

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON
November 5, 2025 Session

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JAMES R. HOLLEY

**Appeal by Permission from the Court of Criminal Appeals
Circuit Court for Henderson County
No. 23-241-2 Donald H. Allen, Judge**

No. W2024-00748-SC-R11-CD

In this appeal, we address whether the Court of Criminal Appeals erred in dismissing a criminal defendant's appeal because he did not include in the appellate record a transcript of his guilty plea hearing. Here, the defendant's plea agreement resolved all issues except the manner of service for the sentence. After a sentencing hearing, the trial court denied the defendant's request for probation. In the record for his appeal to the Court of Criminal Appeals on the denial of probation, the defendant included the transcript from the sentencing hearing but not the transcript from the guilty plea hearing. Citing the absence of the guilty plea transcript, the Court of Criminal Appeals concluded that the record was inadequate for appellate review of the trial court's sentencing decision. Without giving the parties notice and an opportunity to be heard, the appellate court then dismissed the defendant's appeal. We reverse. Under *State v. Caudle*, 388 S.W.3d 273, 278–79 (Tenn. 2012), trial court decisions on the manner of service for a sentence are reviewed under an abuse of discretion standard. When an appellate record does not include an item such as a guilty plea transcript, the appellate court is to determine on a case-by-case basis whether the record is sufficient for meaningful review, in light of this standard. *Id.* at 279. The determination on the adequacy of the record is made with the understanding that the trial court has broad discretion in sentencing and the key question on appeal is whether the trial court recited a proper basis for its sentencing decision. *Id.* Here, the appellate record is sufficient for meaningful appellate review even without the transcript of the guilty plea hearing. But where an appellate court believes a guilty plea transcript is essential to appellate review, it has many options that allow the parties to be heard and to facilitate review of the issues on their merits. Those options include presuming the missing transcript would have supported the trial court's decision, issuing a show-cause order and permitting written responses, ordering supplemental briefs, or ordering the parties to supplement the record. Here, dismissal of the appeal was not a reasonable option. We reverse the judgment of the Court of Criminal Appeals and remand the case to that court for further proceedings consistent with this Opinion.

Tenn. R. App. P. 11 Appeal by Permission; Judgment of the Court of Criminal Appeals Reversed; Case Remanded to the Court of Criminal Appeals

HOLLY KIRBY, J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, C.J., and SARAH K. CAMPBELL, DWIGHT E. TARWATER, and MARY L. WAGNER, JJ., joined.

Robert L. Sirianni, Jr., Winter Park, Florida (on appeal), and Samuel Hinson, Lexington, Tennessee (at trial), for the appellant, James R. Holley.

Jonathan Skrmetti, Attorney General and Reporter; J. Matthew Rice, Solicitor General; William C. Lundy, Assistant Attorney General; Jody Pickens, District Attorney General; and Eric Wood, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2023, James R. Holley (Defendant) was stopped for speeding in Henderson County, Tennessee. After the officer smelled marijuana, he searched the vehicle the Defendant was driving. In it, he found marijuana, glass pipes, a digital scale, and a handgun. The officer then arrested the Defendant.

The arrest led to an eight-count indictment by the Henderson County Grand Jury in September 2023. The Defendant pled guilty as charged in each count. Under the plea agreement, the Defendant agreed to the following sentence:

Count 1: Possession with intent to sell Marijuana (E felony), 4 years;

Count 2: Possession with intent to deliver Marijuana (E felony), 4 years;

Count 3: Possession of drug paraphernalia (A misdemeanor), 11 months, 29 days;

Count 4: Speeding (C misdemeanor), 30 days;

Count 5: Convicted felon (prior felony crime of violence conviction) in possession of a firearm (B felony), 9 years;

Count 6: Convicted felon (prior felony drug conviction) in possession of a firearm (C felony), 9 years;

Count 7: Convicted felon (prior felony drug conviction) in possession of a firearm (C felony), 9 years;

Count 8: Convicted felon (prior felony conviction) in possession of a firearm (C felony), 9 years Multiple Offender.

The two convictions for possessing marijuana were merged, as were the four convictions for possessing a firearm.¹

Each judgment reflects the Defendant's offender status for each felony as a multiple offender.² Each further states: "To serve 9 years (pursuant to Statute Count 5, 6, 7 and 8 are to be served at 85% Release Eligibility)." The written request for acceptance of guilty plea reflects the parties' agreement that the sentences will be served concurrently for "a total effective sentence of 9 years." It notes that the only aspect of the plea left for the trial court to decide was the manner of serving the agreed nine-year sentence.

On May 10, 2024, the trial court held a sentencing hearing to determine the manner of service for the sentence. At the hearing, the State introduced the Defendant's presentence report without objection.³

At the sentencing hearing, the Defendant asked the trial court for alternative sentencing in the form of probation. In support, he offered testimony from his girlfriend, who said the Defendant went to work every day and would be a good candidate for probation. Although she was not present when the Defendant was arrested, the girlfriend

¹ The prior felony convictions for counts 5, 6, 7, and 8 were all convictions in Georgia. One was for burglary, two were drug-related, and another was for forgery.

² Offender status is determined by a defendant's prior convictions. A "multiple offender" is one who has:

(1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; or

(2) One (1) Class A prior felony conviction if the defendant's conviction offense is a Class A or B felony.

Tenn. Code Ann. § 40-35-106(a) (2021).

³ Two reports were admitted because the first one was prepared before the Strong-R assessment was completed. The second report included the assessment.

told the trial court the gun found in the Defendant's car belonged to "Sandy," the only passenger in the car.⁴ She testified she would help the Defendant succeed on probation.

The Defendant gave an allocution in which he apologized to the trial court and asked for leniency. As a resident of Georgia, he assured the trial court that, if he were granted probation, he would stay out of trouble and "you'll never see me again." He also submitted character reference letters in support of his request for probation.

At the hearing, the trial court explained in detail the reasoning for its decision to deny the Defendant's request for probation. The trial court considered the entire record, including the statement of facts presented by the District Attorney. The trial court said it considered the evidence presented at the sentencing hearing, including the testimony presented by the Defendant, the letters submitted on the Defendant's behalf, and the Defendant's allocution, as well as the presentence report.

The trial court went through the enhancement factors it considered, as well as factors favoring the Defendant, and described the weight it gave to those factors. In the course of listing the factors, the trial court said:

I also find as an enhancement factor that the defendant actually possessed a firearm during the commission of a dangerous felony offense. Although he didn't plead guilty to that charge or he wasn't charged with that offense, it clearly appeared based upon the proof that he did possess this firearm while committing a dangerous felony which is the possession of marijuana with intent to sell and/or deliver which certainly would have been a consecutive sentencing had he been convicted of that or had he been charged with that, but apparently the State didn't charge him with that offense. But, it is a factor that I can consider. I do give moderate weight to that factor.

The trial court outlined other factors to which it gave more weight. It noted from the presentence report that the Defendant had five prior felony convictions in Georgia and eight prior misdemeanor convictions, and it gave "great weight" to those prior convictions. It also gave "great weight" to the fact that, "on at least six different occasions while [the Defendant] was on some type of probation out of the State of Georgia, . . . he went out and committed new offenses while on probation." The trial court emphasized that, despite having been told in connection with each of his five prior felony convictions that he could no longer possess a firearm, the Defendant nevertheless was found with a firearm in his possession while he also possessed drugs and drug paraphernalia with intent to sell and

⁴ At the hearing, defense counsel told the trial court he had explained to the Defendant that, even if the gun belonged to someone else, under the pertinent statutes, "it doesn't matter who the gun belongs to. It was in his vehicle. He's in possession of it. He knows that and recognizes that."

distribute. It observed that, some thirty-six years after attending a drug rehabilitation program in the 1980s, the Defendant was still possessing drugs and committing drug crimes. The trial court acknowledged that the Defendant pled guilty and accepted responsibility.

After reviewing these considerations in assessing the Defendant's request for probation, the trial court concluded that the Defendant was not a good candidate for alternative sentencing. It pronounced the sentences for each of the offenses to which the Defendant had pled, to be served concurrently "as per the plea agreement." And, "based upon [the Defendant's] long extensive criminal history," the trial court ordered the Defendant to serve a "total effective nine-year sentence in the Tennessee Department of Corrections."

The Defendant appealed the denial of probation to the Court of Criminal Appeals. He appealed on three grounds: (1) the trial court's alleged improper consideration of an uncharged crime; (2) the trial court's alleged improper consideration of uncertified judgments of conviction from another state; and (3) the trial court's alleged failure to properly consider the Defendant's addiction to drugs. *State v. Holley*, No. W2024-00748-CCA-R3-CD, 2025 WL 354709, at *3 (Tenn. Crim. App. Jan. 31, 2025), *perm. app. granted*, No. W2024-00748-SC-R11-CD, 2025 WL 1733669 (Tenn. June 20, 2025).

On appeal, the Court of Criminal Appeals recited the issues raised by the Defendant. *Id.* at *3. It observed that the terms of the plea agreement left a single issue for the trial court to decide: "whether a sentence of confinement or some form of alternative punishment was warranted." *Id.* It noted reasons why the Defendant would not be "presumed to be a favorable candidate for alternative sentencing." *Id.*

The appellate court then switched its review to other issues—namely, problems it perceived with the sentences for two of the firearm counts, as reflected in the uniform judgment documents in the record. *Id.* at *3–4. Admonishing the Defendant for not including the transcript of the Defendant's guilty plea hearing in the appellate record, the appellate court said that, absent that transcript, the record was insufficient to resolve the issues the court had raised. *Id.* at *4. Referring to one of the issues raised by the Defendant on appeal, the appellate court stated that, "although the Defendant now contests the facts of the crimes, the State would have set out the factual basis for the pleas at the plea hearing." *Id.* (citing Tenn. R. Crim. P.11(b)(3)).

The Court of Criminal Appeals then stated:

When the record does not include a transcript of the guilty plea hearing, this court should determine "on a case-by-case basis whether the record is sufficient for a meaningful review under the standard adopted in *Bise*." [*State*

v.] *Caudle*, 388 S.W.3d [273,] 279 (Tenn. 2012). Given our inability to determine the Defendant’s sentences and the lack of a factual basis for the pleas, we conclude that this appeal should be dismissed.

Id. The Court of Criminal Appeals found, “[T]he record is inadequate for us to conduct a proper appellate review of the trial court’s sentencing decision.” *Id.* at *3. On that basis, it dismissed the appeal. *Id.* at *5.

This Court then granted permission for the Defendant to appeal. In its grant order, the Court asked the parties to address the following issues:

(1) whether, as argued by the parties, the application of the statutory enhancement factors found in Tenn. Code Ann. § 40-35-114 is appropriate in determining manner of service of a sentence, and (2) whether the Court of Criminal Appeals’ sua sponte dismissal of the appeal is contrary to this Court’s decision in *State v. Bristol*, 654 S.W.3d 917 (Tenn. 2022).

State v. Holley, No. W2024-00748-SC-R11-CD, 2025 WL 1733669 (Tenn. June 20, 2025).

Additionally, both parties addressed in their briefs the issue of whether the appellate record, absent the transcript of the guilty plea hearing, was sufficient to review the trial court’s denial of probation to the Defendant.

ANALYSIS

We consider first the Court of Criminal Appeals’ dismissal of the Defendant’s appeal. We begin with a review of *State v. Caudle* on the standard of appellate review of the manner of service of a sentence and how that standard informs appellate courts’ approach to the appellate record. We then address the Court of Criminal Appeals’ decision to dismiss the Defendant’s appeal for failure to include the transcript of the guilty plea hearing in the appellate record, first based on the issue raised by the appellate court *sua sponte*, and then based on one of the issues raised by the Defendant.⁵

⁵ We have found no caselaw identifying the standard of review for appeal of an intermediate appellate court’s dismissal of an appeal for failure to include an item in the appellate record. However, our holding would be the same regardless of the standard of review, so we leave that question for another day.

Record on Appeal

It is well established that a party who chooses to appeal has a duty to prepare “a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” Tenn. R. App. P. 24(b).⁶ When the appellate record is deficient, the parties may seek permission to add to it or the appellate court may order the parties to supplement the record after the appeal is perfected. Tenn. R. App. P. 24(a), (e), (g).

In *State v. Bise*, this Court adopted the abuse of discretion standard, accompanied by a presumption of reasonableness, for appellate review of a trial court’s holding on the length of a criminal sentence. 380 S.W.3d 682, 707 (Tenn.2012). In *State v. Caudle*, this Court applied the standard of review in *Bise* to trial court decisions on the manner of service. 388 S.W.3d at 278-79. The Court held that “the abuse of discretion standard, accompanied by a presumption of reasonableness, applies to within-range sentences that reflect a decision based upon the purposes and principles of sentencing, including the questions related to probation or any other alternative sentence.” *Id.* “[A] trial court’s decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination.” *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014).

In general, a court abuses its discretion “when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.” *State v. McCaleb*, 582 S.W.3d 179, 186 (Tenn. 2019) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). In practice, application of the abuse of discretion standard to sentencing determinations focuses the inquiry on “whether the trial court recite[d] a proper basis” for its decision. *Caudle*, 388 S.W.3d at 279 (citing *Bise*, 380 S.W.3d at 705 n.41, 706).

In *Caudle*, as in this case, the defendant pled guilty, appealed the trial court’s denial of probation, and did not include a transcript of his guilty plea hearing in the appellate

⁶ Rule 26(b) of the Tennessee Rules of Appellate Procedure provides that, when a party who files a notice of appeal fails to file any transcript of the trial proceedings whatsoever, or a statement of the evidence, or a statement that no transcript will be filed under Tenn. R. App. P. 24(d), “the appellate court may dismiss the appeal on its own initiative” Tenn. R. App. P. 26(b). Rule 26 contemplates that, in these circumstances, parties will at least be given notice before dismissal. “In lieu of [dismissing the appeal] on its own initiative, the appellate court may order the filing of the transcript or statement.” *Id.* And the 2016 Advisory Commission Comments to Rule 26 add: “Prior to dismissing an appeal on the appellate court’s own initiative pursuant to Rule 26(b), the court usually will issue a show-cause order and permit the parties an opportunity to file written responses to the order.” *Id.*, Advisory Comm’n. cmts. (2016).

record. 388 S.W.3d at 276. As a result, *Caudle* also addressed how appellate courts should handle the omission of a guilty plea hearing transcript from the appellate record. *Id.* at 279. Rejecting a brightline rule, the Court instructed, “the Court of Criminal Appeals should determine on a case-by-case basis whether the record is sufficient for a meaningful review” of whether the trial court abused its discretion.⁷ *Id.* *Caudle* explained that the case-by-case approach is consonant with the standard of appellate review for the manner of service, noting that “the key to meaningful appellate review under the abuse of discretion standard is whether the trial court recites a proper basis for the sentence,” and that appellants are required under Tennessee Rule of Appellate Procedure 24(b) only to prepare a record “as necessary to convey the issues on appeal.” *Id.*

The Court then described how the case-by-case approach plays out in the context of an omitted guilty plea transcript. It acknowledged that, occasionally, supplementation of the record to add the guilty plea transcript “may be an appropriate remedy.” *Id.* But the Court added that supplementation would often not be necessary, because “the appellate court may review the merits of the sentencing decision with a presumption that the missing transcript would support the ruling of the trial court.” *Id.* (citation omitted).

Reviewing the record before it, the *Caudle* Court found “that the pre-sentence report, the transcript of the sentencing hearing, and the exhibits in the record [were] more than adequate to conduct a meaningful appellate review.” *Id.* Overall, *Caudle* cautioned: “[T]he mere fact that the transcript of the submission hearing was not made a part of the record on appeal should not preclude review under the standard adopted in *Bise*.” *Id.*

The teachings of *Caudle* on how appellate courts should approach an omission from the appellate record have been applied in numerous cases. In all of them, the appellate court considered the Defendant’s sentencing issue on the merits, notwithstanding the absence of a transcript of the guilty plea hearing. *See, e.g., State v. Robinson*, No. E2023-00391-CCA-R3-CD, 2024 WL 837945, at *5 (Tenn. Crim. App. Feb. 28, 2024) (relying on presentence report and transcript of sentencing hearing); *State v. Lewis*, W2024-01692-CCA-R3-CD, 2025 WL 2630728, at *4 (Tenn. Crim. App. Sept. 12, 2025) (“[W]e must presume that the missing guilty plea transcript supports the court’s determination regarding [the] mitigating factor [at issue].”); *State v. Deal*, E2024-01810-CCA-R3-CD, 2025 WL 2886464, at *1 (Tenn. Crim. App. Oct. 10, 2025) (finding record adequate based on presentence report and transcript of DCS proceeding); *State v. Shinpaugh*, No. E2025-00300-CCA-R3-CD, 2026 WL 294732, at *2 (Tenn. Crim. App. Feb. 4, 2026) (noting *Caudle* mentioned supplementing record instead of finding sentencing issue waived, but holding record adequate for appellate review without guilty plea transcript).

⁷ This approach was advocated by the concurring opinion below in the Court of Criminal Appeals. *State v. Caudle*, No. M2010-01172-CCA-R3-CD, 2011 WL 6152286, at *5 (Tenn. Crim. App. Dec. 8, 2011) (Bivins, J., concurring), *aff’d*, 388 S.W.3d 273 (Tenn. 2012).

In light of *Caudle*, we consider the Court of Criminal Appeals' dismissal of the Defendant's appeal, first based on the issue raised by the appellate court *sua sponte*, and then based on one of the issues raised on appeal.

Issue Raised Sua Sponte

Here, the Court of Criminal Appeals' analysis started off well enough. At the outset, it recited the issues raised by the Defendant on appeal; noted that the only issue for the trial court was the manner of service of the agreed nine-year sentence; cited the abuse of discretion standard of review; and pointed out that while the Defendant was eligible for alternative sentencing, he was "not presumed to be a favorable candidate" for it. *Holley*, 2025 WL 354709, at *3. From there, however, the Court of Criminal Appeals' analysis took a sharp left turn, and the Defendant's appeal quickly ended up in the ditch of dismissal.

The appellate court, *sua sponte*, raised an issue that had not been raised by either party. As to the nine-year, Range II, sentence for count five, the Court of Criminal Appeals noted that the crime of conviction for a convicted felon (felony of violence) in possession of a firearm is a class B felony with a Range I sentencing range of eight to twelve years and a Range II sentencing range of twelve to twenty years. (first citing Tenn. Code Ann. 40-35-112(a)(2); and then citing Tenn. Code Ann. 40-35-112(b)(2)). Because the Defendant's nine-year sentence fits within the scope of Range I, the intermediate appellate court concluded the Range II designation on the judgment was either "improper" or a "clerical error." *Id.* As to the nine-year, Range II, sentence in count eight, the Court of Criminal Appeals observed that the crime of conviction for being a convicted felon in possession of a firearm as reflected in that count is a class E felony with a Range II sentencing range of only two to four years. (citing Tenn.Code Ann. 40-35-112(b)(3), (5)). For that reason, it concluded that the nine-year, Range II, sentence indicated for count eight was "improper." *Id.*

After discussing the sentences for counts five and eight, the Court of Criminal Appeals noted that the Defendant had "the burden of preparing a fair, accurate, and complete account of what transpired in the trial court relative to the issues raised on appeal," including "the obligation to have a transcript of the evidence or proceedings prepared." *Id.* (first citing Tenn. R. Crim. App. P. 24(b); and then citing *State v. Bunch*, 646 S.W.2d 158, 160 (Tenn. 1983)). The appellate court then said:

Without the transcript of the guilty plea hearing, in which the parties would have disclosed terms of the plea agreement in open court . . . , we have no way to determine whether the Defendant received improper nine-year sentences as a Range II offender for the convictions in counts five and eight or whether the sentences on the judgments of conviction are clerical mistakes

that may be corrected by the trial court through the entry of corrected judgments pursuant to Tenn. R. Crim. P. 36.

Id. The appellate court cited the *Caudle* case-by-case approach for determining whether the record is sufficient for appellate review. *Id.* (citing *Caudle*, 388 S.W.3d at 279). But it then said: “Given our inability to determine the Defendant’s sentences and the lack of a factual basis for the pleas, we conclude that this appeal should be dismissed.” *Id.*

Here, the Defendant pled guilty to each crime as charged, and the trial court sentenced the Defendant by accepting the parties’ agreement that all sentences would be served concurrently for a total effective sentence of nine years at an 85% release eligibility. Neither party challenged the convictions, the range classifications, or the length of the total effective sentence. While the State pointed out the failure to include the transcript of the guilty plea hearing in connection with the probation issue raised by the Defendant, it did not ask the appellate court to dismiss the appeal. There was no oral argument, so no issues came up in that context. The parties had no way to know of the issues raised by the Court of Criminal Appeals before they received the opinion dismissing the Defendant’s appeal.

In *State v. Bristol*, this Court discussed the problems inherent with an appellate court ruling on issues not raised by the parties without giving them notice and an opportunity to be heard:

The requirement that an appellate court give parties notice and an opportunity to be heard is especially important when, as here, an appellate court undertakes to review an issue that was neither preserved below nor presented on appeal. Reviewing an unpreserved and unrepresented issue presents an especially strong risk of unfairness and prejudice, since the party who stands to lose on that issue would have no inkling that the issue was in play and therefore no reason to develop a record on the issue, research it, or address it in its briefs. . . . Affording the parties notice that the appellate court intends to address an issue and an opportunity to be heard on that matter helps mitigate those risks and protect the weighty interests that the party-presentation principle and preservation requirements are designed to foster.

What constitutes adequate notice and an opportunity to be heard may vary from case to case At a minimum, an appellate court must give the parties notice of the specific issue it intends to address and sufficient time to review the record, conduct research, and prepare an argument *before* the court rules on the issue. While we hesitate to say that “a court must always ask for further briefing when it disposes of a case on a basis not previously argued,” . . . [s]uffice it to say . . . that requiring a party to address an issue

for the first time in a petition for rehearing *after* the court has already ruled is inadequate.

654 S.W.3d 917, 927–28 (Tenn. 2022) (citation omitted). As *Bristol* emphasizes, appellants have no obligation to develop a record on an issue not raised by either party, and parties should be given an opportunity to be heard before the appellate court rules.

This case is distinguishable from *Bristol* in that it is even more problematic. While *Bristol* explains the problems with appellate courts ruling on an issue without giving the parties an opportunity to be heard, here, the Court of Criminal Appeals did not even rule on the issue it raised. It instead *dismissed the appeal*. The appellate court did not explain how dismissing the appeal addressed the questions it raised about the propriety of the sentences for counts five and eight.

To be sure, appellate courts have limited discretion to point out an issue with a sentence, even if neither party has raised it. But, having spotted the issue, if the appellate court believed the guilty plea transcript was essential to resolving it, there were any number of options available. Those options included issuing a show-cause order and permitting written responses, ordering supplemental briefs, or even ordering the parties to supplement the record as noted in *Caudle*. 388 S.W.3d at 279. But dismissal of the appeal was not a reasonable option.

To the extent that the Court of Criminal Appeals dismissed the Defendant’s appeal based on the issue the appellate court raised about the propriety of the sentences for counts five and eight, we must conclude that this was error. *See Bristol*, 654 S.W.3d at 927.

And here, assuming *arguendo* that the sentences for counts five and eight were problematic, that fact did not prevent the Court of Criminal Appeals from addressing the issue that *was* raised by the Defendant: whether the trial court erred in denying probation. The parties had agreed the Defendant would receive a total effective nine-year sentence with an 85% release eligibility. The Defendant’s convictions and nine-year sentences for possessing a firearm in counts five through eight merged. *See State v. Berry*, 503 S.W.3d 360, 362 (Tenn. 2015) (noting that merger is required for convictions for alternative theories of committing the same offense). The merger of convictions and sentences ensures the independent viability of each but views them, for purposes of constitutional double jeopardy, as a single conviction and sentence. *State v. Cooper*, 336 S.W.3d 522, 523–24 (Tenn. 2011). As such, in the event one of the merged convictions or sentences is later invalidated on appeal, any remaining merged conviction and sentence remains valid and operative. *See Berry*, 503 S.W.3d at 365; *State v. Howard*, 30 S.W.3d 271, 274 n.4 (Tenn. 2000).

Therefore, even assuming the sentences in counts five and eight are invalid, the Defendant would still be subject to a valid nine-year sentence, with a release eligibility of 85%, for the firearm possession conviction under the remaining valid merged counts—six and seven.⁸ The sentence discrepancies raised by the Court of Criminal Appeals did not prevent it from resolving the Defendant’s challenge to the denial of probation and then remanding for the trial court to address any remaining concerns with the sentences in counts five and eight. *See, e.g., State v. Buchanan*, No. M2023-01232-CCA-R3-CD, 2024 WL 3665715, at *5 (Tenn. Crim. App. Aug. 6, 2024), *perm. app. denied*, (Tenn. Feb. 20, 2025); *State v. Gilliam*, No. E2023-00533-CCA-R3-CD, 2024 WL 1829118, at *5 (Tenn. Crim. App. Apr. 26, 2024).

We next consider dismissal based on the issue raised by the Defendant.

Issue Raised on Appeal

As noted above, in dismissing the Defendant’s appeal, the Court of Criminal Appeals listed two reasons for the dismissal. The first was the discrepancies it noticed in the sentences for counts five and eight, which we have already discussed. The second appeared to relate to an issue raised by the Defendant: “Furthermore, although the Defendant now contests the facts of the crimes, the State would have set out the factual basis for the pleas at the plea hearing.” *Holley*, 2025 WL 354709, at *4 (citing Tenn. R. Crim. P. 11(b)(3)).

Though it was not fully explained, we assume this reason for dismissal relates to the Defendant’s contention that “the trial court improperly considered the uncharged crime of possessing a firearm during the commission of a dangerous felony as an enhancement factor because the facts showed that the firearm was in the trunk of the car and that the marijuana he possessed was for personal use.” *Id.* at *3. We gather that the Court of Criminal Appeals felt that the transcript of the guilty plea hearing, where “the State would have set out the factual basis for the pleas,” was necessary to meaningfully review this argument. *Id.* at *4 (citing Tenn. R. Crim. P. (11)(b)(3)).

At a guilty plea hearing, the trial court must “determine that there is a factual basis for the plea.” Tenn. R. Crim. P. 11(b)(3). This is normally accomplished through the prosecutor’s summary of the factual basis for offenses that are encompassed within the plea. *See, e.g., Frazier v. State*, 495 S.W.3d 246, 251 (Tenn. 2016). Here, at the sentencing hearing, in discussing the uncharged crime, the trial judge relied on the very same facts that formed the basis for the offenses encompassed within the Defendant’s plea. Under

⁸ Because of the prior conviction element in counts six (prior felony drug conviction), and seven (prior felony drug conviction), any length sentence for a conviction under each carries a statutory minimum release eligibility of 85%. Tenn. Code Ann. § 40-35-501(y) (2022).

these circumstances, it is not readily apparent why the Court of Criminal Appeals considered the guilty plea transcript necessary to consider the Defendant's argument on the uncharged crime, given the crimes to which the Defendant did plead. And the appellate court did not explain.

The appellate record in this case includes the transcript from the sentencing hearing, the presentence report, the uniform judgments of conviction, and the request for acceptance of guilty plea form.⁹ The presentence report contains a statement of facts¹⁰ and also includes the Defendant's history of criminal convictions.¹¹ And the transcript from the sentencing hearing reflects that the trial court recalled and considered the prosecutor's statement of facts at the guilty plea hearing.

When a defendant challenges the denial of alternative sentencing, the initial question presented to the appellate court is whether the record contains enough information to determine whether trial court's decision was based on the principles and purposes of our sentencing laws. *Caudle*, 388 S.W.3d at 279. "[T]here are no 'magic words' that trial judges must pronounce on the record, [but] it is . . . critical that, in their process of imposing sentence, trial judges articulate fully and coherently the various aspects of their decision as required by our statutes and case law." *State v. Trent*, 533 S.W.3d 282, 289-92 (Tenn. 2017) (setting out numerous statutory provisions that bear on sentencing).

Here, the transcript of the sentencing hearing is robust. It includes the trial court's detailed explanation of its findings on multiple factors and how it considered each. The

⁹ Here, the indictments and judgments of conviction establish that the Defendant pled guilty under count one to possession of marijuana with intent to sell. *See* Tenn. Code Ann. § 39-17-1324(i)(1)(AA) (2021) (defining "dangerous felony" as a "felony involving . . . possession with intent to sell . . . a controlled substance"). The Defendant pled guilty to four counts of possessing a firearm, and the transcript of the sentencing hearing includes a concession by the Defendant's attorney that, under the pertinent statutes, no matter who owned the gun the officer found, if it was in the Defendant's vehicle, he is deemed to be in possession of it. The record contains no evidence on the location of the firearm, other than that it was generally "in Mr. Holley's vehicle." Defense counsel acknowledged in the sentencing hearing that, under the pertinent statutes, "it doesn't matter who the gun belongs to. It was in his vehicle. He's in possession of it."

¹⁰ Our Court of Criminal Appeals has often relied on the facts as set forth in the presentence report. *See, e.g., State v. Harth*, No. M2024-01319-CCA-R3-CD, 2025 WL 1219194, at *1 (Tenn. Crim. App. Apr. 28, 2025) (considering the sentencing issue in the absence of the transcript from the guilty plea proceeding based on the facts stated in the presentence report); *State v. Ryan*, No. M2023-01251-CCA-R3-CD, 2024 WL 3508800, at *1 (Tenn. Crim. App. July 23, 2024) (gleaning facts from the presentence report in the absence of the transcript from the guilty plea to review the appeal of a sentence of incarceration).

¹¹ *See Caudle*, 388 S.W.3d at 280 (defendant's criminal history documented in the presentence report); *State v. Samuels*, 44 S.W.3d 489, 494 (Tenn. 2001) (noting the prior convictions reflected in the presentence report); *State v. Winfield*, 23 S.W.3d 279, 284 (Tenn. 2000) (reviewing the criminal convictions reflected in the presentence report).

trial court's findings span multiple pages; they were thorough and specific. The trial court said it considered the nature and circumstances of the offenses of conviction, evidence from the guilty plea and sentencing hearings, the presentence report, the Strong-R assessment, the evidence supporting enhancing and mitigating factors, "statistical information provided by the Administrative Office of the Court as to sentencing practices for these types of offenses," the Defendant's allocution at the sentencing hearing, the Defendant's potential for rehabilitation and treatment, and "the principles of sentencing and the arguments that have been made by counsel as to sentencing alternatives." It described the weight it gave to each factor, and it said specifically that it gave less weight to the uncharged crime than it gave other factors such as the Defendant's prior convictions. Ultimately, the trial court said its decision to deny probation was based primarily on the Defendant's "long extensive criminal history."

At oral argument, in answering questions from this Court, counsel for the Defendant said the transcript of the guilty plea hearing would not have been helpful to the Court of Criminal Appeals' analysis of the issues he raised. When pressed, the State agreed that the transcript was not essential to resolve the issues raised by the Defendant below. We agree as well. It is possible that, in some cases, the transcript of the guilty plea hearing may be essential for meaningful review of the issues raised by the parties. Here, it is not. The appellate record is sufficient to determine whether the trial court's ultimate decision, including its consideration of uncharged criminal conduct, comports with the purposes and principles of sentencing.¹² See *Caudle*, 388 S.W.3d at 278–79; *Sihapanya*, 516 S.W.3d at 476; cf. *Trent*, 533 S.W.2d at 295.

But assuming *arguendo* that the transcript of the guilty plea hearing *was* necessary, as with the perceived problems with the sentences for counts five and eight, the Court of Criminal Appeals had any number of options available to it short of dismissing the appeal.¹³

¹² Even if the trial court wrongfully considered the uncharged criminal conduct, the Defendant would have to show why this error invalidated the overall decision on the manner of service of the sentence. See *Bise*, 380 S.W.3d at 706 (holding that "a trial court's misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed" from the sentencing statutes); *Sihapanya*, 516 S.W.3d at 476 (same as to the decision to deny probation).

¹³ The Court of Criminal Appeals did not fully explain its reasoning for choosing to dismiss the Defendant's appeal, but its opinion chided the Defendant for failing to include the guilty plea transcript in the appellate record. *Holley*, 2025 WL 354709, at *4 ("[T]he State pointed out in its brief that the transcript was absent. The Defendant . . . chose to let the record remain incomplete. . . . The Defendant has the burden of preparing a fair, accurate, and complete account of what transpired in the trial court relative to the issues raised on appeal." (first citing Tenn. R. App. P. 24(b); and then citing *Bunch*, 646 S.W.2d at 160)). This could inadvertently lead to a misimpression that the dismissal was a sanction for failing to include the transcript of the guilty plea hearing.

We are mindful that Rule 1 of the Tennessee Rules of Appellate Procedure states: "These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding on its

Perhaps the simplest is pointed out in *Caudle*: presuming that the missing guilty plea hearing transcript supports the trial court’s ruling. 388 S.W.3d at 279. This has been done on numerous occasions. *See, e.g., State v. Thompson*, 131 S.W.3d 923, 927 (Tenn. Crim. App. 2003); *State v. Keen*, 996 S.W.2d 842, 844–45 (Tenn. Crim. App. 1999). Other options include issuing a show-cause order and permitting written responses; ordering supplemental briefs; or ordering the parties to supplement the record, as also pointed out in *Caudle*. 388 S.W.3d at 279. All of these would have given the parties notice and an opportunity to be heard on the state of the appellate record and would have facilitated review of the issues on their merits.

Neither party has cited a case in which failure to include a guilty plea transcript resulted in dismissal of the appeal, and we have found none.¹⁴ In its review of potential remedies for failure to include a guilty plea transcript, *Caudle* does not mention dismissal.

Furthermore, even if the guilty plea transcript were essential for review of the issue mentioned by the Court of Criminal Appeals—the trial court’s reliance on an uncharged offense—the Defendant here raised other issues as well. *Holley*, 2025 WL 354709, at *3 (noting that the Defendant “also contends that the trial court improperly considered uncertified out-of-state judgments of conviction and failed to consider his drug addiction”). The Court of Criminal Appeals did not say anything about why it dismissed the entire appeal without considering those other issues on their merits.

For all of these reasons, the Court of Criminal Appeals’ dismissal of the Defendant’s appeal was not a reasonable option. We hold that it was reversible error.

The State asks this Court, in the event we reverse the dismissal of the appeal and in the interest of judicial economy, to resolve the Defendant’s appeal on the merits by reviewing the existing record with a presumption that the missing transcript supports the trial court’s denial of probation, and then remand to the trial court to correct the judgments in counts five and eight. On balance, we believe that the better course is to remand the case to the Court of Criminal Appeals to adjudicate the issues raised in the Defendant’s

merits.” Tenn. R. App. P. 1. “[T]he overall intent of the [appellate] rules is to allow cases to be resolved on their merits.” *Johnson v. Hardin*, 926 S.W.2d 236, 238 (Tenn. 1996). And the rules “provide courts with wide discretion and substantial flexibility” to accomplish this objective. *Id.* (citation omitted).

¹⁴ An appellant’s omission of the guilty plea transcript from the appellate record differs, of course, from the situation addressed by Rule 26(b) of the Tennessee Rules of Appellate Procedure, where a party files a notice of appeal but fails to file any transcript of the trial proceedings *whatsoever*, or a statement of the evidence, or a statement that no transcript will be filed under Tenn. R. App. P. 24(d). Tenn. R. App. P. 26(b). *See* note 6, *supra*.

brief to the intermediate appellate court.¹⁵ After doing so, the Court of Criminal Appeals may, in its discretion, remand the case to the trial court to address the sentences and judgments in counts five and eight.

CONCLUSION

For the reasons set forth above, we reverse the decision of the Court of Criminal Appeals and remand to that court for further proceedings consistent with this Opinion.

S/HOLLY KIRBY, JUSTICE
HOLLY KIRBY, JUSTICE

¹⁵ In addition to the issue raised by the Defendant, we asked the parties to brief whether application of the statutory enhancement factors found in Tennessee Code Annotated section 40-35-114 (2023) is appropriate in determining manner of service of a sentence. Among other arguments, the State points out that for determining the appropriate alternative sentence, section 40-35-210(b)(5) (2022) requires the sentencing court consider “[e]vidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 (2022) and 40-35-114 (2023).” Rather than address our specific question, the Defendant argues that no enhancement factors apply in this case. Our resolution of this appeal makes it unnecessary for us to address this issue. This does not preclude the Court of Criminal Appeals from addressing the issue on remand.