IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 10, 2024

STATE OF TENNESSEE v. JOEY LASEAN SCRIBNER

Appeal from the Circuit Court for Maury County
No. 26004 Julie Heffington, Judge

No. M2023-01793-CCA-R3-CD

In 2018, the Defendant, Joey Lasean Scribner, pleaded guilty to possession of 0.5 grams or more of cocaine with the intent to sell, and the trial court sentenced him to ten years to be served on probation. The Defendant violated his probation, and the trial court reinstated his probation. In April 2023, the Defendant was stopped by law enforcement for speeding. Law enforcement determined that he was intoxicated. After a hearing, the trial court found that the Defendant had again violated his probation and ordered him to serve the balance of his sentence in confinement. On appeal, the Defendant contends that the trial court failed to place adequate findings in the record to support its decision to fully revoke his probation. After review, we affirm the trial court's judgment.

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

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and JOHN W. CAMPBELL, SR., JJ., joined.

Kendall Stivers Jones, Assistant Public Defender Appellate Division (on appeal), Franklin, Tennessee, and Milly Worley, Assistant Public Defender (at hearing), Columbia, Tennessee, for the appellant, Joey Lesean Scribner.

Jonathan Skrmetti, Attorney General and Reporter; William C. Lundy, Assistant Attorney General; Brent A. Cooper, District Attorney General; and Pamela Sue Anderson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts and Procedural History

This case arises from the Defendant's possession of cocaine. In 2017, a Maury County grand jury indicted the Defendant for possession with the intent to sell .5 grams or

more of cocaine and for possession of drug paraphernalia. The Defendant pleaded guilty to both offenses, and the trial court entered an agreed sentence of ten years, to be served on probation.

On September 20, 2019, the Defendant's probation officer filed a probation violation affidavit stating that the Defendant had tested positive for THC on March 11, 2018, and also on April 8, 2018. On September 16, 2019, the Defendant had been arrested in Murfreesboro for being a felon in possession of a handgun. The trial court issued a warrant for the Defendant's arrest.

On January 29, 2021, the trial court entered an order partially revoking the Defendant's probation, sentenced to time served, and returned him to probation.

On April 11, 2023, the Defendant's probation officer filed another probation violation report. In it, he stated that the Defendant had been arrested for Driving Under the Influence ("DUI"), Resisting Arrest, Possession of Schedule a II drug (Methamphetamine), Possession of a Schedule IV drug (Alprazolam), and being a Felon in Possession of a Firearm. In the report, the probation officer added that the Defendant had also been cited on November 2, 2020, for Driving on a Suspended License, and on February 28, 2022, for Public Intoxication. The trial court issued a warrant for the Defendant's arrest and appointed him a public defender.

On December 7, 2023, the trial court held a hearing on the probation violation warrant. The State informed the trial court that the probation violation was based on new arrests and subsequent convictions. It then called Sergeant Ashton Matheny with the Maury County Sheriff's Department to testify. The sergeant said that on April 8, 2023, he stopped the Defendant's vehicle because it was traveling 65 miles per hour in a 50 mile per hour zone. As he pulled behind the Defendant's vehicle before it stopped, he noted that the vehicle went over the centerline with both driver's side tires.

After the Defendant's vehicle stopped, Sergeant Matheny noted that both the Defendant and his passenger were moving around inside the vehicle. The sergeant called for back-up and ordered the vehicle's occupants to stop moving, turn off the vehicle, and show the sergeant their hands, and the occupants complied.

The Defendant opened the door, and the officer recognized him because the Defendant had previously been involved in a three-person shooting, during which the Defendant was shot. The sergeant noted that the Defendant smelled "very heavily" of alcohol and marijuana. When the Defendant first opened the door, the sergeant saw an empty bottle of liquor on the floorboard. The Defendant made "nonsensical" statements, and his pupils were dilated. Because of his previous experience with the Defendant's

propensity to carry firearms and resist arrest, the sergeant waited for another officer. During this time, the Defendant was "yelling and screaming and had mood swings and was crying at some point." The Defendant asked to speak with another officer.

Sergeant Matheny left the Defendant, who was seated in the back of his patrol car, to speak with the two other officers who had responded, and he went to speak with the passenger, Ms. Wright. While speaking with Ms. Wright, the sergeant heard a loud commotion and saw the Defendant trying to exit his patrol car. The other officers were telling him to get back into the vehicle. The Defendant, who was 6'4" tall, pushed past the other officers and exited the vehicle. Surmising that the Defendant was intoxicated, the sergeant informed him that he was being arrested. He tried to place the Defendant in handcuffs, and the Defendant began to resist, grabbing at one of the deputy's belts. The officers struck the Defendant multiple times to get him to release the belt. It took four deputies working together to take the Defendant to the ground and arrest him.

Sergeant Matheny testified that he was still concerned that there was a weapon in the Defendant's vehicle, so he called the Columbia Police Department for assistance. After subduing the Defendant, the sergeant searched the vehicle. He found a plastic container that contained a white crystal-like substance that he believed to be methamphetamine, which later tested positive for methamphetamine, and a half of what he thought was a "Xanax bar." He then located a loaded firearm in the rear area where he had previously seen the Defendant moving his arm back and forth. The weapon, a Star Fire 9mm pistol, was loaded and wrapped inside a bandanna inside a purse.

The State then offered certified copies of the Defendant's convictions: DUI, first, simple possession of a Schedule IV, alprazolam; simple possession of a Schedule II, methamphetamine, and resisting arrest.

During cross-examination, Sergeant Matheny testified that the Defendant appeared intoxicated based on his slurred speech, the odor of alcohol, dilated pupils, his refusal to follow officers' orders, his nonsensical statements, and his mood swings, which included cussing, laughing and crying.

The Defendant's probation and parole supervisor, Matthew Thomas, testified that the Defendant had violated his probation by being arrested on April 10, 2023, for DUI, resisting arrest, possession of a Schedule II narcotic, possession of a Schedule IV narcotic, and being a felon in possession of a firearm. Further, after his arrest, the Defendant violated his probation by failing to make contact with the probation officer, possessing a firearm, possessing narcotics, and engaging in assaultive behavior.

Mr. Thomas described the Defendant's history of supervision, which included his first violation from September 16, 2019, for being a felon in possession of a firearm. He was sentenced to time served and returned to probation. The Defendant, Mr. Thomas recounted, was also arrested on February 26, 2022, for public intoxication.

During cross-examination, Mr. Thomas agreed that all of the Defendant's April 2023 arrests occurred on the same date. He further agreed that the September 2019 case was still pending.

Marita Mayes, the Defendant's mother, testified that in the two years preceding the hearing the Defendant had suffered from mood swings from drug use. He would "cry out" for help and had trouble concentrating or communicating. Ms. Mayes said that the Defendant has always lived with her. She described him as an excellent worker who has always paid his child support. Ms. Mayes said that the Defendant had previously been to drug rehabilitation, but it was years prior.

During cross-examination, Ms. Mayes testified that the Defendant had always lived with her while he was not incarcerated but that he had been incarcerated on several occasions. Ms. Mayes agreed that, in 2008 and before this current sentence, the Defendant was convicted of a Schedule I felony drug offense. Before that, the Defendant had been convicted of aggravated assault and of being an accessory after the fact.

Ashley Rhodes, the mother of the Defendant's fifteen-year-old child, testified that she had known the Defendant since 2002. She had witnessed some of the Defendant's unusual behavior, including the Defendant believing that "they" were tracking his phone. The Defendant also called her "crying for help," which was unusual behavior for him. Ms. Rhodes said that she and the Defendant were trying to find a rehabilitation program for the Defendant before she learned that there was a warrant out for his arrest based on his probation violation. Ms. Rhodes said that the Defendant paid his child support "for the most part" and had a relationship with "all of his children."

During cross-examination, Ms. Rhodes testified that she did not think that the Defendant had been using drugs for long before his arrest. She had, however, previously suspected that he had been drinking alcohol.

Based upon this evidence, the trial court found that the Defendant had again violated his probation, and it ordered that he serve the balance of his sentence in confinement.

II. Analysis

On appeal, the Defendant contends that the trial court did not place adequate findings in the record to support fully revoking his probation. He cites *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022), for the proposition that the trial court must both determine that the Defendant violated his probation and consider alternative punishments. He asserts that the trial court did not do so in this case. The State counters that, although the trial court's reasoning is not lengthy, it is sufficient to support its ordering of execution of the Defendant's sentence and that the evidence supports this decision.

At the conclusion of the hearing, the trial court found:

> I find that [the Defendant] has violated his probation. I find that the State has proven that by a preponderance of the evidence. And I'm going to fully revoke [the Defendant's] probation.
>
> I find that the seriousness of his crimes along with prior incidents – the September 2019, the sanction for public intoxication in 2022 – leads me to believe that [the Defendant] has had several opportunities before the incident in April of 2023 to readjust his course.
>
> I find that it will be a full revocation to the original sentence of ten years.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e) (2018). Appellate courts review a trial court's revocation of probation decision 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 consequences on the record." *Dagnan*, 641 S.W.3d at 759. "A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010). If a trial court fails to state its findings and reasoning for the revocation on the record, appellate courts may conduct a de novo review if the record is sufficiently developed, or the appellate court may remand the case for the trial court to make such findings. *Dagnan*, 641 S.W.3d at 759 (citing *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014)).

Probation revocation is a two-step consideration requiring trial courts to make two distinct determinations as to (1) whether to revoke probation and (2) what consequences will apply upon revocation. *Dagnan*, 641 S.W.3d at 757. No additional hearing is required for trial courts to determine the proper consequences for a revocation, but both steps are "two distinct discretionary decisions, both of which must be reviewed and addressed on

appeal." *Id.* In probation revocation hearings, trial courts are required to place "sufficient findings and the reasons for its decisions as to the revocation and the consequences on the record." *Dagnan*, 641 S.W.3d at 759. "Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy [a trial court's] burden" to exercise discretion in each step of the process. *Id*. at 758. We note that the trial court's findings do not need to be "particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision." *Dagnan*, 641 S.W.3d. at 759 (citing *State v. Bise*, 380 S.W.3d 682, 705-06 (Tenn. 2012)).

If a trial court revokes a defendant's probation, options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310 (2018); *see State v. Hunter*, 1 S.W.3d 643, 648 (Tenn. 1999). When determining the appropriate consequence of revocation, "[r]elevant considerations might be, but are certainly not limited to . . .the number of revocations, the seriousness of the violation, the defendant's criminal history, and the defendant's character." *Dagnan*, 641 S.W.3d 759 n.5.

Upon review of the record, we conclude that the trial court made sufficient findings and sufficiently stated reasons on the record for its consequences. The trial court stated that the State had proven its allegations that the Defendant violated his probation, which included the Defendant's new arrest on felony charges. The Defendant does not contest this finding. The court went on to note that the Defendant had previously violated his probation and that the less restrictive measures had not caused the Defendant to "readjust course." The court further noted the "seriousness" of the crimes alleged in the warrant as well as his previous violations. The court, therefore, ordered confinement.

We conclude that the evidence supports the trial court's finding that the Defendant should serve his sentence in confinement. When ordering the Defendant to confinement, the trial court considered the number of the Defendant's previous revocations and the seriousness of the violation, both of which are appropriate considerations. The record supports the trial court's judgment, and the Defendant is not entitled to relief.

III. Conclusion

In accordance with the aforementioned reasoning and authorities, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE