gregory, testified that she had known the Defendant for ten years and saw him frequently. She stated that the Defendant had tried to be a "better person" after the car crash and that she would help him in any way she could. Tanya Ward, the Defendant's sister, testified that she saw the Defendant daily, that he "has a good head on his shoulders," that she would help support him, and that the Defendant had changed "a lot" since the car crash.

The Defendant testified that he was remorseful about the 2017 car crash and that he had sought help. He said that he received treatment at TrustPoint for suicidal thoughts and was able to "get his life back on track" through steady work and faith in God. The Defendant stated that he lost his landscaping job because he was incarcerated but that his employer said he could return to work when he was able. The Defendant said that he voluntarily sought mental health and substance abuse treatment at JourneyPure after his DUI arrest. The Defendant said that he only attended six out of the recommended seven sessions because he knew he was about to be arrested for a violation of probation and that he would return to the treatment sessions if he were released to probation.

The Defendant testified that he had a “really strong support system” through family and work relationships. He said that one of his coworkers had passed away the day he was arrested for DUI, and he apologized to the court because he knew that drinking and driving was “not right.”

On cross-examination, the Defendant said he felt like the 2017 car crash was his fault. The Defendant admitted to being at “Gentleman Jim’s” before his recent arrest for DUI and said he was aware of the TBI report indicating that he had a blood alcohol concentration of .244 percent at the time of his arrest. The Defendant denied being an alcoholic and stated that he attended a substance abuse treatment program in order to help him cope with his problems and the trauma from the car 2017 crash.

The trial court found, by a preponderance of the evidence, that the Defendant violated the conditions of his probation, based upon Officer Batsel’s report and the TBI alcohol report. The court considered that the Defendant performed poorly on the field sobriety tests, that the Defendant had a blood alcohol concentration more than three times the legal limit, and that the Defendant placed his passenger at risk by driving under the influence. The court noted that the Defendant was on bond for the domestic assault charge at the time of his arrest for DUI and as a statutory condition of his bond the Defendant was not to consume alcohol. The court considered that the Defendant’s

vehicular homicide and vehicular assault charges also resulted from the Defendant's driving while impaired.

The trial court noted that despite having a "very supportive" family, the Defendant continued to make poor decisions in stressful situations and that the Defendant needed both mental health and substance abuse treatment. Balancing the Defendant's need for treatment with the need to protect the public, the court had "great concern" that the Defendant's past experiences of driving under the influence would be a "predictor of future performance." The court revoked the Defendant's probation and ordered the Defendant to serve the sentence as originally imposed. This appeal followed.

The Defendant contends he did not receive the effective assistance of counsel at his revocation hearing because his counsel failed to argue that the Defendant's vehicular homicide and vehicular assault convictions were not the result of driving under the influence. The State responds that the Defendant does not present a valid basis for relief because there is no constitutional right to the effective assistance of counsel at a revocation hearing when no constitutional right was violated. We agree with the State.

Regarding the right to counsel at a revocation hearing, this court has said:

Although the right to counsel is guaranteed in criminal cases, the right to counsel at a revocation hearing is not constitutionally guaranteed. *Gagnon v. Scarpelli*, 411 U.S. 778, 789-90, 93 S. Ct. 1756, 1763, 36 L.Ed.2d 656 (1973); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975); *Young v. State*, 539 S.W.2d 850, 854 (Tenn. Crim. App. 1976). However, a defendant is entitled to the “minimum requirements of due process” at a revocation hearing which frequently cannot be guaranteed without the appointment of counsel. *Gagnon*, 411 U.S. at 790, 93 S. Ct. at 1764. These rights include: (1) written notice of the claimed violations of probation; (2) disclosure to the defendant of the evidence against him; (3) the opportunity to be heard in person and present witnesses and documentary evidence; (4) a conditional right to confront and cross-examine adverse witnesses; (5) a neutral and detached hearing body; and (6) a written statement by the fact-finders as to the evidence relied upon and reasons for revoking probation. *Id.* The effectiveness of counsel at a revocation hearing does not raise a constitutional issues [sic] unless counsel’s performance was so defective that one of the defendant’s due process rights was violated. *State v. Richard Lee Kiser*, No. 01C01-0503-CC-00071, 1995 WL 715510, at *3 (Tenn. Crim. App. Dec. 6, 1995), *no perm. app. filed*; *see also State v. David W. Sonnemaker*, No. E2003-01402-CCA-R3-CD, 2004 WL 483239, at *3 (Tenn. Crim. App. Mar. 12, 2004), *perm. app. denied* (Tenn. Oct. 11,

2004); *State v. Larry Ammons*, No. W2001-00834-CCA-R3-CD, 2002 WL 1482675 (Tenn. Crim. App. Mar. 18, 2002), *perm. app. denied* (Tenn., Sept. 23, 2002).

The purpose of a revocation hearing is to determine whether there is probable cause to believe that the defendant has violated a condition of his or her probation. *See Morrissey v. Brewer*, 408 U.S. 471, 468 [(1972)]. If the defendant admits that he violated his probation, and the violation is a reasonable ground for revoking probation, then “that would end the matter . . . [and] dispose of the due process claims.” *Id.* at 490[.]

State v. Jerry N. Eldridge, No. M2004-01080-CCA-R3-CD, 2006 WL 359665, at *3-4 (Tenn. Ct. App. Feb. 16, 2006); *see State v. Nicholas Goff*, No. W2005-02233-CCA-R3-CD, 2006 WL 2689689 (Tenn. Crim. App. Sept. 20, 2006).

“On appeal from a trial court’s decision revoking a defendant’s probation, the standard of review is 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). Tennessee Code Ann. § 40-35-311(e)(2) (Supp. 2021) provides that

[i]f the trial judge revokes a defendant's probation and suspension of sentence after finding, by a preponderance of the evidence, that the defendant has committed a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, absconding, or . . . then the trial judge may . . . cause the defendant to commence the execution of the judgment as originally entered.

When a trial court determines that a defendant's probation must be revoked, the court must then decide upon an appropriate consequence. *Dagnan*. 641 S.W.2d at 757. A separate hearing is not required, but the court must address the issue on the record in order for its decision to be afforded the abuse of discretion with a presumption of reasonableness standard on appeal. *Id.* at 757-58.

After revoking a defendant's probation, the trial court may return a defendant to probation with modified conditions as necessary, extend the period of probation by no more than one year upon making additional findings, order a period of confinement, or order the defendant's sentence into execution as originally entered. T.C.A. §§ 40-35-308(a), (c) (Supp. 2022), -310 (Supp. 2022). "In probation revocation hearings, the credibility of witnesses is for the determination of the trial judge." *Carver v. State*, 570

S.W.2d 872, 875 (Tenn. Crim. App. 1978) (citing *Bledsoe v. State*, 215 Tenn. 553, 387 S.W.2d 811, 814 (Tenn. 1965)).

Because the Defendant stipulated to his revocation violation based upon his DUI, that disposes of the due process claims. *See Jerry N. Eldridge*, 2006 WL 359665, at *4 (citation omitted). As the Defendant correctly notes, “[a]t this particular [revocation] hearing, the [probation] violation itself was stipulated to at the outset.” Further, the Defendant does not contend that his due process rights were violated at the revocation hearing, only that his counsel was ineffective for not presenting evidence that the 2017 car crash, which was the basis for his convictions and sentence, was not the result of intoxication. Accordingly, the Defendant’s claim of the ineffective assistance of counsel fails.

The Defendant also requests that this court consider evidence outside the record related to his 2017 field sobriety test and “chemical bloodwork” that he alleges would show he was not impaired by marijuana at the time of the car crash. Alternatively, he requests that this court remand the case for a new revocation hearing in order for this information to be presented as evidence. The 2017 field sobriety test and toxicology reports were not presented as evidence at the revocation hearing. As a result, this court may not consider such information. *See Tenn. R. App. P. 13(c)*. The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE