

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 15, 2026

FILED

09/24/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. SHAVONNA AUSTIN

Appeal from the Circuit Court for Williamson County
No. 2021-CR-15823, M-CR210159 Deana C. Hood, Judge

No. M2025-02069-CCA-R3-CO

Pursuant to a negotiated plea agreement, Defendant, Shavonna Austin, pled nolo contendere to facilitation of theft of \$60,000 or more but less than \$250,000 and agreed to a three-year placement on judicial diversion with the trial court to conduct a restitution hearing. On appeal, she claims the trial court erred in denying her motion to remove restitution from court costs and dismiss her case. Following a thorough review of the record, the briefs of the parties, and applicable authority, we dismiss the appeal for lack of jurisdiction.

Tenn. R. App. P. 3; Appeal Dismissed.

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, and STACY L. STREET, JJ., joined.

David Von Wiegandt, Louisville, Kentucky, for the appellant, Shavonna Austin.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Stacey Edmonson, District Attorney General; and Carlin C. Hess, Assistant District Attorney General; for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

This case arose when Defendant fraudulently diverted \$101,850 belonging to Sharon and Jonathan Fletcher into her bank account. The victims transferred the money believing it was a down payment to be sent to their title company for a new home. The Williamson County Grand Jury indicted Defendant for theft of property of \$60,000 or more but less than \$250,000, a Class B felony. *See* T.C.A. §§ 39-14-103(a), -105(a)(5).

On August 1, 2022, pursuant to a negotiated plea agreement, Defendant pled nolo contendere to the lesser offense of facilitation of theft of more than \$60,000, a Class C felony. *Id.* §§ 39-14-103(a), -105(a)(5); 39-11-403(b). As a part of the plea agreement, the trial court deferred entry of judgment and granted judicial diversion pursuant to Tennessee Code Annotated section 40-35-313(a)(1)(A) for a three-year period of supervision with restitution to be determined at a later hearing.

Pursuant to the trial court's order entered after the October 10, 2022 restitution hearing, Defendant testified that she permitted a close family friend to deposit \$101,850 into her personal bank account, believing it to be funds from a Paycheck Protection Program loan because he did not have a business account. However, the funds were actually the victims' down payment for a home, and they had been led to believe they were transferring the funds to a title company. The trial court found that Defendant was an educated thirty-two-year-old woman living in "the affluent area of Buckhead" in Atlanta and holding both a bachelor's and a master's degree. Defendant ignored multiple red flags including a fraud alert and bank statement descriptions clearly indicating that the funds were connected to the victims' home purchase. The court found Defendant's testimony not to be credible and found that Defendant personally benefitted from the stolen funds through extensive withdrawals, purchases, transfers, and use of her debit card, all of which could not have been supported by her own account balance. The parties stipulated that the victims' pecuniary loss was \$101,850. The trial court set restitution at \$50,925, with a monthly payment amount of \$1,000 for the first six months and agreed to review Defendant's progress every six months. During the review period, the trial court reduced Defendant's monthly obligation to \$500 without objection from the State.

On February 6, 2023, the victims alerted Defendant's probation officer that no restitution payments had been made. After Defendant was notified that payment was required to avoid a violation, she made a single payment of \$25. The trial court then dismissed the violation warrant. The record reflects that the trial court continued to monitor Defendant's financial circumstances at three- and six-month intervals. On September 9, 2025, the trial court entered an order declining further review after determining Defendant's progress toward restitution was "unsatisfactory." The record does not provide the balance of the restitution amount at that time.

On November 7, 2025, following the expiration of Defendant's three-year term of diversion, Defendant filed a "Motion to Remove Restitution from Court Costs and Dismiss the Case after Completion of Probation on a Judicial Diversion Sentence." In the motion, Defendant claimed she had successfully completed diversion because she had served her three-year term without any violations. She contended that dismissal was required despite her unpaid restitution because, in her view, Tennessee Code Annotated

section 40-35-304 and the restitution order permitted any unpaid restitution to be converted to a civil judgment. T.C.A. § 40-35-304(h)(1) (permitting the victim to convert the unpaid restitution balance into a civil judgment). She further explained that she could not pursue expunction because the trial court clerk required restitution to be paid before court costs, so the court costs remained unpaid. She argued that her restitution obligation expired at the conclusion of her diversionary period and thus should not impede dismissal of the charge and her ability to seek expunction.

At a December 8, 2025 hearing on the motion, Defendant argued that she had “successfully completed” judicial diversion because she had no violations during the three-year term of diversion. Defendant further argued that unpaid restitution should not bar dismissal because, in her view, Tennessee Code Annotated section 40-35-304 and language in the restitution order provided that restitution “may not extend beyond the expiration of the sentence” and should instead be converted to a civil judgment. The State suggested the court had two options: waive restitution and dismiss the case, or decline to waive restitution, leaving the diversion open until restitution was paid. After considering the arguments, the trial court found that Defendant had not “successfully completed” her diversion because restitution, an express condition of the diversion, remained unpaid. The court declined to waive the restitution and ordered that the diversion would remain pending until restitution was paid. The court entered a written order on January 8, 2026. In its later amended order entered January 14, 2026, the trial court further explained that Defendant’s motion conflated two distinct concepts: the statutory conversion of unpaid restitution to a civil judgment and the satisfaction of restitution as a condition of judicial diversion. The trial court clarified that conversion of an unpaid balance to a civil judgment does not satisfy the restitution requirement imposed as part of diversion, and because Defendant had not paid restitution, she had not completed the terms of her deferred sentence.

On December 23, 2025, while still represented by counsel, Defendant filed a pro se notice of appeal. The filing included an unsworn Uniform Affidavit of Indigency but did not request the appointment of counsel. After determining Defendant was represented by counsel when she filed the pro se notice of appeal and that the case remained pending in the trial court, this court entered an order January 7, 2026, directing trial counsel to clarify the status of the case, the nature of the proceedings, and whether he remained counsel of record. Trial counsel responded as ordered and stated that the case was “actually closed” and that he had been retained to represent Defendant on the motion to remove restitution from court costs and dismiss, but he did not indicate whether he or the trial court complied with Rule 37 of the Tennessee Rules of Criminal Procedure. *See* Tenn. R. Crim. P. 37(e)(1) (requiring counsel to inform the trial court when representation is limited to the trial level). Consequently, this court entered a second order removing trial counsel and remanding the matter for the trial court to

determine Defendant's financial status and whether she would retain counsel or request the appointment of counsel. On remand, the trial court concluded that Defendant was not indigent and did not appoint counsel. T.C.A. § 40-14-202. On March 16, 2026, trial counsel filed a notice of appearance for Defendant.

Analysis

Defendant contends that the trial court erred in denying her motion to remove restitution from court costs and dismissing the case. She asserts that she successfully completed judicial diversion because she incurred no violations. Additionally, she argues that her failure to pay restitution should not prevent dismissal because Tennessee Code Annotated section 40-35-304 and the restitution order permit any outstanding restitution to be converted to a civil judgment. She maintains that her restitution obligation ended upon completion of her three-year term of diversion and should now be converted to a civil judgment. She explains that she cannot pursue expunction because she cannot pay court costs while restitution remains outstanding.

The State argues that the appeal must be dismissed because Tennessee Rule of Appellate Procedure 3(b) does not authorize an appeal from an order denying the removal of restitution from court costs or dismissing a diversionary case. The State asserts in the alternative that this court lacks jurisdiction because no valid notice of appeal was filed.

Defendant replies that Rule 3(b) permits her appeal because the issues were not waived and are apparent from the record and because the case concerns the denial of expunction-related relief. She contends that the appeal should proceed in the "interests of justice" under Tennessee Rule of Appellate Procedure 13(b) to prevent needless litigation and to prevent injury to defendants left "in limbo." She adds that her appeal was timely filed after the trial court orally denied the motion, or alternatively, that any defect should be excused because she filed pro se and was unaware of appellate requirements.

Our threshold inquiry is whether this court has jurisdiction over the appeal. The right to pursue an appeal is governed by Rules 3 and 4 of the Tennessee Rules of Appellate Procedure, with Rule 3 defining how an appeal is initiated and Rule 4 defining when it must be filed. "A defendant in a criminal case has no appeal as of right unless it is enumerated in Rule 3(b)." *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017). Tennessee Rule of Appellate Procedure 3(b) provides when a defendant in a criminal case has an appeal as of right:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not

guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation; an order denying a motion for reduction of sentence pursuant to Rule 35(d), Tennessee Rules of Criminal Procedure; an order or judgment pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure; from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceedings from a final order on a request for expunction; and from the denial of a motion to withdraw a guilty plea under Rule 32(f), Tennessee Rules of Criminal Procedure.

Tenn. R. App. P. 3(b).

Although Rule 3(b) permits appeals from “final order[s] on a request for expunction,” Defendant did not file a petition for expunction, and the order she challenges is not a final order on a request for expunction. Because Rule 3 does not specifically authorize an appeal from an order denying the removal of restitution as a condition of probation, Defendant has no right to appeal. *See State v. Hegel*, No. E2015-00953-CCA-R3-CO, 2016 WL 3078657, at *1-2 (Tenn. Crim. App. May 23, 2016) (ruling that defendant has no Rule 3 right to appeal the denial of motion to suspend court costs); *State v. Lane*, 254 S.W.3d 349, 353 (Tenn. 2008) (holding there is no Rule 3(b) right to appeal the denial of motion to modify a condition of probation/restitution); *State v. Bean*, No. M2009-02059-CCA-R3-CD, 2011 WL 917038, at *2 (Tenn. Crim. App. Mar. 16, 2011) (holding a defendant has no right of appeal from an order denying his motion for a furlough); *State v. Childress*, 298 S.W.3d 184, 186 (Tenn. Crim. App. 2009) (holding a defendant cannot appeal from an order allowing the State to nolle prosequi the charges against him); *State v. Coggins*, No. M2008-00104-CCA-R3-CD, 2009 WL 482491, at *3-4 (Tenn. Crim. App. Feb. 25, 2009) (ruling a defendant has no appeal as of right from an order denying a new probation revocation hearing); *Simon v. State*, No. M2003-03008-CCA-R3-PC, 2005 WL 366893, at *2 (Tenn. Crim. App. Feb. 16, 2005) (holding a defendant had no appeal as of right from an order denying sentencing credits); *Sexton v. State*, No. E2003-00910-CCA-R3-PC, 2004 WL 50788, at *3 (Tenn. Crim. App. Jan. 12, 2004) (holding a defendant did not have the right to appeal the denial of a motion for “credit for time at liberty”).

In her reply brief, Defendant argues that because “the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and [] such issues are apparent from the record of the proceedings,” Rule 3(b) allows for a right of appeal in her case. Tenn. R. App. P. 3(b). This argument is without merit. Because Defendant’s grant of judicial diversion meant that no judgment of conviction was entered, Rule 3(b) simply does not apply. *State v. Dycus*, 456 S.W.3d 918, 928 (Tenn. 2015) (“In judicial diversion cases, no judgment of conviction is entered, and a sentence is imposed only in the instance that the defendant fails to successfully complete the period of probation pursuant to the grant of judicial diversion.”).

Defendant’s claim that the matter concerns expunction-related relief does not alter this conclusion. Defendant filed her motion solely because she could not seek expunction without first satisfying restitution, and that circumstance does not convert the order into one appealable under Rule 3. Defendant is not entitled to relief.

Because we dismiss Defendant’s appeal under Rule 3 of the Tennessee Rules of Appellate Procedure, we need not address the State’s alternate argument that Defendant did not file a valid notice of appeal.

CONCLUSION

Because Defendant is not entitled to an appeal under Rule 3(b), this court lacks jurisdiction. The appeal is dismissed.

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE