

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
July 9, 2026 Session

FILED

10/02/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JARED PAYTON

Appeal from the Circuit Court for Henry County
No. 16194 Bruce Irwin Griffey, Judge

No. W2025-01051-CCA-R3-CD

Jared Payton, Defendant, was serving a sixteen-year sentence on supervised probation when he appeared before the trial court on his second probation revocation hearing. The probation warrant alleged a “Graduated Zero Tolerance Violation,” specifically that Defendant failed to consistently comply with his sex offender treatment program. After a hearing, the trial court fully revoked Defendant’s probation. Defendant appeals, arguing (1) his Confrontation Clause rights were violated when the trial relied on an out-of-court statement without making the proper findings, (2) the trial court abused its discretion and acted arbitrarily in revoking Defendant’s probation in full, and (3) his original sixteen-year probationary sentence was illegal and should be remedied pursuant to Tennessee Rule of Criminal Procedure 36.1. After review, the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and MATTHEW J. WILSON, J., joined.

Mitchell A. Raines, Assistant Public Defender, Tennessee District Public Defenders Conference (on appeal) and Kaylee Houston, Camden, Tennessee (at revocation hearing), for the appellant, Jared Payton.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Joshua R. Gilbert, pro hac vice;¹ J. Neil Thompson, District Attorney General; and Marcus Murdaugh, Assistant District Attorney General, for the appellee, State of Tennessee.

¹ Mr. Gilbert, a member of the California Bar, was authorized to practice in Tennessee pursuant to Tennessee Supreme Court Rule 7, section 10.07, pending his admission to the Tennessee Bar.

OPINION

On November 4, 2019, Defendant was indicted by a Henry County grand jury on eleven counts, including eight counts of rape.² Pursuant to a plea agreement, Defendant pled guilty to Counts 3 and 4, which were amended to statutory rape by an authority figure. *See* T.C.A. § 39-13-532. The remaining counts were nolle. Defendant was sentenced to an effective sentence of sixteen years to be served on supervised probation. Defendant was also required to register as a violent sex offender.

Defendant failed a drug screen on January 27, 2022, testing positive for methamphetamine, amphetamine, and marijuana. The screen was confirmed by lab results. A violation of probation warrant was filed on February 22, 2022, alleging that Defendant violated the terms of his probation by testing positive for methamphetamine, amphetamine, and marijuana in violation of “Rule #8,” which prohibited the use of intoxicants. The trial court entered a revocation order which partially revoked probation and ordered Defendant to serve six months in confinement.

On March 27, 2025, Defendant was discharged from his sex offender treatment program after missing three classes—February 26, March 12, and March 26, 2025—at the Association for Sexual Abuse Prevention (“ASAP”) within a thirty-day period. An arrest warrant was subsequently filed on March 31, 2025. The warrant alleged Defendant violated the terms of his probation when he was dismissed from the treatment program in violation of “Rule 12,” which required compliance with the “Specialized Probation Conditions for Sex Offenders.” The probation violation report and the corresponding affidavit described Defendant’s discharge from the program as a “Graduated Zero Tolerance Violation.”

The trial court held a hearing on the alleged violation on June 18, 2025. Mr. John Tracy, the ASAP treatment provider, was unavailable to testify because appearing in person would have required him to close his clinic for that day. In Mr. Tracy’s absence, Defendant presented a letter, which he described as being from Mr. Tracy, allegedly stating that Defendant would be eligible to resume classes at ASAP after “any sanction period” was complete.³

² Both parties’ briefs stated that Defendant’s original charges included rape of a child. This was corrected by counsel at oral argument, and the record reflects Defendant’s original charges included rape pursuant to Tennessee Code Annotated section 39-13-503(a)(1).

³ Mr. Tracy’s letter was not available as a part of the record. We rely on the letter’s description in the probation revocation hearing transcript only to accurately reflect Defendant’s argument during the proceeding. We do find it a bit self-contradictory that Defendant complains of the State’s use of Mr.

The State called Jason Gamlin, Defendant's probation officer, as its sole witness. Mr. Gamlin testified that he supervised Defendant's probation, except for a four-month period when Defendant transferred to Middle Tennessee. Mr. Gamlin confirmed that Defendant's probation was previously partially revoked due to a positive drug screening. Defendant also admitted to Mr. Gamlin that he was dismissed from the treatment program.

On cross-examination, Mr. Gamlin confirmed that Defendant's sex offender treatment program was "about an hour or so" from Clarksville, where Defendant resided. Defendant was required to attend classes once a week as a part of the program. Mr. Gamlin saw Mr. Tracy's letter indicating that Defendant could reenter the ASAP program after this violation was resolved. Mr. Gamlin also confirmed that Defendant's history of noncompliance included (1) a positive drug screening for methamphetamine, amphetamine, and marijuana in 2022, resulting in a partial revocation, (2) a positive drug screening for marijuana, and (3) dismissal from the ASAP program. Defendant remained in compliance with other probation requirements, such as obtaining employment and stable housing. Mr. Gamlin recalled having a conversation with Defendant about the missed classes. Defendant admitted to missing several classes: once, because of a "traffic jam" and another because he arrived late and the door was locked.

Mr. Gamlin confirmed, on the trial court's request, that Defendant pled guilty to Counts 3 and 4, that those counts were amended to statutory rape by an authority figure, and that he received two consecutive eight-year sentences. The trial court then had Mr. Gamlin recount Defendant's supervision history once again, and Mr. Gamlin's response was consistent with his earlier testimony in the hearing.

The State asked for Defendant's probation to be revoked in full because Defendant's dismissal from the ASAP program demonstrated he was "not taking [probation] seriously," and expressed doubts that Defendant would "be able to comply by the rules set forth" by the court. Defendant admitted to being dismissed from the ASAP program and asked the trial court to consider an alternative sentence to incarceration based on Defendant's stable housing and employment and Mr. Tracey's willingness to allow Defendant to continue in the ASAP program. Defendant also noted he was one of the only Clarksville probationers attending treatment in person.

Tracy's March 27, 2025 "Termination Note" as evidence against him but is nonetheless satisfied to refer to Mr. Tracy's letter in support of his eligibility to reenroll at ASAP.

The trial court determined that Defendant was before the court on his “third violation.”⁴ The trial court found Defendant failed to make a “good-faith effort to comply with” the conditions of probation, based upon his supervision history and the underlying offense and sentence length, and the court fully revoked Defendant’s probation. After the hearing, the trial court filed a revocation order requiring Defendant to serve his original sentence in full. It is from this order that Defendant appeals.

Violation of the Right to Confrontation

Defendant contends that the trial court erred in relying on the out-of-court statement from the absent Mr. Tracy without making the proper findings of “good cause” for Mr. Tracy’s absence and the reliability of the statement. Defendant argues his rights under the Confrontation Clause were violated. Defendant acknowledges he failed to object at the hearing and asks this Court to review for plain error. The State asserts that Defendant cannot establish the plain error factors. We agree with the State.

Plain error relief is “limited to errors that had an unfair prejudicial impact which undermined the fundamental fairness of the trial.” *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994). In order to be granted relief under plain error, five criteria must be met: “(1) the record must clearly establish what occurred in the trial court; (2) a clear and unequivocal rule of law must have been breached; (3) a substantial right of the accused must have been adversely affected; (4) the accused did not waive the issue for tactical reasons; and (5) consideration of the error is ‘necessary to do substantial justice.’” *Id.* at 639-42; *see also State v. Smith*, 24 S.W.3d 274, 282-83 (Tenn. 2000) (Tennessee Supreme Court formally adopting the *Adkisson* standard for plain error relief). The defendant bears the burden of persuasion to show that he is entitled to plain error relief. *State v. Bledsoe*, 226 S.W.3d 349, 355 (Tenn. 2007). When it is clear from the record that at least one of the factors cannot be established, this Court need not consider the remaining factors. *Smith*, 24 S.W.3d at 283.

To be clear, Mr. Tracy’s “Termination Note”, although in the record, was never admitted into evidence during Defendant’s probation revocation hearing. We therefore conclude that Defendant is not entitled to relief because consideration of the error is not necessary to do substantial justice. A defendant’s burden to establish that correction of an error is necessary to achieve substantial justice is high. *See, e.g., Adkisson*, 899

⁴ As this Court explained in *State v. Seymour*, No. M2025-00913-CCA-R3-CD, 2026 WL 2211309 (Tenn. Crim. App. July 31, 2026), *no perm. app. yet filed*, an internal sanction is not a “violation” as described in the statute. The trial court clarified that what it refers to as a “first violation” was actually Defendant’s internal sanction by TDOC. Defendant’s hearing was based on his dismissal from the sex offender treatment program, a non-technical violation, so the trial court was nevertheless permitted per statute to fully revoke. *See* T.C.A. § 40-35-311(e)(2).

S.W.2d at 642 (the error must be “of such a great magnitude that it probably changed the outcome of the trial.”); *State v. Vance*, 596 S.W.3d 229, 256 (Tenn. 2020) (in determining the “substantial justice” factor of plain error review, a defendant must show, but for the error, a “significant probability that the jury would have acquitted the Defendant[.]”); *State v. Pewitte*, No. W2024-01128-CCA-R3-CD, 2025 WL 3510902, at *9 (Tenn. Crim. App. Dec. 8, 2025), *perm. app. denied* (May 21, 2026) (noting that “substantial justice is implicated only when the record suggests a genuine risk that the jury’s verdict rested on different incidents[.]”). Whether the correction of the error is necessary to achieve substantial justice is fact dependent, and “[w]here the evidence of guilt is clear or overwhelming, the error—even if proven—is unlikely to warrant relief.” *Pewitte*, 2025 WL 3510902, at *9.

Defendant cites *State v. Sullivan* as evidence that his Confrontation Clause rights were violated and asks this Court to rule similarly. In *Sullivan*, this Court determined the trial court erred when it admitted testimonial hearsay in the form of a probation report without making the proper findings of “good cause” and reliability. *State v. Sullivan*, No. W2025-00708-CCA-R3-CD, 2026 WL 456712, at *7 (Tenn. Crim. App. Feb. 18, 2026), *no perm. app. filed*. As a result, the probation revocation was reversed. *Id.* at *8. There are, however, two pivotal distinctions between Defendant’s case and *Sullivan*. First, *Sullivan* made a contemporaneous objection to the admission of his probation report, and this Court examined his argument under plenary review. *Id.* at *3. Second, the report in *Sullivan* was the *only* evidence which supported the allegations that the defendant violated his probation. *Id.* at *8. (“Thus, we are faced with insufficient proof because the record contains no substantial evidence of any of the alleged violations.”).

Here, Mr. Tracy’s “Termination Note” was not admitted into evidence. Defendant also admitted to Mr. Gamlin himself that he missed ASAP classes and was ultimately dismissed from the program, meaning the note’s contents were not the *only* evidence available for the trial court’s consideration. The factual foundation of Mr. Gamlin’s testimony was, at least in part, based upon Defendant’s own admissions to Mr. Gamlin—that he missed multiple classes and was dismissed by Mr. Tracy from the ASAP program. Therefore, the outcome of Defendant’s revocation hearing was not determined by the admission or exclusion of Mr. Tracy’s “Termination Note.” *Cf. State v. Vance*, 596 S.W.3d at 256 (“[A] conclusion that substantial justice requires relief would imply a significant probability that the jury would have acquitted the Defendant had the disputed testimony not been admitted.”).

Because there is at least one element of plain error relief that cannot be satisfied, Defendant is not entitled to relief on this issue.

Full Revocation

Defendant argues that the trial court abused its discretion in fully revoking his probation because it failed to consider that Mr. Payton's violation was not willful and would not serve the ends of justice. The State disagrees. We agree with the State.

We review probation revocation decisions under an abuse of discretion standard with a presumption of reasonableness "so long as the trial court places sufficient findings and the reasons for its decisions as to the revocation and the consequence on the record." *State v. Dagnan*, 641 S.W.3d 751, 759 (Tenn. 2022). Thus, when a trial court articulates sufficient findings on the record to allow "a meaningful review[,] its decision is presumed reasonable and, absent an abuse of discretion, will be upheld. *Id.* "A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010); *see Dagnan*, 641 S.W.3d at 758.

When a "probationer commits a non-technical violation, a trial court's authority to impose a consequence for that violation is broad." *State v. Rand*, 696 S.W.3d 98, 103 (Tenn. Crim. App. 2024). The trial court may (1) order confinement for some period of time; (2) cause execution of the sentence as it was originally entered; (3) extend the defendant's probationary period not exceeding one year; (4) return the defendant to probation on appropriate modified conditions; or (5) resentence the defendant for the remainder of the unexpired term to a sentence of probation. *See* T.C.A. §§ 40-35-308(c); -310; -311(e)(2).

To determine the appropriate consequence for a violation, the trial court examines whether the beneficial aspects of probation are being served and whether the defendant is amenable to continued probation. *See id.* The trial court may consider several factors, including the number of previous revocations, the seriousness of the violation, the defendant's criminal history, the defendant's character, and the defendant's amenability to correction. *See Dagnan*, 641 S.W.3d at 759 n.5. "Factors important to a defendant's amenability to correction may include the defendant's acceptance of responsibility and genuine remorse, as well as whether the defendant will comply with orders from the court meant to ensure his or her effective rehabilitation." *Rand*, 696 S.W.3d at 106 (citing T.C.A. § 40-35-102(3)(C) and *State v. Owens*, No. E2021-00814-CCA-R3-CD, 2022 WL 2387763, at *5 (Tenn. Crim. App. July 1, 2022), *no perm. app. filed*).

Here, the trial court satisfied the first step of *Dagnan* when it ruled that Defendant violated the terms of his probation by being dismissed from the ASAP program. In determining a full revocation was appropriate, the court examined Defendant's history of supervision and noted that the dismissal from the sex offender treatment program was Defendant's "third violation." The trial court further considered that Defendant

previously received a six-month partial revocation for a positive drug screening. The trial court also stated that, given the length of Defendant's suspended sentence, Defendant's dismissal from his treatment program demonstrated that he "failed to make a good faith effort" in complying with *all* the terms of his probation. This explanation sufficiently satisfied *Dagnan*'s second step.

Defendant opines that the trial court "collapsed" the *Dagnan* analysis into a "moral judgment" of Defendant's underlying conviction when it noted that any consequence less than a full revocation would "undermine the seriousness of the offense [Defendant] committed." We disagree. As previously stated, the trial court is permitted to consider a defendant's criminal history during a revocation hearing. The Public Safety Act additionally authorizes trial courts to evaluate whether a probationer can "remain *compliant* and crime-free in the community" when determining the proper consequence. T.C.A. § 40-28-302(2) (emphasis added). Put another way, the consequence determination in a revocation hearing "is not merely focused on the probationer's rehabilitative needs alone." *State v. Banning*, No. E2022-00188-CCA-R3-CD, 2022 WL 10225186, at *5 (Tenn. Crim. App. Oct. 18, 2022), *no perm. app. filed*. "[A]n accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing." *State v. Shelton*, No. E2022-00875-CCA-R3-CD, 2023 WL 2261081, at *3 (Tenn. Crim. App. Feb. 28, 2023), *perm. app. denied* (Tenn. June 29, 2023) (citation modified).

Defendant pled guilty to two counts of statutory rape by an authority figure. One of the consequences imposed on Defendant as a part of his probation included attending a treatment program for sex offenders. The trial court properly considered Defendant's criminal history as a sex offender and the nature of the violation, which was that Defendant started the treatment at ASAP on February 5, 2025, and was dismissed on March 27, 2025, after missing three classes within a thirty-day period. Moreover, as aforementioned, the trial court also weighed Defendant's prior partial revocation and supervision history in its decision.

We determine that the trial court did not abuse its discretion by revoking Defendant's probation in full. Defendant is not entitled to relief on this issue.

Illegality of Sentence

Defendant lastly argues that his original sixteen-year sentence on supervised probation was illegal because, at the time of Defendant's guilty pleas, statutory rape by an authority figure required a sentence of incarceration. The State contends that Defendant waived this argument by failing to file a motion for correction of an illegal

sentence in the trial court and alternatively, states that any illegality in the sentence is cured by Defendant's revocation. Defendant in his reply brief argues he should succeed under plain error review. We agree with the State that Defendant's argument is waived.

We first consider whether Defendant has waived his claim to challenge the legality of his sentence. As a general rule, "[i]ssues raised for the first time on appeal are considered waived." *State v. Johnson*, 970 S.W.2d 500, 508 (Tenn. Crim. App. 1996). The State is correct that Defendant did not challenge the legality of his original sixteen-year probationary sentence prior to or at the revocation hearing. In fact, Defendant first argues that his original probationary sentence is illegal on appeal. Consequently, Defendant has waived this argument under plenary review. *See State v. Bristol*, 654, S.W.3d 917, 923 (Tenn. 2022) ("[A]n appellate court's authority generally will extend only to those issues presented for review.") (quoting Tenn. R. App. P. 13(b)). Defendant moreover does not ask this Court for plain error review until his reply brief. *See State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024) ("To be clear, a party seeking plain error relief must generally raise and argue the issue in the party's briefing, just as the party would do with all other issues in the ordinary course of an appeal."); *accord State v. Harbinson*, 539, S.W.3d 149, 165 (Tenn. 2018) ("An appellate court may decline to consider issues that a party failed to raise properly.").

Finally, "an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute." Tenn. R. Crim. P. 36.1(a)(2). There is no question here that Defendant was statutorily ineligible for probation. Defendant pled guilty to Counts 3 and 4, which were amended from rape to statutory rape by an authority figure. *See* T.C.A. § 39-13-532. Offenders who are found to violate this statute *must* serve their sentence in confinement. *Id.* § -532(3)(c) ("No person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to §40-35-303 . . .").

Pursuant to Tennessee Rule of Criminal Procedure 36.1, a defendant may file a motion to correct an illegal sentence *at any time before the sentence expires*. Tenn. R. Crim. P. 36.1(a)(1). But it is only after a trial court's ruling on a defendant's motion to correct an illegal sentence that he may appeal as of right. *See id.* § (f). Should Defendant desire resentencing, he must first petition the trial court to do so. *See id.* Advisory Comm'n Cmts. (2013) ("With the adoption of this rule, Tenn. R. App. P. 3 also was amended to provide for an appeal as of right *from the trial court's ruling on a motion* filed under Rule 36.1. to correct an illegal sentence.") (emphasis added); *see generally State v. Brown*, 479 S.W.3d 200 (Tenn. 2015); *cf. State v. Stack*, 682 S.W.3d 866, 874 (Tenn. Crim. App. 2023) ("Accepting the conditions of probation and failing to challenge the conditions at the time of imposition is fatal to a request for relief after probation revocation proceedings have commenced."). Defendant is not entitled to relief here.

CONCLUSION

For the aforementioned reasons, we affirm the judgment of the trial court.

S/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE