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

STATE OF TENNESSEE v. GAREN WRIGHT

Appeal from the Circuit Court for Rutherford County
Nos. 80304, 80575 James A. Turner, Judge

No. M2022-01616-CCA-R3-CD

Defendant, Garen Wright, appeals from the Rutherford County Circuit Court's revoking his probation and ordering him to serve his previously ordered probationary sentence of twenty years in confinement. On appeal, Defendant argues the trial court abused its discretion by not considering alternatives to placing Defendant in custody for the full term. After review, we affirm the judgment of the trial court.

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

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

Gerald L. Melton, District Public Defender, and Brittney Hollis, Assistant District Public Defender, for the appellant, Garen Wright.

Jonathan Skrmetti, Attorney General and Reporter; Mary Elizabeth King, Assistant Attorney General; Jennings Jones, District Attorney General; and Dana Minor, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Procedural History

On March 28, 2018, Defendant pleaded guilty in case number 78323 to one count of violating the sex offender registry, second offense. As a Range III persistent offender, Defendant was sentenced to a term of four years split confinement: one year in custody and

three years on probation. Defendant had nearly a year of pretrial jail credit at the time of his guilty plea, and he bonded out of jail on March 31, 2018.[1]

On April 17, 2018, a probation violation warrant was filed, alleging Defendant had failed to report to his probation officer since bonding out of jail. On July 17, 2018, the warrant was amended to add that Defendant had been arrested for theft, evading arrest, resisting arrest, and failure to appear. On November 7, 2019, the trial court found Defendant had violated his probation in cases 78323 and 77290; sentenced Defendant to time-served, and reinstated Defendant to probation.

On June 23, 2020, Defendant pleaded guilty to three separate offenses. In case number 80304, he pleaded guilty to violating the sex offender registry on April 13, 2018. The trial court imposed a term of six years as a career offender, to be served on probation. In case number 80575, Defendant pleaded guilty in Count 1 to attempted aggravated robbery and Count 2 to aggravated assault, both for offenses occurring March 31, 2018—committed the same day he was released from jail. The trial court sentenced Defendant to ten years on each count as a Range II, multiple offender and ordered Defendant to serve the two ten-year sentences consecutively with each other on probation and concurrently with his other probationary sentences.

On February 25, 2021, a violation of probation warrant was issued, alleging two separate probation violations in December 2020. The first violation alleged Defendant tampered with his GPS device by removing it from his leg. The second violation alleged a small bag of ecstasy pills was found in Defendant's residence. Following a hearing on October 14, 2021, the trial court entered an agreed order finding Defendant had violated his probation. Defendant was ordered to serve one year in custody and the rest of his sentence on probation.

On August 10, 2022, another probation violation warrant was filed. This warrant alleged that on June 9, 2022, Defendant violated his probation after being arrested for aggravated domestic assault, especially aggravated kidnapping, and possessing a weapon as a felon.[2] The warrant also alleged Defendant had failed an April 2022 drug test and did not complete a court-ordered psychosexual evaluation.

On October 21, 2022, an amended probation violation warrant was filed alleging on June 1, 2022, Defendant violated the sex offender registry; Defendant failed to charge his GPS monitor; Defendant failed to report to his probation officer; and Defendant failed to

[1] We could find nothing in the record to indicate why Defendant was being held but was released on bond. In any event, he did not report as required when released.

[2] The evidence presented at the probation revocation hearing suggests these charges were dismissed.

report his new address to his probation officer. These allegations led to the probation hearing and subsequent revocation that is the subject of this appeal.

II. Probation Hearing

At the November 10, 2022 hearing, the State called Tennessee Department of Correction (TDOC) Officer Raquel Miller, who began supervising Defendant's probation in April of 2022. Officer Miller was a Probation and Parole Officer for a specialized unit that supervised sex offenders. When Officer Miller began supervising Defendant, he was serving a twenty-year probation sentence. In December of 2020, before Officer Miller assumed supervision of Defendant, he had violated his probation by removing his GPS device and possessing a small bag of ecstasy pills. After the warrant for that violation was served on Defendant in June 2021, he was ordered to serve twelve months in custody and was not released until March of 2022.

When Defendant first appeared on Officer Miller's case load, Defendant "was not reporting as instructed." Reportedly homeless, Defendant was to show up once a week, either on Mondays, Wednesdays, or Fridays, to charge his GPS monitor which he wore as a condition of his sex offender registration. Officer Miller, however, stated that "it was an issue getting him in on those specific days," with Defendant's claiming "he didn't have a way to the office or he had to walk or he was working." Officer Miller stated Defendant never provided her with an address while he was under her supervision, nor did he provide her with proof of employment. She also stated that homeless offenders were not given chargers for their GPS units, so they were required to come to the office to charge them. This was a common condition for homeless offenders, and others have been able to charge their GPS devices in the office "with no issue."

During Officer Miller's time as Defendant's probation officer, she spoke with Defendant on the phone, but never met with him in the office. She was unaware of whether Defendant had reliable phone service.

Officer Miller testified that on April 27, 2022, a coworker administered a drug screen to Defendant which he failed by testing positive for methamphetamine, cocaine, amphetamines, and marijuana. Officer Miller was able to discuss the test results with Defendant, who told her he "had a lot going on during that time," including a death in his family and mental health difficulties. Officer Miller completed a forensic social worker referral so Defendant could receive a drug and alcohol assessment and a mental health evaluation, with the eventual goal of securing him inpatient substance abuse and mental health treatment. However, Defendant missed his May 13, 2022 appointment with the forensic social worker claiming he "had to walk there and wouldn't be able to make it."

Officer Miller did not know if Defendant had reliable transportation options to get to the probation office.

Defendant did make an appointment with a forensic social worker one week later, and after that meeting, Defendant was referred to Aphesis House for inpatient drug and alcohol treatment and mental health services. However, despite the staff's best efforts, the treatment facility was never able to contact Defendant, who never appeared for placement. Officer Miller was unaware of whether Defendant had any mental health diagnosis, and having never met Defendant in person, she had no opinion on whether he seemed to have mental health issues.

On May 25, 2022, Defendant called Officer Miller and claimed "his girlfriend at that time was blaming him for something he didn't do, and then the phone hung up." During that phone call, Officer Miller told Defendant to report to the probation office the next day, but he did not do so. Officer Miller attempted to call Defendant back after he hung up, but her call went directly to voicemail, and Defendant never answered her later attempts to call. This testimony is consistent with details taken from a Probation Violation Report completed by Officer Miller on July 6, 2022.

At some point, Officer Miller received a potential address for Defendant from a police report. A coworker went to visit Defendant at the address, but the residence was vacant. Defendant did not contact Officer Miller again until a few weeks before the November 10, 2022 probation hearing, when he called her from jail asking about substance abuse and mental health treatment. Officer Miller stated that Defendant was served with the probation violation warrant in this case on June 9, 2022, the same day he was arrested for aggravated assault, especially aggravated kidnapping, and felony weapon possession. Those charges were later dismissed.[3]

Ruth Woods, a supervisory probation officer with TDOC, worked in the office that supervised Defendant's probation. She first encountered Defendant in 2012, when he was placed on probation in another case, and she had supervised Defendant's probation officers for several years. She stated that early in Defendant's first probation term, he would report to the office, but she added, "[i]t was difficult to get him into the office. We had to chase him down." Defendant was then fitted with a GPS monitor, but he often let the unit's battery go dead or cut the unit off, leaving his probation officers unable to find him until he would "catch a new charge." Officer Woods testified that when she told Defendant to report to the probation office, he told her things like, "I have to work. When I get off work, I'll try. But I don't have transportation. It's hard to get around." Conversely, she noted

[3] The record does not state the reasons these charges were dismissed.

that "we have a lot of homeless offenders" who walked to the office if they had no transportation.

In addition to Defendant's issues with reporting to his probation officer and with his GPS device, Officer Woods also acknowledged that Defendant had a drug problem. She testified her office had tried to get Defendant help "several times." In 2016, her office tried to obtain the services of a forensic social worker, but nothing came of it. Then in 2020 or 2021, her office again tried to obtain forensic social worker services but Defendant did not avail himself of the opportunity. Recently, as described in Officer Miller's testimony, Defendant contacted Officer Woods and asked for help so Officer Woods attempted to obtain a forensic social worker and inpatient treatment for Defendant. She also recalled a recent phone call from Defendant claiming a man named "Skinner" was trying to help obtain treatment. Defendant asked Officer Woods to assist Mr. Skinner in obtaining treatment for Defendant, but Mr. Skinner never contacted her. In sum, Officer Woods was unaware whether Defendant had ever obtained any drug or alcohol treatment or mental health treatment.

Like Officer Miller, Officer Woods also testified that Defendant "was always saying that he had to work or was doing something, he couldn't come in." She added at one point between the time Defendant "picked up a charge" and was arrested for the instant violation, Defendant called Officer Woods. At that time, she did not have a probation violation warrant for Defendant. Officer Woods testified she told Defendant she was willing to "get everything squared, and . . . start from brand new. I said, let's do that. But he never came in."

When asked whether she thought Defendant would be a good candidate for probation or if probation would fix or help his problems, Officer Woods replied "no" to both questions. She added, "we have offered that [help] several times. And if he wanted help he would have [taken] it. And he's never taken the help." She also recalled that on a previous risk and needs assessment TDOC had administered, Defendant "scored high in violence." She could not recall if Defendant had "score[d] high in mental health or drugs[.]"

Defendant testified that his mental health was "bad" and that the death of his nephew caused him to use drugs "a lot." Defendant claimed he was trying to get help for his drug and mental health problems, but never received help. Specifically, Defendant denied ever receiving a call from Aphesis House. He claimed he had met with a forensic social worker about the Aphesis House placement, but he was unwilling to go there because the facility allegedly had a waiting period of up to two months. Defendant also said he had been in contact with Jason Skinner, the director of We Do Recovery Through Christ Ministries, which Defendant said was a year-long recovery program. Defendant testified he had been

accepted into the program, but he did not call Mr. Skinner as a witness nor present proof to substantiate his assertion.

Defendant also claimed that after his most recent release from jail, he went to the probation office to charge his GPS unit and met with his "first probation officer," who "quit the first week." Defendant claimed he went to the probation office the following week and told Officer Woods that he was staying at the America's Best Value Inn. He claimed he stayed there thirty days before moving to a duplex which was provided to him as a fixer-upper by a man for whom Defendant had worked in the past. Defendant claimed he had been there throughout his probationary period and had "been nowhere else." However, Defendant offered conflicting testimony about whether he notified his probation officer of where he lived. At one point during his testimony, Defendant claimed he never filled out a form notifying his probation officer about his residence, but at another point he claimed he had notified a social worker at least twice that he was living at the duplex. He also claimed he worked as a handyman for a man named Eddie Frazier, who was not the same person who provided Defendant the duplex. However, Defendant presented no other proof at this hearing to substantiate his employment.

Defendant acknowledged failing a drug screen earlier in his probation and refusing drug treatment. However, Defendant said, "I'm 40 years old. I don't have very much left in my life. So, I would like to try to do something positive with the remainder of it." He said he had asked his probation officers for help on several occasions, but "[n]o one listens." He acknowledged having family living in the area, but he refused to ask them for help. Defendant also claimed he stopped talking to his brother after Defendant "took the 10 for him on 2020, June 23." Defendant also claimed Officer Woods never made the "start brand new" comment she described in her testimony.

Defendant asserted, "I never thought that I signed any paper in 2012 stating that I would be on the [sex offender] registry." He claimed that five months later, "[t]hey forced my hand . . . to sign a piece of paper that they said I forgot to sign in court. . . . I was never supposed to have been on the registry." Defendant also denied being a "child molester" or a "rapist." Additionally, he claimed some of the recent charges against him were false. Defendant said he had used drugs in the past as both a coping mechanism and a means to take his own life, but he said "I just don't have it in me no more. I just don't have the run to do the same things like I used to do." Defendant said he could "barely walk" because of a previous gunshot wound and had no transportation to report to the probation office or to anywhere else he was ordered to attend.

At the end of the hearing, the trial court found the two probation officers to be credible witnesses and found Defendant not credible. The court found, by a preponderance of the evidence, that Defendant had violated his probation by failing to "comply with all

conditions and rules of [the] sex offender registry." The court also found, by a preponderance of the evidence, that Defendant violated his probation by testing positive for illegal drugs. The trial court found Defendant had tested positive for methamphetamine, which the trial court described as "greater than a technical violation under our current statute that applies to violations of probation," and found Defendant "was also simultaneously using cocaine and marijuana." The court also found the State had established, by a preponderance of the evidence, that Defendant "fail[ed] to report for some period of time in May and June of 2022." The trial court noted the failure to report was "in and of itself . . . a technical violation," but added that "the other two grounds do constitute a violation that is beyond a technical violation." Based on Defendant's prior violations of probation, Defendant's failure in past efforts at rehabilitation, and the fact that measures less restrictive than confinement had been applied to Defendant but had failed to deter him from criminal behavior, the trial court concluded it would be "setting [Defendant] up for further failure" if it were to order Defendant to attend a rehabilitation program. The trial court ordered Defendant to serve the remainder of his effective twenty-year term in confinement. This appeal followed.

III. Analysis

In this appeal, Defendant does not challenge the trial court's finding that Defendant violated his probation. Defendant also acknowledges the trial court considered his probation history, the previous attempts to obtain treatment, and whether Defendant was amenable to correction. However, Defendant argues that the trial court's order requiring Defendant to serve the full twenty-year sentence in custody "did not weigh [in] the interests of justice." Defendant further argues the trial court "failed to consider any alternatives to incarceration and provided no reason for its decision beside its reliance on [Officer] Wood[s]'s testimony that [Defendant] had been given chances before." The State contends that the trial court did not abuse its discretion in revoking Defendant's probation and ordering him to serve the remainder of his twenty-year sentence in custody. We agree with the State.

A trial court's decisions regarding the revocation of probation are reviewed for an "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 consequences on the record." *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022). The trial court's findings need not "be particularly lengthy or detailed," but they must be "sufficient for the appellate court to conduct a meaningful review of the revocation decision." *Id.* at 757-59. If the trial court does not make sufficient findings, this court "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*. at 759.

"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). "[A] trial court's decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination." *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014) (order) (per curiam). The defendant bears the burden for establishing suitability for probation; the defendant must show that probation will "'subserve the ends of justice and the best interest of both the public and the defendant.'" *State v. Souder*, 105 S.W.3d 602, 607 (Tenn. Crim. App. 2002) (quoting *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)); *see* Tenn. Code Ann. § 40-35-303(b); *State v. Russell*, 773 S.W.2d 913, 915 (Tenn. 1989); *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008).

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).
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> The probation statute provides for two categories of probation violations, technical and non-technical, with differing penalties for both. A non-technical violation allows the trial court to revoke probation and order a defendant to serve his or her sentence when the court finds "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." T.C.A. § 40-35-311 (e)(2) (2021). Technical violations include any "act that violates the terms or conditions of probation but does not constitute a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding." T.C.A. § 40-35-311 (d)(3) (2021). For a first technical violation, a trial court may (1) revoke probation and impose a term of incarceration not to exceed 15 days or (2) resentence the defendant for the remainder of the unexpired term to a probationary sentence that includes a requirement to participate in a community-based alternative to incarceration. T.C.A. § 40-35-311 (e) (2021).

State v. Nicholas J. Walden, No. M2022-00255-CCA-R3-CD, 2022 WL 17730431, at *3 (Tenn. Crim. App. Dec. 16, 2022), *no perm. app. filed*.

Here, the evidence shows that Defendant violated his probation three times before the violations which are the subject of this appeal, and on those three previous occasions Defendant was given a sentence of less than full confinement. Defendant continued to violate his probation. In the instant probation violations, Defendant's drug screen tested positive for three separate illegal substances, including cocaine and methamphetamine, and Defendant violated his sex offender registry reporting duties by repeatedly failing to report to his probation officer and keeping his GPS monitor charged. The trial court accredited the probation officers' testimony that Defendant never provided proof of employment or a home address. Despite Defendant's requests for mental health and substance abuse treatment, he failed to enroll in the program his probation officers had arranged. Additionally, while Defendant claimed that he previously obtained approval for a faith-based treatment program and had maintained employment and a relatively stable home address, Defendant did not put on proof to support his claims. Accordingly, the trial court was presented with no credible evidence to support Defendant's claims. The only credible evidence from the probation hearing supported the trial court's conclusion that Defendant had failed in past efforts at rehabilitation and was not a successful candidate for rehabilitation in the future.

Based on our review, we conclude the trial court did not abuse its discretion in revoking Defendant's probation. Additionally, the trial court did not abuse its discretion by ordering him to serve the previously imposed twenty-year sentence in confinement. Defendant is not entitled to relief.

IV. Conclusion

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

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MATTHEW J. WILSON, JUDGE