

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs December 20, 2022

FILED

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Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. TAVARES TOBIN**

**Appeal from the Criminal Court for Knox County**  
**Nos. 114222, 116690      Kyle A. Hixson, Judge**

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**No. E2022-00604-CCA-R3-CD**

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Following convictions for unlawful possession of a weapon and a felony drug offense, the Defendant, Tavares Tobin, was sentenced to an effective term of eleven years and placed on probation. Thereafter, the Defendant engaged in new criminal conduct and stopped reporting for supervision. As a consequence of the violations, the trial court revoked the suspended sentences and ordered that the Defendant serve the balance of the effective sentence in custody. On appeal, the Defendant argues that the trial court abused its discretion by finding that he violated the conditions of his probation and by fully revoking his suspended sentences without considering lesser options. We respectfully affirm the judgments of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and ROBERT H. MONTGOMERY, JR., JJ., joined.

Sarah W. Keith, Knoxville, Tennessee, for the appellant, Tavares Tobin.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Debbie Malone, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTUAL BACKGROUND**

In September 2020, the Defendant, Tavares Tobin, pled guilty to the offenses of unlawful possession of a weapon by a felon convicted of a felony drug offense and unlawful possession of cocaine with intent to sell, deliver, or manufacture. Pursuant to a

plea agreement, the trial court sentenced the Defendant to an effective term of eleven years, and it placed the Defendant on probation to be supervised by the Department of Correction (herein “the Department”).

Thereafter, the Department filed a violation report and four amendments. The original report was filed on September 24, 2021, and it alleged that the Defendant had been charged with the offense of aggravated domestic assault and that he failed to report to his probation officer on September 20, 2021. A week later, the Department filed its first amendment alleging that the Defendant had been arrested on September 28, 2021, and he was charged with the offenses of criminal impersonation and unlawful possession of drug paraphernalia.

The Defendant was arrested on the subsequent probationary warrant, and the trial court released the Defendant on bail pending a hearing. After the Defendant was released, the Department filed a second amendment on February 10, 2022, alleging that the Defendant had been discharged from his halfway house and that he had not reported to his probation officer. The Department filed a third amendment on March 2, 2022, alleging that the Defendant had failed to report to probation since February 8, 2022, and that his current whereabouts were then unknown. Finally, on March 17, 2022, the Department filed a fourth amendment alleging that the Defendant had been arrested for the offense of criminal impersonation on March 9, 2022.

The trial court held a revocation hearing on April 14, 2022. The State’s first witness, Mr. Thomas Cox, testified that he was one of two probation officers responsible for supervising the Defendant. Mr. Cox testified that he filed the initial violation report because the Defendant had been charged with the offense of aggravated assault. However, because this charge was later dismissed due to a failure to prosecute, Mr. Cox continued working with the Defendant.

Mr. Cox also testified that he assisted in placing the Defendant in a halfway house because the Defendant was homeless. Mr. Cox testified that he later received a telephone call from someone at the halfway house informing him that the Defendant “had sold drugs” to pay for rent. Mr. Cox and the other probation officer then confronted the Defendant with the allegation, and Mr. Cox testified that the Defendant “mentioned to us that he did sell drugs in order to pay for his rent.”

The State also called as a witness Ms. Paula Bothof, who was the Defendant’s primary probation officer. Ms. Bothof testified that she was assigned to supervise the Defendant on February 1, 2022, and that she met with the Defendant at the halfway house three or four days later. She testified that she received a letter from the Defendant’s halfway house dated February 8, 2022, notifying her that the Defendant left the halfway

house and failed to return. She also testified that the Defendant did not further report to her after he left the halfway house.

Ms. Bothof testified that she filed an amended violation report on February 9, 2022, alleging that the Defendant was discharged from the halfway house and that the Defendant failed to report for supervision. She also testified that she filed another amendment on March 17, 2022, alleging that the Defendant had been charged with the offense of criminal impersonation. The State introduced certified copies of judgments showing that the Defendant had pled guilty to two counts of criminal impersonation.

The trial court permitted the Defendant to allocute without objection by the State. In his unsworn allocution, the Defendant said that he had trouble with transportation and reporting back to the halfway house. He stated that he “begged” the halfway house not to discharge him, but it did so anyway. According to the Defendant, the halfway house kept his belongings, including his cell phone.

Despite not having his cell phone, the Defendant stated that he tried to contact Mr. Cox “at one point in time.” The Defendant said that when he was unable to contact Mr. Cox, he “didn’t know what else to do.” He noted that “when [he] got discharged, yes, [he] got afraid.”

The Defendant asked for “another chance” on probation, asserting that he had not yet had the opportunity for rehabilitation. He noted that he had applied for “numerous jobs” and that he “obtained a job” through his sister a couple of days before his discharge from the halfway house. He also said that he was helping the mother of his children and that he was “focused” on “getting [his] children back into my custody.”

At the conclusion of the proof, the trial court found that “by a preponderance of the evidence . . . the State has shown that [the Defendant] is in violation of his probation as set forth here today[.]” In fully revoking each of the suspended sentences, the trial court observed that the Defendant had been convicted of two criminal impersonation offenses. It also noted that “the most serious thing I’ve heard here today is that he admitted to selling drugs in order to pay his rent at the halfway house.” As the trial court reasoned,

At some point we have to uphold the integrity of our probation system, and a big part of that is demonstrating that when people do not comply with the conditions of probation that they have to go serve their sentences in prison, and I do think that that is the appropriate remedy here today.

The trial court’s formal order was entered on April 18, 2022, and the Defendant thereafter filed a timely notice of appeal. On appeal, the Defendant argues that the trial

court abused its discretion in ordering his sentences into execution. More specifically, the Defendant argues that the trial court failed to consider available alternatives to incarceration and that the trial court improperly considered that the Defendant had sold controlled substances when the evidence supporting this allegation was not corroborated. We respectfully disagree that the trial court abused its discretion in fully revoking the Defendant's suspended sentences, and as such, we affirm the judgments of the trial court.

### STANDARD OF APPELLATE REVIEW

Our supreme court has recognized that “the first question for a reviewing court on any issue is ‘what is the appropriate standard of review?’” *State v. Enix*, 653 S.W.3d 692, 698 (Tenn. 2022). The principal issue in this case is whether the trial court acted within its discretion in fully revoking the Defendant's suspended sentence. We review this issue 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 consequence on the record.” *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022). However, if the trial court did not make such findings, then this Court “may conduct a de novo review if the record is sufficiently developed for the court to do so, or [we] may remand the case to the trial court to make such findings.” *Id.*

### ANALYSIS

When a trial court imposes a sentence for criminal conduct, the court may suspend the sentence for an eligible defendant and place that defendant on probation. *See* Tenn. Code Ann. §§ 40-35-103; 40-35-303(b). The trial court may also require that the defendant comply with various conditions of probation where those conditions are suitable to facilitate rehabilitation or to protect the safety of individuals or the community more broadly. *See State v. Holmes*, No. M2020-01539-CCA-R3-CD, 2022 WL 2254422, at \*16 (Tenn. Crim. App. June 23, 2022) (“The primary purpose of probation sentence, however, ‘is rehabilitation of the defendant,’ and the conditions of probation must be suited to this purpose[.]” (quoting *State v. Burdin*, 924 S.W.2d 82, 86 (Tenn. 1996))), *no perm. app.*; *see also* Tenn. Code Ann. § 40-28-302(1).

So long as a defendant complies with the conditions of the suspended sentence, the defendant will remain on probation until the sentence expires. *State v. Taylor*, 992 S.W.2d 941, 944-45 (Tenn. 1999); *State v. Moses*, No. W2016-01762-CCA-R3-CD, 2018 WL 2292998, at \*4 (Tenn. Crim. App. May 18, 2018) (holding that a defendant's probation may not be revoked for conduct that does not violate a condition of probation). However, if a defendant violates a condition of probation, then the trial court may address the violation as it “may deem right and proper under the evidence,” subject to various statutory

restrictions. Tenn. Code Ann. § 40-35-311(d)(1) (2021). As such, the nature of a probation revocation proceeding involves a two-step process with “two distinct discretionary decisions.” *See Dagnan*, 641 S.W.3d at 757. As our supreme court confirmed in *Dagnan*, the “first [step] is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation.” *Id.*

#### **A. THE VIOLATION DETERMINATION**

As to the first step, a trial court cannot find a violation of the conditions of probation unless the record supports that finding by a preponderance of the evidence. *See State v. Beard*, 189 S.W.3d 730, 734-35 (Tenn. Crim. App. 2005); Tenn. Code Ann. § 40-35-311(d)(1). Where a defendant admits that he or she violated a condition of probation, the trial court may properly find that a violation exists. *See State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999); *see also, e.g., State v. Brewster*, No. E2021-00793-CCA-R3-CD, 2022 WL 2665951, at \*4 (Tenn. Crim. App. July 11, 2022), *no perm. app.*

In this case, the trial court fully revoked each of the Defendant’s sentences. As this Court has recognized, “The probation statute provides for two categories of probation violations, technical and non-technical, with differing penalties for both.” *State v. 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) (2021)). A non-technical violation, such as absconding, “allows the trial court to revoke probation and order a defendant to serve his or her sentence[.]” *Id.*

Although the trial court did not specifically enumerate the violations it found, it concluded that the State had proven that the Defendant “is in violation of his probation as set forth here today[.]” One of the violations alleged and proven by the State was that the Defendant had absconded from probation, and the Defendant admitted during the hearing that he failed to report to his probation officer after his initial attempted contact was unsuccessful. He also testified that he did not report because he was “afraid.” On appeal, the Defendant does not dispute that he violated his probation through absconding, and as such, we conclude that the record supports a finding that the Defendant committed a non-technical violation of probation.

#### **B. THE CONSEQUENCE DETERMINATION**

“As to the second step, the consequence determination essentially examines whether the beneficial aspects of probation are being served and whether the defendant is amenable to continued probation.” *State v. Robinson*, No. M2022-00248-CCA-R3-CD, 2022 WL

17335656, at \*4 (Tenn. Crim. App. Nov. 30, 2022). As the supreme court observed in *Dagnan*, a trial court may consider factors relevant to the nature and seriousness of the present violation, the defendant's previous history on probation, and the defendant's amenability to future rehabilitation. *See Dagnan*, 641 S.W.3d at 759 n.5. Factors important to a defendant's amenability to correction may include the defendant's acceptance of responsibility and genuine remorse, as well as whether the defendant will comply with orders from the court meant to ensure his or her effective rehabilitation. Tenn. Code Ann. § 40-35-102(3)(C); *State v. Owens*, No. E2021-00814-CCA-R3-CD, 2022 WL 2387763, at \*5 (Tenn. Crim. App. July 1, 2022), *no perm. app.* A trial court may also consider whether the violation shows that the defendant is a danger to the community or to individuals in it. *See* Tenn. Code Ann. § 40-28-302(1) ("Supervised individuals shall be subject to: (1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large and cannot be appropriately managed in the community[.]").

In this case, the trial court found that the appropriate consequence for the Defendant's violation was the complete revocation of his suspended sentences, and it did so for three principal reasons. First, the trial court considered that the Defendant had been twice convicted of criminal impersonation occurring while he was on probation for a felony offense. The Public Safety Act of 2016 specifically permits trial courts to consider whether a violating probationer can "remain compliant and crime-free in the community" in determining the appropriate consequence. Tenn. Code Ann. § 40-28-302(2). From this premise, this Court has also recognized that "[t]he rehabilitative goals of probation are directed precisely toward the goal of lawful conduct and public safety. Thus, this Court has long recognized that where the probationer continues to commit new crimes, the beneficial aspects of probation are not being served." *State v. Everett*, No. E2022-00189-CCA-R3-CD, 2022 WL 16643628, at \*4 (Tenn. Crim. App. Nov. 3, 2022) (citation omitted). As such, the trial court properly considered the Defendant's new criminal convictions as part of the consequence determination for the Defendant's violation.

Second, the trial court considered that the Defendant admitted to his probation officer that he sold controlled substances to pay his rent. Aside from the Defendant's engaging in criminal activity to obtain income, this new criminal conduct was also identical to that for which the Defendant was placed on probation in the first instance. This conduct shows that the Defendant cannot or will not abide by the first rule of probation: maintaining lawful conduct. *See State v. Daniel*, No. M2021-01122-CCA-R3-CD, 2022 WL 6644369, at \*3 (Tenn. Crim. App. Oct. 11, 2022). The trial court's consideration of this fact was appropriate as part of the consequence determination.

In response, the Defendant argues that the trial court improperly considered the testimony from his probation officers because their testimony was not corroborated by other evidence. We respectfully disagree. The law does not require that a Defendant's confession be corroborated before it can be considered in the context of a probation revocation proceeding. *E.g.*, *State v. Farve*, No. E2008-00939-CCA-R3-CD, 2009 WL 749307, at \*6 (Tenn. Crim. App. Mar. 23, 2009). As such, the trial court could certainly consider that the Defendant confessed to selling controlled substances at the halfway house even without independent corroboration of the confession.

Moreover, although the Defendant now denies that he sold cocaine or any other illegal substance to pay for rent, he did not dispute this fact in the trial court. For example, the Defendant did not question any of the State's witnesses about his confession during the hearing. Despite making a lengthy allocution, the Defendant did not deny, dispute, or even address this allegation at any point during his statement to the trial court. And, although the State argued specifically that full revocation was appropriate, in part, because the Defendant "was selling drugs to pay for the halfway house," the Defendant did not mention, challenge, or contest this allegation at all during his argument. As the record stands, the fact and substance of the Defendant's confession were undisputed, and we conclude that the trial court did not commit any error in considering this important evidence.

Third, the trial court considered the safety of other persons who also could have been affected by the Defendant's illegal conduct while he was on probation. The Public Safety Act expressly provides that trial courts should consider full revocation where the probationer's conduct "constitutes a significant risk to . . . the community at large and cannot be appropriately managed in the community." Tenn. Code Ann. § 40-28-302(1). Here, the trial court reasoned that members of the community at large, specifically, other residents of the halfway house, could be adversely affected if exposed to someone who was "selling drugs while being a resident," and we conclude that this was an appropriate consideration as part of the consequence determination.

Finally, the Defendant argues that the trial court abused its discretion by failing to consider lesser alternatives to incarceration before it fully revoked the Defendant's suspended sentences. We again respectfully disagree. As we have recognized above, the Public Safety Act requires trial courts to consider revocation when the probationer's risks "cannot be appropriately managed in the community," and the trial court may only consider sanctions other than revocation when interventions exist that "may assist the offender to remain compliant and crime-free in the community." Tenn. Code Ann. § 40-28-302. In this way, the consequence determination "is not merely focused on the probationer's rehabilitative needs alone." *State v. Banning*, No. E2022-00188-CCA-R3-CD, 2022 WL 10225186, at \*5 (Tenn. Crim. App. Oct. 18, 2022), *no perm. app.* Rather, the determination

must necessarily consider whether those needs “can be effectively addressed *in the community* rather than in custody.” *Id.* (emphasis in original).

The record fully supports the trial court’s decision to order incarceration rather than additional community-based interventions. While he was on probation meant for his rehabilitation, the Defendant chose to obtain income from criminal activity by continuing to sell controlled substances. He committed crimes involving dishonesty on multiple occasions, and his willful absconion shows that he “has a complete disregard for the rehabilitative process and the orders of the court.” *Everett*, 2022 WL 16643628, at \*4. The trial court did not abuse its discretion in deciding that a full revocation of the Defendant’s suspended sentences was the appropriate consequence of his violation.

### CONCLUSION

In summary, we hold that the trial court acted within its discretion in finding that the Defendant violated the terms and conditions of his suspended sentences. We also hold that the trial court acted within its discretion in revoking the Defendant’s suspended sentences and ordering that he serve the balance of these sentences in the Department of Correction. We respectfully affirm the judgments of the trial court.

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TOM GREENHOLTZ, JUDGE