

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 23, 2023

FILED

08/18/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MATTHEW PETER MCDONNELL

**Appeal from the Criminal Court for Knox County
No. 120440 Kyle A. Hixson, Judge**

No. E2022-00898-CCA-R3-CD

The defendant, Matthew Peter McDonnell, appeals the Knox County Criminal Court's order revoking his probation and requiring him to serve the balance of his four-year sentence for aggravated assault and vandalism of property valued at more than \$1,000 but less than \$2,500. Discerning no error, we affirm.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

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

Clinton E. Frazier, Maryville, Tennessee, for the appellant, Matthew Peter McDonnell.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; Charme P. Allen, District Attorney General; and Jacob Ens, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant's term of probation emanated from a January 13, 2022 guilty plea to an effective Range I sentence of four years for aggravated assault and vandalism of property valued at more than \$1,000 but less than \$2,500. The defendant was ordered to undergo a mental health evaluation, to complete a drug and alcohol assessment and follow any recommendations, and to refrain from having any contact with the victim, Carole Graham.

On May 16, 2022, approximately four months after the defendant entered the guilty plea, a violation of probation warrant was issued and executed. The warrant stated

that on May 14, the defendant was arrested and charged with aggravated domestic assault, theft of property valued at more than \$1,000 but less than \$2,500, aggravated assault, interference with emergency calls, violation of a “protective order,” and “violation of an order of protection/restraining” against the victim. The warrant alleged that as a result of his arrest, the defendant violated the conditions of probation requiring him to obey all laws, prohibiting him from contacting the victim, and prohibiting him from engaging in “any assaultive, abusive, threatening or intimidating behavior” or any behavior “that poses a threat to others or [him]self.” The warrant also alleged that the defendant changed his residence on or about May 9 without informing his probation officer of his new address in violation of a rule requiring him to inform his probation officer before changing his residence. Finally, the warrant alleged that on or about May 9, the defendant was discharged from a halfway house for drinking alcohol in violation of a rule requiring him to refrain from using “intoxicants” or “illegal drugs.”

During the June 2, 2022 hearing, the defendant announced that his charges for aggravated assault and interference with emergency calls had been dismissed.

During the hearing, the State presented the testimony of Ms. Graham, who was formerly engaged to the defendant and was the victim of the aggravated assault to which the defendant pled guilty in January 2022 and of the defendant’s current charges. She was aware that the trial court had prohibited the defendant from having contact with her. After the defendant was released from jail in January 2022, he stayed in a halfway house. The victim stated that the defendant was kicked out of the halfway house for violating the curfew rules and was homeless. She said the defendant began staying with her but that he had not stayed with her long before he was arrested on the current charges.

The victim testified that on May 12, 2022, she and the defendant were at her home when they became involved in an argument that escalated into “pushing, shoving.” She did not receive any visible injuries and acknowledged that she “pushed back.” She activated her emergency dispatch on her home’s alarm system and requested that the police be dispatched to her home. The defendant took the victim’s cell phone and left her home.

The victim testified that on the following day, the defendant came to her home and returned her cell phone. The victim stated that she wanted to forgive the defendant and “move on from it.” She later met the defendant at her storage unit and allowed him to store his belongings there. They returned to her home where they completed chores and took showers. They subsequently began arguing about a man with whom the victim had a relationship while the defendant was in jail, and the defendant called the victim a “whore” and a “liar.” At one point, the defendant called the man and left a voicemail message. The victim stated that she realized that her gun was missing from the drawer where she generally stored it and that the defendant told her that he had given the

gun to a friend. The victim testified that she did not give the defendant permission to give the gun away. She stated that as she was sitting on top of the stove in the kitchen, the defendant pushed her against the wall and that her head struck the vent. Once the victim stood up, the defendant pushed her on the floor, scraping her leg. The victim exited through the back door and called the police on her cell phone. Upon reentering her home, the victim saw the defendant walking down the street and called to him, but he continued walking away. She then realized that her purse, wallet, cell phone charger, identification, credit cards, and over \$3,000 in cash that she had earned in tips as a server were missing.

During cross-examination, the victim testified that she and the defendant had been in a relationship “on and off” since November 2019. She stated that the defendant was a recovering alcoholic and began drinking again while going through a divorce and after his children were removed from his care by the Department of Children’s Services. The victim acknowledged that she and the defendant continued to have contact sporadically after the defendant was placed on probation and prohibited from having contact with her. She occasionally drove the defendant to her home or other locations. She previously sought advice from an attorney on the procedure for removing the no-contact order, and she agreed that in May 2022, she was still interested in having contact with the defendant.

The victim learned that the defendant was homeless when speaking to him on her cell phone. On May 12, 2022, she drove the defendant from a park to her home. She agreed that they both drank alcohol that evening and that due to the amount of alcohol that she consumed, she did not recall the order of events from May 12. She acknowledged that after the defendant left her home on May 12, he came back to her home during the early hours of May 13 and returned her cell phone. The victim stated that she still had her gun at her home when the defendant returned her cell phone.

The victim testified that on May 13, she worked until 3:00 p.m. and then met the defendant at her storage unit. They returned to her home where they drank alcohol. The victim searched throughout her home and the defendant’s bags for her gun, but she was unable to locate it. The defendant told her that he had given the gun to a friend, but the victim did not know whether the defendant’s friend came to her apartment. After the victim showered, the defendant confronted the victim about her relationship with another man, accused her of continuing to see the man, and left a voicemail on the man’s telephone accusing him of being involved with the victim. The incident in the kitchen then occurred after which the victim called the police and the defendant left the home. After the defendant left, the victim realized that her purse and \$3,065 in cash were missing.

At the conclusion of the hearing, the State requested that the trial court revoke the defendant’s probation and order him to serve his sentence in prison. The defendant

requested that the trial court impose a sentence of split confinement and order inpatient or “in-jail treatment” of the defendant’s mental health and alcohol-related issues.

The trial court found that the State had shown by a preponderance of the evidence that the defendant had violated the terms of his probation and stated that the defendant did so in “one of the worst” possible ways. The court noted the importance of restrictions prohibiting defendants placed on probation for such “a serious offense” from contacting the victims. The court continued, “When you threaten to cut someone’s engagement ring off their finger with a knife, and you’re not sent to prison initially for that but instead placed on probation and the Court orders you not to have any contact with that victim again, I meant that.” The court disagreed with the argument that sending the defendant to prison “accomplishes nothing” and found that a sentence of imprisonment “accomplishes a very important goal of demonstrating to [the defendant] that the law is the law, and when a court renders a judgment in a case, it means something. I think that is necessary to demonstrate to [the defendant] in this case.” The court revoked the defendant’s probation and ordered him to serve the balance of his sentence in confinement.

On appeal, the defendant does not challenge the trial court’s finding that he violated the terms of his probation. Rather, he asserts that the trial court erred in ordering him to serve the balance of his sentence in confinement and maintains that the trial court should have imposed “a period of split confinement with furlough for intensive outpatient substance abuse treatment and mental health treatment.” The State replies that the trial court properly exercised its discretion and ordered the defendant to serve the balance of his sentence in confinement.

As relevant here, “[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, or absconding, then the trial judge may . . . cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e)(2) (Supp. 2021). Accordingly, “[t]he trial judge shall possess the power, in accordance with [Code section] 40-35-311, to revoke the suspension” and “order the original judgment to be in full force and effect from the date of the revocation of the suspension.” T.C.A. § 40-35-310(a). In other words, “[t]he trial judge retains the discretionary authority to order the defendant to serve the original sentence.” *State v. Reams*, 265 S.W.3d 423, 430 (Tenn. Crim. App. 2007).

Probation revocation requires a two-step consideration by the trial court. *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). “The first is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation.” *Id.* (footnote omitted). Our supreme court has held that “these are two distinct

discretionary decisions, both of which must be reviewed and addressed on appeal.” *Id.* at 757-58. “Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden.” *Id.* at 758.

The standard of review on appeal from the trial court’s decision to revoke a defendant’s probation 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.” *Id.* at 759. The trial court’s findings need not be “particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision.” *Id.* (citing *State v. Bise*, 380 S.W.3d 682, 705-06 (Tenn. 2012)). If the trial court fails to place its reasoning for a revocation decision on the record, this court may either “conduct a de novo review if the record is sufficiently developed for the court to do so” or “remand the case to the trial court to make such findings.” *Id.* (citing *State v. King*, 432 S.W.3d 316, 327-28 (Tenn. 2014). Generally, “[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).

Although the trial court did not expressly mention a “two-step” process or use the “separate exercise of discretion language” set forth in *Dagnan*, the trial court’s findings, albeit brief, suggest that the trial court considered the consequences for the violation as a separate discretionary decision. The trial court rejected the defendant’s argument that he should be given another opportunity to seek rehabilitation rather than serve the remainder of his sentence in confinement. The defendant was given the opportunity to seek alcohol treatment, but a few months following his guilty plea, he was kicked out of the halfway house where he had been staying. He then stayed with the victim even though he was prohibited from being in contact with her, and he drank alcohol, after which he became violent with the victim. Although the defendant claims that he should have another opportunity to seek treatment, the court has held repeatedly that “an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing.” *State v. William Strickland*, No. E2021-01280-CCA-R3-CD, 2022 WL 16638786, at *2 (Tenn. Crim. App., Knoxville, Nov. 2, 2022), *no perm. app. filed* (quoting *State v. Jeffrey A. Warfield*, No. 01C01-9711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App. Feb. 10, 1999), *see State v. Nicholas J. Walden*, No. M2022-00255-CCA-R3-CD, 2022 WL 17730431, at *4 (Tenn. Crim. App., Nashville, Dec. 16, 2022), *no perm. app. filed*. We conclude that the trial court did not abuse its discretion in ordering the defendant to serve the remainder of his sentence in confinement.

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

JAMES CURWOOD WITT, JR., JUDGE