

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 12, 2023

FILED

10/04/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. SPENSER CURTIS MCGUIGGAN

Appeal from the Circuit Court for Marshall County
No. 21-CR-62 Forest A. Durard, Jr., Judge

No. M2022-01504-CCA-R3-CD

The defendant, Spenser Curtis McGuiggan, appeals the Marshall County Circuit Court's order revoking his probation and requiring him to serve in confinement the balance of his six-year sentence for sexual battery of a minor. Discerning no error, we affirm.

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

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which KYLE A. HIXSON and MATTHEW J. WILSON, JJ., joined.

Jessica Fay Butler, Assistant Public Defender (on appeal); Donna Hargrove, District Public Defender; and Michael Collins, Assistant District Public Defender (at trial), for the appellant, Spenser Curtis McGuiggan.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Robert J. Carter, District Attorney General; and William Bottoms, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On October 6, 2021, the defendant pleaded guilty to sexual battery of a minor, for which he received an effective six-year, split-confinement sentence, with one year to be served in confinement and the balance on probation. On July 18, 2022, while the defendant was incarcerated at the Marshall County Jail, he was charged with the assault of another inmate, and a violation of probation warrant issued on September 7, 2022. A probation revocation hearing was held on October 5, 2022.

At the hearing, Detective Tony Nichols of the Marshall County Sheriff's Department testified that on July 15, 2022, he began investigating an alleged assault committed by the defendant against Donnie Hill, another inmate at the Marshall County Jail. Detective Nichols testified that he interviewed several inmates, including the defendant, in the course of his investigation. Detective Nichols testified that he also reviewed reports from corrections officers, a statement from Mr. Hill, and video surveillance recordings of several interactions between the defendant and Mr. Hill. Detective Nichols stated that at the conclusion of his investigation, he determined he had probable cause to obtain an arrest warrant for assault against the defendant, which was served on July 18, 2022.

The State introduced four surveillance video recordings of a cell block in the Marshall County Jail through Detective Nichols' testimony. Detective Nichols testified that none of the videos introduced recorded any sound from the cell block. The first recording, from June 5, 2022, began at 10:47 p.m. and depicted Mr. Hill reclining on one of the bunks in the cell block and the defendant standing near him. Brian Welch, a third inmate, was sitting on the bunk adjacent to Mr. Hill's. The recording reflected that after approaching Mr. Hill, the defendant reached down and tapped Mr. Hill on the forehead. Afterwards, the defendant retreated and flexed his muscles in Mr. Hill's direction.

The second recording, from June 6, 2022, began at 3:56 p.m. and showed the defendant, Mr. Welch, and Mr. Hill walking in a loop around the cell block, which Detective Nichols explained inmates typically do for exercise. The recording reflected that when Mr. Hill completed his lap around the room, the defendant and Mr. Welch approached him and stood purposefully in front of him, arms extended, to block his path. The defendant then grabbed Mr. Hill around the chest and lifted him briefly from the ground before releasing him. The three men subsequently continued their laps around the cell block until 3:58 p.m., at which point the defendant sat at a table and extended his arm towards Mr. Hill. Detective Nichols testified that the defendant had some experience wrestling and that he interpreted the gesture as an invitation to arm wrestle. The recording reflected that when Mr. Hill walked past the defendant without accepting his invitation, the defendant rose from the table, arm still extended, and followed Mr. Hill around the cell block.

The third recording, also from June 6, 2022, began at 10:57 p.m. and showed Mr. Hill reclining on his bunk and the defendant standing some distance away, shirtless. The recording reflected that the defendant approached Mr. Hill at his bunk, lifted him out of the bunk, and held him briefly over his head. After the defendant released Mr. Hill, he appeared to smack Mr. Hill somewhere on the lower back. Mr. Hill thereafter returned to his bunk.

The fourth recording, from June 18, 2022, began at 10:06 p.m. and showed the defendant, Mr. Hill, Mr. Welch, and several other inmates. The recording again

depicted Mr. Hill reclining on his bunk and the defendant standing some distance away. The defendant approached Mr. Hill, slapped something out of his hand, and began punching him in the face. Detective Nichols testified that based on these recordings, he charged the defendant with the assault that occurred on July 18, 2022.

On cross-examination, Detective Nichols reiterated that pursuant to his investigation into the alleged assault, he interviewed several individuals involved, including the defendant. Detective Nichols testified that though the defendant disclosed to him that he had been “disrespected” in some manner by Mr. Hill, Detective Nichols was unable to find any evidence to this effect. Detective Nichols further testified that he could not recall whether other inmates he interviewed during his investigation disclosed to him any evidence that Mr. Hill had “disrespected” the defendant prior to the June 18, 2022 incident.

Detective Nichols explained that he reviewed at least seven hours of video surveillance footage from the Marshall County Jail during the course of his investigation. Detective Nichols conceded that he did not continuously review the footage and that he could have missed some recordings of the defendant and Mr. Hill’s interactions.

Mr. Hill testified for the State and explained that he was incarcerated in the Marshall County Jail on several pending charges at the time of the incident. Mr. Hill testified that on June 18, 2022, he was lying in his bunk in the cell block when the defendant and Mr. Welch approached him and began asking questions he perceived to be inappropriate. Mr. Hill testified that after he asked the defendant and Mr. Welch to leave him alone, the defendant punched him in the face twice, drawing blood. Mr. Hill explained that though he did not initially inform any jail personnel about the incident, it nevertheless came to their attention and that he thereafter disclosed the details of the incident to the Marshall County Sheriff’s Department. Mr. Hill testified that though the defendant had acted to “aggravate” him on several previous occasions, the defendant had never become physically hostile towards him until the night of June 18, 2022.

On cross-examination, Mr. Hill denied ever calling the defendant offensive names or otherwise antagonizing him. Mr. Hill testified that prior to the June 18, 2022 incident, the inmates in his cell block would “joke around” with one another and reiterated that his relationship with the defendant had previously been “fine.”

The State rested. After a *Momon* colloquy, the defendant elected not to testify and did not present additional proof.

At the conclusion of the hearing, the State requested that the trial court revoke the defendant’s probation and order him to serve the remainder of his sentence in confinement. In support of this request, the State argued that the evidence and testimony presented showed a clear pattern of aggression by the defendant toward Mr. Hill which

culminated in an assault on June 18, 2022. The defendant requested that the trial court find that he did not commit an assault and allow his probation to take effect at the end of his one year of confinement. In support of this request, the defendant argued that the evidence and testimony presented did not prove he possessed the requisite intent to assault Mr. Hill but rather demonstrated a pattern of the two men joking around with one another. The defendant further described his actions on June 18, 2022 as “an isolated episode.”

On this evidence, the trial court found that the State had shown by a preponderance of the evidence that the defendant violated the terms of his probation by committing an assault against Mr. Hill. The trial court noted that though the defendant had not been charged in relation to his actions on June 5 and 6, they were nevertheless relevant to “indicate an animosity toward Mr. Hill.” The trial court found that there was no evidence that Mr. Hill had antagonized the defendant prior to the assault. The trial court, therefore, revoked the defendant’s probation and, after a brief recess, held a dispositional hearing.

At the dispositional hearing, the State reiterated its request that the defendant serve the remainder of his sentence in confinement. The defendant requested that the trial court impose additional time in confinement rather than the entire balance of the six-year sentence. In support of this argument, the defendant explained that this was his first violation, that he was very near the conclusion of his split confinement, and that he and Mr. Hill had since been moved to different cells. Upon consideration of these requests, the trial court ordered the defendant to serve the remainder of his sentence in confinement. The trial court explained:

In this particular case[,] I find it very problematic that we have gotten not even through the time which we were to serve before our probation was revoked. I think that reflects poorly on our ability to also abide by the orders of the [c]ourt once we are released in society, but still on some type of probation.

I feel in this particular case it is egregious enough to revoke the sentence in full.

On appeal, the defendant asserts that the trial court abused its discretion by failing to conduct a proper two-step analysis on whether to revoke the defendant’s probation and by failing to place sufficient findings of fact on the record to support its decision. The State responds that the trial court properly exercised its discretion in ordering the defendant to serve the balance of his sentence in confinement and made the necessary findings to support this decision.

As relevant here,

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, or absconding, then the trial judge may . . . cause the defendant to commence the execution of the judgment as originally entered.

T.C.A. § 40-35-311(e)(2) (Supp. 2021). Accordingly, “[t]he trial judge shall possess the power, in accordance with [Code section] 40-35-311, to revoke the suspension” and “order the original judgment to be in full force and effect from the date of the revocation of the suspension.” T.C.A. § 40-35-310(a). In other words, “[t]he trial judge retains the discretionary authority to order the defendant to serve the original sentence.” *State v. Reams*, 265 S.W.3d 423, 430 (Tenn. Crim App. 2007).

Probation revocation requires a two-step consideration by the trial court. *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). “The first is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation.” *Id.* (footnote omitted). Our supreme court has held that “these 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.

The standard of review on appeal from the trial court's decision to revoke a defendant's probation 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.” *Id.* at 759. The trial court's findings need not be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision.” *Id.* (citing *State v. Bise*, 380 S.W.3d 682, 705-06 (Tenn. 2012)). If the trial court fails to place its reasoning for a revocation decision on the record, this court may either “conduct a de novo review if the record is sufficiently developed for the court to do so” or “remand the case to the trial court to make such findings.” *Id.* (citing *State v. King*, 432 S.W.3d 316, 327-28 (Tenn. 2014)). Generally, “[a] trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010).

The trial court found, by a preponderance of the evidence, that the defendant had violated his probation agreement by committing an assault, a Class A misdemeanor. *See* T.C.A. § 39-13-101. The trial court relied upon the testimonies of both Detective Nichols and Mr. Hill, as well as the video surveillance footage introduced by the State, in

reaching this conclusion. The evidence supports the trial court's finding that the defendant violated the terms of his probation.

Though it was not required to do so, the trial court held a separate hearing to determine the consequences for revocation. *Dagnan*, 641 S.W.3d at 757. The trial court's findings, though brief, suggest that it considered the consequences for the defendant's violation as a separate discretionary decision. As our supreme court in *Dagnan* explained, a trial court may consider the seriousness of the violation and the defendant's character in support of its decisions in a revocation hearing. *Id.* at 759 n.5 (citing *State v. Fleming*, No. E2017-02352-CCA-R3-CD, 2018 WL 6787580, at *3 (Tenn. Crim. App., Knoxville, Dec. 26, 2018)). The trial court expressed concern that the defendant had violated the terms of his probation before being released from confinement and found that such behavior reflected poorly on the defendant's ability to abide by court orders and the terms of probation upon his release. The trial court further found the defendant's conduct so egregious that it warranted serving the balance of his sentence in confinement, indicating that the court contemplated the seriousness of the violation. Because these considerations are among those specifically noted as appropriate by our supreme court, we conclude that the trial court did not abuse its discretion in ordering the defendant to serve the remainder of his sentence in confinement.

For the foregoing reasons, we affirm the judgment of the trial court.

JAMES CURWOOD WITT, JR., JUDGE