IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 10, 2024

STATE OF TENNESSEE v. RYAN LEATH

Appeal from the Circuit Court for Rutherford County
No. 74889 Don Ash, Judge

No. M2023-01614-CCA-R3-CD

In 2015, the Defendant, Ryan Leath, pleaded guilty to theft of property valued over $10,000, and the trial court sentenced him to six years, suspended, and ordered him to supervised probation. In May 2023, the trial court revoked the Defendant's probation for being arrested for driving under the influence, driving on a revoked license, and harassment. The trial court returned the Defendant to probation, extending it by six years, and ordered him to sign up and attend a mental health treatment program. In October 2023, the Defendant's probation officer filed an affidavit alleging that the Defendant had not attended the program. The trial court revoked the Defendant's probation after a hearing, and on appeal, the Defendant contends that the trial court erred when it revoked his probation and ordered him to serve his sentence in confinement. After review, we affirm the trial court's judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and JOHN W. CAMPBELL, SR., JJ., joined.

Darren L. Drake, Murfreesboro, Tennessee, for the appellant, Ryan Leath.

Jonathan Skrmetti, Attorney General and Reporter; Johnny Cerisano, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Allyson Sims Abbott, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION
I. Facts

In 2015, the Defendant pleaded guilty to theft of property valued over $10,000. The complaint, which is included in the record, indicates that the Defendant presented a check

at Pinnacle Bank in the amount of $10,358.85 that was made out to Tonya Cervantez. An investigation proved that Ms. Cervantez had hired the Defendant to do a roofing job but that he failed to do any of the work. The complaint further alleged that, on November 28, 2014, the Defendant cashed a check at Pinnacle Bank in the amount to $6,243.58. It was therefore alleged that he committed one count of theft of property valued over $10,000 and one count of theft of property valued between $1,000 and $10,000.

The judgment of conviction indicates that the Defendant pleaded guilty on November 24, 2015, to one count of theft of property valued at more than $10,000. The trial court sentenced him to six years, suspended to probation.

In the "history of supervision" section of the probation violation affidavit that is the subject of this appeal, on August 12, 2016, the Defendant's probation officer listed his history of supervision to include that the Defendant failed to provide employment verification, failed to get permission to move and go out of state, failed to report and failed to complete community service work.

On December 3, 2016, the Defendant was charged with Driving Under the Influence ("DUI"), Driving on a Revoked License, and Violation of an order of Protection. On December 28, 2016, a probation violation warrant was submitted for new charges.

Several years later, on November 30, 2022, a probation violation warrant was issued because the Defendant was arrested again for DUI and for having two orders of protection granted against him. In February 2023, a probation violation warrant was issued for the Defendant violating an order of protection. In April 2023, a probation violation warrant was submitted for the Defendant being charged with harassment.

On May 31, 2023, the trial court entered an order that indicated that it had held a hearing and determined that the Defendant had violated his probation. It ordered the Defendant to serve eleven months in jail followed by six years of supervised probation. In the "Additional Rules" section of the order, it read:

> Upon release he is to sign up and attend a 90 day in house mental health/anger and drugs and alcohol treatment and if he does not, he is to finish his sentence. Can't be released until he goes straight into a program.

On October 6, 2023, the Defendant was released from jail and did not report immediately to an in-patient treatment facility, as evidenced by him being present for a home visit at the last reported address. The affidavit stated that the Defendant was instructed to get into a treatment program immediately. On October 9, 2023, a probation

violation warrant was submitted because the Defendant failed to be in a treatment facility as ordered. The trial court issued the warrant on October 10, 2023.

At a hearing on the matter, Amanda Roberts, Court Specialist with the Department of Probation and Parole, testified that she was present when the trial court ordered that the Defendant immediately report to treatment after his release from jail. The assistant district attorney contacted her to inform her that the Defendant had not done so, and she contacted the deputy district director, Sandra McGril, and advised her of the situation.

During cross-examination, Ms. Roberts testified that she had been told that "Lee House" was on the list of approved facilities.

Sandra McGril, a Deputy District Director for the Department of Corrections, testified and confirmed her phone call with Ms. Roberts. She said that the Lee House in Nashville was a sober living halfway house. It was a place for offenders or anyone that needed extra support to stay. The residents were permitted to leave during the day, and the Defendant was permitted to leave at 6:30 a.m. and report back at 10:00 p.m. Ms. McGril said that the program was not a 90-day inpatient program. The program also did not offer any mental health treatment or anger management but was simply a sober living house.

After researching the Lee House, Ms. McGril called Ms. Roberts and told her that the Lee House did not meet the court's requirements. She then contacted another officer and asked her to verify the Defendant's location, and the officer found the Defendant at home. Ms. McGril facilitated getting the warrant processed, and the Defendant was arrested. When the Defendant was arrested, he informed the officer that he "knew people" and that his arrest was "illegal." The Murfreesboro Police Department took custody of the Defendant.

During cross-examination, Ms. McGril testified that the trial court's order required that the Defendant participate in a treatment program after his release, and Lee House was not a treatment program.

Abigail Painter, a probation officer with Probation and Parole in Murfreesboro, testified that Ms. McGril contacted her and told her to ask for assistance from another officer and then check on the Defendant's whereabouts. Ms. Painter did as asked and, at around 2:50 p.m., she found the Defendant at his home with his father. The two appeared to be working in the garage.

Ms. Painter asked the Defendant about the requirement that he receive inpatient treatment after his release, and the Defendant showed her a letter from Lee House saying that he was eligible for the program. The Defendant informed her that he knew all the local

judges and that he was trustworthy and complying with the order. Ms. Painter noted that the Defendant was driving a truck that had ladders attached to the top.

Ms. Painter left, communicated the events with her supervisor, and was instructed to file a probation violation warrant for the trial court's review. The basis of the warrant was that the Defendant did not report to the correct treatment facility.

The Defendant reported to the probation office and was informed he was being arrested by the Murfreesboro Police Department. He told the officers that the arrest was illegal, that the officers did not know who he was, and that he knew a lot of people in power.

The Defendant called Cora Derr, with the Community Corrections probation, who testified that she was unaware of any 90-day inpatient mental health programs and that, normally, they are thirty-day programs. Usually, the residents at the thirty-day program must pay for their care, unless they are declared indigent.

Renee Curtis, the Defendant's mother, testified that she helped him find an appropriate facility to go to after his release. She said that the Defendant did not have insurance and had not been declared indigent. Ms. Curtis said that she called multiple places, some listed in the jail as approved locations, and none met the requirements of the order. The Defendant did a consult with Dr. Lisa Webb, who did a mental health and anger evaluation. Ms. Curtis called Dr. Webb for assistance, and Dr. Webb said that the Defendant would need a diagnosis. Further, she said that she did not have any information that would help.

Based on this, Ms. Curtis arranged for the Defendant to reside at the Lee House, and she paid for him to have mental health counseling, which was to start October 13. She believed the program was a 90-day program. She also paid for him to have anger management, family therapy, and mental health therapy through Bettership, which was a phone application. The Lee House required also that the Defendant return each evening by curfew, attend daily meetings, submit to drug screening, and maintain employment.

Ms. Curtis said she called numerous programs and never got a return call. She found one program, Woodbury, that was a private program but cost $27,000. This program would be forty-two days plus another forty-two days, but it still would not have been a ninety-day program. She said that he had diligently tried without success to find a suitable program.

The Defendant testified that he was set to be released from custody on October 6, and that he had submitted his acceptance letter from the Lee House. The week before his release, he asked sentencing management in booking if they needed any information from

him before his release. They said that no additional information was needed. The day of his release, he was not on the release list. When he inquired further, an officer brought him the judge's order and advised him to have his father take the acceptance letter to the court, who would then fax that to sentencing management for his release.

The Defendant said his father went to the circuit court, who advised him that he needed to take the acceptance letter back to the jail. The Defendant's father complied and, after jail officers making several phone calls, they received approval for the Defendant to be released.

The Defendant said that the Lee House had strict rules and that the director informed him that he had to be there by his scheduled check-in time, or he was technically absconding. The Lee House required that you get toiletries and blankets before arrival. The Defendant said that, after he was released, he went home to retrieve the necessary items before he was to be admitted to the Lee House. While he was there, Officer Pinter and Officer Smith arrived and told him that he was supposed to be at his program. The Defendant said he informed them both that he was packing to go to the program. The officers recorded his documentation from the program and left. The Defendant left shortly thereafter and checked into the Lee House by his 4:00 p.m. scheduled arrival time.

The Defendant said he met the program director, house manager, and his roommates on Friday. The program director contacted his probation officer on Saturday to inform her that he had checked into the program. At 4:10 p.m. his probation officer texted him and acknowledged that he was at the program and told him to follow the guidelines of the program. The Defendant attended his first meeting on Saturday night and then had a house meeting on Sunday at 10:00 a.m. He then described the process of how the Lee House ensured you attended the required meetings and complied with curfew.

He said that the following Tuesday, his probation officer texted him and asked him to come report. He was at the Lee House when he got the text. The Defendant left to report and was arrested.

During cross-examination, the Defendant said that he did not recall the judge telling him that he had to do an inpatient program but that he had to participate in a 90-day program. The Defendant agreed that he did not ask for a hearing before the judge to see if the Lee House complied with the judge's order.

Upon questioning by the trial court, the Defendant said that the Lee House allowed residents to leave between the hours of 6:00 a.m. and 10:00 p.m. He agreed he had his truck with him and could return to Murfreesboro if he so desired. The Defendant denied

telling the officers that "he knew people" who would take care of his arrest. He said he told them that the arrest was wrong because he was at his ninety-day program as required.

The State argued that the trial court had made very clear at the probation violation hearing that the Defendant was to participate in an inpatient treatment program. The Defendant did not do that, and he also said that the probation officers were both lying about statements he made during his arrest. It asked the court to put the Defendant's sentence into effect. The Defendant's attorney argued that ordering jail time would not provide the Defendant with the help he needed. Further, there were no ninety-day inpatient facilities, other than private ones costing tens of thousands of dollars. He contended that the Defendant had not absconded.

The trial court found:

> So in order to revoke probation, a trial judge must fi[nd a] violation of probation by a preponderance of the evidence. The Court finds that he has in fact violated his probation by a preponderance of the evidence. And my order is clear. . . . [The order states:] "upon release, he is to sign up and attend a 90-day inhouse mental health, anger and alcohol treatment, drug pro[gram]. And if he does not, he is to finish his sentence, cannot be released until he . . go[es] straight into the program."
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> And then, I appreciate the difficulty in finding a program. But the whole reason for that was, I didn't want him around harassing these people again, not being around them. And he comes around them. Comes around them. And then, under this program he's got right now, he can come to Murfreesboro anytime he wants to, come around them. After I told him, no, sir. My terms. After I tell him not to comes and after I . . . That's the reason I had the program. I wanted you to stay away from these people. I wanted you to stay away from Murfreesboro. I wanted you to get help, instead you chose a program where you could keep on coming back to Murfreesboro. That's on you. And you got a very good lawyer. If you would have asked him, said I can't find a program. If you would have asked him, he said, let me go back to court and ask for some relief. You didn't do that. You took it on your own to go do this, and you failed in doing that. And you put people who you harassed at risk again. So I'm go[ing to] find, that you have in fact violated your probation. I announced this basis for that violation. I'm [going to] order you to serve the balance of your sentence. And you can get jail credit for whatever you're entitled to.

The Defendant's attorney clarified that this was a technical violation but that it was the fourth violation and inquired whether this was a zero-tolerance violation. The State asserted that it was a zero-tolerance violation, and the trial court agreed. It is from this order that the Defendant now appeals.

II. Analysis

On appeal, the Defendant contends that the trial court erred when it ordered him to serve his sentence for a technical violation and that it erred when it found that the Lee House did not meet the criteria of "in-house" treatment. The State counters that the trial court properly revoked the Defendant's probation based on a non-technical violation and that the Defendant violated his special conditions of probation after his reinstatement. We agree with the State.

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. *Dagnan*, 641 S.W.3d at 757. No additional hearing is required for trial courts to determine the proper consequences for a revocation. *Id*. 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." T.C.A. § 40-35-311(d)(1). "If the trial judge finds by a preponderance of the evidence that the defendant has violated the conditions of probation and suspension of sentence, then the court may revoke the defendant's probation and suspension of sentence, in full or in part, pursuant to § 40-35-310." *Id.* When the trial court determines that a defendant's probation

must be revoked, the court must then decide upon an appropriate consequence. *Dagnan*, 641 S.W.3d at 757. Among other things, the trial court can consider "the number of revocations, the seriousness of the violation, the defendant's criminal history, and the defendant's character. *Id.* at 759 n.5.

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). 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, absconding, or contacting the defendant's victim in violation of a condition of probation. T.C.A. § 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* T.C.A. §§ 40-35-308(c); -310; -311(e)(2).

In this case, the Defendant violated the conditions of his probation by committing a non-technical violation. Between November 30, 2022, and April 2023, the Defendant was arrested for DUI, had two orders of protection granted against him, was charged with violating an order of protection, and was being charged with harassment. In response, and to protect the victims of the orders of protection and harassment, the trial court ordered the Defendant to serve eleven months in jail followed by six years of supervised probation. It further ordered as a modified condition that upon release, the Defendant must "sign up and attend a 90 day in house mental health/anger and drugs and alcohol treatment and if he does not he is to finish his sentence. Can't be released until he goes straight into a program."

The Defendant violated the modified condition by entering a program that he knew did not comply with the conditions of release. The Lee House program allowed the Defendant to leave between the hours of 6:00 am and 10:00 pm. He had his vehicle and could easily travel back to Murfreesboro where his victims lived. The trial court correctly found that the Defendant had violated the modified conditions of his probation. The Defendant violated the terms of his probation multiple times in multiple ways, and the trial court repeatedly gave the Defendant the opportunity to return to probation. The Defendant ultimately entered a program he knew violated the trial court's modified conditions, and the trial court appropriately revoked his probation and ordered him to serve his sentence.

III. Conclusion

Based upon the foregoing, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE