

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 12, 2026

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. ALEXANDER MHLANGA

Appeal from the Circuit Court for Rutherford County
No. 89300 Howard W. Wilson, Chancellor

No. M2025-00958-CCA-R3-CD

The Defendant, Alexander Mhlanga, entered an open guilty plea to driving under the influence (DUI), ninth offense; DUI per se, ninth offense; and driving on a revoked license, second offense or more. Following a sentencing hearing, the trial court imposed an effective sentence of eleven years' incarceration as a Range III, persistent offender, at a one hundred percent service rate. On appeal, the Defendant argues that the trial court abused its discretion by denying his request for alternative sentencing and by failing to consider his eligibility for community corrections, regardless of the overall length of his sentence. Finding no error, we affirm the judgments of the trial court.

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

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

Brennan M. Wingerter, Assistant Public Defender – Appellate Division (on appeal); and Michael Auffinger, Murfreesboro, Tennessee (at trial), for the appellant, Alexander Mhlanga.

Jonathan Skrmetti, Attorney General and Reporter; Kelly Telfeyan, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Jerry L. Blythe, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A. GUILTY PLEA

On April 3, 2023, a Rutherford County grand jury indicted the Defendant for DUI, ninth offense; DUI per se, ninth offense;¹ and driving on a revoked license, second offense or more, relating to events occurring on May 15, 2022. On March 5, 2025, the Defendant entered an open guilty plea as charged. During the plea colloquy, the trial court explained to the Defendant his rights and reviewed the plea agreement. The Defendant confirmed that he understood the rights he was waiving and the terms of his open plea agreement. The uncontested facts supporting the charges were presented by the State at the guilty plea submission hearing as follows:

[W]e would have shown that [based on] the testimony of Officer Brandon [Bains], now deputy of the Rutherford County Sheriff's Department, that on or about May 15th of 2022, he was flagged down by two concerned citizens as he was approaching traveling down Enon Springs Road West.

The individuals advised that they observed [the Defendant] driving erratically [and] also observed him strike a curb in front of 400 Enon Springs Road West[,] causing him to pop his front passenger, as well as his rear passenger tire.

¹ DUI and DUI per se, which are alternative theories of DUI, are defined by statute as follows:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess; [or]

(2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more[.]

Tenn. Code Ann. § 55-10-401 (1), (2). Subsection one defines DUI, while subsection (2) defines DUI per se.

Upon Officer [Bains]' arrival[,] he observed that [the Defendant] was sitting in the driver's seat of his car in the driveway of 500 Enon Springs Road West, which is not his residence.

Additionally, he observed [that the Defendant's] vehicle was still running. He could also smell the odor of what appeared to be alcoholic beverages emitting from his person.

Additionally, he observed [the Defendant] had an unopened Bahama Mama . . . can in the front passenger seat.

[The Defendant] performed unsatisfactorily in his field sobriety test.

At the time of this incident, he had a prior DUI in the Circuit Court of Montgomery County, Tennessee, with the plea date of November 3rd of 2017.

In the Criminal Court of Davidson County, he had another DUI that he pled to [o]n February 8th of 2013.

In the Criminal Court of Davidson County, he pled to another DUI on November 5th of 2009.

In the Criminal Court of Davidson County, he pled to another DUI on April 26th of 2007.

In the General Sessions Court of Davidson County, he pled to another DUI on February 14th of 2005.

In the Criminal Court of Davidson County, he pled to another DUI on October 26th of 2004.

In the Criminal Court of Davidson County, he pled to another DUI on . . . May 6th of 2004.

And then[,] in General Sessions of Davidson County, he pled to another DUI on August 7th, 2002.

This man is DUI [n]inth [o]ffense.

At the time of this incident, he had a [blood alcohol concentration] of .241.

The trial court accepted the Defendant's guilty plea and scheduled a sentencing hearing.

B. SENTENCING HEARING

At the May 22, 2025 sentencing hearing, Rutherford County Sheriff's Department Deputy Brandon Bains testified that on the evening of May 15, 2022, he was an officer with the Smyrna Police Department. While on patrol, he was "flagged down by a concerned citizen that observed [the Defendant] . . . almost hit a telephone pole; and then jumped the curb with his vehicle; and then he pulled into a residence that wasn't his." The citizen further told Officer Bains that he had checked on the Defendant, who seemed intoxicated and under the influence.

Officer Bains testified that he then went to the location described by the citizen and "made contact with" the Defendant, who exited his vehicle, appearing disheveled with red, watery eyes. Officer Bains stated that he could smell alcohol on the Defendant's breath and that three tires on the Defendant's vehicle were "popped." Officer Bains stated that this was consistent with the citizen's statements. Officer Bains asked the Defendant several times if he had been drinking, and the Defendant responded that he had not. Officer Bains testified that the Defendant agreed to participate in field sobriety testing. Officer Bains testified that he conducted three separate field sobriety tests with the Defendant, none of which the Defendant successfully performed. At the conclusion of the tests, Officer Bains placed the Defendant under arrest, located his identification, and searched the Defendant's vehicle. He took witness statements before obtaining a search warrant for the Defendant's blood sample. Officer Bains then accompanied the Defendant to the hospital and was present for the Defendant's blood draw, which was eventually sent to the Tennessee Bureau of Investigation's (TBI) Crime Laboratory. Officer Bains testified that, when he ran a background check on the Defendant, he discovered the Defendant did not have a valid driver's license.

In addition to Officer Bains's testimony, the State introduced the Defendant's presentence report, the Defendant's official alcohol report from the TBI indicating a blood alcohol concentration of 0.241, and a certified copy of the Defendant's driving history. The State also introduced certified copies of the Defendant's multiple convictions for DUI, driving on a revoked or suspended license, and habitual motor vehicle violations.

The Defendant's daughter, Hope Mhlanga, testified that she was a social worker and that she lived in Canada. She described her relationship with the Defendant as "very close."

She testified that she visited the Defendant every summer for two to three weeks and that he had “always been there for [her]”; she stated that they were in contact by phone almost every day when she was not visiting. She testified that she had never seen the Defendant consume alcohol or be intoxicated and that he had never done anything to make her feel uncomfortable around him. She testified that she became aware of his current legal issues in this case a year before the hearing and that she was aware he had previously had some “traffic” or license issues. She admitted she was shocked about his current charges because she thought it was “out of character” based upon her own relationship with him, how he treated family and friends, and his “kind” and “giving” qualities. She stated she understood that “people make mistakes” and that regardless of whether he committed the offense of DUI, it did not “take away from who he [was] as a person.”

On cross-examination, the Defendant’s daughter testified that she had lived in Canada since 2007 and that she had always been able to contact the Defendant. She also admitted that at times she had spoken to the Defendant when he called her from jail.

The Defendant’s niece, Tatenda Makoka, testified that she had a degree in social work and psychology. Ms. Makoka stated she was affiliated with the mental health court in Davidson County and that she performed mental assessments on inmates and those on probation or released in the community. She testified she had known the Defendant her entire life and had lived with him in Nashville on and off for about two years. She stated that prior to living together they had stayed in close contact with each other. When asked if she was aware of the Defendant’s past legal issues, she stated she was only aware of “license” issues. She testified that the Defendant worked in restaurant management for Jack in the Box. She testified that she had never seen the Defendant consume alcohol or be intoxicated. She explained that she had never assessed the Defendant and was only testifying as to his good character. She stated that the Defendant was a “good member of society,” was “not out hurting or injuring anybody or causing any harm,” and was “not a threat . . . [or] a flight risk.” She opined that “getting [him] the help [he] need[ed] to reinstate [him] in the community would be [her] preference as a social worker.”

On cross-examination, Ms. Makoka stated she was unaware of any rehabilitation programs the Defendant completed while they resided together, but she stated he had “mentors” and that he had “remained sober to her knowledge.” She stated that the Defendant did not drive but either rode with a co-worker or took a hired car, such as an Uber, to work. She stated she was aware he had a temporary license at some point while they lived together. She also admitted she was aware of his extensive criminal history.

The Defendant testified that he immigrated to the United States from Zimbabwe in 1982. He stated that he held a degree in business administration from Tennessee State University and had completed some coursework toward a master’s degree before marrying

his daughter's mother. He stated he had been employed in the restaurant business since graduating from college in 1990; he had been a general manager at some point, but he was currently an assistant general manager at a Jack in the Box restaurant in Nashville, where he had worked for eleven years. He testified that he lived with his sister, his niece, and his father, who were all present at the hearing in support of him.

When asked to describe his relationship with alcohol, the Defendant admitted that it was "not a good []one." He testified that he had troubles in his marriage which ended in divorce, and he had started drinking and "hanging out with the wrong people and friends" after the divorce. He admitted that he drank one margarita on May 15, 2022, before driving his vehicle back from Winchester. He stated that driving after drinking was a mistake. He testified that he got lost on his return and had three flat tires. He recalled hearing the "pop" sounds from the tires and pulling into a residence to inspect them. He stated he was looking for a restaurant to call for a ride when an officer arrived.

The Defendant admitted that he had multiple prior convictions for DUI and that he was on parole on the night of these offenses. He testified that he served the remainder of his parole sentence, which was between forty-five and sixty days. The Defendant admitted that after being released on bond in this case, he was arrested for driving on a suspended license in a separate case; he was also charged with an open container violation and simple possession. The Defendant testified that, in that case, he drove on a revoked license because his brother had been drinking and that the open containers in the vehicle belonged to his brother. He stated that the possession charge was dismissed prior to his sentencing hearing in this case and related to an over-the-counter pill he used for sleep issues. The Defendant testified that, after completing his parole, he had been on an alcohol monitor as a condition of his bond for all three years between his arrest and sentencing, and he had never once violated the monitoring conditions. The Defendant testified that he had not consumed alcohol at all during the three years while on bond in this case.

The Defendant testified that he commuted to and from work by "Uber, friends, bus, MTA, [or] coworkers" because he was "tired of the consequences of drinking." He admitted to drinking and driving and stated that he was remorseful. He expressed his desire to be placed on probation with the alcohol monitor requirement, if needed, because he had been successful with that bond condition for three years.

On cross-examination, the Defendant maintained that he only drank one margarita on May 15, 2022, despite his blood alcohol concentration of 0.241, which was "three times the legal limit to be able to drive." He also stated that he did not know how he ended up with three flat tires. He stated that some of his prior DUI convictions and open container violations were the result of his driving after having one drink and when his passengers had multiple open containers in his vehicle. However, he admitted entering guilty pleas to

those offenses and could not state which offenses were allegedly the result of his friends' actions rather than his own. He admitted to previously having participated in rehabilitation programs on several occasions.

On redirect examination, the Defendant stated that he recognized he had a problem with alcohol and needed help, but he stated that going to jail would "destroy [his] life." He further suggested that he could attend a treatment program at Buffalo Valley. On recross-examination, the Defendant maintained that he thought the use of the monitor was what he needed and which he had not had in prior cases.

At the conclusion of the proof, the State's oral argument followed its Notice of Sentencing Factors filed on May 7, 2025. The State argued that the Defendant was not a favorable candidate for alternative sentencing because he was being sentenced for a third or subsequent felony conviction involving separate periods of incarceration or supervision. The State further argued that because the Defendant's conviction was for a DUI seventh or more offense, he was required to serve one hundred percent of his sentence and was not entitled to earn more than fifteen percent sentence reduction credits. Thus, the State requested that the trial court impose a Range III sentence between ten and fifteen years' incarceration at one hundred percent service.

The Defendant did not oppose his classification as a Range III, persistent offender. He argued that the evidence presented warranted the trial court's consideration of his familial support, his lack of a violation in the three years between the offense and the sentencing hearing, and his recognition of wrongdoing. The Defendant argued that, pursuant to Code section 55-10-402(a)(6)(A), a sixth or subsequent DUI conviction is a Class C felony and carries a mandatory minimum sentence of only 150 days. The Defendant sought a ten-year sentence of split confinement coupled with probation, with electronic monitoring as a condition of probation. The State responded that probation was not a possible alternative to sentencing in this case but conceded that community corrections was available.

After considering the purposes and principles of the Sentencing Act, the trial court found that there was no dispute that the Defendant was a Range III, persistent offender, placing his range of punishment for a Class C felony between ten and fifteen years' incarceration. In consideration of the applicable enhancement factors, the trial court found that the Defendant had a prior criminal history beyond that necessary to establish the appropriate range, and that the offense was committed while the Defendant was on parole release. *See* Tenn. Code Ann. § 40-35-114(1), (13). The trial court found that the only applicable mitigating factor was the catchall factor, referencing the Defendant's work history and age of sixty-three. *See id.* § -113(13). The trial court, accordingly, imposed an effective sentence of eleven years' incarceration.

In consideration of the Defendant's request for alternative sentencing, the trial court noted that because the Defendant's sentence exceeded ten years, he was ineligible for probation. The trial court further found:

I do have to look at whether confinement is necessary to protect society by restraining the Defendant with a long history of criminal conduct. Whether confinement is necessary to avoid the depreciating [the] seriousness of the offense, or if confinement is particularly suited to provide an effective deterrent. And whether measures less restrictive than confinement have frequently and recently been applied unsuccessfully to the Defendant.

And that necessitates that I consider also the enhancement factors that I've gone over, mitigating factors that I've gone over, his potential for rehabilitation, also considered his truthfulness while testifying.

And it's disturbing to the [c]ourt when I looked at this gentleman's record and the facts of this case, it starts out at [age thirty-three] with a conviction for assault, numerous driving on revoked license at the time he was [thirty-three, thirty-four, thirty-five, thirty-six] driving on revoked. Driving on revoked. [Thirty-nine], driving on revoked.

DUI, 2004. That was a – conviction was a fourth offense. The State's done a good job of laying out his convictions. He's got eight prior convictions.

What concerns the [c]ourt is that his testimony is that he has not had alcohol within the last three years. Then he finds himself before we can, you know, get this case resolved, being arrested with his brother where he had two open containers in the car. So[,] the [c]ourt has to sort of judge the credibility of this Defendant.

And in looking at his testimony here today, considering that he – his remorse for this, the potential for rehabilitation. He says mostly – a lot of these DUIs, he blames on his friends.

The current charge that I just spoke about, he blames on his brother. And then his testimony is that he had one margarita on the date that we're here about and he registered a .24.

The fact that he was driving on three flat tires and didn't know what happened, his credibility is an issue with the [c]ourt and that goes to my consideration of his likelihood of rehabilitation.

Now, I agree he's had this monitor, and apparently, we hadn't had any positive tests on that monitor, but I don't know the conditions. I don't know the reporting of that monitor. How often he's required to blow into it. I haven't heard any proof on that.

In just – when I look at this record, at [sixty-three] years of age, he's continually picked up these DUIs. But not only that, he's served lengthy jail sentences on this DUI.

And, in fact, he was on a [twelve]-year sentence, having served that on a violation, still on parole when he picked up this offense. And so[,] the likelihood of rehabilitation, I find is slim.

It's concerning to the [c]ourt that a man [sixty-three] years old, after having all of these convictions and all of these chances – and he's had chance after chance after chance, and basically just chosen to continue to live this lifestyle. I can't find that he's a candidate for alternative – any alternative relief.

The trial court entered judgments and merged the Defendant's conviction of DUI per se, ninth offense into his conviction of DUI, ninth offense, but then entered a corrected judgment on Count One on September 3, 2025. This timely appeal followed.

II. ANALYSIS

The Defendant argues that the trial court abused its discretion by denying his request for alternative sentencing and by failing to consider his eligibility for community corrections, regardless of the overall length of his sentence. The State responds that the trial court acted within its discretion. We agree with the State.

We review a trial court's sentencing determinations for abuse of discretion. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). Additionally, where the trial court imposes a within-range sentence, “and the record demonstrates that the sentence is otherwise in

compliance with the purposes and principles” of the Sentencing Act, we afford its sentencing determinations a presumption of reasonableness. *Id.* A trial court abuses its discretion in the context of sentencing determinations by applying an incorrect standard of law or reaching a decision contrary to logic or reasoning which causes prejudice to the complaining party. *State v. Bonds*, 502 S.W.3d 118, 166 (Tenn. Crim. App. 2016) (citing *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)). This standard of review also applies to “questions related to probation or any other alternative sentence.” *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012).

Included among the purposes and principles of the Sentencing Act is the balancing consideration that “the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed” while also acting as an effective deterrent to future violations of the law. *See* Tenn. Code Ann. §§ 40-35-102(3)(A), 40-35-103(4). The trial court must also consider the following factors:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;
- (7) Any statement the defendant wishes to make on the defendant’s own behalf about sentencing; and
- (8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Id. § -210(b). Although the trial court is not required to make particularly lengthy or detailed findings on the record in its consideration of these factors, it must nevertheless “set forth enough to satisfy the appellate court that [it] has considered the parties’ arguments and has a reasoned basis for” imposing the sentence. *Bise*, 380 S.W.3d at 705-06 (citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007)).

In determining whether incarceration is appropriate in a particular case, a trial court should consider 1) whether “[c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;” 2) 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 3) whether “[m]easures less restrictive than confinement have frequently or recently been

applied unsuccessfully to the defendant.” *Id.* § -103(1)(A)-(C); *see also State v. Hooper*, 29 S.W.3d 1, 5 (Tenn. 2000). Our Code provides that “[a] defendant shall be eligible for probation . . . if the sentence actually imposed upon the defendant is ten (10) years or less.” Tenn. Code Ann. § 40-35-303(a).

In his reply brief, the Defendant specifically argues that the trial court failed “to explicitly consider the required statutory factors for eligibility in a community corrections program – under the primary criteria in section 40-36-106(a), supported by the purpose of the ‘special needs’ criteria in section 40-36-106(c) – before denying an alternative sentence.” The Defendant argues that the trial court simply failed to consider community corrections. However, at the sentencing hearing, the State argued the Defendant was not eligible for a probationary sentence but conceded the Defendant’s eligibility for a community corrections sentence.

Immediately following this concession, the trial court made findings concerning the Defendant’s sentencing, including the range of punishment and the length of sentence. The Defendant’s eleven-year sentence was within the Range III punishment of ten to fifteen years for a Class C felony. *See id.* at § -112(c)(3). The trial court found that the Defendant was not eligible for probation and then considered whether an alternative sentence was appropriate. The trial court determined that confinement was necessary to protect society due to the Defendant’s lengthy history of criminal conduct, that confinement was necessary to avoid depreciating the seriousness of the offense of DUI ninth offense, and that measures less restrictive than confinement, as well as confinement, had been frequently applied unsuccessfully to the Defendant. *See id.* § -103(1)(A)-(C). In considering these factors, the trial court considered the applicable enhancement and mitigating factors, the Defendant’s potential for rehabilitation, and the credibility of the Defendant’s testimony. The trial court found that the Defendant was not a credible witness and referenced the fact that he committed the offense while on parole and the fact that the Defendant had been given multiple chances at alternative sentences. The trial court noted that the Defendant blamed his friends for his criminal conduct in past offenses and his insistence that he only had one drink on the night of the offense, despite his registering a blood alcohol concentration of 0.241. After considering all this, the trial court found that the Defendant was not a candidate for “*any* alternative relief.”

Based upon the trial court’s prior determination that the Defendant was not eligible for probation, and the State’s concession that the Defendant was eligible for community corrections, the record supports that the trial court addressed the Defendant’s eligibility and suitability for a community corrections sentence along with other alternative sentencing options. Because the record shows that the trial court carefully considered the purposes and principles of sentencing before denying probation and any alternative sentencing relief, including community corrections, the Defendant has failed “to either

establish an abuse of discretion or otherwise overcome the presumption of reasonableness afforded” to the court’s sentence in this case. *Caudle*, 388 S.W.3d at 280. The record of the Defendant’s lengthy prior criminal history, spanning thirty years, his repeated unsuccessful attempts at alternative sentencing, and his lack of credibility supports the trial court’s denial of any form of alternative sentencing. The Defendant is not entitled to relief.

III. CONCLUSION

Following our review of the record and based on the foregoing analysis, we affirm the judgments of the trial court.

s/ *STEVEN W. SWORD*

STEVEN W. SWORD, JUDGE