

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs February 22, 2023

FILED

02/28/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. JIMMIE ELWOOD SHELTON, JR.**

**Appeal from the Criminal Court for Knox County**  
**Nos. 114891 & 118820          Steven W. Sword, Judge**

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**No. E2022-00875-CCA-R3-CD**

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The Defendant, Jimmie Elwood Shelton, appeals the trial court's order revoking his probation and ordering him to serve the balance of his sentence in confinement. While on probation, the Defendant was again charged with multiple additional crimes. After a hearing, the trial court revoked the Defendant's probation and ordered him to serve the remainder of his sentence in confinement. On appeal, the Defendant asserts that the trial court abused its discretion when it revoked his probation and when it ordered him to confinement. After review, we affirm the trial court's judgments.

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

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

Michael A. Graves, Knoxville, Tennessee, for the appellant, Jimmie Elwood Shelton, Jr.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and William C. Bright, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts**

In 2018, the Defendant was indicted for multiple counts of theft related to counterfeit checks and money orders. Thereafter, in case number 114891, the Defendant pleaded guilty to theft of property valued at more than \$60,000 but less than \$250,000. The trial court imposed a probated sentence of ten years. While released on bond, the Defendant was arrested and indicted for two additional felony theft charges in case number 118820. The Defendant pleaded guilty to those felony offenses, as well as two additional misdemeanor theft offenses. For the felony theft offenses, the trial court imposed sentences

of ten years each, suspended to probation, to be served consecutively to the Defendant's probated sentence in case number 114891, for a total effective sentence of thirty years of probation.

Two days after the imposition of his thirty-year probation sentence, the Defendant was arrested and charged with possession of fentanyl, possession of heroin, and possession of methamphetamine. He pleaded guilty to the three drug charges, and the trial court issued probation violation warrants in case numbers 114891 and 118820. The Defendant incurred theft charge while on bond in case number 121061. The trial court consolidated the Defendant's probation violations in case numbers 114891 and 118820 and his charge in case number 121061 into a single hearing in May of 2022.

At the hearing, the Defendant pleaded guilty to theft in case number 121061, with an agreed-upon sentence of ten years, to be served consecutively to his existing thirty-year sentence, with the manner of service to be determined by the trial court. Related to the Defendant's probation violations in case numbers 114891 and 118820, the following evidence was presented: Jeffrey Skeen testified that he had reviewed the Defendant's Department of Corrections file, which indicated that the Defendant had failed to attend probation intake following his sentences. The probation division was unable to contact the Defendant by telephone or at his address. The Defendant stipulated that he was in violation of his probation.

The trial court stated that the Defendant's sentence, if ordered to serve, would be forty years, which it acknowledged was a lengthy sentence for a property crime. The trial court noted the Defendant's poor performance while on probation on account of his multiple arrests while released. The trial court acknowledged the Defendant's substance abuse problem and his need for treatment. The trial court considered whether confinement was necessary to protect the interests of society based on the Defendant's lengthy criminal history as a multi-state offender dating back almost thirty years. The trial court also considered whether confinement was necessary to avoid depreciating the seriousness of the offense. The trial court stated that less serious measures than confinement had been tried and had failed in the Defendant's case and that his potential for rehabilitation was not good.

The trial court considered the multiple options for service of the Defendant's sentence based on his release eligibility. Following this lengthy and thoughtful consideration, the trial court elected to revoke the Defendant's probation sentences in case numbers 114891 and 118820 and ordered the Defendant to serve his thirty-year sentence in confinement. Based on the Defendant's jail credit and release eligibility, the Defendant would be eligible for release after serving approximately seven and a half years. Regarding case number 121061, the trial court imposed supervised probation to be served consecutively to the Defendant's sentence in confinement.

## II. Analysis

On appeal, the Defendant argues that the trial court abused its discretion when it revoked his probation and ordered him to serve the balance of his sentences in confinement. He argues that the trial court should have imposed split confinement with a portion of his sentence to be served at a residential treatment facility. The State responds that the trial court acted within its discretion when, after determining that the Defendant had violated the terms of his probation, it revoked the probation sentences and ordered him to serve the remainder of his sentences in incarceration. We agree with the State.

A trial court's authority to revoke a suspended sentence is derived from Tennessee Code Annotated section 40-35-310 (2018), which provides that the trial court possesses the power "at any time within the maximum time which was directed and ordered by the court for such suspension, . . . to revoke . . . such suspension" and cause the original judgment to be put into effect. A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2018). "In probation revocation hearings, the credibility of witnesses is to be determined by the trial judge." *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). If a trial court revokes a defendant's probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310 (2018); *see State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999).

The judgment of the trial court in a revocation proceeding, including the consequences of the revocation, is entitled to a presumption of reasonableness unless there has been an abuse of discretion. *See State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022); *see also State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Smith*, 909 S.W.2d 471, 473 (Tenn. Crim. App. 1995). This is true "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. It is not necessary for the trial court's findings to be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision." *See Dagnan*, at 759. Further, a finding of abuse of discretion "'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.'" *Id.* at 555 (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

The record in this case provided substantial evidence to support the trial court's finding that the Defendant violated his probation. First, the Defendant admitted to the violations. The Defendant's admission to a violation has itself been held to be "substantial

evidence” that the violation took place. *State v. Glendall D. Verner*, No. M2014-02339-CCA-R3-CD, 2016 WL 3192819, at \*7 (Tenn. Crim. App., at Nashville, May 31, 2016), *perm. app. denied* (Tenn. Sept. 30, 2016) (citing *State v. Yvonne Burnette*, No. 03C01-9608-CR-00314, 1997 WL 414979, at \*2 (Tenn. Crim. App., at Knoxville, July 25, 1997); *see State v. Zantuan A. Horton*, No. M2014-02541-CCA-R3-CD, 2015 WL 4536265, at \*3 (Tenn. Crim. App., at Nashville, July 28, 2015) (stating that a defendant who admitted violating the terms of his probation conceded an adequate basis for finding of a violation), *no perm. app. filed*; *State v. Gordon Herman Braden, III*, No. M2014-01402-CCA-R3-CD, 2015 WL 2445994, at \*2 (Tenn. Crim. App., at Nashville, May 22, 2015), *no perm. app. filed*; *State v. Neal Levone Armour*, No. E2003-02907-CCA-R3-CD, 2004 WL 2008168, at \*1 (Tenn. Crim. App., at Knoxville, Sept. 9, 2004) (“Essentially, then, the defendant conceded an adequate basis for a finding that he had violated the terms of probation.”), *no perm. app. filed*.

After the trial court found that the Defendant had violated the terms of his probation sentences, it retained discretionary authority, pursuant to Tennessee Code Annotated section 40-35-310(b), to order the Defendant to serve his sentences in incarceration. The determination of the proper consequence of a probation violation embodies a separate exercise of discretion. *Hunter*, 1 S.W.3d at 647; *see also Dagnan*, 641 S.W.3d at 759. Case law establishes that “an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing.” *State v. Jeffrey A. Warfield*, No. 01C01-9711-CC-00504, 1999 WL 61065, at \*2 (Tenn. Crim. App., at Nashville, Feb. 10, 1999), *perm. app. denied* (Tenn. June 28, 1999).

We conclude that the trial court did not abuse its discretion when it found that the Defendant had violated his probation. The Defendant’s probation sentence required that he report to his probation officer after release from jail, which he failed to do. He was also arrested multiple times. Therefore, the trial court did not abuse its discretion when it revoked the Defendant’s probation based upon multiple violations.

Further, we conclude that the trial court did not abuse its discretion when it ordered the Defendant to serve the balance of his sentences in confinement, based on his history of failing to comply with terms of prior probationary sentences. Finally, we note that the trial court did not impose the maximum sentence in confinement, electing to order probation for the Defendant’s new conviction, rather than the ten-year sentence in incarceration for which he was eligible. The Defendant is not entitled to relief.

### **III. Conclusion**

Based on the foregoing reasoning and authorities, we affirm the trial court’s judgment.

