

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 28, 2023

FILED
05/12/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JEREMIAH SWEET

Appeal from the Circuit Court for Blount County
Nos. C-26453, C-26482, C-26651 Tammy Harrington, Judge

No. E2022-00761-CCA-R3-CD

The Defendant, Jeremiah Sweet, appeals as of right from the Blount County Circuit Court’s revocation of his probation and execution of his four-year sentence for aggravated statutory rape, simple possession of a Schedule VI controlled substance, and theft of property valued at \$1000 or less. Although the Defendant admits to violating the terms of his probation, he argues that the trial court abused its discretion by ordering him to serve the balance of his sentence in confinement. After review, we affirm.

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

KYLE A. HIXSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and JILL BARTEE AYERS, J., joined.

J. Liddell Kirk (on appeal), Madisonville, Tennessee, and Mack Garner (at hearing), Maryville, Tennessee, for the appellant, Jeremiah Sweet.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Mike Flynn, District Attorney General; and Ryan Desmond, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

On October 18, 2021, the Defendant pleaded guilty to a series of offenses that occurred in Blount County. The Defendant pleaded guilty in case number C-26651 to aggravated statutory rape, a Class D felony, and was sentenced to four years’ incarceration suspended to three years and ten months on supervised probation. *See* Tenn. Code Ann. § 39-13-506. The Defendant also pleaded guilty to simple possession of a Schedule VI controlled substance in case number C-26482 and to theft of property valued at \$1000 or

less in case number C-26453, both Class A misdemeanors, and was sentenced in each case to eleven months and twenty-nine days suspended to supervised probation.¹ *See* Tenn. Code Ann. §§ 39-14-103, -17-418. The sentences in these three cases were run concurrently with each other.

A violation of probation warrant related to these cases was issued March 30, 2022, alleging that the Defendant had materially violated his probation. Specifically, the warrant stated that the Defendant violated

Rule # 9 in that the offender did use or possess illegal drugs. On 2/10/2022, the offender did test positive for amphetamines and methamphetamines. On 3/04/2022, lab verification results were received that confirmed the positive test for amphetamines and methamphetamines.

A probation revocation hearing was held on May 13, 2022. The Defendant stipulated that he had violated the terms of his probation by testing positive for methamphetamine in February 2022. The parties further stipulated to the admissibility of the laboratory confirmation report.² Based on the Defendant's stipulation, the court found that the Defendant had violated his probation. Thus, the only question before the trial court was the appropriate consequence to apply in light of the Defendant's violation. Defense counsel stated that a treatment facility was not available for several months, which was the reason for conducting a revocation hearing.

The State then called Adam Hancock, the Defendant's probation officer, who testified that he began supervising the Defendant in October 2021. Mr. Hancock stated that the drug screen conducted in February 2022 was the Defendant's first drug screen since being placed on probation. Mr. Hancock said that after the positive drug screen result, the Defendant responded that he had smoked methamphetamine because he was "stressed."

On cross-examination, Mr. Hancock testified that the Defendant complied with reporting to probation three times each month. Although Mr. Hancock could not recite all of the special conditions pertaining to the Defendant's probation, Mr. Hancock confirmed that the Defendant was otherwise compliant with the terms of his probation. Mr. Hancock stated that the Defendant was referred to a forensic social worker after testing positive for

¹ During the revocation hearing, the State mentioned that the Defendant had three misdemeanor charges and one felony charge subject to a revocation of probation as the result of this guilty plea. However, the record includes only two guilty-pleaded misdemeanor judgments.

² Although the parties agreed to the admissibility of the report, it was not entered as an exhibit to the hearing, nor was it included in the record on appeal.

methamphetamine, and although the Defendant missed the first appointment, he eventually met with the social worker. After this appointment, the Defendant was referred to a relapse prevention class by the social worker, which he attended until his arrest.

At the conclusion of cross-examination, the court questioned Mr. Hancock. In response to the court's questioning, Mr. Hancock clarified that the Defendant had a pre-existing appointment with the forensic social worker scheduled for February 11, 2022. After testing positive for methamphetamine on February 10, Mr. Hancock instructed the Defendant to "have a conversation" with the forensic social worker during his appointment the next day about his positive drug screen. The Defendant missed this appointment, but subsequently attended another appointment. During this appointment, the forensic social worker referred the Defendant to the relapse prevention program.

On redirect examination, Mr. Hancock confirmed that the Defendant was not taken into custody upon the initial positive drug screen. He explained that it was department policy to get a laboratory confirmation of the drug screen prior to seeking an arrest warrant for the violation.

The Defendant testified that he had heard Mr. Hancock testify and mostly agreed with Mr. Hancock's testimony. The Defendant indicated that he saw his probation officer as directed despite his having car issues and needing to take the bus. The Defendant acknowledged that he received both SNAP benefits and assistance from his mother while on probation. He stated that, if released from custody, he could live with his mother in Union County until he could "get back on [his] own feet" and that he had a "housing reconstruction" job lined up.

The Defendant said that he was required to go to the relapse prevention class once a week and that he attended four out of twelve classes before being arrested. He affirmed that the class was "absolutely" helping him. He stated that though he knew methamphetamine was illegal, he did not believe that he had a drug problem and that using methamphetamine was a "horrible mistake." The Defendant stated that he only used marijuana regularly before his probation but had quit since being on probation. The Defendant stated that using drugs was not worth "the loss of freedom" or the risk to his own life. The Defendant explained that he was HIV positive and that, if incarcerated over the next month, he would lose his assistance and would be unable to afford his medication.

On cross-examination, the Defendant stated that in his plea agreement, he pleaded guilty to a simple possession charge and a drug paraphernalia charge.³ The Defendant

³ The judgments included in the record show that the Defendant's drug paraphernalia charges in case numbers C-26482 and C-26453 were dismissed.

stated that the paraphernalia charge involved marijuana and not methamphetamine. He denied that the paraphernalia allegation included a “razorblade, straw, and pipe,” but asserted that it instead involved a “glass bowl and container that had marijuana in it.” The Defendant reiterated that he did not use methamphetamine regularly prior to his arrest.

The Defendant stated that he only used methamphetamine one time between his October 2021 intake and his February 2022 drug screen. He stated that three or four days prior to his February 2022 appointment, he was offered methamphetamine while at a friend’s house. He stated that he had an upper respiratory sinus infection, resulting in tiredness, and that his HIV infection made sickness “hit” him “a lot worse.” He stated that he used the methamphetamine because he “needed to get some stuff done” and reiterated that it was a “horrible mistake[.]” In addition, the Defendant affirmed that a placement at a substance treatment facility was not available until September 2022 because of his status as a sex offender, which he acknowledged was a circumstance created by his own conduct.

During arguments, the State contended that the Defendant’s methamphetamine use was indicative of a drug problem and that the Defendant should remain incarcerated until a treatment facility was available. The Defendant asked the trial court to order a sixty-day split confinement sentence with a drug and alcohol screen and assessment upon release to determine treatment recommendations for the Defendant to follow while on probation.

The trial court found that the Defendant stipulated to “materially” violating his probation and that his probation was revoked. The court noted, “[T]here is a reason why [testing positive for methamphetamine] is a violation the way that it is structured . . . [and] why it is brought to the court the way that it is brought to court given the dangers of the use of methamphetamine.” The trial court stated that it was inclined toward alternative sentencing until the Defendant testified that he did not have a “drug problem” and made “excuses for the underlying [drug] offense.” The court stated, “[I]f somebody says they don’t have a problem why am I sending them back to drug treatment.” The trial court further stated, “[I]f we’re going to use methamphetamine while we’re on probation for an aggravated statutory rape because we’re tired, I don’t know what I’m supposed to do with that as far as then trying to determine whether or not this person should be released[.]” The court noted safety concerns for the Defendant and others in the community and stated that it did not find a benefit in sending the Defendant back to a relapse prevention program. The trial court sentenced the Defendant to serve the remaining balance of his sentence in confinement. This timely appeal followed.

II. ANALYSIS

The Defendant argues that the trial court abused its discretion by revoking his probation and ordering him to serve the balance of his four-year sentence in confinement based on a positive drug test for methamphetamine. The State responds that the trial court acted within its discretion by ordering the Defendant to serve the balance of his sentence in confinement.

Appellate courts review a trial court's revocation of probation decision 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). "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). If a trial court fails to state its findings and reasoning for the revocation on the record, appellate courts may conduct a de novo review if the record is sufficiently developed, or the appellate court may remand the case for the trial court to make such findings. *Dagnan*, 641 S.W.3d at 759 (citing *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014)).

Probation revocation is a two-step consideration requiring trial courts to make two distinct determinations as to (1) whether to revoke probation and (2) what consequences will apply upon revocation. *Dagnan*, 641 S.W.3d at 757. A trial court may revoke a defendant's probation upon finding by a preponderance of the evidence that a defendant has violated the conditions of probation. Tenn. Code Ann. §§ 40-35-310, -311(e) (2021) (subsequently amended). No additional hearing is required for trial courts to determine the proper consequences for a revocation. *Id.* The trial court's findings do not need to be "particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision." *Id.* at 759 (citing *State v. Bise*, 380 S.W.3d 682, 705-06 (Tenn. 2021)).

"The trial judge may enter judgment upon the question of the charges as the trial judge may deem right and proper under the evidence adduced before the trial judge." Tenn. Code Ann. § 40-35-311(d)(1). "Notwithstanding subdivision (d)(1), the trial judge shall not revoke probation, whether temporarily . . . or otherwise, based upon one (1) instance of technical violation or violations." *Id.* § 40-35-311(d)(2). Accordingly, the probation statute provides for two categories of probation violations, technical and non-technical, with differing penalties for both. *State v. Nicolas J. Walden*, No. M2022-00255-CCA-R3-CD, 2022 WL 17730431, at *3 (Tenn. Crim. App. Dec. 16, 2022) (citing Tenn. Code Ann. § 40-35-311(e)(2)).

The following are classified as non-technical violations: a defendant's commission of a new felony or a new Class A misdemeanor, a zero tolerance violation as defined by the department of correction community supervision matrix, or absconding. Tenn. Code Ann. § 40-35-311(e)(2). Once a trial court determines that a defendant has committed a non-technical violation of probation, the trial court may: (1) order confinement 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 the remainder of the unexpired term to a sentence of probation. *See id.* §§ 40-35-308(c)(1), (2); -310; - 311(e)(1), (2).

A technical violation "means an act that violates the terms or conditions of probation but does not constitute" an enumerated non-technical violation. Tenn. Code Ann. § 40-35-311(d)(3). As stated, a trial court may not revoke a defendant's probation, temporarily or otherwise, based upon one instance of a technical violation. *Id.* § 40-35-311(d)(2). A trial court may revoke a defendant's probation based upon a second or subsequent technical violation and impose a temporary term of incarceration not to exceed: (1) fifteen days for a first revocation, (2) thirty days for a second revocation, (3) ninety days for a third revocation, or (4) the remainder of the sentence for a fourth or subsequent revocation. *Id.* § 40-35-311(e)(1)(A). Alternatively, upon a second or subsequent technical violation, a trial court may revoke a defendant's probation and resentence a defendant to a term of probation that includes participation in community-based alternatives to incarceration. *Id.* § 40-35-311(e)(1)(B).

Here, the trial court's application of the first step of *Dagnan* is not in dispute. The Defendant admitted at the revocation hearing that he had violated the terms of his probation and only wished to be heard on the appropriate consequence for his violation. *See State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999) (concluding that the defendant's concession that he was a frequent user of marijuana while on probation supported the trial court's conclusion that a violation of probation occurred); *see also State v. Kadrean J. Brewster*, No. E2021-00793-CCA-R3-CD, 2022 WL 2665951, at *4 (Tenn. Crim. App. July 11, 2022) (explaining that a defendant's stipulation to a probation violation supports revocation), *no perm. app. filed*. Similarly, on appeal, the Defendant does not contest that he had violated the terms of his probation but instead argues that the trial court abused its discretion in ordering complete revocation as the consequence for his violation rather than ordering a split confinement until a drug treatment program became available.

As to the second step of *Dagnan*, the trial court found that the appropriate consequence for the Defendant's "material[]" violation was the complete revocation of the Defendant's probation. Generally, the trial court adequately described the reasons for its

decision as required by *Dagnan*. However, the trial court did not specifically find whether the Defendant's probation violation constituted a technical or non-technical violation. As such, we conduct a de novo review of the issue. *Dagnan*, 641 S.W.3d at 759 (citing *King*, 432 S.W.3d at 324).

The record reflects that the Defendant was on notice from the violation warrant that he violated his probation by "us[ing] or possess[ing] illegal drugs[,] specifically, "amphetamines and methamphetamines." The knowing possession of methamphetamine is a Class A misdemeanor. Tenn. Code Ann. §§ 39-11-302(b), -17-408(d)(2), -17-418(a), -(c)(1). At the revocation hearing, the Defendant admitted that he accepted methamphetamine that was offered to him at a friend's residence. He explained that he had smoked the methamphetamine because he was tired and "needed to get some stuff done." He acknowledged knowing that methamphetamine was illegal and described his decision to use the drug as a "horrible mistake." These facts, coupled with the Defendant's subsequent positive drug screen, demonstrate by a preponderance of the evidence that the Defendant knowingly possessed methamphetamine and thus committed a Class A misdemeanor and a non-technical violation of probation. *See id.* § 40-35-311(e)(2). Therefore, the trial court was statutorily permitted to commence the execution of the Defendant's sentence. *See id.*

In reaching this decision, we acknowledge that the State conceded in its brief that the Defendant's admission of methamphetamine *use* qualifies as a technical offense. In making this concession, the State cites only to the Defendant's brief, but we can find no support for this legal conclusion in the Defendant's brief. The State's concession is not otherwise supported by a citation to the record or by a citation to any supporting authority. As we are not required to accept the State's concession, we decline to do so here. *See State v. Brown*, 479 S.W.3d 200, 210 (Tenn. 2015) (citations omitted). In any event, our determination of this case is not based solely on the Defendant's mere use of methamphetamine but rather on the facts in the record which support the conclusion that he knowingly possessed methamphetamine, thus constituting a Class A misdemeanor and a non-technical violation of probation.

Further, we agree with the trial court's reasoning that the Defendant's drug use while on probation for aggravated statutory rape, along with the Defendant's repeated denial and excuses for his drug problem, posed a safety concern to both the Defendant and the community at large. *See* Tenn. Code Ann. § 40-28-302(1) (requiring that supervised individuals be subject to revocation proceedings if their conduct while on supervision poses a significant risk to the community at large). Moreover, "this court has repeatedly held that 'an accused, already on [a suspended sentence], is not entitled to a second grant of probation or another form of alternative sentencing.'" *Brewster*, 2022 WL 2665951, at *5

(citations omitted) (alteration in the original). Based on our de novo review, we conclude that the record supports the trial court's complete revocation of the Defendant's probation.

III. CONCLUSION

Based upon the review of the record as a whole, we affirm the judgments of the trial court.

KYLE A. HIXSON, JUDGE