

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs July 11, 2023

FILED

09/19/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. NICHOLAS KENTRELL DICKERSON**

**Appeal from the Circuit Court for Fayette County**  
**Nos. 11-CR-149, 13-CR-119, 13-CR-120      J. Weber McCraw, Judge**

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**No. W2022-00431-CCA-R3-CD**

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The Appellant, Nicholas Kentrell Dickerson, appeals the Fayette County Circuit Court's orders revoking his probation and imposing his original sentences for various drug convictions and a felony evading arrest. The Appellant contends the trial court abused its discretion in revoking his probation because (1) the alleged violations were based on new charges that were subsequently dismissed, and (2) the remaining violations were technical in nature and not a valid basis for full revocation under Tennessee Code Annotated section 40-35-311(e)(1)(A) (2022). Upon our review, we affirm.

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

CAMILLE R. McMULLEN, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and JILL BARTEE AYERS, JJ., joined.

J. Colin Rosser (on appeal), Somerville, Tennessee, William Massey (at trial), Memphis, Tennessee, for the Appellant, Nicholas Kentrell Dickerson.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Mark E. Davidson, District Attorney General; and Falen Chandler, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

The record herein is sparse, and we glean the Appellant's criminal history, in large part, from the information provided in the probation violation reports. In 2012, in case number 11-CR-149, the Appellant was convicted of possession of a Schedule II drug (cocaine) with intent to sell (count one) and possession of a Schedule III drug (dihydro) with intent to sell (count two), for which he received an effective sentence of ten years suspended to supervised probation after service of 300 days. The Appellant's probationary

term in case number 11-CR-149 was originally set to expire on June 7, 2021. However, in 2014, in case number 13-CR-119, the Appellant was convicted of possession of a Schedule II drug (cocaine) with intent to sell (count one) and possession of Schedule VI (marijuana) with intent to sell (count two), for which he received a concurrent term of ten years' probation to be served consecutively to case number 11-CR-149. The Appellant's probationary term was thus extended and reset to expire on June 17, 2031. Sometime later in 2014, in case number 13-CR-120, the Appellant was convicted of felony evading arrest and received a sentence of two years, which was apparently to be served on probation. Following this sentence, the probation violation report notes that the Appellant's effective probationary sentence was twenty years.

In December 2019, a probation violation report was filed in each of the above case numbers asserting the same grounds. The probation violation reports collectively asserted that the Appellant failed to obey the laws of the State (Rule 1), used or possessed drugs or intoxicants (Rule 8), and engaged in assaultive, abusive, or threatening behavior (Rule 14). The grounds in support of each violation were substantially the same and alleged that on or about December 31, 2018, the Appellant committed the offense of child abuse/neglect endangerment, possession of a controlled substance (cocaine), simple possession of marijuana, possession of a controlled substance (heroin), possession of methamphetamine, and possession of drug paraphernalia.

Another probation violation report was filed on June 25, 2020, asserting that the Appellant failed to allow the probation officer to visit his home or failed to report to the probation office (Rule 6). The grounds alleged in support of this violation were that on June 2, 2020, the supervising officer conducted a home visit at the Appellant's residence, and after several attempts to contact him, officers instructed the Appellant to report to the probation office on June 4, 2020, and the Appellant failed to do so. Additionally, on June 17, 2020, the probation officer conducted a home visit in an effort to contact the Appellant but was unsuccessful. The officer left a door tag at the Appellant's home instructing the Appellant to report to the probation office on June 18, 2020, but the Appellant failed to do so. The history of supervision section of the report noted that the Appellant "was violated on 12/10/19 for new charges" and that the Appellant failed a drug screen on March 17, 2020, and was sanctioned for it.

A probation revocation hearing was held on March 8, 2021. The Appellant's probation officer testified that he had been supervising the Appellant in case numbers 11-CR-149, 13-CR-119, and 13-CR-120 since July 2019. The officer confirmed that he filed two probation violation reports against the Appellant, one on December 6, 2019, alleging multiple new criminal offenses, and another violation report on June 25, 2020, alleging that the Appellant failed to report as directed, and failed to make payments of court costs for

which he was sanctioned. On cross-examination, the officer explained that he made several attempts to reach the Appellant by phone and through home visits but was unsuccessful.

Lieutenant Kenny Cook of the Fayette County Sheriff's Office testified that on December 31, 2018, he was involved in a traffic stop of the Appellant. Lieutenant Cook arrived on the scene to assist Deputy Al Freeman. During the stop, another vehicle arrived which was occupied by two females, one of whom was a juvenile. Over defense counsel's hearsay objection, Lieutenant Cook testified that Deputy Freeman told him that the Appellant handed the juvenile female, located on the passenger side of his vehicle, a baggie. Lieutenant Cook recovered the baggie from the juvenile female and it contained substances which were later confirmed to be .7 grams of heroin, .22 grams of methamphetamine, and 2.37 grams of cocaine. A leafy, green substance was also recovered from the baggie, and Lieutenant Cook stated it field tested positive for marijuana. The lab reports confirming the test results and photographs of the baggies were admitted into evidence at the hearing. Six hundred and twelve dollars in different denominations was recovered from the Appellant, which Lieutenant Cook opined was consistent with the sale and delivery of narcotics.

On cross-examination, Lieutenant Cook agreed that the money recovered from the Appellant was also consistent with "legal money." However, he pointed out his opinion that the money was consistent with the sale and delivery of narcotics was informed by the digital scales and illegal narcotics also found with the Appellant. Lieutenant Cook agreed that he did not personally observe the Appellant give anything to the juvenile female. He agreed that Deputy Freeman observed the Appellant give the juvenile the baggie, and that Deputy Freeman was not present at the hearing to testify. Lieutenant Cook agreed that he personally recovered the baggie containing the drugs from the juvenile female. Finally, Lieutenant Cook agreed that the affidavit of complaint for the new drug offenses did not attribute the statement that the Appellant was observed to pass the baggie to the juvenile female to Deputy Freeman; rather, the affidavit included "just a general statement that juvenile approached the vehicle and that [the] juvenile approached passenger side of the car and reached in and took a plastic bag that [the Appellant] gave her."

After hearing the arguments of the parties, the trial court revoked the Appellant's probationary term and stated as follows:

The Court does find that he has failed to meet with probation as required on that particular date in either May or June . . . but he failed to meet and contact information was left and he failed to follow up on it and, obviously, face-to-face is important and issues arise when people on probation fail to meet with the probation officer. And then the Court does find there's probable cause to believe that a new crime has been committed

by [the Appellant] while he is on supervision. Therefore, the Court finds he is no longer a suitable candidate for alternative sentencing.

On March 11, 2021, the trial court entered orders revoking the Appellant's probation as to case numbers 11-CR-149, 13-CR-119, and 11-CR-120. The Appellant, acting pro se, filed an untimely notice of appeal on April 7, 2022. By order of this court, the untimeliness of the notice of appeal was waived in the interest of justice, and this case is now properly before us for review.

## ANALYSIS

As we understand the Appellant's issues presented, he does not assert that the trial court abused its discretion during the probation revocation hearing nor does he lodge a complaint challenging the findings of the trial court. Instead, the Appellant argues the State dismissed the charges which gave rise to the probation violation after the hearing and the remaining violations, technical in nature, were not grounds for full revocation of his sentence based on newly enacted Tennessee Code Annotated section 40-35-311(e)(1)(A) (2022). In response, the State contends the Appellant is not entitled to relief because he has failed to provide proof of dismissal of the new criminal offenses on appeal and relies on law that did not apply at the time of his revocation hearing; and therefore, the record supports the trial court's decision to revoke his probation based on the new offenses and his failure to report as directed. We agree with the State.

Upon our review of a trial court's revocation of a defendant's probationary sentence, we apply an "abuse of discretion standard of review 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." State v. Dagnan, 641 S.W.3d 751, 759 (Tenn. 2022). An abuse of discretion has been established when the "record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred." State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980); see State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001); State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978). 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." Shaffer, 45 S.W.3d at 555 (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)). A probation revocation determination involves a two-step analysis in which the trial court must determine whether a defendant violated the conditions of probation and must then determine the appropriate consequences for a violation. Dagnan, 641 S.W.3d at 757. 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) (2019). If the trial court revokes a defendant's probation, the statutory provisions regarding probation at the time

of the Appellant's hearing authorized the trial court to return a defendant to probation with modified conditions as necessary, extend the period of probation by no more than two years, order a period of confinement, or order the defendant's sentence into execution as originally entered. Id. §§ 40-35-308(a), (c) (2019) (subsequently amended), -310 (2019) (subsequently amended).

The Appellant provides this court with limited briefing and states that "on March 18, 2021, the State dismissed the charges against [the Appellant], and one count was actually returned as a No True Bill[.]" Later in his brief, the Appellant asserts "the State announced they would be nolle prosecuting the charges and a superseding indictment would be entered[;]" however, "no such superseding indictment has been entered and the Fayette County Circuit Court Clerk's office reflect 20-CR-38 has been dismissed." Our review of the record shows that at the end of the probation revocation hearing, the parties discussed case number 20-CR-38, presumably the case number for the new drug related offenses giving rise to the probation violation, and a possible guilty plea was mentioned for a future date. The State advised the trial court that at the next setting either a guilty plea would be entered or the State would nolle pros the matter and seek a superseding indictment. No further information as to the new drug related offenses is included in the record, and thus, the Appellant has failed to substantiate this claim.

Moreover, even if the new drug offenses had been dismissed, we cannot say it would have impacted our resolution of this issue. This court has repeatedly held that a dismissal would not invalidate the trial court's conclusion that the crimes were committed. See Delp, 614 S.W.2d at 396-97 (citing Ray v. State, 576 S.W.2d 598, 600 (Tenn. Crim. App. 1978)) (revocation may be based upon criminal acts alleged in violation warrant even though defendant was acquitted of charges for underlying acts); State v. Gonzales, No. M2011-02562-CCA-R3-CD, 2012 WL 6163178, at \*5 (Tenn. Crim. App. Dec. 11, 2012) (revocation affirmed where the underlying charges which served as a basis for the decision to revoke had been dismissed), perm. app. denied (Tenn. Mar. 5, 2013); State v. Gabriel, No. M2002-01605-CCA-R3-CD, 2004 WL 1562551, at \*2 (Tenn. Crim. App. July 12, 2004) (holding that "validity of the original warrant was not affected by the dismissal of the criminal charges arising from the acts alleged in the warrant") no perm. app. filed; State v. Turnley, No. 01C01-9403-CR-00094, 1994 WL 714227, at \*3 (Tenn. Crim. App. Dec. 22, 1994) ("[t]he fact that the Defendant was not convicted of any of the offenses with which he was charged does not mandate dismissal of the probation violation warrant") no perm. app. filed. Based on this authority, we reject the Appellant's conclusory claim that the sole grounds remaining in support of his probation violation were technical violations. Instead, upon our review of whether the trial court properly revoked the Appellant's probation, we will consider the Appellant's failure to report to his probation officer as directed and any evidence of the new drug related criminal offenses.

The record shows that in 2014, the Appellant received an effective twenty-year period of probation. On December 31, 2018, Lieutenant Kenny Cook was involved in a traffic stop of the Appellant. During the stop, the Appellant was observed to give a juvenile female a baggie which contained .7 grams of heroin, .22 grams of methamphetamine, 2.37 grams of cocaine, and marijuana. The Appellant also had six hundred and twelve dollars in different denominations and digital scales in his possession, both of which were consistent with the sale and delivery of narcotics. The Appellant's probation officer testified that he filed two probation violation reports in each of the Appellant's cases. The probation violation reports were based on the new offenses the Appellant was charged with in December 2018 as well as the Appellant's failure to report and pay court costs. Specifically, in May and June of 2020, the Appellant failed to report to the probation office as directed. His probation officer made at least three visits to the Appellant's home but was unable to contact him. Based on this proof, the trial court revoked the Appellant's probation. Upon our review, the record contains substantial evidence to support the trial court's findings that the Appellant violated the terms of his probation. Accordingly, the trial court did not abuse its discretion in revoking the Appellant's probation and ordering him to serve his sentence. The Appellant is not entitled to relief.

### **CONCLUSION**

Based on the above reasoning and authority, we affirm the judgment of the trial court.

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CAMILLE R. MCMULLEN, PRESIDING JUDGE