

FILED

07/31/2026

Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 12, 2026 Session

STATE OF TENNESSEE v. DETERRIES Q. SEYMOUR

Appeal from the Criminal Court for Wilson County
No. 23-CR-162 Brody N. Kane, Judge

No. M2025-00913-CCA-R3-CD

Deterries Q. Seymour, Defendant, was serving a four-year sentence on supervised probation when he appeared before the trial court on his second probation revocation hearing. The amended probation violation warrant alleged a single failed drug screening for marijuana and cocaine and a Class A misdemeanor arrest/charge. The warrant’s “violation information” alleged a “Graduated Zero Tolerance Violation.” After a hearing, the trial court revoked Defendant’s probation in full on the basis that Defendant committed five technical violations, counting each drug found within the Defendant’s system, including drugs from a previous failed drug screen already adjudicated as a separate technical violation. The trial court determined that Defendant had committed five technical violations, pursuant to Tennessee Code Annotated section 40-35-311 et seq. and the Tennessee Department of Correction’s community supervision sanction matrix (“Matrix”). Defendant appeals the full revocation of his probation. After review, the judgment of the trial court is reversed, and the case is remanded to the trial court for further proceedings.

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

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and STEVEN W. SWORD, JJ., joined.

Brennan M. Wingerter (on appeal), Assistant Public Defender – Appellate Director; Elizabeth Thornton, University of Tennessee Winston College of Law Qualified Law Student, Tennessee Public Defender’s Conference; Shelley Thompson Gardner, District Public Defender; Raymond D. Jones (at revocation hearing), Assistant Public Defender, for the appellant, Deterries Q. Seymour.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; Jason Lawson, District Attorney General; and Justin Harris, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In September of 2023, Defendant pled guilty to one count of theft of property valued more than \$2,500 but less than \$10,000 and one count of introduction of drugs into a penal facility. Defendant was sentenced to an effective sentence of four years to be served on supervised probation.

On December 14, 2023, Defendant failed a drug screen, testing positive for both marijuana and cocaine in one single test. On January 10, 2024, a violation of probation warrant was filed alleging that Defendant violated the terms of his probation by testing positive for marijuana and cocaine in violation of “Rule #8,” which prohibits the use of intoxicants. Lab results confirmed that Defendant tested positive for both marijuana and cocaine. The violation information section of the warrant’s affidavit indicated the “technical only” box was checked and noted it was Defendant’s first technical violation.

On September 4, 2024, Defendant was arrested by the Lebanon Police Department for criminal impersonation, possession of a Schedule II drug for resale, tampering with evidence, resisting arrest, and simple possession of THC. On October 11, 2024, an amended violation of probation affidavit was filed alleging Defendant again violated the terms of his probation by acquiring additional criminal charges in violation of “Rule #1,” which prohibits a probationer from breaking the laws of “the United States, or any State in which [he] may be, as well as any municipal ordinances.” The violation information section of the warrant’s affidavit indicated the “New Felony Arrest” and “New Class A Misdemeanor”¹ boxes checked, which are non-technical violations.

On November 26, 2024, the trial court held a hearing on the alleged violations. Defendant admitted to violating the terms of his probation. After the hearing, the trial court filed a probation “revocation order – partial revocation” finding that Defendant violated

¹ While the amended probation affidavit in the record checked “New Class A Misdemeanor” in reference to Defendant’s charges of criminal impersonation, the May 2025 probation violation hearing transcript confirms the trial court’s determination that Defendant’s criminal impersonation charge was a Class B misdemeanor. Nonetheless, Defendant was subject to full revocation because of the new felony arrest.

rules “#1, 8” and ordered Defendant to serve 120 days in confinement, with credit for the eighty-one days Defendant served.

On February 12, 2025, Defendant again failed a drug screen, testing positive for both marijuana and cocaine in one single test. On February 25, 2025, a violation of probation warrant was filed alleging that Defendant violated the terms of his probation by testing positive for marijuana and cocaine in violation of “Rule #8,” which prohibits the use of intoxicants. Lab results confirmed that Defendant tested positive for both marijuana and cocaine. The violation information section of the warrant’s affidavit had the “technical only” boxes checked and noted it was Defendant’s second technical violation.

On April 2, 2025, Defendant was again arrested by the Lebanon Police Department for criminal impersonation. On April 17, 2025, an amended violation of probation warrant was filed alleging Defendant again violated the terms of his probation by acquiring additional criminal charges in violation of “Rule #1.” The violation information section of the warrant’s affidavit had the “New Class A Misdemeanor” and the “Graduated Zero Tolerance” boxes checked.² An arrest warrant accompanied the affidavit.

On May 28, 2025, the trial court held a hearing on the alleged violations. Again, Defendant admitted to violating the terms of his probation. The trial court, in viewing Defendant’s probation history, found a total of five technical violations. To reach five technical violations, the trial court counted each drug that appeared on a single drug test as an individual violation, meaning “the first time [Defendant failed a drug screen] would be two, would be cocaine and marijuana, and [the second time Defendant failed a drug screen for] cocaine and marijuana here would be . . . three and four. Plus, the criminal impersonation would be five.”

The trial court then confirmed with the probation officer that, “[i]f I found he had five technical violations, that’s revoke in full, couldn’t I? Couldn’t it technically?” The probation officer, without being placed under oath, responded to the trial court that a defendant’s probation could be revoked in full after the fourth technical violation. The trial court, based on this calculation, determined:

Well, this is what I’m, [Defendant], I’m going to consider this a total of five technical violations. I think what I’m doing is in keeping with what they’re doing in the Putnam County District. You got the two, marijuana and cocaine

² Again, the May 2025 probation hearing transcript indicates Defendant’s second criminal impersonation charge was also a Class B misdemeanor. Further, the record is silent as to whether the trial court considered the violations to be a “graduated zero tolerance” violation. In fact, the term “graduated zero tolerance” was never used at Defendant’s probation violation hearing.

the first time, the cocaine and marijuana this time, plus the picking up of the new charge. So, I'm going to revoke you to serve, sir.

After the hearing, the trial court filed a probation “revocation order – full revocation” finding that Defendant violated “Rules #1, 8” and ordered Defendant to serve the remainder of his sentence in confinement. Defendant timely appealed.

Analysis

A trial court must engage in a “two-step consideration” when determining whether to revoke a defendant’s probation. *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). The first step is to determine whether the defendant has violated a condition of probation, and the second step is to determine the appropriate consequence of that violation. *Id.* We review both determinations for 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.” *Id.* at 759. Generally, discretion is abused when the trial court 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.” *Id.* at 758 (quoting *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010)). Where the trial court failed to make sufficient findings or provide its reasoning for its decision under either step, appellate courts may conduct a de novo review if the record is sufficiently developed, or it may remand the case for the trial court to make the necessary findings. *Id.* at 759 (citing *State v. King*, 432 S.W.3d 316, 327-28 (Tenn. 2014)).

Here, Defendant fully admitted the allegations of the April 17, 2025, violation warrant as amended. We only need then to consider the trial court’s determination of the second step regarding the appropriate consequence for the violation.

Technical v. Non-technical Violations

Defendant first argues that the only violations the trial court could consider at the second probation violation hearing were Defendant’s technical violations. The State disagrees and asserts that because Defendant’s first probation violation, adjudicated on November 26, 2024, was non-technical, the trial court was permitted to fully revoke Defendant’s probation, regardless of how many technical violations Defendant accrued thereafter. In his reply brief, Defendant argues that the State has waived this argument by failing to raise it to the trial court and by failing to present evidence at the revocation hearing. Defendant further contends that the trial court’s previous partial revocation for a non-technical violation does not authorize full revocation for subsequent technical

violations. We agree with Defendant that the trial court erred in using Defendant's previously adjudicated non-technical violation to authorize a full revocation here.

We consider as a threshold matter whether the State has waived its argument that the trial court was permitted to fully revoke Defendant's probation. As an appellate court, our authority generally extends only to those issues that have been "formulated and passed upon in some inferior tribunal." *State v. Bristol*, 654 S.W.3d 917, 925 (Tenn. 2022) (citation and internal quotation marks omitted). To preserve an issue for appellate review, a party must assert a timely objection in the trial court that identifies the specific ground for relief. *State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024). However, the State's burden in a probation revocation hearing is to prove a violation of probation existed by a preponderance of evidence. T.C.A. § 40-35-311(d)(1) ("If the trial judge finds by a preponderance of the evidence that the defendant has violated the conditions of probation and suspension of sentence, then the court may revoke the defendant's probation and suspension of sentence . . .").

Defendant asserts a correct statement of the law but applies it mistakenly in his case. Defendant admitted to violating the terms of his probation during his second probation revocation hearing in May 2025. From that point forward, the State need not raise an argument because the burden of proof, that Defendant violated his probation, was satisfied. *Dagnan* does not require any additional argument for consequences from the State – only that "the trial court place sufficient findings and the reasons for its decisions as to the revocation and the consequence on the record" for meaningful appellate review. *Dagnan*, 641 S.W.3d at 759. In other words, the State, as appellee, did not waive its argument.

We next consider the merits. "The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *State v. Howard*, 504 S.W.3d 260, 269 (Tenn. 2016) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). "When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language. . . ." *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009) (citation omitted); *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

The General Assembly, in its 2016 Public Safety Act ("the Act") amended the probation statutes and, among other things, created two separate categories of violations—technical and non-technical violations—with differing penalties for both. *See generally* T.C.A. § 40-35-311. A technical violation is a violation that "does not constitute a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, absconding, or contacting the

defendant's victim in violation of a condition of probation." *Id.* § -311(g). Non-technical violations are defined inversely. *See id.* § -311(e)(2). A trial court has broad authority to impose a range of consequences for a non-technical violation, up to and including the full revocation of a suspended sentence. *See State v. Rand*, 696 S.W.3d 98, 106 (Tenn. Crim. App. 2024). For a technical violation, however, the General Assembly enumerated a narrow system of graduated sanctions. *See generally* T.C.A. § 40-35-311(e). A trial court may not revoke a defendant's probation "based upon one (1) instance of technical violation or violations." *Id.* § -311(d)(2). Only upon a defendant's "second or subsequent instance of a technical violation" may a trial court revoke probation and:

- (A) Impose a term of incarceration not to exceed:
 - (i) Fifteen (15) days for a first revocation;
 - (ii) Thirty (30) days for a second revocation;
 - (iii) Ninety (90) days for a third revocation; or
 - (iv) The remainder of the sentence for a fourth or subsequent revocation;

Id. § -311(e)(1)(A).

Defendant admitted to violating his probation during his first revocation hearing in November 2024. The trial court was within its discretion to temporarily revoke his probation and impose a term of incarceration for 120 days based upon Defendant's non-technical violation. That non-technical violation was thus adjudicated.

The State contends that the trial court, during Defendant's second revocation hearing, was within its discretion to fully revoke Defendant's probation on the basis that Defendant had previous non-technical violations. A trial court may consider the defendant's amenability to correction and whether the defendant will comply with court orders in furtherance of his rehabilitation. *Rand*, 696 S.W.3d at 106 (*citing* T.C.A. § 40-35-102(3) and *State v. Owens*, No. E2021-00814-CCA-R3-CD, 2022 WL 2387763, at *5 (Tenn. Crim. App. July 1, 2022), *no perm. app. filed*). A defendant's previous non-technical violations and consequent revocation are proper considerations as to whether he is amenable to correction. Prohibiting a trial court from absolutely utilizing this factor in its reasoning would disregard our supreme court's ruling in *Dagnan* and deprive the trial court of permissible and necessary context. *Dagnan*, 641 S.W.3d at 759-60.

The State, however, seeks to broaden a trial court's discretion beyond the statute's plain language. "The function of the judiciary is to carry out legislative intent without broadening the statute beyond its intended scope." *State v. Pope*, 427 S.W.3d 363, 368 (Tenn. 2013) (internal citation omitted). The General Assembly, in establishing different violation categories and respective penalties, directed the courts to treat technical and non-

technical violations separately. The statute provides a graduated penalty system for technical violations and offers broad discretion for non-technical violations. In doing so, it does not permit a trial court to fully revoke probation based upon a defendant's *previous* non-technical violation.

The trial court in Defendant's case would have been within its discretion to fully revoke Defendant's probation during the November 2024 hearing because he was before the court on a non-technical violation. The trial court chose instead to partially revoke Defendant's probation and impose a 120-day sanction. To allow the trial court to then go back and constructively re-adjudicate the prior non-technical violations in a subsequent hearing would violate the statute.

Therefore, while a trial court may consider "the number of *revocations*, the seriousness of the *violation*, the defendant's criminal history, and the defendant's character," *Dagnan* at 759 n.5 (emphasis added), it remains limited to sanctions within the statutory constraints for technical violations. Here, the trial court could have considered Defendant's prior revocation, but only to support a partial revocation not to exceed thirty days for a second "instance" of technical violations only. T.C.A. § 40-35-311(e)(1)(A)(ii). The trial court thus erred when it fully revoked Defendant's probation, premised on the logical reasoning that "120 days didn't seem to [faze him]," by using an incorrect legal standard.

To be clear, we read the Act as well as the Matrix, to limit the trial court's discretion to sanction a probationer for a technical violation for one instance of a violation at a time, until such time as the probationer reaches a fourth instance of a technical violation. Only then can the court fully revoke probation and impose full incarceration for the remainder of the sentence for a technical violation. In reaching the determination as to whether to partially revoke or fully revoke probation, the court can properly consider past revocation adjudications.

Counting Technical Violations

Defendant next argues the trial court abused its discretion when it counted each drug Defendant tested positive for in two failed drug screens as a separate technical violation, totaling four technical violations from two drug screenings. The State contends that the trial court was within its discretion to fully revoke Defendant's probation after determining Defendant committed five technical violations. We agree with Defendant.

A statute is ambiguous when "the parties derive different interpretations from the statutory language." *Howard*, 504 S.W.3d at 270 (quoting *Owens*, 908 S.W.2d at 926). If

a statute is ambiguous, this Court “‘may reference the broader statutory scheme, the history of the legislation, or other sources’ to determine the statute’s meaning.” *State v. Frazier*, 558 S.W.3d 145, 153-54 (Tenn. 2018) (quoting *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)). “Further, the language of a statute cannot be considered in a vacuum, but ‘should be construed, if practicable, so that its component parts are consistent and reasonable.’” *In re Estate of Tanner*, 295 S.W.3d 610, 614 (Tenn. 2009) (quoting *Marsh v. Henderson*, 424 S.W.2d 193, 196 (Tenn. 1968)). The courts must likewise “presume that . . . the General Assembly ‘did not intend an absurdity.’” *State v. Mainer*, 678 S.W.3d 717, 723 (Tenn. Crim. App. 2023) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010)).

A trial court can revoke a defendant’s suspended sentence if that defendant “engag[es] in conduct that is a second or subsequent *instance* of a technical *violation* or *violations*. . .” T.C.A. § 40-35-311(d)(2) (emphasis added). A technical violation is “an act that violates the terms or conditions of probation.” T.C.A. § 40-35-311(g) (emphasis added). The word “instance” is not defined in the statute.

Defendant and the State cite to *State v. Carney* in furtherance of their respective positions as to what “instance” means within the context of this statute. In *Carney*, this Court considered whether a trial court could partially revoke a defendant’s probation based upon a single “instance” of technical violations. No. M2023-01305-CCA-R3-CD, 2024 WL 3292584, at *1 (Tenn. Crim. App. July 3, 2024), *no perm. app. filed*. The probation officer in that case reported that the defendant was a “no-show” for his drug test and then failed to call his probation officer for four days in a row. *Id.* We found the State’s argument most persuasive – that “instance” is a “relatively brief period of time” – in part because “to hold otherwise would result in a criminal defendant’s being allowed to flaunt the rules of probation, or . . . to simply stop cooperating[] with no real consequences so long as his violations are only technical violations.” *Id.* at *3. The defendant in *Carney* was “required to make a phone call every day,” so “an instance of violative conduct occurred each day the [d]efendant failed to make a check-in call.” *Id.* (citation modified). In other words, the defendant’s failure to call in each day was a distinct act in which he did not comply with his probation conditions.

The trial court here counted each drug for which the Defendant tested positive as an individual violation, totaling four violations based on failed drug screenings and one violation for his criminal impersonation B misdemeanor charge. This is contrary to the statute.

First, a failed drug screen in which a defendant tested positive for multiple drugs *may* be considered multiple violations if the State demonstrates that the consumption of

each drug was a separate and distinct act. Here, the trial court utilized the number of drugs on a single drug screen as per se evidence of multiple, separate acts. The record does not provide any additional evidence regarding whether Defendant's ingesting of marijuana and cocaine occurred as the result of two acts or four acts.

Second, irrespective of its counting method for violations, the trial court used "violation" as the metric for revocation rather than "instance." The statute uses the word "instance" specifically in subsections (d)(2) and (e)(1) to describe the trial court's authority to revoke probation. *See generally* T.C.A. § 40-35-311. The General Assembly could have easily conferred that a trial court may revoke a defendant's probation upon his second or subsequent *violation*. It failed to do so, instead explaining that such a revocation can occur upon a defendant's "second or subsequent *instance* of a technical *violation*." T.C.A. § 40-35-311(e)(1) (emphasis added). Additionally, the statute mentions "one (1) *instance* of technical *violation* or *violations*" (emphasis added); construing the statute as a whole, it is consistent and reasonable to conclude the General Assembly intended the words "violation" and "instance" to have a separate meaning and purpose. "There is a presumption that every word in a statute has meaning and purpose and should be given full effect so long as the obvious intention of the General Assembly is not violated by so doing." *Pope*, 427 S.W.3d at 368 (internal citations omitted). Consistent with *Carney*, a failed drug screen, regardless of how many substances are present, is one *instance* of a violation or violations because it captures a "relative[ly] brief period of time." Specifically, it captures what substances were in the defendant's system at the time of the screening. Therefore, it was improper for the trial court to conflate the terms "instance" and "violation" when calculating whether Defendant had the requisite technical violations to fully revoke his probation.

To be clear, we read the Act, as well as the Matrix, to limit the trial court's discretion to sanction a probationer based on the number of different intoxicants (other than methamphetamine) found in a drug screen, to one instance of violation, regardless of the number of substances detected in any one drug test, unless the evidence indicates that the substances were ingested on separate occasions. Here, there is clear proof that Defendant used illegal drugs based upon the presence of cocaine and marijuana in his system. However, there is no proof that he used illegal drugs on more than one occasion.

Zero Tolerance Violation

Defendant argues that the trial court acted against the probation statute's plain language by fully revoking Defendant's probation based on five technical violations because it was his second revocation hearing. The State contends that the trial court was within its discretion to fully revoke Defendant's probation because Defendant committed

a zero-tolerance violation when he acquired two Class B misdemeanor charges in a one-year period. In his reply brief, Defendant asserts that (1) the State waived this argument, (2) the trial court's prior partial revocation for a non-technical violation does not support a full revocation in this case, and (3) the State failed to present evidence at Defendant's probation hearing that he committed a "zero tolerance violation." We agree with Defendant that the trial court erred in conflating the terms "violation" and "revocation" in the probation statute, insofar as the trial court failed to make a finding as to whether Defendant committed a "zero tolerance" violation.

First, just as we explained above regarding the legislature's use of "instance" and "violation" within the probation statute, we must adhere to the plain meaning of the statute whenever possible. *Carter*, 279 S.W.3d at 564. The General Assembly specifically articulated that a trial court may impose graduated sanctions for technical violations after each subsequent *revocation*. See T.C.A. § 40-35-311(e) (emphasis added). It would have been simple for the General Assembly to articulate that trial courts may impose incarceration based on the number of technical violations a defendant accrues. However, no such language is present in the statute.³ It would be illogical for this Court to substitute the word "violation," a defendant's non-compliance with the terms of his probation, with "revocation," which is the trial court's adjudication of a defendant's probation violation.

The record demonstrates that the trial court revoked Defendant's probation in full based on its belief that Defendant committed five technical violations. This was, however, Defendant's second revocation hearing; based on the statute's plain language, the trial court should have limited its sentence to a partial revocation and imposed a term of incarceration no greater than thirty days. T.C.A. § 40-35-311 (e)(1)(A)(ii).

Second, both parties address whether Defendant committed a "zero tolerance" violation at the time of the second probation revocation hearing. As aforementioned, the State does not waive this argument in its response as the appellee. However, the trial court failed to articulate on the record that Defendant committed a "zero tolerance" violation or

³ We turn to other state statutes which implemented a graduated sanction system for technical probation violations based upon a defendant's number of violations rather than revocations. See, e.g., Md. Code Ann., Crim. Proc. § 6-223 (West) ("[S]ubject to subsection (e) of this section, for a technical violation, impose a period of incarceration of: 1. not more than 15 days for a first technical *violation*; 2. not more than 30 days for a second technical *violation* . . .") (emphasis added); La. Stat. Ann. § 15:574.9 ("[A]s determined by the committee on parole, shall be required to serve the following sentences: (aa) For the first technical *violation*, the offender shall serve not more than ninety days. (bb) For a second technical *violation*, the offender shall serve not more than one hundred twenty days.") (emphasis added).

that its decision to fully revoke Defendant's probation was based at all upon a "zero tolerance" violation.

The statute refers to a "zero tolerance" violation as "defined by the department of correction community supervision sanction matrix." T.C.A. § 40-35-311(e)(2). The Matrix⁴ defines a Level 4 Zero Tolerance Violation to include: three or more non-compliance with Level 1 Sanctions in a year, two or more non-compliance with Level 2 Sanctions in a year, or any non-compliance with Level 3 Sanctions in a year; Positive Drug Screening for Methamphetamine (excluding intake); Refusal to Submit to a Drug Screening; Refusal to Submit to a Search; Absconding Supervision; Possession of Firearm; New Criminal Class A Misdemeanor Arrest/Conviction; and New Criminal Felony Arrest/Conviction.

The State argues that Defendant committed a "zero tolerance" violation by having two Class B misdemeanor charges within a one-year period because a Class B misdemeanor charge results in Level 2 Sanctions. There is ambiguity as to whether two or more non-compliance with Level 2 Sanctions in a year period would amount to a "zero tolerance" violation. While the Matrix defines it as such, the Tennessee Administrative Policies and Procedures Community Supervision Sanctions Manual⁵ ("the Manual") defines two or more non-compliance with Level 2 Sanctions in a year warrants Level 3 Sanctions, not zero tolerance.

Irrespective of whether two or more non-compliance with Level 2 Sanctions in a year is "zero tolerance," the State's argument is still a misreading of the Matrix. The Matrix, reading from left to right, categorizes violations based on "attitude" or "behavior." The Matrix then identifies the level of sanctions based upon the severity of the violation. The consequence imposed on a defendant is in response to the "level" assigned to the behavior. Examples of Level 2 Sanctions, which "shall be imposed w/in 2 business days" include a curfew for 60 days, restricted travel privileges, and additional drug screenings. The Manual further defines Level 2 Sanctions as "mid-level *responses* to address offender non-compliance" (emphasis added). Additionally, it states that corresponding matrix code, NCS2, is used "when an offender has failed to *comply* with two (2) or more Level 2 sanctions in one (1) year" (emphasis added). In accordance with the Matrix and the Manual, two or more instances of non-compliance with Level 2 Sanctions in a one-year

⁴ The Matrix provided to this Court by both parties indicates this matrix was effective as of May 1, 2023. See attached appendix.

⁵ The Manual provided to this Court by appellant has an effective date of April 1, 2019. This Court was unable to locate an update version, if such a version existed.

period are not considered an additional charge resulting in further Level 2 Sanctions, but rather two instances of non-compliance with the sanctions imposed by the Matrix.

Further, in Defendant's case, the trial court fully revoked Defendant's probation based upon the fact that Defendant had five *technical* violations. Defendant admitted to violating his probation in the second revocation hearing. But, although Defendant's amended warrant had the box "zero tolerance" checked, defense counsel and the trial court agreed during the second probation revocation hearing that Defendant's failed drug screening and criminal impersonation charges were all technical violations. The trial court even asked the probation officer present if it could revoke Defendant's probation in full based on five technical violations. Neither the State, the probation officer, nor the court mentioned Defendant's having committed a "zero tolerance" violation. The trial court's only recorded reasoning for full revocation was the number of technical violations Defendant accrued. Therefore, the trial court failed to make sufficient findings as to whether it considered Defendant to have committed a "zero tolerance" violation. *Cf. State v. Bryant*, No. E2024-01943-CCA-R3-CD, 2025 WL 2402022, at *3 (Tenn. Crim. App. Aug. 19, 2025) ("A judge's responsibilities under *Dagnan* include the obligation to state on the record the basis for a probation revocation and whether the Defendant was alleged to have committed technical or non-technical violations, such as zero tolerance violations, and to discuss the effect of those violations on the appropriate consequence."), *no perm. app. filed*.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and remanded for further proceedings consistent with this opinion. On remand, the trial court should first determine whether Defendant committed a zero-tolerance violation. Failing the establishment of a zero-tolerance violation, the court shall be limited by the Act to a term of incarceration not to exceed thirty days for a second violation.

We are aware of the image that this conclusion depicts - allowing a defendant to "flaunt the rules of probation." *See Carney*, 2024 WL 3292584, at *3. However, given the very narrow discretion the Act gives a trial court in imposing sanctions on probationers for technical instances of non-compliance, this conclusion reflects the current condition of the state's probation violation law.

s/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE

Electronically RECEIVED on March 10, 2026
Appellate Court Clerk

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