

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 23, 2023

FILED

06/06/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. PAUL TRACY BAILES

Appeal from the Criminal Court for Hamilton County
Nos. 298063, 299250, 303028, 303274, 306566 Thomas C. Greenholtz, Judge

No. E2022-00741-CCA-R3-CD

The Defendant, Paul Tracy Bailes, appeals from the Hamilton County Criminal Court's probation revocation of the fourteen-year split-confinement sentence he received for his guilty-pleaded convictions for forgery, two counts of theft of property, and two counts of attempted possession of methamphetamine for resale. On appeal, the Defendant contends that the trial court abused its discretion in revoking his probation, rather than permitting him to participate in the mental health court program. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirm

ROBERT. L. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and J. ROSS DYER, J., joined.

Jessica F. Butler (on appeal), Assistant Public Defender – Appellate Division; Steven Smith (at hearing), District Public Defender; and Anna Marcona (at hearing), Assistant District Public Defender, for the appellant, Paul Tracy Bailes.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Coty G. Wamp, District Attorney General; and Colin Campbell, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Four of the Defendant's convictions resulted from his May 24, 2018 guilty pleas, at which time he received an effective fourteen-year, split-confinement sentence, with eleven months and twenty-nine days to be served and the balance on probation. On December 18, 2018, the Defendant committed a new offense, and he was convicted of a Class D felony attempted theft upon his guilty plea on August 1, 2019. He was sentenced to two years' probation, to be served concurrently to the sentences in the previous cases. He also pleaded

guilty to a probation violation charge which was based upon his commission of the December 18, 2018 offense, and the court revoked his probation, ordered him to serve a two-year sentence, and returned him to probation for the remainder of the fourteen-year sentence.

On May 5, 2020, a probation violation report was generated on the basis of the Defendant's arrest for new offenses alleged to have been committed on May 1. On May 26, a capias was issued for the Defendant based upon the violation report. The capias specified that the Defendant was charged with attaining a new arrest, failing to report the new arrest, and failure to pay restitution. The record reflects that the Defendant's new criminal charges were related to his high-speed motor vehicle flight from police officers and his subsequent interaction with them.

At the May 5, 2022 revocation hearing, the trial court observed that the Defendant had pending charges of aggravated assault, assault on police officers, resisting arrest, reckless endangerment, possession of methamphetamine, and possession of drug paraphernalia, and that the Defendant was alleged to have failed to pay restitution. The parties agreed that the Defendant had been in custody since May 2020, except for times when he had been released to another county and to another state due to holds placed upon him.

Probation and Parole Officer Christina Barnes testified that the violation report alleged that the Defendant had violated four rules of probation: he was arrested on new charges; he failed to report the arrest; he possessed methamphetamine; and he failed to pay restitution. She stated that the Defendant had been on probation, had reported as required, and had passed drug screens from June 2018 until January 2019 and from December 2019 until April 2020. She agreed that her office had not had any interaction with the Defendant since April 2020. She later agreed that the Defendant had not reported as instructed twice in January 2019. She stated that she had no record of any restitution payments. She said the Probation and Parole Office learned of the Defendant's May 1, 2020 arrest when a probation officer visited the Defendant's home and learned from the Defendant's mother of the arrest. She said probationers sometimes called the probation office from jail in order to report an arrest.

Hamilton County Sheriff's Department (HCSD) Deputy Aaron Cameron testified that in the early morning hours of May 1, 2020, he was on duty as a patrol officer when he came upon the Defendant slumped over the steering wheel of a parked car on the side of the road. He said that what he thought was "a pretty sizable amount of methamphetamine" was visible in a small plastic bag in the car's passenger seat. He said he called for backup and put "spike strips" in front of the Defendant's car to puncture the tires in the event the Defendant woke and tried to flee. Deputy Cameron said that when backup officers arrived,

they opened the driver's door in order to wake the Defendant to determine if he needed medical treatment, but that the Defendant woke, immediately reached for his gear shift, and drove away. Deputy Cameron did not recall if he had identified himself when he attempted to enter the car to check on the Defendant. Deputy Cameron said the Defendant drove over the spike strips, causing his car's tires to deflate.

Deputy Cameron testified that he activated his blue lights and siren and that he followed the Defendant in a "very dangerous" pursuit, in which the Defendant reached speeds in excess of 100 miles per hour and drove erratically with shredded tires. Deputy Cameron noted that sparks flew from the contact of the Defendant's car's wheels with the road. Deputy Cameron said the Defendant drove more than twice the speed limit through residential areas, drove on the wrong side of the road for most of the pursuit, did not heed traffic signs or red lights, and hit a couple of signs. Deputy Cameron described part of the route as a narrow, curvy, two-lane road with hills and no shoulder. He said the Defendant stopped after becoming "boxed in" on a dead-end street. Deputy Cameron did not recall how many patrol cars were involved in the chase but said they all had their blue lights and sirens activated.

Deputy Cameron testified that several officers approached the Defendant's car. Deputy Cameron said the Defendant had a sheathed knife on his belt loop and that the officers who were in the process of detaining the Defendant "felt him reaching for that knife."

Deputy Cameron testified that the suspected methamphetamine he had seen in the car before the pursuit was not recovered when the car was searched after the pursuit. He said a gallon Ziploc bag was found in the glove box¹ but that it was not the same bag he had seen with the suspected methamphetamine. He said several syringes were found in the Defendant's car. He said that he had been far enough behind the Defendant at times during the pursuit that it would have been difficult to see if the Defendant threw something out the window.

Deputy Cameron identified a disc containing the dashboard camera video recording of the incident, and the disc was received as an exhibit.

When asked to review the video recording and asked if any of the officers identified themselves as police officers, Deputy Cameron stated that due to the poor quality of the audio, he "couldn't make out any words." He identified on the recording the location when he "saw some items leaving the [Defendant's] vehicle."

¹ The prosecutor acknowledged that the contents of the gallon bag had been tested and had been determined not to be a controlled substance.

We have reviewed the recording, and its contents are consistent with Deputy Cameron's testimony. The recording reflects that the car emitted exhaust fumes before the officers approached it, from which we infer that the car's engine was running. The officers who approached the Defendant's car to check on him before the chase were uniformed, and the chase lasted almost twelve minutes. The record also shows that the Defendant ran a red light at an intersection and that a gas station with its lights illuminated sat at the corner of the intersection.

Teresa Brinkley, the Defendant's sister, testified for the defense that the Defendant had been a patient at psychiatric facilities as a child. She said he had taken clonidine and Ritalin. She said she had learned from their mother that the Defendant had diagnoses of bipolar disorder and schizophrenia, and she said he began "getting into a lot of trouble around age twelve or thirteen." She acknowledged that her mother had been unable to locate any "paperwork" related to the Defendant's mental health diagnoses. She said that after the Defendant began taking medication during his childhood, his "attitude and everything" improved but that he remained "a little rebellious." She said that once the Defendant was in his 20s and started his own business, he "was okay." She acknowledged that she and the Defendant had not been close as children but that they were now.

Ms. Brinkley testified that the Defendant's wife gave birth in 2011, that she left the Defendant because she "couldn't deal with it," that the Defendant adopted the child, that the Defendant "was not hi[m]self" behaviorally, and that the Defendant lost his business. Ms. Brinkley said that the Defendant's daughter now lived part-time with Ms. Brinkley and her mother.

Ms. Brinkley testified that her boyfriend would employ the Defendant if the Defendant were released on probation and that the Defendant could live with her or their mother. Ms. Brinkley said she and her mother were prepared to "keep him on that road to get help."

Ms. Brinkley testified that she did not think the Defendant had intentionally violated the terms of his probation. She acknowledged that she had seen some of the video of the police chase and, when asked if she thought the Defendant's conduct had been intentional, she responded that the officers had not identified themselves and that she did not know what the Defendant's thoughts had been when he was pursued by vehicles with blue lights. She said that when the incident occurred, the Defendant "had been asked to leave from where he was at because of . . . COVID" and that he had been on the way to her house.

Ms. Brinkley agreed that the Defendant's mental health had improved since he had been on medication while in custody. She did not think the Defendant had been using methamphetamine in May 2020, and she explained that their mother would not have allowed the Defendant to have access to his daughter, who was living with their mother at the time, had the Defendant been using drugs. Ms. Brinkley said the Defendant's daughter had been struggling since the Defendant had been in custody and that the Defendant's daughter "needs him more than . . . anything."

Ms. Brinkley testified that the Defendant had tried to obtain mental health treatment but that he had been denied care due to his not having insurance. She said that after being employed for ninety days, he would have insurance and could seek treatment.

Hamilton County Mental Health Court Director Rebekah Bohannon testified that in order for a person to be placed in the program, the person's attorney must submit an application, after which three assessments were conducted in order to determine the applicant's eligibility for the program. She said the three assessments determined whether the person had a substance use disorder; whether a mood, anxiety, or psychotic spectrum disorder was present; and what risk factors needed to be addressed. She said that the Defendant completed the assessments with a therapist on the mental health court's staff on January 25, 2022, and that the assessments showed the likely presence of a substance use disorder, the likely presence of a psychiatric disorder, and a moderate to high score on the risk-needs assessment. She said that a risk-needs assessment score of moderate to high was needed in order to qualify for the program, that the other assessments were used to inform "what they might be coming to our court with," and that the Defendant met the criteria for the program. She said the Defendant's medical records were submitted and were reviewed by "Mr. Naylor." She did not recall if she had reviewed the Defendant's records.

Ms. Bohannon testified that the coexistence of substance use and psychiatric disorders was "pretty typical" and that the existence of both did not disqualify a person from participation in the mental health court program. She said that participants were sometimes referred for inpatient substance use treatment and that any psychiatric medications were assessed and adjusted in consultation with the participant's mental health provider. She said that participants without insurance were assessed by a forensic social worker and referred to a participating mental health provider. She said that although the initial eligibility assessments had been completed, no determination had been made regarding the appropriate level of substance use treatment the Defendant might need. She said that if the Defendant "were to come into [the mental health] court," one of the program's "collaborative community partner[s]" would determine the treatment plan and level of care needed. She explained that a specific treatment plan was not determined until after a participant was ordered by the court to be admitted to the program. She further

explained that the mental health court program facilitated treatment and communicated with a participant's providers, and that the providers determined the specific treatment plan.

Ms. Bohannon testified that a mental health court applicant's application was reviewed by attorneys from the public defender's and the district attorney's offices to determine if any "legal barriers" existed to the applicant's participation in the program. She did not know if the Defendant's application had been reviewed by these attorneys and stated that his application predated the date she began working with the mental health court program. She said it was possible the attorneys decided about the Defendant's eligibility for the program before her employment began. She did not know if an assistant district attorney sent an email to someone in the mental health court program which stated that the assistant district attorney did not think the Defendant was a good candidate for the program. She agreed, however, that the Defendant had been determined to be eligible for the program after she began her employment with the program.

Matthew Naylor, mental health court case manager, testified that the "navigator" who had received and managed the Defendant's application was no longer employed by the program. Mr. Naylor said the Defendant's application for the program had been approved on January 31, 2022. He stated that he did not have documentation with him regarding whether "legal" had approved the application. He said that certain disqualifying offenses were listed on the front of the application but that he did not know if the disqualification was based upon a statute or a program policy. He said, however, that he assumed the legal team had approved the application and that the Defendant's application would not have been approved absent the legal team's approval.

Mr. Naylor testified that a mental health court participant had an orientation with him and a meeting with a case manager about the participant's individual care plan before the participant was released from confinement. He said the participant was required to agree to the terms of the program in order to participate. He said that a participant whose case was from criminal court remained in the program for a minimum of two years. He said a participant initially attended court weekly and "checked in" with a case manager twice a week. He said that random drug screens were conducted and that a participant also was monitored by the probation office. He said a participant was required to comply with any medication regimen prescribed by the person's provider. Mr. Naylor described in detail the five phases of the program and stated that a participant had to meet certain requirements in order to advance to each subsequent phase. He said that a participant whom the staff sought to have removed from the program for failure to comply with the program's requirements would be taken into custody pursuant to a *capias*, receive representation by appointed counsel, and have a termination hearing.

Mr. Naylor testified that he had not received any “records” submitted with the Defendant’s application and that would have been done by the “navigator” who received the application. He said that, according to mental health court records, “Silverdale” records reflected that the Defendant had been diagnosed with bipolar disorder.

The Defendant testified that, based upon the contents of the video recording previously received as an exhibit, he had violated the terms of his probation. Regarding the incident, he said that he had worked about fifteen to sixteen hours earlier in the day. He said that he had been staying with “Josh” in order to avoid introducing COVID into his mother’s home but that Josh woke him and asked him to stay somewhere else that night. The Defendant said he drove from Josh’s house toward his sister’s house but could not remain awake. He said he parked on the side of the road and slept. He said that his doors were “jerked open,” that he saw flashlights, that he heard someone curse and yell for him to get out of the car, and that someone tried to pull him from his car. The Defendant said he drove away and heard what he thought was gunfire as he pulled away. He said he was scared for his life. He said he looked in his rearview mirror and saw that the police were behind him but that he did not realize at first that the police were behind him and thought someone might have been trying to carjack or rob him.

The Defendant testified that he had intended to drive until he saw a business or another place to stop where someone else was present. He said he did not see any businesses that were open and occupied. He thought the cars pursuing him were going to “ram” him. He said that when he reached a dead-end street, he stopped. He said that he had not thrown anything from the car and that the car’s windows could not be lowered. He said the situation had been “horrible” and that someone could have been injured. The Defendant said he did not know what he could have done differently and that he had been terrified. When asked about syringes in his car, he said Josh was diabetic and took insulin. He agreed that methamphetamine had been his drug of choice but said he did not inject it.

The Defendant testified that he had been in jail for the two years since the incident. He said he had been attacked by gang members while at Silverdale and that he had been transferred to the Hamilton and the Coffee County jails for his own protection. He denied that he had pending charges in Coffee County.

The Defendant testified that beginning in childhood, he had mental health issues consisting of hyperactivity, “learning disorder,” and paranoid schizophrenia. He said he was treated by psychiatrists as a child and that he discontinued treatment in his mid-20s, when he thought he no longer needed treatment. He said he later suffered “a couple of little breakdowns” but was unable to receive treatment because he was uninsured. He said that after he was assaulted in prison, he had received psychiatric care and that he had been on medication for the past eighteen months. He thought that the medication was helping

slow his anxiety and racing thoughts but that he did not think it was the correct medication and that he might need a different one.

The Defendant testified that he wanted to be placed in the mental health court because he had let down his daughter and had attempted suicide in the past. He said that his assault in jail had caused him to realize he wanted to “live for her.” He thought the program could help him receive the correct medication and that he would benefit from the program’s structured accountability requirements. He said that his attorney had submitted an application on his behalf to the drug court several years before he applied to the mental health court but that he did not qualify for drug court. He said that he would be able to comply with the terms of both mental health court and probation. He acknowledged that he had been on probation in the past but said he thought that he would be successful if he were granted enrollment in mental health court due to its structure. He said that he had not been provided any mental health “tools” during his previous times on probation.

The Defendant agreed that he had “about eight” felony convictions, including a federal conviction for possession of methamphetamine.

After taking the matter under advisement, the trial court issued a lengthy written order, finding substantial evidence that the Defendant had violated his probation by committing new offenses on May 1, 2020, and it ordered him to serve his sentence in the Department of Correction. In denying the Defendant’s request to remain on probation and to be placed in the mental health court program, the court found that the Defendant’s hearing testimony had not been credible, that he had failed to accept responsibility for his actions, that he had a lengthy criminal history, and that he had failed to comply with previous court orders and conditions of release on bond. The court found that the Defendant’s dangerous criminal conduct while on probation for five prior felonies was “especially serious.” The court noted the grave risk the public faced due to the Defendant’s conduct, the sustained period during which the Defendant’s illegal conduct continued, and the Defendant’s disregard for law enforcement officers during the incident. The court found that the Defendant had acted deliberately and in purposeful defiance of the law. The court noted that the Defendant had previously violated his probation in a similar fashion, by engaging in new criminal conduct, thereby reflecting poorly on his prospects for rehabilitation. The court also noted that the Defendant had a pattern of being released and committing new offenses relatively soon thereafter. The court found, based upon the Defendant’s history of failure in complying with the terms of probation, that he was unlikely to comply with the terms of a non-incarcerative sentence if granted further reprieve.

Speaking to the Defendant’s bid for placement in the mental health court program, the trial court found that the evidence did not show the Defendant had been “properly”

admitted to the program. The court found that the program's staff appeared to be unaware of previous objections to the Defendant's participation in the program and that the evidence failed to show the program had followed its own procedures in granting admission. The court also found that the Defendant had not offered any reliable evidence establishing his claimed mental health condition. Further, the court found that the evidence did not show the Defendant's claimed bipolar disorder contributed to his continued criminal conduct. The court also found that no evidence of a proposed treatment plan had been offered, despite the Defendant's status as a repeat felony offender who was willing to endanger others to serve his own ends. The court expressed its concern that no proposed treatment plan existed to address the risk the Defendant posed to the community. The court found that the Defendant had not shown he would cooperate with effective rehabilitative measures. Finally, the court noted that the Defendant had been granted "largesse" by virtue of the terms of his 2018 plea agreement for four felony offenses and that he had again been granted largesse following his 2019 guilty plea to a new felony conviction and in the consequence imposed for his 2019 probation revocation.

This appeal followed.

The Defendant contends that the trial court erred in revoking his probation, rather than placing him in the mental health court program as an additional condition of probation. He does not challenge the court's determination that he violated the terms of probation by committing new offenses. The State counters that the court did not abuse its discretion. We agree with the State.

"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." *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)).

If the trial court failed to memorialize its reasons for the revocation decision on the record, the appellate court may either conduct a de novo review, provided the record is developed sufficiently for such review, or it may remand the case to the trial court with instructions to make appropriate findings. *Dagnan*, 641 S.W.3d at 759.

When a trial court determines that a defendant's probation must be revoked, the court must then decide upon an appropriate consequence. *Id.* at 757. A separate hearing is not required, but the court must address the issue on the record in order for its decision to be afforded the abuse of discretion with a presumption of reasonableness standard on appeal. *Id.* at 757-58.

After revoking a defendant's probation, the trial court may return a defendant to probation with modified conditions as necessary, extend the period of probation by no more than one year upon making additional findings, order a period of confinement, or order the defendant's sentence into execution as originally entered. T.C.A. §§ 40-35-308(a), (c) (Supp. 2022), -310 (Supp. 2022). "In probation revocation hearings, the credibility of witnesses is for the determination of the trial judge." *Carver v. State*, 570 S.W.2d 872, 875 (Tenn. Crim. App. 1978) (citing *Bledsoe v. State*, 215 Tenn. 553, 387 S.W.2d 811, 814 (Tenn. 1965)).

The Defendant argues that the trial court's decision that the Defendant must serve his sentence in consequence for the probation violation was based upon "an erroneous assessment of the proof." The Defendant takes issue with the court's determination that no reliable evidence showed that the Defendant had been properly admitted to the mental health court program, that the Defendant had a mental health condition, that bipolar disorder contributed to the Defendant's continued criminal conduct, and that the evidence failed to show that an effective treatment plan would be implemented if the Defendant were enrolled in the program. The Defendant points to evidence which he argues addresses these concerns, and he contends that any deficiency in developing a detailed and quantifiable treatment plan lies with the mental health court staff.

The question presented to the trial court, upon its determination that the Defendant had violated the terms of his probation, was one of the appropriate consequence for the violation. *See Dagnan*, 641 S.W.3d at 757. Our supreme court has said that, in making this determination, a court may consider factors such as: "the number of revocations, the seriousness of the violation, the defendant's criminal history, and the defendant's character." *Id.* at 759 n.5. The record in the present case reflects that the court analyzed the evidence and made findings in its written order regarding the facts and circumstances as they informed its decision regarding the appropriate consequence for the violation.

In summarizing its concerns about returning the Defendant for some form of a non-incarcerative sentence, the trial court stated:

[T]his court weighs heavily the serious nature of the present violations; the willfulness of the present violations; the chances and opportunities given to

the Defendant to come into compliance while serving his suspended sentence; the repeated nature of the Defendant's felony criminal conduct; the frequency of the felony misconduct; the Defendant's prior criminal record and history of bail violations; the failure of lesser sanctions to ensure compliance with the terms of probation; and the absence of an effective treatment plan to mitigate the Defendant's risk of danger to the community. All of these issues are of substantial concern to the Court.

In its analysis, the trial court also considered, at length, whether the mental health court program as an additional term of probation was an appropriate alternative based upon the court's concerns outlined above. In the end, however, the court concluded that the Defendant was not an appropriate candidate to be placed in the program. The record reflects that the court conducted a thorough and thoughtful review of the facts and circumstances of the Defendant's case. Having placed the Defendant on probation at the original sentencing and having returned the Defendant to probation after ordering a limited period of confinement following a previous probation violation, the court was unpersuaded that the Defendant could succeed if he were returned to probation conditioned upon participation in the mental health court program.

Affording the trial court the presumption of reasonableness to which it is entitled in view of its having made sufficient findings on the record, we conclude that the court acted within its discretion in ordering the Defendant to serve his sentence in consequence of his probation violation. Unfortunately for the Defendant, he demonstrated by his egregious criminal behavior while on probation and by his prior criminal history and disregard for the court's authority that he was not a suitable candidate for a return to probation for his second probation violation. He is not entitled to relief.

In reaching this conclusion, we have considered the Defendant's argument that the trial court erroneously assessed the proof regarding the mental health court program. Even if we were to accept the Defendant's argument, he cannot overcome the court's determination that he was not a suitable candidate for an additional opportunity to serve his sentence on probation. The Defendant had been granted a split-confinement sentence involving probation. He had previously been returned to probation following a violation. For this repeat violation, the court made thorough findings of fact and conclusions of law which reflect its determination that the Defendant would be unsuccessful if given an additional opportunity to remain on probation. The court's findings reflect that several factors outweighed all others.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE