

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 9, 2023

FILED

06/26/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DESHAWN EUGENE WILLIAMS

**Appeal from the Criminal Court for Davidson County
No. 2012-C-2338 Angelita Blackshear Dalton, Judge**

No. M2022-01123-CCA-R3-CD

Defendant, Deshawn Eugene Williams, appeals from the Davidson County Criminal Court's revoking his probation and ordering him to serve his previously ordered probationary sentence of ten years in confinement. On appeal, Defendant argues the trial court abused its discretion by failing to give him credit for time successfully served while on probation. After review, we affirm the judgment of the trial court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and JILL BARTEE AYERS, JJ., joined.

David von Wiegandt, Nashville, Tennessee, for the appellant, Deshawn Williams.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Glenn R. Funk, District Attorney General; and Simone Marshall, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

On November 9, 2012, Defendant pleaded guilty to possession with intent to sell or deliver more than 0.5 grams of a schedule II controlled substance and received a ten-year sentence suspended to probation. Following the issuance of a warrant alleging a violation of his probation, a hearing was held on March 16, 2016 where Defendant conceded he had violated his probation by resisting arrest and possessing crack cocaine. The trial court sentenced him to time served and reinstated his probation. Following a second probation violation warrant, at a hearing on October 6, 2020, Defendant conceded several violations

of his probation, stemming from his arrest on new charges of four counts of felony aggravated assault, misdemeanor theft, and misdemeanor vandalism. The trial court sentenced Defendant to time served and to serve the remainder of his sentence under intensive probation.

This matter results from Defendant's third probation violation warrant. At the July 7, 2022 revocation hearing, the State entered a recording from a preliminary hearing in General Sessions Court where the State presented evidence that Defendant sold cocaine to a pedestrian in a hand-to-hand transaction. When police approached Defendant's vehicle and attempted to search Defendant, he fled on foot. Police apprehended Defendant and observed a scale with white residue in his vehicle. Upon searching the vehicle, police found crack cocaine, marijuana, and a gun. The amounts of crack cocaine and marijuana indicated an intent to redistribute the drugs. The court issued a probation violation warrant for Defendant in October of 2021, and from that time until his May 2022 arrest, he did not report to his probation officer.

After the State entered the preliminary hearing recording, Defendant conceded the allegations and chose to testify on his own behalf. Defendant told the trial court that he had "like a year left" on probation. He stated that during the last four years he worked as a construction worker and as a janitor. Defendant also testified that he took care of his grandfather throughout the COVID-19 pandemic, that he was his grandfather's primary caregiver, and that he had four children who he saw every other weekend. While Defendant was in jail, he took a drug education class through the Davidson County Sheriff's Office, called "New Avenue."

Defendant admitted that this was his third probation violation. Defendant also testified that he knew he was not supposed to be selling or doing drugs, that selling drugs is illegal, and that the consequences of violating his probation included that his ten-year sentence could go into effect. Defendant attempted to explain his reason for not reporting for eight months, stating, "[t]o be honest, I knew I had the baby on the way and I was going to, I was going to turn myself in after I had the baby."

After Defendant's concession, the trial court found that Defendant violated his probation by committing the new offenses of possession with intent to sell cocaine, possession with intent to sell marijuana, being a felon in possession of a weapon, evading arrest, resisting arrest, and theft of a firearm. The trial court imposed Defendant's original ten-year sentence to be served in custody. The court noted that "[Defendant] was before the [c]ourt on his third violation in this case, with all prior violations based on arrests for criminal offenses while on probation." The court expressed "great concern for possession of a firearm by a convicted felon," and noted that police could not serve the October 2021 warrant until they arrested Defendant in May of 2022, and that "but for the arrest on the most recent charges, [Defendant] provided no indication of turning himself in on the October warrant." Defendant requested that the trial court award him sentence credit for

the time he had served on probation per Tennessee Code Annotated section 40-35-311(e)(1). After taking the matter under advisement, the trial court issued a written order denying the request and ordering Defendant to serve the full sentence in custody. The trial court entered an amended judgment that gave Defendant credit for time he had actually served in custody. This timely appeal follows.

II. Analysis

Defendant's sole argument in this appeal is that the trial court abused its discretion by failing to give Defendant jail credit for the nine years he had served on probation. Specifically, Defendant notes that he "had approximately only one year left on a ten-year sentence," that Defendant's two prior violations were "minor offenses in comparison with the rest of the criminal code," and the trial court improperly considered information not included in the violation warrant. In his reply brief, Defendant also argues that he was not legally on probation once the October 2021 warrant issued. We disagree.

In its order denying Defendant's request to reduce his sentence based on time served successfully while on probation, the trial court stated:

After careful consideration of the applicable law and Mr. Williams' record, including his history in this case, the Court denies his request for reduction of time successfully served on probation and suspension of his sentence. In doing so, the Court notes that Mr. Williams was before the Court on his third violation in this case, with all prior violations based on arrests for criminal offenses while on probation. The Court further notes that Mr. Williams conceded the first two violations and was reinstated to supervised probation each time. The Court further notes that the basis of the instant violation consists of multiple charges for felony drug offenses, felon in possession of a firearm, evading arrest and resisting arrest, with great concern for possession of a firearm by a convicted felon. The Court further notes that a probation violation warrant was issued by the Court in October 2021, but not served until Mr. Williams was arrested on the charges discussed supra. As the Court stated at the probation violation hearing, but for the arrest on the most recent charges, Mr. Williams provided no indication of turning himself in on the October warrant.

We will consider the trial court's determination to award or deny credit for time served on probation under an abuse of discretion standard. *See State v. Dagnan*, 641 S.W.3d 751, 758 (Tenn. 2022) ("Concerning the standard of appellate review, . . . the case law is clear that probation revocation decisions are reviewed for abuse of discretion.") (citations omitted). "A trial court abuses its discretion when it applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on a clearly erroneous

assessment of the evidence, or employs reasoning that causes an injustice to the complaining party.” *State v. Davis*, 466 S.W.3d 49, 61 (Tenn. 2015) (citations omitted).

Probation revocation is a two-step consideration in which the trial court makes two distinct determinations. *Dagnan*, 641 S.W.3d at 753. First, the court determines whether to revoke probation; if so, the court must determine the consequences which shall apply upon revocation. *See id.* at 757. “[T]hese 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.

A trial court may revoke a defendant’s probation upon a finding by a preponderance of the evidence that a defendant has violated the conditions of probation. Tenn. Code Ann. §§ 40-35-310(a), -311(e)(1) (Supp. 2021). As this court has explained,

Upon finding that a defendant has violated probation, the trial court may: (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 not exceeding one year; (4) return the defendant to probation on appropriate modified conditions; or (5) resentence the defendant for remainder of the unexpired term to a sentence of probation. *See* T.C.A. §§ 40-35-308(c)(1), (2); -310; -311(e)(1), (2) (2021).

State v. Kadrean J. Brewster, No. E2021-00793-CCA-R3-CD, 2022 WL 2665951, at *3 (Tenn. Crim. App. July 11, 2022), *no perm. app. filed*.

In 2021, the General Assembly amended the law to allow trial judges the discretion to award defendants credit against their original sentences for time successfully served while on probation. Before the amendment, a defendant was not entitled to jail credit for time spent on probation. Tennessee Code Annotated section 40-35-310(a) reads as follows:

The trial judge shall possess the power, at any time within the maximum time that was directed and ordered by the court for the suspension, in accordance with § 40-35-311, to revoke the suspension. The trial judge *may* order the original judgment to be in full force and effect from the date of the revocation of the suspension and *may* give credit against the original judgment by the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation or a portion of that amount of time.

(emphasis added). Similarly, Tennessee Code Annotated section 40-35-311(e)(2) reads:

If 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, absconding, or contacting the defendant's victim in violation of a condition of probation, then the trial judge *may* revoke the probation and suspension of sentence by an order duly entered upon the minutes of the court, and cause the defendant to commence the execution of the judgment as originally entered, which *may* be reduced by an amount of time not to exceed the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation.

(emphasis added).¹

A plain reading of these statutes clearly shows that the legislature intended for a trial judge to have the discretion to award or deny a defendant credit for time served on probation. We have previously noted that the amended version of Tennessee Code Annotated section 40-35-310 gives “the trial court discretion to ‘give credit against the original judgment by the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation or a portion of that amount of time.’” *State v. Timothy Howard Smartt*, No. E2021-00125-CCA-R3-CD, 2021 WL 6143735, at *9 (Tenn. Crim App. Dec. 30, 2021) (quoting Tenn. Code Ann. § 40-35-310(a)), *no perm. app. filed*.

The first step of *Dagnan* is not at issue here, given Defendant's concession to the violation. As to the second step of *Dagnan*, when it determines the consequence for a probation violation, a trial court may consider “the number of revocations, the seriousness of the violation, the defendant's criminal history, and the defendant's character.” *Dagnan*, 641 S.W.3d. at 759 n.5. We conclude, by extension, that a trial court should also consider these factors when determining whether to award credit for time successfully spent on probation, as this is a consequence of a probation violation.

Here, a review of the record shows the trial court properly considered many of these factors. The trial court considered Defendant's prior violations, noting that he was “before the [c]ourt on his third violation in this case, with all prior violations based on arrests for criminal offenses while on probation.” The trial court considered the seriousness of the violations, stating in its written order “the basis for the instant violation consists of multiple charges for felony drug offenses, felon in possession of a firearm, evading arrest and resisting arrest,” and that Defendant's possession of a firearm was “a huge problem.” Defendant argues on appeal that his first two violations were based on the “minor offenses” of resisting arrest and evading arrest, and that the new charges, including drug offenses,

¹ We note that the violations provided for in this sub-section are for non-technical violations.

possession of a weapon by a felon, evading arrest, and resisting arrest, were almost ten years since his original guilty plea on November 9, 2012. But as the trial court noted, it considered “the very serious nature of the most recent charges” when it decided to deny Defendant credit for his time on probation.

The court also considered Defendant’s character and found such character lacking. Defendant claimed he would turn himself in, but the trial court found Defendant had “no intention” of doing so. Defendant testified that he had maintained relatively stable employment and took care of family members during his probationary period, but the appellate record contains no proof, other than Defendant’s self-serving testimony, to support these claims.

Defendant also argues that the trial court abused its discretion by considering facts not alleged in the probation violation warrant. He points out that the trial court reasoned that “but for the arrest on the most recent charges, [Defendant] provided no indication of turning himself in on the October warrant.” While it is inappropriate for a trial judge to rely on new felony convictions as grounds for revocation if those convictions are not listed in the revocation warrant, that is not the case here. The trial court was not considering facts outside the warrant; rather, it was judging Defendant’s credibility about his claim that he would turn himself in after the birth of his child. *See State v. Ricky Davis*, No. 03C01-9706-CC-00215, 1998 WL 205925, at *2 (Tenn. Crim. App. Apr. 29, 1998) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, (1973)); *see also State v. Wade*, 863 S.W.2d 406, 408 (Tenn. 1993).

In his reply brief, Defendant cites the Tennessee Supreme Court’s opinion *State v. Shaffer*, contending that after the October 2021 probation violation warrant was issued, he was not on probation because “[t]he interruption of the probationary period is triggered by the issuance of the probation revocation warrant and not by service of the warrant on the defendant.” 45 S.W.3d 553, 555 (Tenn. 2001) (citing *Allen v. State*, 505 S.W.2d 715, 717 (Tenn. 1974)). Defendant argues because the warrant had issued, he was not on probation while his violation was pending. This argument lacks context. Although the issuance of the revocation warrant interrupts service of the sentence, it does so by extending that sentence—not suspending it. In *Shaffer*, “the probated sentence was for a term of three years from April 20, 1992” and on July 31 of that same year, a probation revocation warrant interrupted service of that sentence. 45 S.W.3d at 555. “This interruption . . . extended the trial court’s authority over the defendant beyond April 20, 1995.” *Id.* In other words, the revocation warrant did not remove the defendant’s probation status, it simply lengthened his term until the trial court could address the violation in the warrant. Nothing in *Shaffer* holds that a trial court cannot consider a defendant’s behavior after issuance of a probation revocation warrant. Accordingly, we conclude that the trial court was within its discretion to consider that Defendant did not turn himself in on the October 2021 revocation warrant and to consider his behavior after the revocation warrant was issued.

Ultimately, a trial court need not award Defendant credit against the original judgment for time he successfully served while on probation. *See* Tenn. Code Ann. § 40-35-310(a); *Timothy Howard Smartt*, 2021 WL 6143735, at *9. In this case, considering the trial court’s well-reasoned findings about Defendant’s previous probation violations and the seriousness of the charges giving rise to the instant probation violation, and the lack of credible evidence of Defendant’s good character, we conclude the trial court did not abuse its discretion to revoke the probation and “cause the defendant to commence the execution of the judgment as originally entered.” Tenn. Code Ann. § 40-35-311(e)(2). Defendant is not entitled to relief on this issue.

III. Conclusion

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

MATTHEW J. WILSON, JUDGE