FILED
07/11/2023
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 27, 2023

STATE OF TENNESSEE v. REX ALLEN MOORE

Appeal from the Criminal Court for Knox County
No. 118748 G. Scott Green, Judge

No. E2022-01364-CCA-R3-CD

Defendant, Rex Allen Moore, appeals the trial court's revocation of his probation after incurring new criminal charges related to his failing to report an email address to the sex offender registry. On appeal, Defendant argues that the trial court abused its discretion by finding that he knowingly violated the terms of his probation. Following a *de novo* review of the record, we affirm.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and ROBERT H. MONTGOMERY, JR., JJ., joined.

Clinton E. Frazier (on appeal) and Susan Shipley (at revocation hearing), Knoxville, Tennessee, for the appellant, Rex Allen Moore.

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

OPINION

On February 3, 2022, Defendant pled guilty in Knox County Criminal Court to theft of property valued at more than $1,000 but less than $2,500, in exchange for dismissal of one count of misdemeanor vandalism and an agreed four-year sentence to be served on supervised probation. On June 9, 2022, Defendant's probation officer filed an affidavit alleging that Defendant had violated Rule 1 of the conditions of his probation by being charged with perjury and a sex offender registry[1] violation for failing to "timely disclose

[1] The record reflects that Defendant was required to register as a violent sex offender based upon a 1989 conviction for the aggravated sexual battery of a seven-year-old victim.

required information to the designated law enforcement agency." A probation violation warrant was issued the same day.

At the August 19, 2022 revocation hearing, Probation Officer Lindsay Delorge testified that she supervised sex offenders and that she began supervising Defendant in February 2022, after Defendant completed the intake process. Officer Delorge identified copies of two Tennessee Bureau of Investigation (TBI) "sexual offender/violent sexual offender registration/verification/tracking" forms containing Defendant's information updates and the Tennessee Offender Management Information System (TOMIS) notes an intake officer, Christopher Ramey, made during Defendant's intake meeting, which were received as exhibits.

Exhibits 1 and 3 were copies of the sexual offender/violent sexual offender registration/verification/tracking form completed on February 10, 2022, and April 28, 2022, respectively. Section B, which contained dedicated space for "Offender's complete electronic mail address information," was blank in both exhibits. Exhibit 2, the February 10, 2022 TOMIS notes, reflected that Defendant received copies of the "supervision order (probation order), specialized conditions, TBI SOR instruction form, sex offender registration and tracking form" and that he "was given ample opportunity to ask questions and indicated understanding of [the] rules and requirements."

Officer Delorge testified that Defendant first reported to her on February 10, 2022, and that sex offenders were required to provide her with any email addresses they had. Defendant did not report having any email addresses at that time or at his April 2022 information update. Defendant told Officer Delorge that he did not have a cell phone because he had broken it. Officer Delorge stated that Defendant told her that his wife lived in Knoxville's Community Development Corporation (KCDC) housing and that he wished to reside there. Officer Delorge told him that KCDC housing was in "a restricted zone" and that he could not go back to his wife's address.

Officer Delorge testified that, on May 10, 2022, Defendant came in for a regular "GPS swap out[]" and had a cell phone in his hand. Officer Delorge inspected the phone and took photographs of the screen, which were received as exhibits. One photograph showed a Google Account page for "John doe," which had the same cell phone number as the number listed in a second photograph showing the cell phone's number, serial number, and other information. The Google email was listed as "jonhd379@gmail.com."[2] The contact was listed as being female and having a birthdate of July 1, 1975. Officer Delorge noted that July 1, 1975 was not Defendant's birthdate.

[2] The transcript spells Officer Delorge's articulation of the address as "John E 379 @gmail.com," but the photograph contains the spelling "jonhd379@gmail.com."

The other photographs showed a "test email" sent from Officer Delorge's work email address in the cell phone's inbox; February 16 and 24, 2022 emails from Oak Ridge National Laboratory Federal Credit Union addressed to "REX"; an April 7, 2022 KCDC participant portal registration acknowledgment addressed to "Rex Moore"; and a Red Roof Inn email from "2 days ago" addressed to "REX" detailing a stay between May 7 and May 8, 2022. An additional photograph was too dark to read fully but contained mention of a Visa debit card, and Officer Delorge stated that she saw an email containing a credit card receipt bearing Defendant's name. Officer Delorge said that Defendant had reported staying at the Red Roof Inn.

Officer Delorge testified that it was a violation of the sex offender registry to have an unregistered email account. She affirmed that she obtained a warrant against Defendant based upon this information.

On cross-examination, Officer Delorge acknowledged that Defendant reported to intake as directed; she did not recall if he arrived on time. She stated that Officer Ramey performed a "Vasor-2" assessment and agreed that Defendant was deemed a low risk for sexually reoffending by this measure. Officer Delorge stated that Defendant received a GPS monitor at intake and that he wore the monitor continually until she took out the warrant in May. Officer Delorge noted that, although Defendant "didn't have a VOP for the monitoring, . . . he was constantly going into restricted zones." She disagreed that Defendant complied when told not to go into a restricted zone. She stated that, although Defendant would have had to "be there consistently" to be charged with a violation of probation, she "had several conversations to take out a VOP and an SOR warrant when he was going back to the KCDC housing[.]" Officer Delorge acknowledged that Defendant came in for GPS monitor swap outs, although he was not always on time. She agreed that Defendant's wife lived at KCDC and that she never had any indication that he was engaging in "nefarious activity" at KCDC.

Officer Delorge testified that, although Defendant initially refused to complete a Strong-R assessment on religious[3] grounds, he complied after a second request and was found a moderate risk to reoffend. She agreed that Defendant was in his sixties, that he had "mental health issues," and that she asked him to complete a mental health assessment. Officer Delorge did not know why Defendant was receiving disability benefits.

[3] Defense counsel stated that Defendant "has some religious beliefs about signing things"; the technical record indicates that Defendant had filed grievances related to being required to complete the assessment. From what we can glean from Defendant's handwritten filings, he objected to being asked to consider whether he agreed with statements consistent with beliefs held by pedophiles.

Upon examination by the trial court, the prosecutor stated that the sex offender registry violation charge had been bound over to criminal court on June 23, 2022, after a preliminary hearing.

Officer Delorge testified that Defendant reported to her on Tuesdays and Fridays and that he never missed an appointment. She agreed that he handed her his cell phone when requested and that he unlocked the phone for her. Officer Delorge stated that she could see the applications on the cell phone on these occasions and that nothing indicated "things had been deleted."

Officer Delorge testified that she told Defendant he needed a cell phone to communicate with her about where he was staying. Officer Delorge affirmed that she told Defendant that he could stay at the Red Roof Inn. She stated that, after she found the email account, she learned that Defendant's cell phone belonged to his wife. Officer Delorge did not know Defendant's wife's birthdate. She noted that Defendant "had numerous phones." Officer Delorge denied that she had done a forensic examination of the cell phone she photographed. She agreed that the phone contained no sexual material or evidence of criminal activity.

Officer Delorge testified that Officer Ramey completed Defendant's intake form, which was Exhibit 1, and that Officer Ramey checked a box indicating that Defendant read and understood the sex offender registry requirements. She noted that "it's part of intake for them to go through the sex offender registry page by page to ensure that the information on it is correct." Officer Delorge agreed that she was not present when the document was explained to Defendant.

Officer Delorge testified that she completed Defendant's updated information form in Exhibit 3. Her practice was to complete the information forms by computer and that she generally printed out forms for offenders to take with them. She said that she displayed the form on a "big monitor" for offenders to view any necessary information.

Defense counsel asked Officer Delorge to confirm that a box was not checked indicating that "the requirements have been read to me, and I understand the requirements with an intent - and if - there is a penalty with intent to deceive, makes any false statement on the TBI registration form, [it is] a felony offense of perjury[.]" Officer Delorge agreed that the box was not checked. The form itself reflected the following:

> <u>Section I – PLEASE READ CAREFULLY BEFORE SIGNING</u>
>
> ☐ I acknowledge I have read and understand the requirements
> ☐ The requirements have been read to me and I understand the requirements

> **Tennessee Code Annotated 39-16-702(b)(3): a person who, with intent to deceive, makes any false statement on the TBI Registration Form is guilty of the felony offense of perjury.**

The first box was checked, and the second box was left blank. Officer Delorge stated that "[t]here are notes that indicate that" Officer Ramey explained to Defendant that making false statements on the form constituted perjury. She agreed, though, that she did not make the notes and was not present for the conversation.

Relative to Exhibit 3, the April 28, 2022 sexual offender tracking form, Officer Delorge testified that she "presented this" personally to Defendant. Officer Delorge agreed that "the portion of the form in which they attest that this is under penalty of perjury, that's not checked[,]" and she added that the box was not checked because Defendant "read the screen." Officer Delorge stated that, when she "[did] updates," she asked the offender to read the screen along with her and asked if the information was correct. Officer Delorge stated that she read the form aloud if an offender had a hard time reading. Officer Delorge acknowledged that Defendant was "60 something years old" and disabled.

When asked by the trial court if defense counsel was "insinuating there's a problem with being 60 something years old," counsel responded, "I will attest and stipulate there is a huge problem with being 60 years old." Counsel argued that no proof existed of intent to deceive or violate the law because Defendant gave Officer Delorge the cell phone and "[h]ad there been any attempt to deceive, this would have been erased, or [Officer Delorge] wouldn't have had access to it."

The trial court noted that the sex offender registry offense "was bound over" and found that Defendant was "technically in violation" but stated,

> Do I think that he should go serve four years in the penitentiary for this, I don't know that I feel that way, but I'd like to do is . . . see what happens, see if you all can resolve the new SRO charge. If there can be a resolution on everything, let's get it done.

Defense counsel agreed that Defendant had been in custody since May, and the court stated that "a several month sanction might be appropriate for this." Counsel asserted that this was Defendant's first sex offender registry violation, and the court stated that the violation would have a ninety-day mandatory minimum sentence, which Defendant had completed. The court continued the matter for two weeks pending resolution of the sex offender registry violation.

The court minutes[4] indicated that a second hearing occurred on September 8, 2022, but the transcript was not included in the appellate record, and nothing in the record describes what occurred at the hearing in more detail. Following the September 8, 2022 hearing, the trial court entered a written order, in which it found that Defendant violated State law and the conditions of his probation, revoked Defendant's probation to time served, and placed Defendant back on probation. The record also reflects that on September 8, 2022, the trial court entered a two-year probation order relating to Defendant's conviction for a sex offender registration form violation. This timely appeal followed.

Analysis

On appeal, Defendant contends that the trial court abused its discretion by finding that he knowingly violated the terms of his probation, arguing the following:

> [Defendant] is disabled and has mental health issues. He has a religious objection to performing certain acts, such as his Strong R assessment, but he ultimately complied. He reported to his intake and was fitted with a GPS device which he, substantially, complied with. [Defendant] was not allowed to reside with his wife since she lived on KCDC property, although he frequently would visit her there. [Defendant], as he was instructed by his probation officer, resided at the Red Roof Inn. Officer Delorge was not present when the officer went over the intake forms with [Defendant] and was not sure exactly what had been said to him. Furthermore, the portion of the intake form which would advise [Defendant] that his responses to the form were under penalty of perjury was not checked.
>
> Under the circumstances, the Appellant contends that perhaps it was an abuse of discretion for the trial court to find that he had knowingly violated his probation.

The State argues that the trial court did not abuse its discretion by revoking Defendant's probation.

---

[4] The court minutes read as follows:

> Came the Attorney General for the State, also [D]efendant in proper person, having counsel present and came on for hearing on Revocation of Probation Warrant. Said Warrant having been heard; probation is hereby revoked. However, [D]efendant is placed on probation with State Probation and a written order shall be filed in this cause.

Upon a finding by a preponderance of the evidence that a defendant has violated a condition of his or her probation, a trial court may revoke probation and order the imposition of the original sentence. Tenn. Code Ann. §§ 40-35-310, -311; *State v. Kendrick*, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005) (citing *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991)). Proof of a violation does not need to be established beyond a reasonable doubt. *State v. Milton*, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984) (citing *Roberts v. State*, 584 S.W.2d 242, 243 (Tenn. Crim. App. 1979)).

Once a trial court has determined that a violation of probation has occurred, the court has the discretionary authority "to impose one of several alternative consequences: (1) order incarceration for some period of time; (2) cause execution of the sentence as it was originally entered; (3) extend the defendant's probationary period by up to two years; or (4) return the defendant to probation on appropriate modified conditions." *State v. Dagnan*, 641 S.W.3d 751, 756 (Tenn. 2022).

In *Dagnan*, our supreme court concluded "that probation revocation is a two-step consideration on the part of the trial court." The first step "is to determine whether to revoke probation." The second step "is to determine the appropriate consequence upon revocation." *Id*. at 753. The court "emphasize[d] that these are two distinct discretionary decisions, both of which must be reviewed and addressed on appeal." *Id.* The court made it clear that "[s]imply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden." *Id.* at 758-59. The court announced that, if the trial court properly stated on the record its findings for revoking a defendant's probation and its findings for imposing the consequences for the violation, then an abuse of discretion with a presumption of reasonableness standard of appellate review applied to both steps of the two-step consideration. *Id.* at 759. The trial court's findings in both steps have to be sufficient for the appellate court to conduct a meaningful review of the revocation decision. *Id.*

When a trial court fails to place on the record its reasoning for revoking probation, unless the defendant admits to the violation, or fails to place on the record its reasoning for imposing the sentence, we may conduct a *de novo* review if the record is sufficiently developed for the court to do so, or we may remand the case to the trial court to make such findings. *Id.* The trial court in this case found that a violation occurred, but other than a general statement of the court's reluctance to order Defendant to serve four years in confinement for the violation, the court did not articulate at the revocation hearing or in its written order its reasoning for revoking Defendant's probation or its decision to reinstate the probation. We find, though, that the record is sufficiently developed for us to conduct a *de novo* review.

Although the new charges were still pending at the time of the revocation hearing, the State was able to establish facts "that would permit the trial court to make a conscientious and intelligent judgment" that the conduct of Defendant violated the conditions of his probation, namely, that he knowingly failed to timely disclose required information to his probation officer as a sex offender and that he committed perjury. *State v. Harkins*, 811 S.W.2d 79, 81 (Tenn. 1991).

Tennessee Code Annotated section 40-39-208(a)(3), (b) states that it is a Class E felony for a sex offender to knowingly fail to "timely disclose required information to the designated law enforcement agency." The TBI sex offender tracking form contained a designated space for offenders to list all electronic accounts, including email addresses. Officer Delorge testified that Defendant never reported having an email address during her time as his probation officer, which began on February 10, 2022. On May 10, 2022, an examination of Defendant's cell phone revealed an email account containing various emails addressed to Defendant. The email account was registered to "John doe," who was listed as being a woman whose birthdate did not correspond to Defendant's. Emails from the account reflected that Defendant had received emails starting on February 19, 2022.

The sex offender tracking form informed offenders that false statements on the form constituted perjury under Tennessee Code Annotated section 39-16-702(a)(3) (stating in relevant part that a person commits perjury who, with intent to deceive "[m]akes a false statement, not under oath, but on an official document required or authorized by law to be made under oath and stating on its face that a false statement is subject to the penalties of perjury"). Relative to Defendant's knowledge of the sex offender registry requirements and his intent to deceive, the February and April 2022 sex offender tracking forms reflected that Defendant read and understood the sex offender registry restrictions, and Officer Ramey's TOMIS intake notes indicated that he gave Defendant copies of the sex offender registry restrictions and the information forms and that Defendant indicated his understanding of the requirements. Defendant did not report any electronic accounts, including email, to Officer Delorge during their February or April 2022 meetings. Combined with the fact that Defendant registered the email address under a false name, sex, and birthdate—or, alternatively, received email correspondence at an address belonging to a third party—this evidence tends to prove that Defendant was aware that he was not supposed to have an email address without disclosing such to his probation officer.

Additionally, Defendant's argument relative to the sex offender registry tracking form's check boxes is inconsistent with a commonsense reading of the form. The statutory language explaining that falsifying information on the form constitutes perjury clearly applies to both of the check boxes, which describe two discrete scenarios: (1) an offender has read and understands the requirements, or (2) an offender has had the requirements read to him and understands them.

We find that Defendant violated the terms of his probation by failing to disclose the email address to his probation officer, which also constituted an intentional misstatement on the sex offender registry form and, as a result, perjury. Because Defendant committed two new criminal offenses, which stemmed from his dishonesty with his probation officer, we conclude that his probation should be revoked.

Relative to the trial court's decision to reinstate Defendant's probation, we will defer to the court's assessment that the nature of Defendant's violation was adequately addressed by his confinement pending resolution of the probation violation and did not merit further[5] incarceration. *See* Tenn. Code Ann. § 40-39-208(b), (c) (stating that a person found to have falsified a sex offender registry form for the first time must serve at least ninety days in jail before being eligible for probation). We conclude that Defendant should be placed back onto supervised probation as originally ordered.

Conclusion

Based on the foregoing and the record as a whole, the judgment of the trial court is affirmed.

____

ROBERT L. HOLLOWAY, JR., JUDGE

[5] The record reflects that the probation violation warrant was executed on June 9, 2022, and Defendant's probation was reinstated ninety-one days later, on September 8, 2022.