

**FILED**

08/19/2026

Clerk of the  
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 21, 2026 Session

**STATE OF TENNESSEE v. MARC FODER**

**Appeal from the Criminal Court for Knox County  
No. 128227 Hector I. Sanchez, Judge**

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**No. E2025-00596-CCA-R3-CD**

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Marc Foder, Defendant, appeals from the trial court's order revoking his probation and requiring him to serve the balance of his sentence as originally imposed. Defendant argues that the revocation hearing failed to satisfy state and federal due process requirements because the trial court denied his oral motion for a continuance to obtain video evidence that he claimed was necessary for his defense. Alternatively, Defendant claims that he received ineffective assistance of counsel at the revocation hearing. We conclude that Defendant received the minimum due process protections required at a probation revocation hearing and that the trial court did not abuse its discretion by revoking Defendant's probation. After de novo review, we affirm the consequence imposed for the violation.

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

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

Tyler M. Caviness (on appeal), Knoxville, Tennessee, and Julia A. Trant (at revocation hearing), Knoxville, Tennessee, for the appellant, Marc Foder.

Jonathan Skrmetti, Attorney General and Reporter; Caroline W. Weldon, Assistant Attorney General; Charne P. Allen, District Attorney General; and Berkley Mason, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

### *Procedural History*

On July 22, 2024, Defendant pleaded guilty to Class E felony evading arrest and Class A misdemeanor assault and received an effective two-year sentence as a standard offender to be served on supervised probation. On February 25, 2025, a violation of probation warrant was issued, alleging that Defendant violated Rule 1 by committing vandalism, attempted aggravated burglary, disturbing the peace, resisting arrest, and aggravated assault on a law enforcement officer and Rule 14 by engaging in assaultive, abusive, threatening, and intimidating behavior. On March 19, 2025, trial counsel was appointed to represent Defendant on the probation revocation warrant.

### *Probation Revocation Hearing*

At the beginning of the April 4, 2025 revocation hearing, trial counsel orally moved for a continuance, arguing that Defendant's hearing on the new charges in general sessions court had been reset to April 14, 2025, and that more time was needed for counsel to review a surveillance video from Walmart and the officer's body camera footage. The State asked to go forward with the revocation hearing because it had four officers present to testify and because the defense was not entitled to the surveillance and body camera videos for the probation revocation hearing. The trial judge denied the motion for continuance and proceeded with the hearing.

Knox County Sheriff's Office (KCSO) Deputy Colter Robinson testified that he responded to a report of a man walking around Walmart on Norris Freeway with a machete. The report stated that the suspect was standing near the flagpole. He located Defendant standing outside next to the flagpole. Deputy Robinson identified himself, drew his weapon, and ordered Defendant to show his hands. Defendant ignored the command, grabbed a bag out of a shopping cart, and started walking toward the store entrance. Deputy Robinson holstered his weapon and attempted to physically restrain Defendant from leaving. During the altercation, Defendant punched Deputy Robinson in the face. Deputy Robinson later passed out and was taken to the hospital, where he was diagnosed with a concussion. He suffered headaches and memory loss for a "couple of weeks."

KCSO Deputy Hunter Messer arrived during the physical altercation and attempted to assist Deputy Robinson. Deputy Messer said Defendant was pulling his hands in toward his chest and waistline, as if reaching for a weapon. During the altercation, Deputy Messer observed a hatchet under Defendant's body. Deputy Messer gained control of the hatchet

and threw it aside. KCSO Deputy Jose Santiago testified consistently with the testimony of the other two deputies.

After Deputy Santiago testified, both sides presented short closing arguments. The State asked the court to revoke probation and order Defendant to serve the remainder of his sentence in the Tennessee Department of Correction (TDOC). Trial counsel argued:

[W]ith respect to the revocation, we would defer to the [c]ourt. With respect to what the [c]ourt should do after the revocation, [Defendant] has a substantial drug problem. We have [arranged] placement [at the] Lazarus Project, and we are asking the Court to allow him to enter treatment.

### ***Trial Court's Oral Ruling***

The trial court summarized the testimony of the three deputies before stating:

So[,] that was the proof. So[,] the [c]ourt has to make two determinations in a two-prong analysis in a revocation proceeding. First[,] whether or not by a preponderance of the evidence [Defendant] materially violated terms [of] probation.

[T]hrough the testimony of three officers here, the [c]ourt does find by a preponderance of the evidence [Defendant] has in fact violated the terms and conditions of his probation, namely by being re-arrested and for fighting with law enforcement.

So[,] the next question becomes the appropriate sanction and in this [c]ourt's judgment the appropriate sanction is to revoke his probation, order that he serve his sentence in [TDOC]. It is a two-year sentence. So[,] he is subject to determinate release. So[,] when he does come out, I hope he'll certainly make better decisions when he is on determinate release. So that will be the order of the [c]ourt today.

On April 24, 2025, Defendant filed a pro se notice of appeal.<sup>1</sup> On September 9, 2025, trial counsel moved for and was granted additional time to file a brief. After failing to file a brief or respond to this court's orders, on February 6, 2026, this court removed trial counsel as counsel of record in this appeal and appointed appellate counsel.

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<sup>1</sup> The record does not contain any documents addressing the filing of a pro se notice of appeal by a defendant who was represented by counsel.

## **Analysis**

Defendant raises several due process challenges to the revocation of his probation. He argues that the trial court's denial of his oral motion for a continuance deprived him of the opportunity to present video evidence necessary to his defense. He also argues that the trial court erred by revoking his probation and ordering him to serve the balance of his sentence in confinement without adequately articulating the basis for its decision. In the alternative, Defendant argues that he received ineffective assistance of counsel at the revocation hearing.

## **Standard of Review**

Whether a probation revocation proceeding satisfied the requirements of due process presents a question of law, which this court reviews de novo with no presumption of correctness. *See State v. Cullom*, No. E2019-01943-CCA-R3-CD, 2020 WL 6342655, at \*3 (Tenn. Crim. App. Oct. 29, 2020). However, the trial court's ultimate decisions to revoke probation and to determine the appropriate consequence are reviewed for an abuse of discretion with a presumption of reasonableness when the trial court has placed sufficient findings on the record. *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022). If the trial court fails to place on the record either the findings supporting revocation or the consequence, 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.*

## ***Denial of a Continuance and Opportunity to Present Evidence***

Defendant argues that by denying a continuance of the probation revocation hearing, the trial court prevented Defendant “from meaningfully contesting the revocation allegations, presenting evidence on his own behalf, and confronting adverse witnesses.” As a result, Defendant claims that the revocation hearing did not satisfy procedural due process requirements. The Fourteenth Amendment's Due Process Clause affords a probationer certain procedural protections in a probation revocation proceeding. *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82, 786 (1973). Those minimum requirements of due process include written notice of the alleged violations; disclosure of the evidence against the probationer; an opportunity to be heard and “to present witnesses and documentary evidence”; the right to confront and cross-examine adverse witnesses, absent a finding of good cause; “‘a neutral and detached’ hearing body”; and a written statement identifying the evidence relied upon and the reasons for revocation. *Id.* at 786 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)).

A revocation hearing must be held “at the earliest practicable time.” Tenn. Code Ann. § 40-35-311(b). “The granting of a continuance lies within the sound discretion of the trial court” and “will be reversed only if it appears that the trial court abused its discretion to the prejudice of the defendant.” *State v. Odom*, 137 S.W.3d 572, 589 (Tenn. 2004). Here, trial counsel, who was appointed fifteen days before the April 4, 2025 revocation hearing, failed to move for a continuance until the probation revocation hearing had begun. As grounds, trial counsel argued that the preliminary hearing on the new charges had been reset to April 14 and that she had requested but had not yet obtained the Walmart surveillance video and the deputies’ body camera footage. The State argued that it had “four officers here to testify” and requested that the hearing proceed.

The fact that Defendant did not move for a continuance until the day of the hearing weighed against Defendant’s oral motion, as did the fact that the granting of a continuance would have inconvenienced four witnesses who were present to testify. Additionally, Defendant did not subpoena the Walmart surveillance video or the deputies’ body camera footage, did not subpoena a Walmart witness who could have testified about the surveillance system or video, and did not cross-examine any of the three deputies about body camera footage. Defendant failed to establish that the Walmart surveillance video or the deputies’ body camera footage existed or, if such evidence existed, that it would have affected the trial court’s determination that a probation violation occurred. In this instance, the trial court did not abuse its discretion by denying a continuance.

Upon de novo review, we conclude that Defendant was not deprived of due process because the proceeding in the trial court complied with the requirements rights outlined in *Gagnon*.

### ***Two-Step Revocation of Probation Process***

A probation revocation proceeding involves two distinct discretionary determinations: (1) whether the defendant violated the conditions of probation by a preponderance of the evidence and (2) the appropriate consequence for that violation. When the trial court “places sufficient findings and the reasons for its decisions as to the revocation and the consequence on the record,” we review that court’s decision for an abuse of discretion with a presumption of reasonableness. *Dagnan*, 641 S.W.3d at 753. Although a trial court’s findings do not have to be extensive, they must be “sufficient for the appellate court to conduct a meaningful review of the revocation decision.” *Id.* 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).

### *Articulated Reasons for Revoking Defendant's Probation*

The trial court recounted the testimony of the three witnesses. The court stated on the record that Deputy Robinson responded to a report that a man was walking around Walmart with a machete “making folks uncomfortable.” When Deputy Robinson arrived at Walmart, he ordered Defendant to “show his hands.” Defendant refused to comply with Deputy Robinson’s commands and an altercation ensued during which Defendant struck Deputy Robinson in the head with sufficient force to cause Deputy Robinson to suffer a concussion. When Deputy Messer arrived at the scene, he observed Deputy Robinson and Defendant in a physical altercation. Deputy Santiago corroborated the testimony of the other two deputies. All three deputies testified that Defendant possessed a hatchet. The trial court found by a preponderance of the evidence that Defendant violated the terms and conditions of his probation by fighting with the deputies.

By accrediting the deputies’ testimony and by finding that Defendant violated the terms and conditions of his probation by “fighting with law enforcement,” the trial court placed sufficient findings and reasoning on the record to permit meaningful appellate review of its decision to revoke Defendant’s probation. We determine that the trial court did not abuse its discretion by revoking Defendant’s probation.

### *Consequence for Violation*

When, as in this case, the trial court revokes a defendant’s probation, the trial court must determine the proper consequence of the violation. Although no additional or separate hearing is required, the determination of the proper consequence of the probation violation requires a separate exercise of discretion. *State v. Reams*, 265 S.W.3d 423, 430 (Tenn. Crim. App. 2007); *Dagnan*, 641 S.W.3d at 757. A trial court’s factual findings “are essential to facilitate meaningful appellate review” of the consequence imposed. *Id.* at 758. Without factual findings, appellate courts have “no insight on the reasons or factors considered” to determine whether the trial court abused its discretion. *Id.*

After stating its findings and reasons for revoking Defendant’s probation, the trial court made no separate findings to support the consequence it imposed. Defendant’s probation officer was not called as a witness. Because no proof was presented concerning Defendant’s history on probation, prior violations, prior opportunities for rehabilitation, compliance with reporting, or amenability to continued supervision, the trial court’s decision to order Defendant to serve the balance of his sentence in confinement was based entirely on the testimony of the three deputies. Although the same testimony may support both the decision to revoke and the decision regarding the consequence, *Dagnan* makes clear that the trial court must perform a separate exercise of discretion to determine the

appropriate consequence. In this case, however, after finding that Defendant violated the terms and conditions of his probation, the trial court then stated that “the next question becomes the appropriate sanction and in this court’s judgment the appropriate sanction is to revoke his probation, order that he serve his sentence in [TDOC].” The trial court placed no specific findings or reasons on the record to support the consequence imposed for the violation. Moreover, the court’s statement does not demonstrate that it separately exercised its discretion in determining the appropriate consequence.

We conclude that because the trial court failed to place on the record any findings supporting the consequence it imposed, the trial court’s decision is not entitled to a presumption of reasonableness. Our options are, therefore, to either conduct a de novo review if we conclude that the record is sufficiently developed for the court to do so, or to remand the case to the trial court to make such findings if we conclude that it is not. *Id.* at 759. We determine that the record is sufficiently developed for de novo review. As indicated, the trial court fully accredited the testimony of the officers that Defendant possessed a weapon, that he engaged in a physical altercation with officers, and that he struck Deputy Robinson with sufficient force to cause him a concussion. The seriousness of this conduct itself warrants execution of the original judgment despite the absence of evidence concerning Defendant’s prior performance on probation. *See* Tenn. Code Ann. § 40-35-311(e)(2).

### ***Ineffective Assistance of Counsel***

Defendant claims that trial counsel was deficient for failing to adequately investigate and prepare for the probation revocation hearing and for failing to obtain or subpoena the Walmart surveillance video and body camera footage.

[T]he right to counsel at a revocation of probation hearing is not guaranteed by either the Constitution of the United States or the Constitution of the State of Tennessee. Thus, the effectiveness of counsel at a revocation hearing is not a constitutional issue, except in those cases where the performance of counsel is so defective that another right which is constitutionally guaranteed at a revocation hearing is violated.

*Kiser v. State*, 1995 WL 715510, at \*3 (Tenn. Crim. App. Dec. 6, 1995), *no perm. app. filed*; *see also State v. Ammons*, No. W2001-00834-CCA-R3-CD, 2002 WL 1482675, at \*4 (Tenn. Crim. App. Mar. 18, 2002), *perm. app. denied* (Tenn. Sept. 23, 2002); *State v. Goff*,

No. W2005-02233-CCA-R3-CD, 2006 WL 2689689, at \*4 (Tenn. Crim. App. Sept. 20, 2006), *no perm. app. filed*; *State v. Lindsey*, No. E2018-01502-CCA-R3-CD, 2019 WL 3856898, at \*13 (Tenn. Crim. App. Aug. 16, 2019), *no perm. app. filed*; *State v. Ward*, No. M2022-01264-CCA-R3-CD, 2023 WL 5528601, at \*3 (Tenn. Crim. App. Aug. 28, 2023), *no perm. app. filed*.

As discussed above, Defendant received the minimum due-process protections to which he was entitled at the probation revocation hearing. Defendant has not established that trial counsel's alleged failure to investigate or obtain the surveillance and body camera footage deprived him of any constitutional right guaranteed at a revocation hearing. Accordingly, the alleged deficiencies do not present a constitutional ineffective-assistance claim, and Defendant is not entitled to relief on this issue.

### **Conclusion**

Based upon the foregoing, we affirm the judgment of the trial court.

*s/Robert L. Holloway, Jr.*  
ROBERT L. HOLLOWAY, JR., JUDGE