

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 19, 2026 Session

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MICHAEL JASON HOLLOWAY

**Appeal from the Criminal Court for Hamilton County
No. 319224 Boyd M. Patterson, Judge**

No. E2025-01136-CCA-R3-CD

Defendant, Michael Jason Holloway, appeals the Hamilton County Criminal Court’s denial of judicial diversion following his guilty plea to reckless aggravated assault, a Class D felony. He also contends that the State breached a material term of the plea agreement by taking a position on diversion at the sentencing hearing. Upon review of the entire record, the briefs and arguments of the parties, and the applicable law, we affirm the judgment of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and MATTHEW J. WILSON, J., joined.

Marya Schalk and Benjamin McGowan, Chattanooga, Tennessee, for the appellant, Michael Jason Holloway.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Coty Wamp, District Attorney General; and Natalie Cropp, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

On July 21, 2024, an encounter between Defendant and the occupants of an Infiniti SUV on Ooltewah–Ringgold Road escalated into a road-rage incident. Both vehicles were traveling northbound on a two-lane road on which passing was prohibited. Defendant was riding his motorcycle; his wife, his sixteen-year-old son, and his son’s

friend were each riding their own motorcycles along with him. The facts of this case as set forth by the State at the guilty plea submission hearing are as follows:

On July 21st, sheriff's deputies were notified that a road rage incident had occurred where a gun was fired The investigation took into consideration the victim/driver of an Infinity SUV as well as six parties¹ on motorcycles interviewed by the deputies I think what everyone can agree on is that there was a road rage incident. The folks on motorcycles felt like they were threatened by the gentleman driving the Infinity SUV. There was some back-and-forth between the parties. The motorcyclists would say that the SUV was driving recklessly and that a possible defense at trial is that one of the parties would say that the SUV tried to run one of the motorcycles off the road. The defendant pulled a gun and shot at the Infinity SUV, which the victim was driving

The official investigative report, later incorporated into the presentence investigation ("PSI"), stated that after passing two motorcycles, the SUV driver was followed by Defendant, on a Harley-type motorcycle who cursed at the SUV's occupants and grabbed and broke the driver's side mirror. The SUV driver threw a water bottle at Defendant, who then fired a shot through the rear passenger-side window, grazing the driver's shoulder. The wound was superficial, and the bullet was later recovered from the driver's shirt.

Defendant was stopped shortly thereafter in Georgia. He initially denied involvement in the shooting, but ultimately admitted to firing the weapon, telling law enforcement that he believed the SUV had endangered his family and that he intended to shoot the vehicle's tire.

Defendant pled guilty by information to reckless aggravated assault. As a part of the plea agreement, Defendant's sentence would be fully suspended with no incarceration, and the trial court would determine whether Defendant would be granted diversion and the length and conditions of the sentence.

At the sentencing hearing on July 7, 2025, the trial court noted that the PSI and Defendant's sentencing memorandum indicated Defendant was statutorily eligible for judicial diversion and asked the State whether it opposed diversion. The State responded by addressing the sentencing principles, statistical data from the Administrative Office of

¹ The record indicates that there were six motorcycles on the road at the time of the incident; however, only four motorcyclists were a part of Defendant's group.

the Courts (“AOC”), and certain *Electroplating*² factors, specifically the circumstances of the offense, the deterrence value, the interests to the public, and depreciation of the seriousness of the offense, and stated that, to the extent those factors applied, “that is the State’s position.” When the court asked whether the State was saying these factors “don’t militate in favor of diversion,” the State confirmed, “Correct.”

Defense counsel immediately requested a bench conference to address an inconsistency with the parties’ agreement. The State acknowledged the parties had “come to an agreement that [the State] would not take a position on diversion,” and clarified that it was “not saying that [Defendant] should not receive diversion,” but only referencing legal factors that “may apply.” Defense counsel responded that her understanding was that the State was “taking a position on the law but not on the ultimate determination,” and the State agreed.

The State then continued its presentation, addressing AOC statistics, enhancement factors, and the *Electroplating* factors. The State emphasized several factors unfavorable to diversion, primarily the circumstances of the offense, while stating that some factors weighed in Defendant’s favor, such as lack of criminal history, positive social history, and amenability to correction. The State reiterated that it was “not taking a position” on whether diversion should ultimately be granted.

Defense counsel argued extensively in favor of judicial diversion, asserting that the offense resulted from an isolated lapse in judgment during a rapidly evolving encounter on the roadway; that Defendant had immediately accepted responsibility and cooperated throughout the process; that he had no criminal record, a decades-long employment history, stable family and community ties, and strong character support; and that the circumstances of the offense fell “outside the heartland of a typical road rage case.” Counsel also stressed the significant employment consequences of a felony conviction and his high amenability to correction.

The victim testified that the incident had both a financial impact and continuing emotional effects. He explained that Defendant’s gunshot shattered the rear passenger-side window of his 2013 Infiniti Q56 SUV and caused a superficial grazing wound to his shoulder. The victim presented receipts and bills documenting his medical expenses and repairs to his SUV. He stated that his daughter, who was a passenger in the vehicle, was “still traumatized” from the incident and “freaks out” when they are driving and she sees motorcycles.

² *State v. Electroplating, Inc.*, 990 S.W.2d 211 (Tenn. Crim. App. 1998).

Defendant read from his written statement which had been submitted as part of the PSI. In it, he expressed remorse, acknowledged that he should have pulled over and called police, and stated that he “take[s] a lot of pride in being a safe driver and responsible gun owner . . . these are privileges that carry a great deal of responsibility and [he] lost sight of that in the moment” and deeply regretted his conduct.

In announcing its ruling, the trial court undertook a factor-by-factor analysis under the *Electroplating* framework. The court first confirmed that Defendant “does qualify for diversion,” noting that he was a Range I, standard offender with no statutory exclusions. The court emphasized that several diversion factors strongly favored Defendant. It found Defendant’s amenability to correction particularly compelling, stating that Defendant’s “amenability to correction . . . clearly [is] in the defendant’s favor” and that he had “no prior criminal record” and a positive social history supported by longstanding employment and character letters. The court stated that Defendant’s “social history obviously militates in favor of diversion.”

The court also found no concerns relating to Defendant’s mental or physical health, except to acknowledge the “tragic health situation” involving Defendant’s first wife, who passed away, and the illness of his current wife, circumstances the court noted to show Defendant’s stability and caregiving responsibilities, not as grounds against diversion.

Despite these favorable findings, the court ultimately placed “great weight” on the circumstances of the offense, finding that they weighed heavily against diversion. The court described Defendant’s conduct as “deadly force,” stressing that Defendant “used a gun rather than pull over,” and that even accepting Defendant’s version that he intended only to shoot out the tire, “a few inches one way or the other and this would be a very different case.” The court found that Defendant’s actions were not merely reckless in the abstract but presented an extreme and immediate threat to life: the bullet “traveled . . . in the direction of the victim’s person” and passed close enough that “this would be a homicide case” if the trajectory of the shot had been slightly different.

The court also relied on facts in the PSI, observing that there were “a number of places” where Defendant could have pulled over and that Defendant himself “described passing many businesses and areas . . . sufficient to pull over.” The court emphasized the escalation, noting that Defendant “felt that he should have shot at the car” instead of disengaging, which the court found unjustified under the circumstances.

While acknowledging that the case carried unusual context compared to “typical” road-rage incidents, the court reiterated that the use of a firearm against a moving, occupied vehicle was an overriding concern, stating, “Deadly force was used. It was

unnecessarily used[,]” and “[t]he firearm being used . . . militates against diversion in this case.” These considerations, the court said, were the basis on which it placed “great weight.”

The court expressly noted that all remaining factors either favored Defendant or lacked evidence to apply against him. “Just about everything else militates in favor of the defendant, or there’s not enough information” to weigh it negatively. However, the court concluded that the seriousness and danger inherent in the circumstances of the offense “outweighed all other considerations.”

Accordingly, the court denied judicial diversion, finding that it could not overlook the “extreme danger” created by firing into an occupied, moving vehicle and the life-threatening potential of Defendant’s conduct despite his otherwise exemplary background. The court sentenced Defendant to two years suspended to unsupervised probation and ordered restitution in the amount of \$3,040.07

It is from this order that Defendant now timely appeals.

Analysis

On appeal, Defendant argues that the trial court erred in denying judicial diversion because it failed to properly consider and weigh the *Parker*³/*Electroplating* factors, gave disproportionate weight to the circumstances of the offense, and improperly relied on irrelevant considerations such as general concerns about “road rage” cases. Additionally, he argues the State violated the plea agreement by taking a position against diversion at sentencing despite an express agreement to remain neutral. In response, the State contends that the trial court conducted a correct, factor-by-factor analysis, placed “great weight” on the circumstances of the offense as permitted under Tennessee law, and acted within its broad discretion. The State further maintains that no breach occurred because the record contains no proof that silence on diversion was a term of the plea agreement, and, in any event, it took no position on the “ultimate determination” of diversion.

I. Denial of Diversion

Following a determination of guilt by plea or by trial, a trial court may, in its discretion, defer further proceedings and place a qualified defendant on probation without entering a judgment of guilt. T.C.A. § 40-35-313(a)(1)(A); *State v. Dycus*, 456 S.W.3d 918, 925 (Tenn. 2015). A qualified defendant is one who is found or pleads guilty to the offense, is not seeking deferral for certain sexual offenses or an offense committed by an

³ *State v. Parker*, 932 S.W.2d 945 (Tenn. Crim. App. 1996).

elected or appointed person, has not been previously convicted of a felony or Class A misdemeanor, and has not previously been granted judicial or pretrial diversion. T.C.A. § 40-35-313(a)(1)(B)(i)(a)-(e). If the defendant successfully completes the period of probation, the trial court is required to dismiss the proceedings against him, and the defendant may have the records of the proceedings expunged. *Id.* § 40-35-313(a)(2), (b); *Dycus*, 456 S.W.3d at 925. Thus, “judicial diversion is not a sentence; rather, the grant or denial of judicial diversion is simply a decision to defer a sentence or to impose one.” *State v. Sheets*, No. M2022-00538-CCA-R3-CD, 2023 WL 2908652, at *6 (Tenn. Crim. App. Apr. 12, 2023), *no perm. app. filed* (citing *State v. King*, 432 S.W. 3d 316, 324-25 (Tenn. 2014)). “Our supreme court has described judicial diversion as a ‘legislative largess’ available to a qualified defendant.” *Dycus*, 456 S.W.3d at 925 (citing *King*, 432 S.W.3d at 323); *see also State v. Hodge*, No. E2024-01455-CCA-R3-CD, 2025 WL 2828436, at *3 (Tenn. Crim. App. Oct. 6, 2025), *no perm. app. filed*.

With a guilty plea to the Class D felony of reckless aggravated assault and no prior criminal record, Defendant met the statutory requirements for eligibility for judicial diversion. *See* T.C.A. § 40-35-313(a)(1)(B). Mere eligibility for judicial diversion, however, does not entitle a defendant to judicial diversion. *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996). In determining whether to grant diversion, the trial court must consider the following factors: (a) the accused’s amenability to correction, (b) the circumstances of the offense, (c) the accused’s criminal record, (d) the accused’s social history, (e) the accused’s physical and mental health, (f) the deterrence value to the accused as well as others, and (g) whether judicial diversion will serve the interests of the public as well as the accused. *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998); *Parker*, 932 S.W.2d at 958.

The decision to grant or deny a qualified defendant judicial diversion “is entrusted to the discretion of the trial court.” *King*, 432 S.W.3d at 323 (citation omitted). This court will apply a presumption of reasonableness to a trial court’s decision regarding judicial diversion so long as the trial court considers the *Electroplating* factors, identifies the relevant factors, and explains on the record the reasoning for its decision. *Id.* at 326 (citing *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012)). In doing so, this court will uphold a trial court’s decision denying or granting judicial diversion so long as there is “any substantial evidence to support the trial court’s decision.” *Id.* “‘Substantial evidence’ is ‘[e]vidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.’” *State v. Clark*, 452 S.W.3d 268, 280 (Tenn. 2014) (quoting Black’s Law Dictionary 640 (9th ed. 2009)). A trial court is “not required to utilize any ‘magic words’ or specifically reference the case names . . . when discussing the relevant factors in order to receive the presumption of reasonableness.” *King*, 432 S.W.3d at 327 n.8.

The record reflects that the trial court expressly identified and considered the *Parker/Electroplating* factors. The court found that several factors strongly favored Defendant. It noted that Defendant had no prior criminal history, a positive social history, longstanding and stable employment, and no identifiable mental or physical health concerns weighing against diversion. The court further emphasized that Defendant was “amenable to correction,” referencing the numerous character letters submitted, his remorse, and his compliance while on bond. The trial court also acknowledged that the record contained minimal evidence supporting deterrence. The trial court’s consideration of these factors satisfies the requirement that the relevant criteria be addressed on the record. *Id.* at 327.

Defendant’s primary argument is that the trial court impermissibly elevated the “circumstances of the offense” above all other factors. This Court has recognized that the circumstances of the offense may, by themselves, justify denial of judicial diversion when that factor outweighs others. *See State v. Kyte*, 874 S.W.2d 631, 634 (Tenn. Crim. App. 1993) (stating that “the circumstances of the offense may alone serve as the basis for denial” of judicial diversion). However, our supreme court has clarified that reliance on this factor requires more than ordinary wrongdoing; the circumstances must be “especially violent, horrifying, shocking, reprehensible, offensive or otherwise of an excessive or exaggerated degree.” *State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006); *see also State v. Hatfield*, No. E2018-00041-CCA-R3-CD, 2019 WL 91542, at *3 (Tenn. Crim. App. Jan. 3, 2019). This heightened standard is particularly relevant where the defendant’s conduct created a significant and unjustifiable risk of serious bodily injury or death.

Here, the trial court placed “great weight” on the fact that the defendant escalated a roadside confrontation by firing a handgun into a moving vehicle occupied by two people. The court noted that even accepting Defendant’s assertion that he intended only to strike the rear tire, the shot passed “within a few inches” of the victim’s head and “would have resulted in a very different case” had the projectile traveled slightly differently. The trial court also observed that Defendant passed “many businesses and areas” where he could have safely pulled over but chose instead to escalate the encounter. In denying diversion based on the circumstances of the offense, the court relied on Defendant’s extreme and excessive reaction, noting that there are “homicide cases with this level of proof.” The trial court acted within its discretion in concluding that the extreme risk created by Defendant’s decision to use deadly force outweighed the otherwise favorable factors.

Defendant also asserts that the trial court relied upon generalized concerns about “road rage cases.” Although the trial court commented on its experience with the frequency and seriousness of such cases, it expressly stated that those observations were

not part of its reasoning and emphasized that it was deciding the case based on the facts presented. The transcript reflects that the trial court's comments about road rage contextualized its concern about the seriousness of firing a weapon during a roadway confrontation, not as an independent reason to deny diversion. The record supports the trial court's statement that its ruling turned on "this case," its evidence, and the statutory and common law factors. We decline to second guess that explicit representation. *See King*, 432 S.W.3d at 328 ("Where the trial court has considered the relevant factors and supported its decision with substantial evidence, the appellate court must uphold the ruling.").

The trial court thoroughly considered the applicable criteria, articulated its reasoning in compliance with *King* and *Trotter*, and based its denial of diversion on substantial evidence, specifically, the extreme seriousness and potentially fatal consequences of Defendant's conduct. Defendant has failed to demonstrate that the trial court abused its discretion in denying judicial diversion.

II. Breach of Plea Agreement

Defendant next argues that the State breached a material term of the plea agreement by taking a position against judicial diversion at sentencing. Although defense counsel initially requested a bench conference and expressed concern that the State's comments might conflict with the agreement, the trial court clarified the scope of the parties' understanding, and counsel ultimately agreed with that explanation and raised no further objection. Defendant requests we review this issue for plain error. *See State v. Enix*, 653 S.W.3d 692, 701 (Tenn. 2022).

To obtain relief under plain error review, the defendant bears the burden of persuading the appellate court that all five of the following prerequisites are satisfied: (1) the record clearly establishes what occurred in the trial court; (2) a clear and unequivocal rule of law was breached; (3) a substantial right of the accused was adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is necessary to do substantial justice.

Id. (citing *State v. Dotson*, 450 S.W.3d 1, 49 (Tenn. 2014)). Additionally, the error must have been of such great significance "that it probably changed the outcome of the trial." *State v. Banks*, 271 S.W.3d 90, 119 (Tenn. 2008) (citing *State v. Bledsoe*, 226 S.W.3d 349, 354-55(Tenn.2007)). "If a defendant fails to establish any of these criteria, an appellate court must deny relief under the plain error doctrine, and an appellate court need not consider all criteria when the record demonstrates that one of them cannot be

established.” *State v. Vance*, 596 S.W.3d 229, 254 (Tenn. 2020) (quoting *State v. Minor*, 546 S.W.3d 59, 67 (Tenn. 2018)).

The written plea agreement in the record does not include a provision that the State would not take a position on diversion. However, at the plea hearing, defense counsel stated her “understanding” that the State would take no position on diversion, and the State acknowledged that was the agreement. The transcript from the sentencing hearing confirms that before any argument, the State clarified that it intended to address the *Electroplating* factors but not the “ultimate determination.” Defense counsel expressly agreed with that clarification.

The State’s comments at sentencing consisted of summarizing the applicable factors, noting which ones could arguably apply, and presenting evidence relevant to restitution. The State repeatedly said that it was “not taking a position” on whether diversion should be granted. The trial court accepted and credited that representation, explicitly noting on the record that the State had “taken no position.” Nothing in the transcript suggests the State urged the court to deny diversion. Such neutral discussion of sentencing factors did not constitute “taking a position” and thus, did not breach the plea agreement.

Even assuming there was some ambiguity in the State’s position, Defendant cannot show that any alleged breach affected the judgment. The trial court made clear that its ruling rested solely on its own assessment of the circumstances of the offense, which it found uniquely serious and dispositive. The court repeatedly stated that the State’s position, or lack thereof, was not a factor. Because the denial of diversion was independently and fully supported by the trial court’s factual findings, no substantial right of Defendant was affected. Defendant is not entitled to plain error relief.

CONCLUSION

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

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE