

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSONSeptember 1, 2026 Session Heard at Memphis¹**STATE OF TENNESSEE v. ANTHONY HOGUE****Appeal from the Circuit Court for Gibson County****No. 20580 Clayburn Peeples, Judge**

No. W2025-01093-CCA-R3-CD

The Defendant, Anthony Hogue, pled guilty in the Gibson County Circuit Court to two counts of rape. The trial court imposed consecutive ten-year sentences and suspended them to supervised probation. After the Defendant was discharged from sex-offender treatment, the trial court found that he violated the conditions of his probation and fully revoked his suspended sentences. On appeal, the Defendant raises three issues: (1) whether the evidence was sufficient to establish that he violated the conditions of his probation; (2) whether the admission of the probation officer's testimony about the reasons for his discharge from treatment violated his due process right to confront adverse witnesses; and (3) whether his original effective sentence of twenty years of supervised probation was illegal. Upon our review, we respectfully affirm the judgments of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which TIMOTHY L. EASTER and J. ROSS DYER, JJ., joined.

Joshua V. Lehde, Assistant Public Defender – Appellate Division, Tennessee District Public Defenders Conference (on appeal); Rachele Scott Gibson, District Public Defender; and Jason C. Scott, Assistant District Public Defender (at hearing), for the appellant, Anthony Hogue.

¹ Oral argument in this case was heard at the Cecil C. Humphreys School of Law at the University of Memphis. We express our gratitude to the University and our court staff for their efforts in bringing this project to fruition. We also appreciate the attorneys and students who attended and participated in the session.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Frederick H. Agee, District Attorney General; and Nina W. Seiler, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

In January 2024, the Defendant pled guilty to two counts of rape. The trial court sentenced him to ten years of confinement for each count, to be served consecutively. The court suspended each sentence and placed the Defendant on probation for twenty years.

Because of his sexual-offense conviction and sex-offender registration, the Defendant was required to undergo a psychosexual evaluation. Based on the results of that evaluation, he was placed in a sex-offender treatment class in Jackson, Tennessee. The treatment provider, Alicia Perry, administered the class, which met once a week.

In May 2025, the treatment provider discharged the Defendant from the program. After the Defendant's discharge, the trial court issued a probation violation warrant for his arrest. The warrant alleged that the Defendant violated two rules or conditions of his suspended sentences. First, it alleged that he violated Rule 12, which required him to abide by the specialized conditions for sex offenders. This allegation was based on his unsuccessful discharge from sex-offender treatment. Second, it alleged that he violated Rule 14, which prohibited assaultive, abusive, threatening, or intimidating behavior. This allegation was based on a claim that his discharge resulted from his "hostile, aggressive behavior and tone."

A. PROBATION REVOCATION HEARING

In June 2025, the trial court held a revocation hearing. The State called one witness at the hearing, the Defendant's probation officer, Glenda Hubbard. She testified on direct examination that the treatment provider discharged the Defendant from the sex-offender treatment class "due to his hostile and aggressive behavior and tone while in group." The Defendant objected to this testimony on hearsay grounds, asserting that Officer Hubbard had no direct knowledge of the events that led to his dismissal from the class. The trial court did not rule on the objection.

The State then asked whether the Defendant had been removed from the group, regardless of the reason. Officer Hubbard confirmed that he had. She testified that participation in sex-offender treatment was a condition of the Defendant's supervision. She also testified that the violation was a zero-tolerance violation, not a technical violation, and that the Defendant could face full revocation.

Officer Hubbard testified that she was not present at the group session that led to the discharge. She could not say when the Defendant began treatment. She also could not confirm, without checking her file, defense counsel's suggestion that the Defendant had attended treatment for about a year. According to Officer Hubbard, the treatment provider dismissed the Defendant based on a single incident in May and was not willing to take him back. She testified that the treatment provider cited the Defendant's hostility toward her and his crumpling papers and throwing them at her. Officer Hubbard acknowledged that other providers offered sex-offender treatment, but she explained that the Defendant would have to travel to Waverly or Memphis to attend them. She added that the Defendant would have to resume treatment immediately upon his release from custody.

The treatment provider did not testify at the revocation hearing. When the trial court asked why she was absent, the State responded that the treatment provider was unavailable and that it wished to proceed without resetting the hearing date.² The Defendant did not call any witnesses.

B. THE TRIAL COURT'S ANNOUNCEMENT

In argument, the Defendant asserted that the violation was technical. He also argued that he faced a lengthy period of confinement after a single "blow-up" in roughly fifty group sessions. The trial court responded that the Defendant's situation illustrated why it had criticized this kind of probationary sentence, but it stated that "the law has to keep its promises." Observing that "probation is for people who can do probation," the court fully revoked both suspended sentences.

The Defendant asked the court to reconsider the full revocation and instead impose a period of revocation. The court declined, explaining that the parties had agreed to a

² The transcript reflects that the State said, "I did speak with Ms. Hubbard, and she was not available today." Because Officer Hubbard had just testified and the trial court's question concerned the absent treatment provider, we understand the State's response to refer to Ms. Perry. Both parties read the record the same way.

twenty-year probationary sentence and that it would not, in effect, resentence the Defendant. The court added that a period of revocation would place the sheriff's office in an "indeterminate sentencing situation."

The court also stated that the Defendant had received "an incredible opportunity." It said that it wished the hearing had waited until it "could have first-person testimony regarding what he allegedly did." Even so, the court concluded that "it's pretty clear that that's what happened."

The Defendant then addressed the court. Referring to the treatment provider, he stated that he "just got in a little disagreement with her" and left when she asked him to leave. The hearing concluded shortly thereafter.

The trial court entered its revocation order on June 23, 2025. The Defendant filed a timely notice of appeal thirty days later. *See* Tenn. R. App. P. 4(a).

ANALYSIS

In this appeal, the Defendant raises three issues: (1) whether the evidence was sufficient to establish that he violated the conditions of his probation; (2) whether the admission of the probation officer's testimony about the reasons for his discharge from treatment violated his due process right to confront adverse witnesses; and (3) whether his original effective sentence of twenty years of supervised probation was illegal and, if so, what remedy is appropriate. The Defendant does not challenge the trial court's decision to fully revoke his suspended sentences as the consequence of the violation. We address each of these issues in turn.

A. VIOLATION DETERMINATION

The Defendant first argues that the evidence was insufficient to establish that he violated the conditions of his probation. He contends that, once Officer Hubbard's hearsay testimony is set aside, the record shows only that the treatment provider removed him, not why she did so. He also argues that his removal from a single program was not a violation because other programs remained available.

The State responds that the Defendant's undisputed discharge from statutorily required treatment is itself a violation, regardless of the reasons for it. We agree with the State. Because the violation does not depend on the reasons why the treatment provider discharged him, we consider the Defendant's challenge to Officer Hubbard's testimony separately in Part B below.

1. Governing Principles

A probation revocation proceeding involves a two-step process with “two distinct discretionary decisions.” *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). The first step is to determine whether the probationer violated a condition of probation, and the second is to determine the appropriate consequence of that violation. *Id.* As to the first step, a trial court may find a violation only if the record supports that finding by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311(d)(1) (2025); *State v. Drake*, No. E2024-00165-CCA-R3-CD, 2024 WL 4719132, at *3 (Tenn. Crim. App. Nov. 8, 2024), *no perm. app. filed*. For sex offenders placed on probation, participation in treatment is ordinarily a mandatory condition. Under the Tennessee Standardized Treatment Program for Sex Offenders, “any plan of treatment recommended by the evaluation shall be a condition of the probation.” *State v. Albright*, 564 S.W.3d 809, 815-16 (Tenn. 2018) (quoting Tenn. Code Ann. § 39-13-705(b)).

Generally speaking, the violation determination focuses on whether the probationer breached a condition of probation. The reasons for the breach do not ordinarily affect that determination. As this court has recognized, “trial courts are generally not required to consider the willfulness of a defendant's conduct in the violation determination, unless the violation involves a failure to pay a monetary obligation, such as restitution.” *State v. Banning*, No. E2022-00188-CCA-R3-CD, 2022 WL 10225186, at *4 n.2 (Tenn. Crim. App. Oct. 18, 2022) (citations omitted), *no perm. app. filed*; *see also State v. Goodwin*, No. E2008-00730-CCA-R3-CD, 2009 WL 47348, at *3 (Tenn. Crim. App. Jan. 8, 2009) (“[A] finding of willfulness is necessary only for violations that involve non-payment.”), *no perm. app. filed*. In the sex-offender treatment context specifically, this court has declined to extend the willfulness requirement beyond the failure to pay monetary obligations. *State v. Marshall*, No. M2001-02954-CCA-R3-CD, 2002 WL 31370461, at *7 (Tenn. Crim. App. Oct. 14, 2002), *no perm. app. filed*.

This principle is not without limits. As our supreme court has recognized, “since a probationer's conditional freedom from incarceration is at risk, he must be afforded due

process in the revocation proceeding.” *State v. Wade*, 863 S.W.2d 406, 408 (Tenn. 1993). Indeed, the willfulness requirement for monetary obligations reflects these constitutional limits. As this court has explained, the requirement exists because “the due process and equal protection rights of indigents were at stake” when a probationer fails to pay because he is too poor. *Marshall*, 2002 WL 31370461, at *7 (discussing *Bearden v. Georgia*, 461 U.S. 660 (1983), and *State v. Dye*, 715 S.W.2d 36 (Tenn. 1986)).

The same limits apply to other conditions, including participation in treatment. A discharge from treatment cannot support a violation if the discharge itself rests on a constitutionally impermissible basis. For example, this court has recognized that “due process concerns are raised when probation is revoked because a treatment provider discharged a defendant from treatment based upon the defendant’s refusal to admit to offenses in addition to the conviction offense.” *State v. Reams*, 265 S.W.3d 423, 431 (Tenn. Crim. App. 2007). In such cases, the question is not whether the discharge resulted from the probationer’s willful conduct, but whether the State may rely on the discharge at all. These limits answer the Defendant’s concern that, under the State’s view, a treatment provider “could remove a probationer from treatment for any reason at all.”

Outside these limits, though, a trial court generally need not find that the probationer’s conduct was willful.³ Instead, the reasons for a violation matter at a different stage. Once a violation is found, “the consequence determination essentially examines whether the beneficial aspects of probation are being served and whether the defendant is amenable to continued probation.” *State v. Rand*, 696 S.W.3d 98, 106 (Tenn. Crim. App. 2024). In making that determination, a trial court may consider the nature and seriousness of the present violation, the probationer’s previous history on probation, and his amenability to future rehabilitation. *See Dagnan*, 641 S.W.3d at 759 n.5. Factors bearing on amenability may include the probationer’s acceptance of responsibility and genuine remorse, and whether he will comply with orders meant to ensure his effective rehabilitation. *See State v. Noel*, 729 S.W.3d 315, 326 (Tenn. Crim. App. 2025).

Thus, while a violation determination generally does not require a finding that the probationer’s conduct was willful, the reasons for a discharge from treatment may be

³ When the alleged violation is a new offense, the State “must establish the elements of the alleged crime by a preponderance of the evidence,” including any mental state the offense requires. *See State v. Ridgeway*, No. W2025-01052-CCA-R3-CD, 2026 WL 1544201, at *4 (Tenn. Crim. App. June 2, 2026), *no perm. app. filed*. But that proof establishes an element of the breach itself; it is not a separate finding that the probationer’s conduct was willful.

relevant to the consequence determination. *See Drake*, 2024 WL 4719132, at *6 (recognizing that the trial court properly considered the probationer’s history of treatment, including his repeated failures to engage with it, in assessing his amenability to future rehabilitation). In essence, the violation determination asks whether the probationer violated a condition of the suspended sentence. The consequence determination asks what that violation reveals about the probationer’s prospects for successful rehabilitation in the community. *Cf. Noel*, 729 S.W.3d at 326.

2. Application

a. The Defendant’s Discharge from Required Treatment

With these principles in mind, we consider whether the record, apart from the challenged testimony about the reasons for the discharge, establishes that the Defendant violated a condition of his suspended sentences. *See Dagnan*, 641 S.W.3d at 759. The violation warrant alleged that the Defendant violated Rule 12 of his probation, which required him to “abide by the Specialized Conditions for Sex Offenders as adopted by the Tennessee Department of Correction.” At the hearing, Officer Hubbard testified that the Defendant was required to undergo a psychosexual evaluation and sex-offender treatment. She also agreed, without objection, that “it is a condition of his supervision that he be in the sex offender treatment.”

The record also establishes that the Defendant was discharged from that treatment. When the State asked whether, “[r]egardless of the basis,” the Defendant was “kicked out of that group,” Officer Hubbard answered, “Yes, ma’am.” The Defendant did not object to this testimony. On cross-examination, defense counsel himself elicited that the treatment provider had dismissed the Defendant from the program and was not willing to take him back. Later, when defense counsel suggested that the Defendant was willing to return, Officer Hubbard confirmed that the treatment provider would not allow him to come back.⁴

⁴ Officer Hubbard learned of the discharge from the treatment provider. However, the Defendant did not object to the testimony establishing the fact of the discharge, and defense counsel elicited much of that testimony on cross-examination. When a party does not object to evidence, the trier of fact may consider it for “its natural probative effects as if it were in law admissible.” *State v. Smith*, 24 S.W.3d 274, 280 (Tenn. 2000). The Defendant also told the trial court that the treatment provider “asked me to leave. I left.”

The Defendant does not dispute these facts on appeal. His challenge is directed to Officer Hubbard's testimony about the reasons for the discharge. Indeed, he acknowledges that "[t]he only information before the trial court was the simple fact that [the treatment provider] decided to remove [the Defendant] from treatment."

The unchallenged proof thus establishes by a preponderance of the evidence that the Defendant was discharged from the treatment program that was a condition of his supervision and that the treatment provider would not readmit him. The violation determination did not require a finding that the discharge resulted from the Defendant's willful conduct. *See Banning*, 2022 WL 10225186, at *4 n.2. Further, the constitutional limits discussed above are not implicated here. The Defendant has not contended, either at the hearing or on appeal, that his discharge rested on any constitutionally impermissible basis, and nothing in the record suggests one.⁵ Accordingly, the Defendant's discharge from required treatment established a violation of Rule 12.

The second alleged violation stands on a different footing. Rule 14 prohibited "assaultive, abusive, threatening or intimidating behavior." The only evidence of such behavior came through Officer Hubbard's account of the treatment provider's statements. As we explain in Part B, that testimony was inadmissible absent a threshold finding of good cause for the treatment provider's absence. Because the record contains no such finding, no admissible proof supports a violation of Rule 14.

However, the absence of admissible proof on Defendant's violation of Rule 14 does not undermine the trial court's finding that the Defendant violated the conditions of his probation. A single violation is sufficient to support the violation determination. *See State v. Watson*, No. M2003-01814-CCA-R3-CD, 2004 WL 1562553, at *4 (Tenn. Crim. App. July 13, 2004) (concluding that an alternative ground for revoking a community corrections sentence was "sufficient to justify the revocation"), *perm. app. denied* (Tenn. Dec. 6, 2004). On this record, that determination rests on the Rule 12 violation alone. We now turn to the Defendant's arguments that his discharge from treatment cannot establish a violation.

⁵ The Defendant told the trial court that he "just got in a little disagreement with her." He has not suggested that this disagreement, or anything else, provided a constitutionally impermissible basis for the discharge.

b. The Defendant's Remaining Arguments

In pressing his argument to the contrary, the Defendant offers three reasons why the fact of his discharge cannot establish a violation. First, relying on *Marshall* and similar cases, the Defendant argues that the State must prove why a probationer did not complete treatment. Those cases do not establish such a rule. *Marshall* expressly declined to require a finding of willfulness. 2002 WL 31370461, at *7. Instead, the court asked whether a defendant who attended nearly every session and finished the assignments in all ten modules had “complete[d]” his treatment program, as his probation required. *Id.* at *7-9. Construing the condition, the court concluded that he had satisfied it. *Id.* at *9.

Later decisions distinguishing *Marshall* have noted the probationer’s “blameworthy failure at treatment,” but they did so while rejecting claims that the probationers had complied with the program’s objective requirements. *See, e.g., State v. Holliman*, No. M2005-02139-CCA-R3-CD, 2007 WL 316406, at *9 (Tenn. Crim. App. Feb. 5, 2007), *no perm. app. filed*; *see also Reams*, 265 S.W.3d at 432. Like the probationers in those cases, and unlike the probationer in *Marshall*, the Defendant does not claim that he completed his treatment or satisfied its objective requirements. He was discharged before doing so.

Second, the Defendant compares his discharge to a new arrest, which cannot by itself establish that a probationer violated the law. Respectfully, the comparison does not hold. When the alleged violation is new criminal conduct, an arrest is only an accusation, and the State must prove the conduct itself. *See State v. Harris*, No. W2021-00229-CCA-R3-CD, 2022 WL 522888, at *2 (Tenn. Crim. App. Feb. 22, 2022), *no perm. app. filed*. A discharge from required treatment is different. When a probation condition requires participation in treatment, the discharge itself breaches that condition. And although the limits discussed above could require more, the Defendant does not contend that his discharge rested on an impermissible basis.

Third, the Defendant argues that other treatment programs remained available to him. Officer Hubbard acknowledged that programs in Waverly and Memphis were options. However, the availability of other programs does not change the fact that the Defendant was discharged from the program he was required to participate in. Whether he could resume treatment in the community is a question for the consequence determination, not the violation determination. *See Dagnan*, 641 S.W.3d at 759 n.5.

For these reasons, none of the Defendant's arguments undermines our conclusion that his discharge from required treatment established a violation of Rule 12. Accordingly, we hold that the record supports the trial court's finding that the Defendant violated the conditions of his probation. The Defendant is not entitled to relief on this issue.

B. ADMISSION OF THE PROBATION OFFICER'S TESTIMONY

The Defendant next argues that the admission of Officer Hubbard's testimony about the reasons for his discharge from treatment violated his due process right to confront adverse witnesses. He contends that the trial court admitted this hearsay without finding good cause for the treatment provider's absence or finding that the testimony was reliable. The State does not address the merits of this argument. Instead, it argues that the Defendant waived the issue in two ways: by failing to obtain a ruling on his objection and by objecting only on hearsay grounds.

We agree with the Defendant that he preserved this issue and that the testimony was inadmissible without the required finding of good cause. Even so, we conclude that the error was harmless beyond a reasonable doubt as to the violation determination.

1. Preservation of the Issue

Before reaching the merits, we address the State's contention that the Defendant waived this issue. The State argues that the Defendant's objection fell short in two respects: he did not obtain a ruling on the objection, and he objected only on hearsay grounds, not constitutional ones. We respectfully disagree on both points.

To preserve an evidentiary issue for appeal, a party must ordinarily make a timely objection that identifies a specific ground. *See State v. Morgan*, 727 S.W.3d 182, 197 (Tenn. Crim. App. 2025); *see also* Tenn. R. Evid. 103(a)(1). As a general rule, a party must also show that it insisted on a ruling before the trial court can be put in error for admitting testimony. *Shelton v. Martin*, 176 S.W.2d 247, 248 (Tenn. 1943). However, where counsel's objection puts the trial court on notice that the party seeks to exclude the testimony, our supreme court has treated the court's failure to rule as "tantamount to overruling the objection." *Nabors v. Gearhiser*, 525 S.W.2d 145, 148 (Tenn. 1975). And "[a] party does not waive an issue by phrasing it differently in the trial court than on appeal." *State v. Harbison*, 539 S.W.3d 149, 165 (Tenn. 2018).

The setting of a probation revocation hearing shapes how these principles apply. As this court has recognized, “strict rules of evidence do not apply at revocation hearings.” *State v. Otten*, 721 S.W.3d 14, 19 (Tenn. Crim. App. 2025) (citation omitted). Instead, “a due process standard applies in determining the admissibility of a statement made by an out-of-court declarant at a probation violation proceeding.” *Drake*, 2024 WL 4719132, at *4 (quoting *State v. Walker*, 307 S.W.3d 260, 265 (Tenn. Crim. App. 2009)). In the probation revocation setting, a hearsay objection and a due process objection ask the same question: whether the court may consider an absent declarant’s out-of-court statements.

As to the State’s first argument, the trial court’s failure to rule did not forfeit the Defendant’s objection. Defense counsel objected as soon as Officer Hubbard described the reasons for the discharge. Counsel identified the ground as hearsay and noted that Officer Hubbard had “no direct knowledge” of the events. That objection put the trial court on notice that the Defendant sought to exclude the testimony. The trial court did not rule, but it later relied on the substance of that testimony, concluding that “it’s pretty clear that that’s what happened.” That reliance confirms that the court treated the testimony as admitted. In these circumstances, we treat the objection as having been overruled. *See Nabors*, 525 S.W.2d at 148.

As to the State’s second argument, the hearsay objection also fairly presented the due process claim that the Defendant raises on appeal. At a revocation hearing, the due process standard determines whether hearsay statements may be admitted, and it “preclude[s] the admission of hearsay evidence unless two requirements are met.” *Otten*, 721 S.W.3d at 19. Because the strict rules of evidence do not apply in this setting, a hearsay objection at a revocation hearing invokes, in substance, the due process standard. *See Wade*, 863 S.W.2d at 409-10 (evaluating, under the minimum requirements of due process, a laboratory report admitted over the defendant’s objection); *Otten*, 721 S.W.3d at 19-20 (applying the due process standard to the defendant’s objection that the testifying officer lacked personal knowledge and could not be meaningfully cross-examined); *Drake*, 2024 WL 4719132, at *4.

As we have noted, defense counsel objected that Officer Hubbard had “no direct knowledge” of the events she described. The objection thus challenged the State’s effort to prove the reasons for the discharge through the out-of-court statements of an absent declarant. Although the Defendant now describes his claim in due process terms, it is the

same claim he presented to the trial court.⁶ *See Harbison*, 539 S.W.3d at 165. We therefore conclude that the due process claim is preserved for plenary review.

2. Merits of the Due Process Claim

Having concluded that the Defendant preserved this issue, we turn to its merits. As noted above, due process, rather than the strict rules of evidence, governs the admission of hearsay at a revocation hearing. The question is whether Officer Hubbard's testimony about the reasons for the discharge was admissible under that standard. We respectfully conclude that it was not.

a. Governing Principles

Because the issue in a revocation proceeding is not the probationer's guilt or innocence, "the right to confront and cross-examine adverse witnesses is not absolute and may be relaxed under certain circumstances." *Wade*, 863 S.W.2d at 407. Due process nevertheless guarantees a probationer "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." *Id.* at 408 (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973)).

Consistent with these principles, hearsay is admissible at a revocation hearing if two requirements are met. First, the trial court must find "good cause" to justify the denial of the defendant's right to confront and cross-examine adverse witnesses. Second, the hearsay

⁶ A criminal trial calls for a different analysis. In that setting, "an objection that evidence constitutes inadmissible hearsay does not, by itself, preserve a separate confrontation claim." *State v. Deshields*, No. W2024-01694-CCA-R3-CD, 2025 WL 3023733, at *6 (Tenn. Crim. App. Oct. 29, 2025) (citations omitted), *no perm. app. filed*. That is because the two objections raise different questions at trial. A hearsay objection asks whether an out-of-court statement is offered to prove the truth of the matter asserted. *See id.* at *5; Tenn. R. Evid. 801(c). A confrontation objection asks, among other things, whether the statement is testimonial and whether the declarant was available for cross-examination. *See Deshields*, 2025 WL 3023733, at *6 (citing *Smith v. Arizona*, 602 U.S. 779, 783 (2024); *Crawford v. Washington*, 541 U.S. 36, 54 (2004)).

At a revocation hearing, by contrast, the strict rules of evidence do not apply. A probationer's right to confront adverse witnesses in that setting "arises not under the Sixth Amendment confrontation clause, but rather as a matter of due process." *State v. Dotson*, No. M2023-00430-CCA-R3-CD, 2024 WL 3027295, at *6 (Tenn. Crim. App. June 17, 2024), *perm. app. denied* (Tenn. Nov. 14, 2024). As a result, a single due process standard governs the hearsay objection at issue here.

must be shown to be reliable. *Otten*, 721 S.W.3d at 19 (citing *Wade*, 863 S.W.2d at 409); see also *Drake*, 2024 WL 4719132, at *4 (noting that the opposing party must also have a fair opportunity to rebut the evidence).

The good-cause inquiry requires the trial court to assess “why confrontation is not desirable or impractical.” *State v. Dotson*, No. M2023-00430-CCA-R3-CD, 2024 WL 3027295, at *6 (Tenn. Crim. App. June 17, 2024) (citation and internal quotation marks omitted), *perm. app. denied* (Tenn. Nov. 14, 2024). “Good cause is not a precise standard,” and the inquiry “is factually driven.” *Id.* Testimony that establishes the grounds for revocation, however, should be treated “more rigorously because it provides the basis for depriving the [probationer] of his or her liberty.” *Id.* (citation omitted).

Generally speaking, good cause for failing to call a witness may exist where calling an out-of-state witness would be “cost prohibitive” or where the witness would have to travel a prohibitively long distance to attend the hearing. *Drake*, 2024 WL 4719132, at *4 (citing *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997); *State v. Ricker*, 875 S.W.2d 687, 688 (Tenn. Crim. App. 1994)). However, good cause does not exist where the absence of the witness is unexplained. *Id.* (citing *State v. Littrell*, No. W2022-01433-CCA-R3-CD, 2023 WL 6548679, at *3 (Tenn. Crim. App. Oct. 9, 2023)).

b. Application

The parties do not dispute that Officer Hubbard’s testimony about the reasons for the discharge was hearsay. She was not present at the group session. The State offered her account of the treatment provider’s statements to prove that the Defendant had, in fact, engaged in “hostile and aggressive behavior and tone.” See Tenn. R. Evid. 801(c).

The trial court made no finding of good cause for denying the Defendant his right to confront and cross-examine the treatment provider. This court addressed the same omission in *State v. Wiley*, in which the trial court “made no findings concerning the unavailability of the witness, nor did the court make a specific finding of good cause for the admission of the evidence.” No. E2004-01463-CCA-R3-CD, 2005 WL 1130222, at *3 (Tenn. Crim. App. May 13, 2005), *no perm. app. filed*; see also *Drake*, 2024 WL 4719132, at *4. Absent those findings, we held that the hearsay should not have been admitted, even though the *Wiley* trial court had found it reliable. See *Wiley*, 2005 WL 1130222, at *3.

The only explanation for the treatment provider's absence came from the State. It reported that she was not available and that it wished to proceed without resetting the hearing date. The State did not explain why the treatment provider was unavailable, describe any effort to secure her attendance, or request a continuance.

That explanation does not establish good cause. In *Drake*, this court concluded that the record did not support a finding of good cause where the State "offered no further explanation of why" the treatment provider was absent. 2024 WL 4719132, at *5. The same is true here. Absent some effort to secure the treatment provider's attendance, the State's wish to avoid a continuance does not show that confrontation was undesirable or impractical. See *State v. Sullivan*, No. W2025-00708-CCA-R3-CD, 2026 WL 456712, at *6 (Tenn. Crim. App. Feb. 18, 2026) (concluding that the record did not support a good-cause finding where it revealed no evidence that the State had attempted to secure the declarant's attendance), *no perm. app. filed*; cf. *Otten*, 721 S.W.3d at 20 (concluding that a witness's "ongoing medical concerns" established good cause).

The trial court's own remarks also weigh against any implicit finding of good cause. *But see Drake*, 2024 WL 4719132, at *5 (questioning whether an implicit finding can satisfy *Gagnon*'s requirement that the court "specifically find[] good cause for not allowing confrontation." (citing *Gagnon*, 411 U.S. at 786)). The court stated that it wished the hearing had waited until it "could have first-person testimony regarding what he allegedly did." That statement is difficult to reconcile with an implicit determination that confrontation was undesirable or impractical. The court's hesitation also reflects the significance of the testimony at issue. The challenged testimony supplied the only account of the conduct alleged as a basis for the violation. When hearsay is offered to establish a ground for revocation, a trial court should carefully examine the reasons for denying confrontation. See *Dotson*, 2024 WL 3027295, at *6.

In short, the record contains no finding of good cause, and it would not support one. We therefore do not reach whether the testimony was reliable or whether the Defendant had a fair opportunity to rebut it. See *Wade*, 863 S.W.2d at 410 (holding that a report "was not admissible into evidence because there was no showing of good cause"). Accordingly, we respectfully conclude that Officer Hubbard's testimony about the reasons for the Defendant's discharge from treatment was inadmissible under the minimum requirements of due process. The remaining question is whether this error requires relief.

3. Harmlessness of the Hearsay Error

The erroneous admission of hearsay at a revocation hearing does not require reversal of a violation finding if the State shows “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Watson*, 2004 WL 1562553, at *4 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). Such an error is harmless when properly admitted evidence independently establishes the violation. *See id.*; *Drake*, 2024 WL 4719132, at *5.

That is the case here. The challenged portion of Officer Hubbard’s testimony concerned only why the treatment provider discharged the Defendant. As we explained in Part A above, the State did not need to prove the reasons for the discharge to establish the violation, unless the discharge rested on a constitutionally impermissible basis. The Defendant has raised no such claim. The discharge itself therefore established the violation, and the challenged testimony did not contribute to that determination.

Our courts have granted relief when inadmissible hearsay supplied the only evidence of a violation. *See, e.g., Wade*, 863 S.W.2d at 409; *Otten*, 721 S.W.3d at 20; *Sullivan*, 2026 WL 456712, at *8. Relief has not followed, however, when other evidence independently established the violation. In *Drake*, for example, the probationer admitted he was discharged from treatment, and the challenged evidence therefore “was not used to establish that he violated the terms of his probation.” 2024 WL 4719132, at *5. This case resembles *Drake*. The violation rested on the unchallenged proof of the Defendant’s discharge from required treatment, not on the inadmissible hearsay. We are satisfied beyond a reasonable doubt that the error did not contribute to the finding that the Defendant violated Rule 12.

Our conclusion is limited to the violation determination. Although the reasons for a treatment discharge may be relevant to the consequence determination, the Defendant does not challenge the trial court’s consequence determination, including its decision to fully revoke his suspended sentences. We therefore express no view on that determination. Nor do we consider the extent to which the challenged testimony may have influenced the trial court’s choice of a consequence. Because the error was harmless as to the violation determination, the Defendant is not entitled to relief on this issue.

C. LEGALITY OF THE ORIGINAL SENTENCES

Finally, the Defendant argues that his original effective sentence of twenty years of supervised probation was illegal because it exceeded the ten-year limit on the total period of probation for multiple convictions. *See* Tenn. Code Ann. § 40-35-303(c)(1) (2025). He asks that we remand the case for the trial court to consider the issue under Tennessee Rule of Criminal Procedure 36.1. The State responds that the claim is waived and that Rule 36.1 requires a motion in the trial court. We agree with the State that this appeal is not the proper vehicle for the Defendant's claim.

This appeal arises from the revocation of the Defendant's suspended sentences, not from the original judgments of conviction. The Defendant does not argue that the claimed illegality affects the revocation. His challenge, therefore, targets judgments not before us in this appeal.

That conclusion does not leave the Defendant without a remedy, as our law provides other procedures for challenging an allegedly illegal sentence. For example, a party "may seek to correct an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered." Tenn. R. Crim. P. 36.1(a)(1). A defendant may also challenge an illegal and void sentence through a petition for a writ of habeas corpus. *See* Tenn. Code Ann. § 29-21-101 (2024).

An appeal from a probation revocation is not a substitute for these procedures. *See State v. Payton*, No. W2025-01051-CCA-R3-CD, 2026 WL 3000004, at *5 (Tenn. Crim. App. Oct. 2, 2026) ("[I]t 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."), *perm. app. open*; *cf. State v. Stack*, 682 S.W.3d 866, 874 (Tenn. Crim. App. 2023) ("We agree that appellate review of a sentence, including a probation condition, should be required at the time the sentence is imposed."). Accordingly, we decline to address the merits of this issue. We express no view on whether the Defendant's original sentences were illegal or on what effect, if any, the revocation had on that question. Nothing in this opinion precludes either party from seeking relief through a proper procedural vehicle.

CONCLUSION

In summary, we hold that the record supports the trial court's finding that the Defendant violated the conditions of his probation by being discharged from required sex-offender treatment. We also hold that, although the admission of hearsay testimony about the reasons for his discharge violated his right to due process of law, the error was harmless beyond a reasonable doubt. Finally, we decline to address the legality of the Defendant's original sentences in this appeal. Accordingly, we respectfully affirm the judgments of the trial court.

s/ *Tom Greenholtz*

TOM GREENHOLTZ, JUDGE