

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

**FILED**  
04/04/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. JERRY LYNN HUSKEY**

**Appeal from the Circuit Court for Sevier County  
Nos. 25408, 25409, 25410, 26617-III Rex H. Ogle, Judge**

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**No. E2022-00713-CCA-R3-CD**

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Defendant, Jerry Lynn Huskey, appeals the trial court’s order revoking his sentence of probation for aggravated domestic assault, theft under \$1,000, evading arrest, and resisting arrest, and ordering him to serve his original six-year sentence in confinement. Following our review of the entire record 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 Affirmed**

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

Brennan M. Wingerter, Assistant Public Defender, Franklin, Tennessee (on appeal), and Amber Haas, Public Defender, Sevierville, Tennessee (at trial) for the appellant, Jerry Lynn Huskey.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; James B. Dunn, District Attorney General; and Barry A. Williams, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

### Factual and Procedural Background

Defendant pled guilty to aggravated domestic assault in case number 25408, theft of property valued at \$1,000 or less in case number 25409, and evading arrest and resisting arrest in case number 25410. Pursuant to the plea agreement, he was sentenced to an effective six-year sentence, suspended to probation.

On September 27, 2019, the first probation violation warrant was issued against Defendant as a result of a new arrest for aggravated stalking and contempt of court. On October 30, 2019, an amended violation of probation warrant was issued adding an evading arrest charge. The amended warrant contained toxicology results noting Defendant tested positive for amphetamine and methamphetamine on October 1, 2019. Following a December 12, 2019 hearing, the trial court found Defendant in violation of his probation and sentenced him to 120 days in jail, then reinstated to probation.

On January 6, 2020, Defendant was charged with aggravated stalking, evading arrest, and three counts of contempt of court in case number 26617-III. Defendant ultimately pled guilty to evading arrest and violating a protective order. Pursuant to the plea agreement, Defendant was sentenced to concurrent sentences of 11 months and 29 days, with credit for time served and the balance on probation, to be served consecutively to Defendant's sentences in case numbers 25408, 25409, and 25410.

On December 8, 2020, a second probation violation warrant was issued against Defendant as a result of a new arrest for theft of property. On September 7, 2021, an amended violation of probation warrant was issued for multiple violations, including Defendant's failure to make himself available for a risk and needs reassessment and failure to report to probation. Following a hearing on October 25, 2021, the court found Defendant in violation of his probation, and again, reinstated Defendant to probation after serving 120 days in jail.

On February 22, 2022, a third probation violation warrant was issued against Defendant following his arrest for reckless driving, driving on a suspended license, felony evading, and violation of the financial responsibility law. This warrant also included other allegations that Defendant had violated the terms of his probation.

Following a hearing on May 16, 2022, the trial court found Defendant to be in violation of his probation, revoked Defendant's probation, and ordered him to serve the balance of his sentence in confinement. Defendant then timely filed a notice of appeal.

## ANALYSIS

Defendant contends that the trial court's order should be reversed and vacated because the preponderance of the evidence does not support the trial court's finding that Defendant violated his probation. Alternatively, Defendant argues that the record does not include sufficient findings to support the trial court's decision to order a revocation and execution of Defendant's original sentence. The State responds that the trial court properly exercised its discretion in revoking the Defendant's probation and ordering Defendant to serve the balance of his sentence in confinement. We agree with the State.

It is well settled that a trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. *See* T.C.A. §§ 40-35-310, -311(e); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). "The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment." *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). 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).

In *State v. Dagnan*, the supreme court aimed to "clarify and bring uniformity to the standards and principles applied by the trial courts and appellate courts in probation revocation proceedings" to resolve confusion about the proper procedure for a trial court to follow before revoking a probationary sentence. 641 S.W.3d 751, 757 (Tenn. 2022). The court determined that:

probation revocation is a two-step consideration on the part of the trial court. *See* Tenn. Code Ann. §§ 40-35-308, -310, -311. The first is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation. This is not to say that the trial court, having conducted a revocation hearing, is then required to hold an additional or separate hearing to determine the appropriate consequence. The trial courts are required by statute to hold a revocation hearing. *Id.* § 40-35-311(b). However, there is no such requirement in the statutes or case law for an additional hearing before deciding on a consequence, and we decline to impose one. [The] defendant agrees that requiring a separate hearing solely to determine the consequence for violating probation is not necessary and would be too great of a burden on the trial courts. Still, we emphasize that

these are two distinct discretionary decisions, both of which must be reviewed and addressed on appeal. Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden.

*Id.* at 757. A trial court is required to make two separate decisions: (1) whether to revoke probation; and (2) if probation is revoked, what consequence will apply. *Id.* The supreme court explained the standard of review in a decision revoking probation as follows:

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 [State v.] Bise*, 380 S.W.3d [682,] 705-06 [(Tenn. 2014)]. "This serves to promote meaningful appellate review and public confidence in the integrity and fairness of our judiciary." *[State v.] King*, 432 S.W.3d [316,] 322 (Tenn. 2014)]. When presented with a case in which the trial court failed to place its reasoning for a revocation decision on the record, the appellate court may conduct a de novo review if the record is sufficiently developed for the court to do so, or the appellate court may remand the case to the trial court to make such findings. *See King*, 432 S.W.3d at 327-28.

*Id.* at 759.

At Defendant's hearing, Officer Hart with the Sevierville Police Department testified that when he ran the license plate on Defendant's vehicle through the portal, the plate "came back to ... [D]efendant," and indicated that Defendant had a revoked license. Officer Hart testified that he directly observed the driver three separate times as he tried to initiate the traffic stop, and he identified Defendant as the driver. When he attempted to initiate the traffic stop, Defendant "accelerated rapidly through the parking lot, jumped an embankment directly into the intersection, and proceeded northbound." Officer Hart testified he discontinued his pursuit of Defendant due to public safety concerns. On cross-examination, Officer Hart explained that the license plate on the vehicle was registered to Defendant but did not match the vehicle Defendant was driving that day. Later that night, during Defendant's arrest, the vehicle to which the tag was registered was located. It was a similar vehicle but was disabled and was clearly not the one Defendant had been seen driving earlier in the day. According to Officer Hart, Defendant said his tag had been stolen while he was incarcerated, but he did not report the stolen tag upon his release.

Defendant's supervising probation officer, Robert McGill, testified at the hearing that this was Defendant's third violation on all of his suspended sentences and that

“[e]verytime he violates[,] he receives new charges.” He also testified that Defendant was not in compliance with any of the probation requirements other than reporting. On cross-examination, Officer McGill testified that Defendant rode a bicycle when he reported to probation because he claimed he did not have a vehicle.

At the conclusion of the hearing, the trial court recounted the facts that gave rise to the violation warrants and noted the testimony about Defendant’s prior violations and Defendant’s lack of success on probation. The court stated that “nothing has worked with [Defendant]” because Defendant “keep[s] violating the law.” Defendant addressed the court in an unsworn statement explaining that he rode a bicycle everywhere he went, his vehicle tag “got stolen,” and he was not driving the vehicle in question. The trial court accredited the testimonies of both officers, finding by a preponderance of the evidence that Defendant had violated his probation. The trial court then began discussing Defendant’s lack of success on probation, stating, “Nothing has worked with you.” The following dialogue then took place:

The Defendant: This officer is lying. Straight out lying.

The Court: Well, I find he has a lot more credibility than you do.

The Defendant: Well, then, stick it in you[r] a\*\*.

The Court: Well, thank you. You’re so kind.

The Defendant: F\*\*\* it. Yeah, let’s go on to jail.

The Court: Let the record reflect that [Defendant] has some disagreement with what the Court did. Then he voluntarily chose to walk out of the well of the courtroom as the Court was finding him in violation. And so the Court does find him in violation and orders his sentence revoked – his probation revoked, and he’ll execute his sentence.

The trial court conducted a hearing and based on testimony at the hearing, found proof by a preponderance of the evidence to support the new charges pending against Defendant and accordingly found Defendant in violation of his probation. The trial court further reviewed the proof regarding Defendant’s lack of success with probation. During the trial court’s analysis, Defendant said, “let’s go on to jail” and stormed out of the courtroom. As noted in *Dagnan*, “[i]t 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.” *Id.* (citing *Bise*, 380 S.W.3d at 705-06). The record is sufficient for a meaningful review and we conclude that the trial court did not abuse its discretion. Defendant is not entitled to relief.

## CONCLUSION

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

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JILL BARTEE AYERS, JUDGE