

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 22, 2023

FILED

05/03/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. SHELBY BROOKS**

**Appeal from the Circuit Court for Sevier County  
No. 22121 Rex H. Ogle, Judge**

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**No. E2022-00564-CCA-R3-CD**

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The defendant, Shelby Brooks, appeals the Sevier County Circuit Court's order revoking her probation and requiring her to serve the balance of her five-year sentence for the sale of a Schedule II controlled substance and the sale of a Schedule III controlled substance in confinement. Discerning no error, we affirm.

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

JAMES CURWOOD WITT, JR., P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JOHN W. CAMPBELL, SR., JJ., joined.

Brennan M. Wingerter, Assistant Public Defender-Appellate Director (on appeal); Rebecca Lee, District Public Defender; and Shannon J. Holt, Assistant District Public Defender (at hearing), for the appellant, Shelby Brooks.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Rinard, Assistant Attorney General; James B. Dunn, District Attorney General; and Charles Lee Murphy, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant's term of probation emanated from a March 21, 2017 guilty plea to an effective Range I sentence of five years for the sale of a Schedule II controlled substance and the sale of a Schedule III controlled substance. The trial court ordered a term of split confinement; the defendant was to serve 120 days in jail before being placed on supervised probation for the balance of her sentence. The defendant's probation was revoked on April 15, 2019, as a result of her arrest for driving under the influence, second offense, and other driving-related offenses in January of 2019. The trial court ordered the

defendant to serve another 120-day period of confinement, after which the defendant was placed back on supervised probation. The trial court also ordered the defendant to complete an alcohol and drug assessment and to follow any recommendations.

On September 7, 2021, a second probation violation report was filed, alleging that the defendant was arrested for shoplifting in October 2020, failed to report the arrest, failed to provide proof of employment, absconded probation, failed to complete an alcohol and drug assessment as ordered by the trial court, and failed to pay her fines, probation fees, and court costs. The arrest warrant was executed in February 2022; the trial court appointed counsel to represent the defendant; and a hearing was held on April 11, 2022, during which defense counsel announced an “open plea” to the violations.

During the hearing, the probation officer testified to the charges listed in the violation report and the warrant. He stated that he last saw the defendant in April 2019, at the hearing on her first violation of probation. He informed the defendant that an active arrest warrant existed in Monroe County and that if she was released from jail without being transported to Monroe County, she would need to report to the probation office and also answer for the warrant. However, the defendant never reported as required.

During cross-examination, the probation officer testified that as of August 2021, the arrest warrant for the defendant in Monroe County remained active. He stated that prior to the defendant’s first violation of probation, she was in treatment programs from December 2017 until March 2018, was housed in a sober living facility through September 2018, and was reporting to her probation officer during that time period.

In response to questioning by defense counsel, the defendant stated that she experienced some “traumatic” events, chiefly the death of her mother. The defendant said that she struggled to deal with her mother’s death and relapsed into drug usage. She acknowledged that opiates were her downfall. She stated that she had a bed waiting for her at New Beginnings, a rehabilitation facility in Knox County. She said that she had support from her family and that she would be allowed to obtain employment while residing at New Beginnings.

The trial court found that the defendant had not “reported to probation in over three years, that she is an absconder, that she continues to violate the law, and she’s had time after time to rehab and that’s not worked.” The trial court determined that the defendant was in willful violation of her probation and ordered execution of her sentence.

In her appeal to this court, the defendant posits that the trial court erred in revoking her probation and ordering her sentence into effect because the trial court failed “to put sufficient findings on the record” and failed to consider that the defendant complied

with her probation conditions when she was sober, that she had relapsed because of the death of her mother, and that the defendant had arranged an in-patient rehabilitation placement. The State argues that the trial court's order reflects a proper exercise of its discretion.

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 few 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).

The defendant acknowledges in her reply brief that she violated the terms of her probation and that, therefore, her appeal only relates to the second prong of the revocation analysis, the trial court's decision to require her to serve the remainder of her sentence in confinement. The defendant asserts that the trial court's findings primarily relate to her violation of probation, the first prong of the analysis, and are insufficient to support the trial court's decision to order execution of her sentence.

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 considered not just the findings of violations but also found that the defendant had been given other opportunities for rehabilitation and that those attempts had not been successful. Thus, the trial court rejected defense counsel's argument that the defendant should be given another opportunity to seek rehabilitation rather than serve the remainder of her sentence in confinement.

The defendant argues that the trial court should have considered the negative impact of her mother's death on her prior efforts at drug rehabilitation. However, as acknowledged by the defendant in her appellate brief and as stated in her probation violation report issued prior to the first revocation of her probation in April 2019, her mother died in 2018. Following the death of the defendant's mother, the trial court revoked the defendant's probation in April 2019 but granted the defendant another opportunity to serve her sentence on probation following a short term of confinement. Once the defendant was released from confinement, she absconded for more than three years. Thus, measures less restrictive than confinement were unsuccessful and reflected poorly on the defendant's potential for rehabilitation. This 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 her sentence in confinement.

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

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JAMES CURWOOD WITT, JR., PRESIDING JUDGE