

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs October 3, 2023

FILED

10/18/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. ERIC DEWAYNE MILTON**

**Appeal from the Circuit Court for Carroll County**  
**No. 21CR140      Bruce Irwin Griffey, Judge**

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**No. W2023-00341-CCA-R3-CD**

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The defendant, Eric Dewayne Milton, appeals from the trial court's revocation of his community corrections sentence and order directing the defendant to serve the remainder of his eight-year sentence in confinement. On appeal, the defendant contends the trial court abused its discretion by failing to treat the defendant's violation as a violation of probation and impose a thirty-day sentence of confinement. After a thorough review of the record, the applicable law, and the briefs of the parties, we affirm the judgment of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Steven J. West, Huntington, Tennessee, for the appellant, Eric Dewayne Milton.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Neil Thompson, District Attorney General; and Stephanie Hale, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Facts and Procedural History***

On January 10, 2022, defendant, Eric Dewayne Milton, pled guilty in case number 21CR140 to one count of possession of more than .5 grams of methamphetamine with intent to deliver. The trial court imposed an eight-year sentence. Per the terms of his sentence, the defendant was required to serve one year in confinement with the remainder of his sentence to be served on community corrections. He was given the option to serve his one-year confinement with a rehabilitation program. On January 11, 2022, one day

after his sentencing, the defendant failed to report to his rehabilitation program. He was charged with his first violation of his community corrections sentence. As a result, a Partial Revocation Order was entered on May 20, 2022, directing the defendant to serve the remainder of his one-year sentence in confinement. The defendant was released from the Carroll County Jail on November 22, 2022.

Upon release, the defendant again failed to report. On January 9, 2023, a warrant was issued for the defendant's arrest, charging him with his second violation. On March 3, 2023, the trial court conducted an evidentiary hearing on the defendant's alleged failure to comply with the conditions of his community corrections sentence. The trial court found that there existed a preponderance of the evidence that the defendant had violated the terms of the community corrections sentence. The trial court also stated that after reviewing the defendant's criminal conviction history and compliance while being supervised and any statements, arguments, or submissions on behalf of the defendant, a full revocation of his community corrections sentence was appropriate, and ordered the defendant to serve the balance of his eight-year sentence in confinement.

On March 9, 2023, the defendant filed a timely Notice of Appeal.

### *Analysis*

On appeal, the defendant contends that the trial court erred by ordering him to serve the remainder of his eight-year sentence in confinement. The defendant argues the trial court should have found his failure to report to be a second "technical" violation and thereby imposed a thirty-day confinement as required of violations of probation under Tenn. Code Ann. § 40-35-311. The State contends that the trial court was within its authority and discretion when it revoked the defendant's community corrections sentence and ordered the defendant to serve the remainder of his sentence in confinement pursuant to Tenn. Code Ann. § 40-36-106. We agree with the State.

In the instant case, the defendant concedes that the trial court's finding of a violation and its decision to revoke his community corrections sentence was proper. Instead, the defendant seeks relief solely from the trial court's chosen consequence that the defendant serve the balance of his sentence in confinement and prays for this Court to impose a sentence of thirty days' confinement and return him to community corrections. Therefore, we will not address the trial court's findings that a violation occurred or that a revocation was proper. Instead, we will focus on whether the trial court's decision to order the defendant to serve the balance of his sentence in confinement was authorized by the appropriate statute and whether the trial court's chosen consequence was an abuse of discretion.

The procedures for revocation of probation and community corrections are similar, and the same legal principles apply. *See State v. Harkins*, 811 S.W.2d 79, 83 (Tenn. 1991). “A trial court, upon finding by a preponderance of the evidence that a defendant violated the conditions of his probation must determine (1) whether to revoke probation, and (2) the appropriate consequence to impose upon revocation.” *State v. Dagnan*, 641 S.W.3d 751, 753 (Tenn. 2022). “On appeal from a trial court’s decision revoking a defendant’s probation, the standard of review 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. 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 id.* at 759. “In reviewing the trial court’s findings, it is the [appellate court’s] obligation to examine the record and determine whether the trial court has exercised a conscientious judgment rather than an arbitrary one.” *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991).

The defendant’s contention is that his failure to report to his community corrections supervisor was a “technical” violation, and therefore, subject only to the maximum thirty-day confinement period under Tennessee Code Annotated section 40-35-311(e)(1)(A)(ii) which applies to revocations of probation. While the defendant is correct that his Violation Report categorized his failure to appear as “technical,” that designation is irrelevant to determining the appropriate consequence of a community corrections violation. “Community corrections sentences are governed by Tennessee Code Annotated section 40-36-106 which authorizes the trial court to conduct a revocation hearing for violations as outlined in the probation revocation statute of 40-35-311: Failure to comply with the terms of probation subjects the offender to revocation proceedings conducted by the court pursuant to § 40-35-311.” Tenn. Code Ann. § 40-36-106(e)(3)(B); *see also* Tenn. Code Ann. § 40-35-311(b) (May 2021) (“[w]henver any person is arrested for the violation of probation and suspension of sentence, the trial judge . . . shall, at the earliest practicable time, inquire into the charges and determine whether or not a violation has occurred and, at the inquiry, the defendant must be present and is entitled to be represented by counsel and has the right to introduce testimony in the defendant's behalf”).” *See State v. Gibbs*, 2022 WL 1146294, at \*3 (Tenn. Crim. App. Apr. 19, 2022).

Under Tennessee Code Annotated section 40-36-106(e), once a trial court has found sufficient evidence of a violation, the trial court has the authority to revoke a community corrections sentence and order the defendant to serve the remainder of his sentence in confinement. While a revocation of probation and a revocation of community corrections are similar, a trial court examining a revocation of community corrections is not bound to the same maximum sentence mandates as technical violations of probation under Tennessee Code Annotated section 40-35-311. Under a community corrections sentence,

“a violation irrespective of its nature remains a violation.” *State v. Griffis*, No. E03C31-9708-CR-00358, 1998 WL 712702 (Tenn. Crim. App. Oct. 13, 1998). Therefore, the trial court was within its authority to order the defendant to serve the remainder of his sentence in confinement under section 40-36-106.

Lastly, the trial court’s decision to order the defendant to serve the remainder of his sentence in confinement was not an abuse of discretion. The trial court’s findings considered the consequence imposed for the violation as a separate discretionary decision. The trial court stated clearly that it reviewed the defendant’s criminal conviction history and compliance while being supervised, along with any statements, submissions, and argument on behalf of the defendant, before finding the most appropriate sentence for the defendant to be a full revocation. The trial court sufficiently recorded the facts that it considered and its reasoning for fully revoking defendant’s community correction sentence. Giving a presumption of reasonableness to the trial court’s decision, we conclude there was no abuse of discretion.

### ***Conclusion***

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

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J. ROSS DYER, JUDGE