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Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs October 21, 2025

STATE OF TENNESSEE v. MITCHELL STANLEY POZEZINSKI, JR.

Appeal from the Circuit Court for Montgomery County
No. 63CC1-2024-CR-369 Ashleigh L. Travis, Judge

No. M2024-01659-CCA-R3-CD

The Defendant, Mitchell Stanley Pozezinski, Jr., was found guilty after a bench trial before the Montgomery County Circuit Court of two counts of violating the conditions of his community supervision for life by failing to comply with a polygraph assessment and by failing to complete a psychosexual evaluation. *See* T.C.A. §§ 39-13-524 (Supp. 2002) (subsequently amended) (sentence of community supervision for life); 39-13-526 (2018) (violations of community supervision). On appeal, the Defendant asserts the proof is insufficient to sustain his convictions. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and STEVEN W. SWORD, JJ., joined.

Roger Nell, District Public Defender; Joshua V. Lehde (on appeal), District Public Defender Fellow - Appellate Division; and Kathryn Stamey (at trial), Assistant District Public Defender for the appellant, Mitchell Stanley Pozezinski, Jr.

Jonathan Skrmetti, Attorney General and Caroline W. Weldon, Assistant Attorney General; Robert J. Nash, District Attorney General; and Jeffrey Watts, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In April 2005, the Defendant pleaded nolo contendere to attempted aggravated sexual battery. He was sentenced to five years' probation and, after completing his probationary period in 2010, was placed on community supervision for life. While on

community supervision, the Defendant was required to abide by the Tennessee Department of Correction (TDOC) Department of Probation and Parole's special conditions. The two conditions at issue in this case required that the Defendant (1) submit to a yearly polygraph assessment and (2) complete a psychosexual evaluation by a provider approved by the Tennessee Sex Offender Treatment Board (Board). As relates to the polygraph assessment condition, the affidavit of complaint alleged that the Defendant failed to abide by the special condition for sex offenders requiring a yearly polygraph assessment and that the Defendant had been sanctioned on November 7, 2023 for that violation. On April 1, 2024, a Montgomery County Grand Jury indicted the Defendant for failure to comply with both conditions. Count one of the indictment stated that the Defendant "on or about the 7th day of November 2023," failed to comply with the polygraph assessment special condition. Count two of the indictment stated that the Defendant "on or about December 31, 2023," failed to comply with the special condition requiring him to complete a psychosexual evaluation. After a bench trial, the Defendant was found guilty as charged, sentenced to time served, and ordered to submit to a polygraph assessment and to complete a psychosexual evaluation.

At the October 7, 2024 trial, TDOC probation and parole officer Kathleen High testified that she worked with sex offenders and had supervised the Defendant. She said that she advised the Defendant of the special probation conditions for sex offenders and that, on June 6, 2019, he signed a form acknowledging those conditions. The form was received as an exhibit. Ms. High stated that special condition 4 read, "I will submit to and pay for a polygraph assessment and evaluation as instructed by my officer."

TDOC probation and parole manager Ryan Dominy testified that while reviewing the Defendant's file, he found correspondence from the Family Wellness Center stating that the Defendant "had successfully completed sex offender counseling." Mr. Dominy was concerned because he was unfamiliar with the facility and because the letter referenced "counseling" instead of "treatment." Mr. Dominy also discovered an October 22, 2010 letter written by Steven Vann that purported to be a psychosexual evaluation. Mr. Dominy sent the correspondence to Jonathan Holland, a member of the Board, to ask Mr. Holland whether the Defendant had completed an approved psychosexual evaluation based upon Mr. Vann's letter and the 2011 letter from the Family Wellness Center. Mr. Vann's letter was not received as an exhibit at the trial but was referenced in an email from Mr. Dominy to Mr. Holland. A redacted portion of the email was received as an exhibit. Mr. Dominy's email stated that Mr. Vann recommended the Defendant be required to reenter treatment, which would include a polygraph assessment. Mr. Dominy stated that, in response to his email to Mr. Holland, he was advised that the Defendant needed to undergo a psychosexual evaluation by a Board-approved provider and needed to submit to a polygraph assessment. Mr. Dominy said that if an offender was not currently in sex offender treatment, the offender must submit to a yearly polygraph

assessment. Mr. Dominy directed probation officer Anthony Lipinski to notify the Defendant of these conditions.

Mr. Dominy testified that the Defendant had completed five years of probation before being placed on community supervision for life where he was under the jurisdiction and supervision of the TDOC. According to Mr. Dominy, the TDOC had sole jurisdiction over the Defendant's community supervision, and any prior probation orders would have been superseded by TDOC community supervision directives. Mr. Dominy said that the Defendant never completed a psychosexual evaluation by a Board-approved provider and that the Defendant's last polygraph assessment occurred "approximately three years ago," though he was required to obtain a yearly polygraph. Mr. Dominy concluded that the Defendant had not complied with his community supervision conditions.

On cross-examination, Mr. Dominy testified that he had managed the Defendant for four years. Mr. Dominy confirmed that he sent Mr. Vann's letter and the Family Wellness Center letter signed by Randy Hultberg to Mr. Holland. Mr. Dominy acknowledged that the Defendant told him about a February 22, 2011 court order from Judge Gasaway[1] indicating that the Defendant had completed his counseling and treatment requirements. In his email to Mr. Holland, Mr. Dominy indicated that the 2011 trial court order stated that the Defendant "'fully complied and . . . completed the required counseling and treatment required by law.'" The email also said that the Defendant completed "sex offender counseling" with Mr. Hultberg in 2007 and a psychosexual evaluation with Mr. Vann in 2010. Mr. Dominy said that Mr. Hultberg was not currently approved by the Board to provide sex offender treatment but that he did not know what Mr. Hultberg's approval status might have been in 2011. Mr. Dominy acknowledged that on the Tennessee Department of Health's website, Mr. Hultberg's name appears with a reference indicating he was approved by the Board to provide sex offender treatment. Mr. Dominy maintained that the listing on the website did not confirm Mr. Hultberg's accreditation by the Board.

Mr. Dominy testified that in 2018 or 2019, the Defendant signed a standard form acknowledging the special conditions for sex offenders who are on community supervision for life. Mr. Dominy said the Defendant filed a grievance to contest the Board's mandate that he undergo a polygraph assessment and a psychosexual examination. Mr. Dominy said that on January 1, 2024, he prepared a community supervision for life violation report. Mr. Dominy said that the Defendant's Strong-R risk and needs assessment would not affect whether he needed to abide by the special conditions of his community supervision.

[1] The 2011 court order was not introduced as an exhibit at the trial.

Anthony Lipinski testified that he supervised the Defendant and that on September 5, 2023, he directed the Defendant to have an annual polygraph assessment because this was standard policy when an offender was not in sex offender treatment. Mr. Lipinski said the Defendant understood those requirements. Mr. Lipinski stated that the Defendant, however, "flat-out refused" to undergo a polygraph assessment. The Defendant told Mr. Lipinski that a February 2011 court order excused him from further testing and that he was "done with treatment." Mr. Lipinski confirmed that the Defendant began community supervision for life in October 2011 and last had a polygraph assessment in 2018. Mr. Lipinski said that participants in the community supervision for life program are under TDOC's jurisdiction and are required by statute to complete a psychosexual evaluation. On January 2, 2024, Mr. Lipinski asked the Defendant, "Did you set up your psychosexual evaluation?" The Defendant said, "No." Mr. Lipinski stated that he was not aware that the Defendant ever completed a psychosexual evaluation by a Board-approved provider or a polygraph assessment after that conversation.

On cross-examination, Mr. Lipinski testified that he had supervised the Defendant "off and on for eleven years." Mr. Lipinski said the polygraph requirement was included in the TDOC standards of supervision. According to Mr. Lipinski, TDOC standards required all offenders who were not currently in sex offender treatment, regardless of whether they had completed sex offender treatment, to submit to an annual polygraph assessment. Mr. Lipinski acknowledged that he had no certification or training in treating sex offenders. Mr. Lipinski said that he was aware that the Defendant filed a grievance and that Mr. Lipinski, his manager, and the Defendant met in early December 2023, to discuss it. Mr. Lipinski agreed that the goal of the community supervision specialized conditions was to prevent recidivism and protect the public. Mr. Lipinski acknowledged that in March or April 2023, the Defendant's risk and needs assessment identified the Defendant as being "low" risk. On December 14, 2023, Mr. Lipinski prepared a Strong-R case plan listing an April 30, 2024 "target date" for a polygraph assessment and a December 31, 2023 target date for completing a psychosexual evaluation. Mr. Lipinski said the Defendant refused to sign acknowledging the case plan. Mr. Lipinski agreed that the Defendant had not been convicted of any new sex offenses. Mr. Lipinski acknowledged that on January 10, 2024, he completed two affidavits of complaint: one for the Defendant's failure to submit to a polygraph assessment and one for the Defendant's failure to undergo a psychosexual evaluation. Mr. Lipinski said that on January 2, 2024, before the arrest warrants were issued, he sanctioned the Defendant for a zero-tolerance violation of the Defendant's community supervision conditions, listing the violation as resulting from a new criminal arrest or conviction. Mr. Lipinski said he also sanctioned the Defendant on November 7, 2023.

On redirect examination, Mr. Lipinski testified that the Defendant was sanctioned because the Defendant indicated that he would not submit to a polygraph assessment or a psychosexual evaluation. Mr. Lipinski also reiterated that the risk and needs assessment was independent of the Defendant's obligation to abide by the community supervision special conditions.

Susan Siedentop, a TDOC correctional administrator and chairman of the Board, testified that the Board is legislatively mandated, with twelve members who oversee sex offender risk evaluation and treatment. Ms. Siedentop said that the Board also approved sex offender treatment providers. Ms. Siedentop said she was a licensed clinical social worker and was trained to conduct sex offender evaluations and treatment. Mr. Holland forwarded the email he received from Mr. Dominy to Ms. Siedentop, including the letters from Mr. Vann and Mr. Hultberg. Ms. Siedentop stated that the Board had never approved Mr. Hultberg to be a sexual offender treatment provider. Ms. Siedentop said that Mr. Vann, who was now deceased, had been a Board-approved provider in 2010. Ms. Siedentop reviewed the letter from Mr. Vann regarding the Defendant and concluded that the letter did not meet the requirements of a psychosexual evaluation. Ms. Siedentop stated that the letter merely explained Mr. Vann's concerns after meeting with the Defendant. Ms. Siedentop concluded that, based upon her review of the items she received from the Defendant's file, the Defendant had not satisfied the Board's condition to complete a psychosexual evaluation.

On cross-examination, Ms. Siedentop testified that she had chaired the Board since 2017 and that she never saw the Defendant's entire case file. Ms. Siedentop said that she received an email from Mr. Holland stating that the Defendant's sex offender treatment provider was not approved by the Board and that no record existed of what treatment the Defendant had received. Ms. Siedentop, in response to Mr. Holland's email, said that the Defendant needed a new psychosexual evaluation. Ms. Siedentop confirmed that she conducted a "quick" analysis of the material from Mr. Holland.

Ms. Siedentop testified that although the Department of Health's website indicated that Mr. Hultberg was approved to provide sex offender treatment, she did not have any records indicating that he had attended training or had been approved by the Board. Ms. Siedentop said that an additional concern with the correspondence from Mr. Hultberg was that he did not provide a mandated "comprehensive, completed relapse prevention plan" or provide records verifying the Defendant's attendance in group therapy sessions.

After argument, the trial court first addressed whether the Defendant had completed a psychosexual evaluation pursuant to TDOC directives. The court noted that both Mr. Dominy and Ms. Siedentop testified that the Defendant had not completed such an evaluation. The court considered that, regardless of whether Mr. Hultberg provided an evaluation of the Defendant, "there was not that final evaluation that was filed as . . .

required under [the Defendant's] community supervision for life." The court also credited Ms. Siedentop's testimony that Mr. Hultberg was not a Board-approved sex offender treatment provider, which the court found was different than having a license from the Department of Health.

Regarding the polygraph assessment, the trial court noted that the Defendant signed a form in 2019 acknowledging that he was required to submit to a polygraph assessment as one of his community supervision for life requirements. The court considered testimony indicating that the TDOC required a yearly polygraph assessment and that the Defendant had not completed a polygraph assessment since 2018. The court also considered whether the Defendant was subject to this violation prematurely because the Defendant was charged with failing to complete a polygraph assessment before the April 30, 2024 target date listed in the Strong-R case plan. The court credited Mr. Lipinski's testimony that the Defendant indicated that he "wasn't going to do it." The court noted that the Defendant filed a grievance with the Board protesting the polygraph assessment and that he indicated his refusal to comply with the polygraph requirement by refusing to sign the form acknowledging the Strong-R case plan target date.

The court found that the Defendant violated his community supervision for life conditions by failing to complete the psychosexual evaluation and the polygraph assessment. The court sentenced the Defendant to time served and ordered him to complete a psychosexual evaluation within thirty days and a polygraph assessment within ninety days.

On appeal, the Defendant contends that the evidence is insufficient to support a finding that he violated the terms of his community supervision for life. Regarding the polygraph assessment condition, the Defendant asserts that the arrest warrant was filed before the target date by which he was directed to take a polygraph test. Regarding the psychosexual evaluation condition, the Defendant asserts that he had already completed a psychosexual evaluation and sex offender treatment. The State counters that the evidence was sufficient to sustain the Defendant's convictions because the Defendant refused to submit to a polygraph assessment and failed to complete a psychosexual evaluation with a Board-approved provider.

In determining the sufficiency of the evidence, the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is "afforded the strongest legitimate view of the evidence and all reasonable inferences" from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not "reweigh or reevaluate the evidence," and questions regarding "the credibility of witnesses [and] the weight and value to be given the evidence . . . are

resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

"A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). "The standard of review 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)).

The Defendant was convicted of knowingly violating the conditions of his community supervision for life. Tennessee Code Annotated section 39-13-526 states in relevant part:

> (a) It is an offense for a person to knowingly violate a condition of community supervision imposed upon the person pursuant to § 39-13-524.
>
> (b)(1) If the conduct that is a violation of a condition of community supervision does not constitute a criminal offense, the violation is a Class A misdemeanor.
>
> . . . .

T.C.A. § 39-13-526 (2018). The version of Tennessee Code Annotated section 39-13-524 that is applicable to the Defendant's 2005 conviction provides that a person on community supervision for life is under the TDOC's jurisdiction, and it authorizes the TDOC to establish "individual" and "necessary" conditions to protect the public and rehabilitative efforts. It states as follows:

> (a) In addition to the punishment authorized by the specific statute prohibiting the conduct, any person who, on or after July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-522, or attempts to commit a violation of any such section, shall receive a sentence of community supervision for life.
>
> (b) The judgment of conviction for all persons to whom the provisions of subsection (a) apply shall include that such person is sentenced to community supervision for life.
>
> (c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon

such person by the court or upon such person's release from regular parole supervision, whichever first occurs.

(d)(1) A person on community supervision shall be under the jurisdiction, supervision and control of the board of probation and parole in the same manner as a person under parole supervision. The board is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from such person committing a new sex offense as well as promoting the rehabilitation of the person.

. . . .

Id. § 39-13-524 (Supp. 2002) (subsequently amended). To facilitate the community supervision for life program,

[d](2) [t]he board shall develop guidelines and standards for a system of programs for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the department of correction, placed on parole, or placed in community corrections. The programs developed shall be as flexible as possible, so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. The programs shall be structured in a manner that the programs provide a continuing monitoring process, as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system, and may include, but shall not be limited to, polygraph examinations by therapists and probation and parole officers, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. . . .

Id. § 39-13-704 (2018) (subsequently amended).

The record reflects that community supervision for life special condition 4 required offenders to "submit and pay for a polygraph assessment and evaluation as instructed by my Officer." On June 6, 2019, the Defendant signed a form acknowledging that condition. Mr. Lipinski testified that the Defendant was required to submit to a yearly polygraph assessment and that he informed the Defendant of this requirement. The Defendant's last polygraph assessment occurred in 2018. Mr. Lipinski testified that, on September 5, 2023, he advised the Defendant that the Defendant was not in compliance with special condition 4 and that he needed to submit to a polygraph assessment, but the Defendant "flat-out refused." On November 7, Mr. Lipinski sanctioned the Defendant for violating special condition 4. That violation was the basis for the affidavit of complaint and count one of the indictment. On December 14, Mr.

Lipinski provided the Defendant with a Strong-R case plan that set a target date of April 30, 2024, by which the Defendant should complete a polygraph assessment. However, the Defendant refused to agree to the case plan, even refusing to sign it. The January 10, 2024 affidavit of complaint alleged the Defendant's continuing refusal to abide by special condition 4, for which the Defendant had been sanctioned on November 7, 2023. The record reflects that the Defendant had a continuing duty to abide by special condition 4 and that he knowingly violated that condition as of November 7. Accordingly, the evidence is sufficient to support the conviction. The Defendant is not entitled to relief on this basis.

The record reflects that the Board established special conditions applicable to offenders placed on community supervision for life, which included completing a psychosexual evaluation with a Board-approved provider and that the Defendant was aware of that condition. Ms. Siedentop and Mr. Dominy testified that no record existed showing that the Defendant completed a psychosexual evaluation with a Board-approved provider or that any treatment plan resulted from such an evaluation. However, a portion of Mr. Dominy's email to Mr. Holland mentioned Mr. Vann's 2010 evaluation and a 2011 court order indicating that the Defendant had completed the required counseling and treatment. The trial court resolved this evidentiary issue by crediting the testimony of Ms. Siedentop and Mr. Dominy. Ms. Siedentop testified that Mr. Vann's letter did not meet the requirements of a psychosexual evaluation because it did not provide the necessary evaluative information or guidance for future treatment. Ms. Siedentop also testified that Mr. Hultberg was not approved by the Board to conduct sex offender treatment. Taking the evidence in the light most favorable to the State, the record reflects that it is sufficient to establish that the Defendant was aware he was required to submit to a psychosexual evaluation by a Board-approved provider before December 31, 2023, and that he did not comply. The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

s/ Robert H. Montgomery, Jr.
ROBERT H. MONTGOMERY, JR., JUDGE