IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs January 29, 2025

STATE OF TENNESSEE v. CHARLES C. ROBERTS

Appeal from the Criminal Court for Knox County
Nos. 126769, 121338 G. Scott Green, Judge

No. E2024-00705-CCA-R3-CD

The Defendant, Charles C. Roberts, pled guilty to burglary of an automobile. The plea agreement provided that the Defendant would be sentenced to a term of six years, aligned consecutively to a previous case, with the trial court to determine the manner in which the sentence would be served. After an initial hearing, the trial court ordered the Defendant not to have contact with a third party and reset the resolution. After the State alleged that the Defendant violated the no-contact order, the court sentenced him to serve the sentence in the Tennessee Department of Correction. On appeal, the Defendant argues that (1) he did not violate the terms of the order; but (2) even if he did, the trial court abused its discretion in ordering a sentence of confinement based upon this circumstance. Upon our review, we respectfully disagree and affirm the judgment of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which KYLE A. HIXSON, J., joined. ROBERT H. MONTGOMERY, JR., J., concurring in results only.

Eric M. Lutton, District Public Defender, and Jonathan Harwell, Assistant District Public Defender (on appeal); and Joseph Sandford, Keith Lowe, and Megan Newman, Assistant District Public Defenders (at plea and sentencing), for the appellant, Charles C. Roberts.

Jonathan Skrmetti, Attorney General and Reporter; Abigail H. Hornsby, Assistant Attorney General; Charme P. Allen, District Attorney General; and Robert DeBusk, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

A. ORIGINAL CHARGES AND PLEA

On April 29, 2022, the Defendant pled guilty to seven counts of automobile burglary. The trial court imposed an effective sentence of four years to be served on probation. The court also required him to complete a Veteran's Treatment Court Program ("2022 Case").

While the Defendant was on probation, he burglarized multiple vehicles at Joe Neubert Collision Center around midnight on November 30, 2023. Surveillance footage captured the Defendant entering multiple vehicles and removing various items. Responding officers arrived and located the Defendant, who had fled from the scene. Upon questioning, the Defendant admitted to stealing the items, all of which were recovered.

A Knox County grand jury charged the Defendant with burglary of an automobile, among other offenses ("2024 Case").[1] On January 29, 2024, the Defendant pled guilty to that charge. The plea agreement provided for an effective sentence of six years as a Range II, multiple offender, with the trial court to determine the manner in which the sentence would be served. The agreement also provided that the sentence would run consecutively to his four-year sentence in the 2022 Case.

B. SENTENCING HEARING: PART I

On March 14, 2024, the trial court held a combined hearing to address sentencing in the 2024 Case and the probation violation in the 2022 Case. The State called the victim to testify, and it introduced the presentence report into evidence. The report revealed that the Defendant had an extensive criminal history, including multiple prior convictions for burglary, drug offenses, and theft. The report also identified his substance use and mental health history, including post-traumatic stress disorder and schizophrenia stemming from his military service. The risk and needs assessment revealed that the Defendant was at a moderate risk of reoffending.

[1] The grand jury also charged the Defendant with theft of property and evading arrest, and he pled guilty to these charges. These convictions are not at issue in this appeal.

C. DEFENDANT'S WITNESSES

The Defendant also called several witnesses. Gloria Smith, a case manager for the Knox County Recovery Veterans Treatment Program, testified about her experience working with the Defendant during his time in the program. She described the Defendant's initial success in the program, his honesty, and his positive influence on others. However, Ms. Smith noted that he began to falter when he entered a relationship with his girlfriend, Felicia Bright, which distracted him from recovery. She recommended that the Defendant be placed with the Morgan County Residential Recovery Program, emphasizing that its structured, isolated environment would benefit the Defendant.

The Defendant's probation officer, Lori Russell, testified that the Defendant had committed thirteen probation violations, including theft, shoplifting, and drug offenses, over several years. She also expressed concerns about the Defendant's relationship with Ms. Bright, describing it as a negative influence. Ms. Russell believed the Defendant would not willingly participate in the Morgan County program due to this relationship.

Jason Pollard, a combat veteran and friend of the Defendant, testified about their shared experiences in Veterans Treatment Court and their mental health and substance use issues. He supported the Morgan County recommendation, believing that the structure and medication regulation were important. Mr. Pollard stated that the Defendant was a different person when on his medication.

Finally, in his allocution, the Defendant expressed remorse and asked for "one more chance" in society. He admitted that Ms. Bright's influence was negative, but also suggested that she had the potential to be part of his recovery. The Defendant pledged full effort toward the Morgan County program if given the opportunity.

D. TRIAL COURT'S PRELIMINARY ANNOUNCEMENT

The trial court began its ruling by reflecting on the principles of accountability and the necessity of imposing consequences for repeated criminal behavior. The court acknowledged the Defendant's long history of felony convictions, which heavily involved substance use and theft-related offenses. It emphasized that the Defendant violated his probation conditions by engaging in the same behavior that led to his original sentence. The court then revoked the Defendant's probation in the 2022 Case and ordered the four-year sentence in that case to be served in the Tennessee Department of Correction.

With respect to the 2024 Case, the court observed that the Defendant was in a "very different place" compared to others in the courtroom, particularly due to his mental health struggles and his history of trauma from military service. It recognized that Ms. Bright was a "negative influence" and that the Defendant would need "to sever ties" with her to be successful in recovery. As such, the court deferred sentencing in the 2024 Case for sixty days, and it ordered that the Defendant have "no contact" with Ms. Bright. The court announced the no-contact order as follows:

> And I'm ordering you right now that you are to have no contact with [Ms. Bright]. . . .
>
> . . . .
>
> . . . I want to give you the opportunity, but the keys are in your hands. And if you call her, if you speak with her, you're going to prison if it's proven to me that you participated in that.

The court explained that this order was a test of the Defendant's commitment to rehabilitation. The court said that, if the Defendant complied with the condition, it would sentence him to six years of probation, with the condition that he complete the Morgan County Drug Court Program. However, the court also warned the Defendant that if evidence showed that he contacted Ms. Bright, it would impose a six-year prison sentence to be served consecutively to the four-year sentence.

The Defendant said that he understood the court but asked how he could obtain his bank cards from Ms. Bright. The court responded that it would not negotiate with him on the no-contact condition. The court then reset the hearing date for May 10, 2024.

E. SENTENCING HEARING: PART II

Two weeks later, the State alleged that the Defendant had violated the no-contact order through a third-party phone call, and the court convened a hearing on April 24, 2024. The State called Captain Aaron Turner with the Knox County Sheriff's Office to testify. The captain testified that the Defendant orchestrated a phone call to Ms. Bright through a third party, Michael Herron. Video footage from the jail showed the Defendant passing a note to Mr. Herron shortly before Mr. Herron made a call to Ms. Bright.

In the recorded phone call, Mr. Herron relayed messages from the Defendant to Ms. Bright, informing her that the Defendant loved her but could not contact her for sixty days, warning that any contact would result in a ten-year prison sentence. Mr. Herron also conveyed the Defendant's financial instructions, asking Ms. Bright to take care of herself and her daughter, deposit $75 weekly in his jail account, avoid using her name, and ensure no one else accessed his card. In the conversation, Mr. Herron emphasized the Defendant's love for her, and Ms. Bright requested updates "every couple of days" on the Defendant's well-being.

Following the hearing, the trial court found that the Defendant violated the no-contact condition and sentenced him to serve the six-year sentence in confinement. The trial court filed the judgments of conviction on May 13, 2024, and the Defendant filed a timely notice of appeal the next day.

ANALYSIS

In this appeal, the Defendant raises two issues. First, he argues that he did not violate the trial court's no-contact order with Ms. Bright and that, as such, the trial court should have imposed the alternative sentence it otherwise announced it would impose. Alternatively, he asserts that the trial court abused its discretion in ordering incarceration based on an indirect violation of a no-contact order.

In response, the State argues that the trial court's sentence of incarceration is entitled to a presumption of reasonableness. It asserts that the proof supports a finding that the Defendant violated the court's no-contact order. It also contends that the trial court's decision to impose incarceration was based on several factors, including the Defendant's long history of criminal convictions and his prior failures on probation. We agree with the State.

A. Defendant's Violation of the No-Contact Order

The Defendant first argues that he did not violate the trial court's no-contact order. He asserts that the trial court did not prohibit his having contact with Ms. Bright through third parties and that the only examples given by the trial court prohibited direct contact, such as calling, emailing, or speaking with her. He maintains that because he did not directly contact Ms. Bright, the trial court could not have found that he violated the order. The State responds that the Defendant did violate the order and tried to conceal the violation through Mr. Herron. For different reasons, we agree with the State.

As an initial matter, it is important to note what the Defendant does *not* challenge. First, although the Defendant challenges the trial court's finding that he violated the no-contact order, he does not challenge the court's authority to impose that order. Indeed, the Defendant consented to the order in the trial court,[2] and he raised no objection to the order until after he was alleged to have violated it. Second, the Defendant does not contest that he intended to communicate with Ms. Bright. Instead, he argues that by going through Mr. Herron, he complied with the strict terms of the order and did not have notice that this conduct was prohibited.

Generally speaking, "it is fundamental to our system of justice through due process that persons who are to suffer penal sanctions must have reasonable notice of the conduct that is prohibited." *State v. Stubblefield*, 953 S.W.2d 223, 225 (Tenn. Crim. App. 1997); *State v. Ellis*, No. M2004-02297-CCA-R3-CD, 2005 WL 2453963, at *3 (Tenn. Crim. App. Oct. 5, 2005) ("[D]ue process requires reasonable notice of the conduct to be prohibited."), *perm. app. denied* (Tenn. Mar. 6, 2006). In similar contexts, such as with probation conditions, we have recognized that words must be given their plain and ordinary meaning, and "[t]heir meaning must be gleaned from what is said, not what was intended." *State v. Lewis*, 917 S.W.2d 251, 255 (Tenn. Crim. App. 1995).

However, fair notice of prohibited conduct encompasses more than just the actual words used by the court; it also contemplates prohibitions arising from "common sense" inferences. *State v. Albright*, 564 S.W.3d 809, 825 (Tenn. 2018). Indeed, quoting the United States Court of Appeals for the First Circuit, our supreme court made clear that

> fair warning is not to be confused with the fullest, or most pertinacious, warning imaginable. Conditions of probation do not have to be cast in letters six feet high, or to describe every possible permutation, or to spell out every last, self-evident detail. Conditions of probation may afford fair warning even if they are not precise to the point of pedantry. In short, conditions of probation can be written—and must be read—in a commonsense way.

[2] Following the State's notice that the Defendant had violated the no-contact order, the court held a short preliminary scheduling hearing. The Defendant was represented by a different lawyer from the Public Defender's Office, and the trial court explained the background of the proceedings to the Defendant's lawyer, saying that it "specifically asked [former counsel] to discuss with him and received his consent to do it in this fashion rather than imposing judgment that day." Although the appellate record does not otherwise contain this conversation referenced by the trial court, no party disputes that it occurred or that the Defendant consented to this procedure.

Id. (quoting *United States v. Gallo*, 20 F.3d 7, 12 (1st Cir. 1994)); *see also Leatherwood v. Allbaugh*, 861 F.3d 1034, 1045 (10th Cir. 2017) ("In this regard, the inquiry into fair warning is not necessarily confined to the four corners of the probation order. The meaning of a probation order may be illuminated by the judge's statements or other events, any or all of which may aid the court to determine whether a probationer has been forewarned." (cleaned up)).

In this case, the trial court ordered the Defendant "to have no contact with" Ms. Bright. No one disputes that the no-contact order reasonably prohibited direct personal interaction with Ms. Bright. But it also prohibited the Defendant from communicating with her as well. After all, in explaining the order to the Defendant, the court specifically said that the order prohibited the Defendant from speaking with Ms. Bright or calling her.

Understood in a common-sense way, the order's prohibitions on communications were not limited to the court's examples. The court issued the order expressly to sever ties between the Defendant and a person deemed, by nearly all witnesses, to endanger the Defendant's recovery. No reasonable person familiar with the context would have interpreted "no contact" to prohibit communication by phone, but then implicitly allow it by mail, electronically, or through a messenger. Instead, a reasonable person would understand that "no contact" means exactly that, irrespective of the method employed.

Yet, despite the prohibition on communication with Ms. Bright, the Defendant nevertheless sought to contact her. The Defendant communicated with Ms. Bright through a messenger that he loved her and was subject to the order. He communicated to her that she could permissibly use some money for family purposes but expressly prohibited her from allowing other third parties to access his bank accounts. He also communicated express instructions to her to place money in his commissary account, including amounts and the frequency of deposits, as well as instructions on how to avoid detection. The no-contact order plainly prohibited these contacts, even without the need for the court to "spell out every last, self-evident detail." *Albright*, 564 S.W.3d at 825.

The Defendant argues that the "no contact" order did not really mean *no* contact. He asserts instead that the order was essentially a "limited contact" order that allowed some types of contact, while prohibiting others. We respectfully disagree. At the hearing, the trial court acknowledged that Ms. Bright was a "negative influence" and sought to sever this influence through the no-contact order as a rehabilitative measure. No reasonable person, aware of the order's language and the circumstances under which it was entered, would have understood that the Defendant was permitted to continue a connection with Ms. Bright as long as it was not direct. We conclude that the Defendant had reasonable

and fair warning of what conduct was prohibited, and we affirm the trial court's finding that the Defendant violated the no-contact order.

B. Denial of an Alternative Sentence

In the alternative, the Defendant argues that, even if he did violate the no-contact order, the trial court abused its discretion to order incarceration based only on this violation. As the Defendant constructs the argument, the trial court had already decided that the Defendant was an appropriate candidate for an alternative sentence when it imposed the no-contact order. Yet, it did not explain how a single phone call through a third party changed its analysis and outweighed the circumstances favoring an alternative sentence. He requests a remand for a new sentencing hearing.

In response, the State disagrees that the trial court found the Defendant to be an appropriate candidate for alternative sentencing, but instead believed that incarceration was the appropriate punishment in the absence of an amenability to rehabilitation. It also asserts that the trial court relied upon appropriate statutory factors in imposing incarceration, including the Defendant's history of criminal convictions and probation violations. We agree with the State.

1. 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). We review a trial court's sentencing determinations for an abuse of discretion, "granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). This standard of appellate review applies to a trial court's decision to grant or deny alternative sentencing. *State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012). As the supreme court has clarified, "a trial court's decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination." *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014).

2. Alternative Sentencing

"Any sentence that does not involve complete confinement is an alternative sentence." *State v. Sanders*, No. M2023-01148-CCA-R3-CD, 2024 WL 1739660, at *3 (Tenn. Crim. App. Apr. 23, 2024) (citation and internal quotation marks omitted), *perm. app. denied* (Tenn. July 17, 2024). Our supreme court has recognized that "[t]he [Sentencing] Act requires a case-by-case approach to sentencing, and [it] authorizes, indeed encourages, trial judges to be innovative in devising appropriate sentences." *Ray v. Madison County*, 536 S.W.3d 824, 833 (Tenn. 2017) (citation and internal quotation marks omitted). "[I]ndividualized punishment is the essence of alternative sentencing," and the punishment imposed should fit the offender as well as the offense. *State v. Dowdy*, 894 S.W.2d 301, 305 (Tenn. Crim. App. 1994).

Pursuant to Tennessee Code Annotated section 40-35-103(1) (2019), sentences involving confinement may be ordered if they are based on one or more of the following considerations:

(A) whether "[c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct";

(B) whether "[c]onfinement is necessary to avoid depreciating the seriousness of the offense[,] or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses"; or

(C) whether "[m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]"

And, of course, the trial court must consider the defendant's potential for rehabilitation in determining whether to impose an alternative sentence. *See* Tenn. Code Ann. § 40-35-103(5) (2019).

Even if a defendant is eligible for probation, the burden of establishing suitability for probation rests with the defendant. *See* Tenn. Code Ann. § 40-35-303(b) (2019). This burden also requires showing that probation will "subserve the ends of justice and the best interest of both the public and the defendant." *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008). To that end, when considering whether a defendant has met this burden, the trial court should consider "(1) the defendant's amenability to correction; (2) the circumstances

of the offense; (3) the defendant's criminal record; (4) the defendant's social history; (5) the defendant's physical and mental health; and (6) special and general deterrence value." *State v. Trent*, 533 S.W.3d 282, 291 (Tenn. 2017); *State v. Francis*, No. M2022-01777-CCA-R3-CD, 2024 WL 4182870, at *6 (Tenn. Crim. App. Sept. 13, 2024), *no perm. app. filed*.

In this case, the trial court ultimately ordered that the Defendant's six-year sentence be served in the Tennessee Department of Correction. In so doing, the court recognized in the first part of the sentencing hearing that the Defendant had a long history of criminal convictions involving the same type of behavior. *See* Tenn. Code Ann. § 40-35-103(1)(A). The court noted that the criminal behavior was the result of substance use but also observed that the Defendant was currently on probation and committed an offense involving identical criminal conduct. *See id.* § 40-35-103(1)(C). It also reiterated these considerations after the conclusion of the second part of the hearing as well. At this time, the trial court observed from the presentence report that the Defendant had some fourteen felony convictions and three additional misdemeanor convictions and was on probation when the instant offense occurred.

In this context, the record shows that the trial court doubted whether the Defendant was amenable to rehabilitation given his history. However, it is also clear that the court struggled with evaluating the information from the Defendant and his supporters that new rehabilitative efforts would be beneficial. This concern formed the genesis of the no-contact order as a measure to evaluate whether effective rehabilitation was reasonably feasible.

Thus, to alleviate concerns about the Defendant's amenability to rehabilitation, the trial court's bifurcation of the sentencing hearing was not improper. In assessing whether a defendant should receive an alternative sentence, a trial court may properly consider whether the defendant will comply with court orders meant to ensure effective rehabilitation. Indeed, as we have expressly recognized this principle in the context of probation violation proceedings:

> In considering whether to place a defendant on probation in the first instance, a trial court must consider measures that encourage "effective rehabilitation of those defendants, where reasonably feasible, by promoting the use of alternative sentencing and correctional programs that *elicit voluntary cooperation* of defendants[.]" Tenn. Code Ann. § 40-35-102(3)(C) (emphasis added). This principle of sentencing recognizes that rehabilitative efforts cannot be "reasonably feasible" when the defendant does not

> voluntarily comply with those efforts. Thus, when a trial court weighs whether to *continue* rehabilitative efforts, it may certainly consider whether the defendant will voluntarily comply with the court's orders.

State v. Penny, No. W2023-00912-CCA-R3-CD, 2024 WL 1803264, at *4 (Tenn. Crim. App. Apr. 25, 2024) (emphasis in original), *perm. app. denied* (Tenn. Oct. 25, 2024); *see also State v. Banning*, No. E2022-00188-CCA-R3-CD, 2022 WL 10225186, at *1, 4 (Tenn. Crim. App. Oct. 18, 2022), *no perm. app. filed*.

Here, the no-contact order was directly linked to an essential consideration in the Defendant's rehabilitation. The Defendant also consented to the trial court's proposal, including the no-contact order, after discussing it with counsel, and he raised no concern about how the trial court would consider his compliance with the order in its sentencing decision. As such, once the Defendant violated the trial court's no-contact order, the court could properly consider this fact, along with other relevant information, to decide whether an alternative sentence was appropriate.

Finally, we respectfully disagree with the Defendant that the trial court denied an alternative sentence simply because he violated the no-contact order. To be sure, this fact was important to the court's analysis. But the trial court's full analysis expressly considered the information in the presentence investigation report, his social history, including his status as a veteran, the Defendant's extensive criminal record, his history of probation violations, his commission of a new offense while on probation for identical conduct, and, now, a violation of a no-contact order meant for his rehabilitation. The court considered and weighed this information in light of the purposes and principles of sentencing, including particularly the Defendant's lack of amenability to rehabilitation.

As is typically the case with sentencing questions, the standard of appellate review is important. In this case, the trial court identified the correct standards of law that applied to its consideration of alternative sentencing. It considered and weighed the purposes and principles of sentencing, as well as the appropriate statutory and common-law factors for alternative sentencing. It then made a reasoned choice between acceptable alternatives after considering the relevant facts on the record. Because the trial court's sentence reflects a decision based on the purposes and principles of sentencing, its decision is entitled to a presumption of reasonableness. *See Caudle*, 388 S.W.3d at 279. As such, we conclude that the trial court acted within its discretion to deny an alternative sentence and impose a sentence of full incarceration. The Defendant is not entitled to relief on this ground.

CONCLUSION

In summary, we hold that the trial court acted within its discretion in denying the Defendant's request for an alternative sentence to incarceration. Accordingly, we respectfully affirm the trial court's judgment.

s/ *Tom Greenholtz*
TOM GREENHOLTZ, JUDGE