

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs December 13, 2022

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. CORY EDWARD WALDEN

**Appeal from the Circuit Court for Lincoln County
Nos. 19-CR-92, 19-CR-93, 19-CR-134 Forest A. Durard, Jr., Judge**

No. M2022-00386-CCA-R3-CD

After pleading guilty to two counts of violation of the habitual motor vehicle offender law and reckless endangerment, Defendant was sentenced to a total of eight years and six months on supervised probation. Several probation violation warrants, a partial revocation, and additional convictions followed, eventually culminating in a hearing on the revocation of Defendant's probation. Defendant admitted the violations. The trial court ultimately determined that Defendant's multiple probation violations warranted the complete revocation of probation. After a review, we affirm the judgment of the trial court.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and JILL BARTEE AYERS, JJ., joined.

Donna Hargrove, District Public Defender; William J. Harold, Assistant District Public Defender, for the appellant, Cory Edward Walden.

Jonathan Skrmetti, Attorney General and Reporter; Samantha L. Simpson, Assistant Attorney General; Robert J. Carter, District Attorney General; and Amber Sandoval, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Defendant's long list of issues leading up to this appeal began with his guilty pleas to one count of driving after being declared a habitual motor vehicle offender in 2019 in case number 19-CR-92 and one count of the same offense in case number 19-CR-93. He was sentenced to one year in case number 19-CR-92 and 18 months in case number 19-CR-93. The sentences were ordered to be served consecutively to each other. Defendant

also pled guilty in case number 19-CR-134 to one count of reckless endangerment, for which he received a sentence of 6 years, suspended to supervised probation. This sentence was ordered to be served consecutively to the unserved sentences in case numbers 19-CR-92 and -93. The trial court suspended all of the sentences to supervised probation, for a total effective probationary sentence of eight years and six months.

On June 10, 2020, a probation violation report was issued against Defendant as the result of a new arrest for possession/theft of stolen property and driving on a revoked license. On September 8, 2020, Defendant waived his right to a hearing and pled guilty to the violation of probation. The trial court entered an order revoking Defendant's probation and reinstating Defendant to probation for the balance of the original sentence. Defendant was awarded jail credit from July 4, 2020, to September 8, 2020.

On November 18, 2020, a probation violation report was issued against Defendant for an arrest in Madison County, Alabama for domestic assault, felon in possession of a pistol, and possession of contraband in jail. About a month later, in mid-December 2020, another probation violation report was issued after Defendant was again arrested in Madison County, Alabama for possession of methamphetamine and unlawful possession of a weapon. From the record, it appears that Defendant pled guilty to possession of a controlled substance and unlawful possession of a pistol for the November charges and received a sentence of 36 months. He was placed on supervised probation for the remainder of the sentence, ordered to pay a fine, complete a "treatment assessment" and have no contact with the victim. On January 1, 2021, Defendant was arrested for violating a domestic order.

Most, if not all of Defendant's convictions, stemmed from his substance use abuse. At some point, while the above-referenced probation violations were pending against Defendant, he submitted a letter from Ken Pounders, Director of Outreach Ministries of Alabama ("OMA") to the trial court. The letter indicated that Defendant was accepted into OMA's 12-month residential training center with an entry date of January 5, 2022.

On November 21, 2021, the trial court entered an order revoking Defendant's probation. Defendant was ordered to serve one year in confinement before returning to probation to serve the balance of his original sentence. The trial court order granted Defendant the "opportunity, after service of six (6) months of his sentence, to attend a Court-approved rehab facility." Noting that OMA had accepted Defendant into its program, the trial court scheduled the case for a hearing on January 4, 2022, "for review to determine if Defendant will be able to attend this rehab center."

Defendant remained incarcerated until the trial court granted Defendant furlough on January 4, 2022, to attend the OMA program. In the order, the trial court noted that if

Defendant was “terminated” from the program for any reason, he would be required to immediately return to the Lincoln County Jail or risk being charged with felony escape. A trial court order from merely one day later, January 5, 2022, indicated Defendant “expressed an intent to voluntarily leave” the OMA program on the date he arrived. The trial court ordered officers from the Lincoln County Sheriff’s Office to meet the director of OMA at the state line to return Defendant to the Lincoln County Jail. Mr. Pounders drove Defendant back toward Tennessee from Alabama. During the drive, Defendant escaped from Mr. Pounders’s vehicle while still in Alabama. As a result of his arrest for escape, another probation violation warrant was filed against Defendant.

At a hearing on March 1, 2022, Defendant pled guilty to the violation arising from his escape charge. Defendant admitted that he had a drug problem with “[m]ainly meth and pills” and “[h]eroin too.” Defendant agreed that he understood OMA to be a faith-based program and voluntarily attended the faith-based program but changed his mind once he arrived and enrolled. After less than one day, Defendant left the program. Defendant asked the trial court to send him to a different rehabilitation program, promising that he “would like to turn [his] life around and do right.” On cross-examination, Defendant admitted that he told the trial court on a previous occasion that he would do whatever it took to get clean. Defendant admitted that he still needed help and was “tired of living like a drug addict.”

Mr. Pounders testified that he discussed the faith-based nature of the OMA program with Defendant before his arrival. Defendant agreed to attend. However, once Defendant arrived, he did not even complete the intake procedure. Defendant spent about three hours in total at OMA, complaining about the faith-based nature of the program after only one hour. Defendant tried to claim he had no idea that the facility and program were faith-based. Defendant repeatedly asked Mr. Pounders to leave. Mr. Pounders obliged Defendant in his request, agreeing to drive Defendant back to Lincoln County to surrender him to authorities there. Once in the car, Defendant attacked Mr. Pounders’s Christianity. However, Defendant then indicated he would like to attend the OMA program. Mr. Pounders turned the car around to give Defendant a second chance at OMA. Mr. Pounders called the trial court and Defendant’s counsel to inform them of the situation. Defendant insisted on leaving OMA for a second time. Mr. Pounders drove Defendant toward the state line. At a stop light in Hazel Green, Alabama, Defendant opened the door to the vehicle and fled.

At the hearing, the trial court recounted the lengthy history of Defendant’s drug use leading to multiple probation violations and Defendant’s conduct leading up to the escape from OMA. The trial court noted specifically the success of the OMA program and the fact that it had been Defendant’s choice to attend the program. The trial court discredited Defendant’s claim that he was unaware of the faith-based nature of the program. The trial

court commented that Defendant “breach[ed]” the trust of the court by absconding and commented that Defendant could have and should have contacted his probation officer about being transferred to a different facility. The trial court revoked Defendant’s probationary sentences in full. Defendant appealed.

Analysis

On appeal, Defendant argues that the trial court improperly ordered him to serve the balance of his sentence. Citing *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997), Defendant insists that there is no substantial evidence in the record to support the trial court’s conclusion. The State, on the other hand, notes that Defendant fails to cite the most recent Tennessee Supreme Court opinion setting forth the standard for revocation of probation, in which the court concludes that revocation involves a “two-step” inquiry. *State v. Dagnan*, 641 S.W.3d 751, 753 (Tenn. 2022). The State insists that Defendant failed numerous times at a probated sentence and that the trial court did not abuse its discretion by ordering Defendant to serve the sentence in incarceration.

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);¹ *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 *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 at 753. 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

¹ There were multiple changes in the code sections dealing with revocation of probation effective July 1, 2021.

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 d]efendant 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. Thus, 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 went on to explain the standard of review of 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. 2012)]. "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.

Here, Defendant pled guilty to the probation violation and the trial court held a hearing to "make a decision on the sentencing." After hearing the proof presented at the hearing through witnesses, the trial court recounted the facts that gave rise to the violation reports. The trial court pointed to Defendant's prior revocations, arrest for escape, and failure to complete the rehabilitation program beyond a few hours of intake as reasons to sustain the violation of his probation. After reviewing the proof, the trial court found that

the State proved Defendant had violated his probation. The trial court noted Defendant committed “a breach of trust of the Court” when he jumped out of Mr. Pounders’s vehicle after having been given two chances at rehabilitation. The trial court was displeased with Defendant’s actions, noting that Defendant “chose” his path and because of his actions, the court had no “faith he is going to do anything [the trial court] tell[s] him to do.” The trial court then noted this was not the first violation and then determined that Defendant’s “behavior warrants” that Defendant’s probation should be revoked in full because Defendant “chose to run off and [the trial court] cannot tolerate that.” 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).

Defendant claims that the record “lacks substantial evidence to support the actions of the trial court” because the proof only showed that Defendant received a “new charge.” The facts presented indicated that Defendant admitted he violated the rules of his probation by getting arrested for escape and failing to participate in the inpatient rehabilitation program, supporting a finding by the trial court that Defendant’s probation should be revoked. The trial court did not abuse its discretion. Defendant is not entitled to relief.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

TIMOTHY L. EASTER, JUDGE