

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs July 9, 2026

FILED

07/31/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. SHEPPARD WASHINGTON

Appeal from the Circuit Court for Madison County
No. 18-193 Kyle Atkins, Judge

No. W2025-01115-CCA-R3-CD

In 2019, the Defendant, Sheppard Washington, pleaded guilty to two counts of violating the sex offender registry statute. The trial court ordered him to serve six years, suspended after serving eleven months and twenty-nine days in confinement. The remainder of the five-year and one-day sentence was to be served on community corrections. In 2022, the trial court ordered that the Defendant be transferred to probation under the supervision of the Tennessee Department of Correction. In June 2024, the trial court revoked the Defendant's probation. In May 2025, the Defendant filed a Rule 36.1 motion to correct an illegal sentence. He alleged that he did not receive credit for his time served on community corrections. On May 23, 2025, the trial court found by order, first, that the Defendant did not appeal the revocation order, so it was final. Next, it found that the Defendant's time was served on probation and not community corrections, so he was not entitled to jail credits. The Defendant filed an untimely notice of appeal. We dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

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

Sheppard Washington, Only, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; Park Huff, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Defendant's violating the rules and conditions of the sex offender registry. On February 26, 2018, a Madison County grand jury indicted the

Defendant for two counts of violating the sex offender registry: one count for his failing to report within forty-eight hours any change of any information given to the registering agency on the registration form; and one count for his failing to report a change in electronic mail address information, any instant message, chat, or other internet communication name or identity information.

On November 19, 2019, the Defendant pleaded guilty to both counts, and the trial court sentenced him to six years. It ordered that the Defendant serve eleven months and twenty-nine days of that sentence in confinement, followed by five years and one day on probation supervised by community corrections. The Defendant did not appeal.

On May 1, 2025, the Defendant filed a motion to correct an illegal sentence. In it, he alleged that on September 24, 2019, the court entered a judgment sentencing him to a term of six years. He further asserted that he had served thirty-five months successfully on community corrections, from September 24, 2019, to August 22, 2022, so he was entitled to thirty-five months of jail credit, which he had not received.

In the attachment to his filing, he said that the trial court had revoked his probation on June 10, 2024, and that the only credit he received was for time he spent in the county jail. He alleged his sentence was illegal because he did not receive credit for time he served on probation.

On May 21, 2025, the State responded and stated that, on September 24, 2019, the Defendant did, in fact, plead guilty to two counts of violating the sex offender registry. The Defendant was sentenced as a Range III offender to six years. The sentence had not expired. The Defendant received probation after serving ninety days in jail. The probation was to be supervised by community corrections. The probation was revoked on June 10, 2024, and the Defendant was ordered to serve his sentence. The State alleged that the Defendant was not sentenced pursuant to the community corrections statute enumerated in Tennessee Code Annotated section 40-36-103, and so he was not entitled to credit. The State further stated that the Defendant had not timely appealed his revocation order and that the order was now final so his motion should be denied.

The trial court filed an order on May 23, 2025, that adopted the State's response. It added that the Defendant's motion was dismissed pursuant to Rule 36.1(b)(2) for failing to state a colorable claim.

On July 7, 2025, the Defendant filed a motion in response to the State's May 21, 2025, motion. In it, he asserted that he had served 262 days before receiving probation, not 90 days. He went on to assert that he was entitled to jail credit for the time he served on probation. Because he had not received these jail credits, his sentence was illegal.

On July 28, 2025, the Defendant filed a *pro se* notice of appeal on July 21, 2025. In April of 2026, long after the filing deadline, the Defendant made a filing to our court wherein he contended that there was a typo in the notice of appeal filing. He asserted that he signed his notice of appeal on June 28, 2025, with no explanation as to why it was not filed until July 28, 2025. He further alleged that he stated a colorable claim for relief, that the State did not timely file its brief, and that he was entitled to credit for time he served on probation.

The Defendant is now appealing the trial court's denial of his Rule 36.1 motion regarding his not receiving jail credit for time he spent on probation.

II. Analysis

On appeal, the Defendant contends that the trial court erred when it did not award him credit for the time he served on community corrections. He asks this court to award him this credit, which he asserts would make his release date in 2027 rather than 2029. The State accurately notes that the trial court's order denying the Defendant's motion was entered May 23, 2025, and he did not file his notice of appeal until July 28, 2025.

Tennessee Rule of Criminal Procedure 36.1, Correction of Illegal Sentence, provides both a criminal defendant and the State an avenue to seek the correction of an illegal sentence at any time before the sentence has expired. Tenn. R. Crim. P. 36.1(a)(1), (f). “[A]n illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.” *Id.* at 36.1(a)(2). A motion to correct an illegal sentence pursuant to Rule 36.1 “must state with particularity the factual allegations on which the claim for relief from an illegal sentence is based.” *State v. Wooden*, 478 S.W.3d 585, 594 (Tenn. 2015). “If the motion states a colorable claim that the unexpired sentence is illegal, . . . and if the defendant is indigent and is not already represented by counsel, the court shall appoint counsel to represent the defendant.” Tenn. R. Crim. P. 36.1(b)(3). On the other hand, if the trial court, after reviewing the motion, any response thereto, and the record, “determines that the motion fails to state a colorable claim, it shall enter an order summarily denying the motion.” *Id.* at 36.1(b)(2). A colorable claim is “a claim that, if taken as true and viewed in a light most favorable to the moving party, would entitle the moving party to relief under Rule 36.1.” *Wooden*, 478 S.W.3d at 593. Whether a motion to correct an illegal sentence pursuant to Rule 36.1 states a colorable claim for relief is a question of law which this court reviews *de novo*. *Id.* at 589 (citing *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007)).

In this case, the trial court found that the Defendant had not stated a colorable claim for relief. It filed its order on May 23, 2025. The Defendant did not file his notice of appeal from this order until July 28, 2025.

Tennessee Rule of Appellate Procedure 4(a) requires that a notice of appeal be “filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from[.]” “An untimely notice of appeal can, and often does, result in a dismissal of the appeal.” *State v. Manning*, No. E2022-01715-CCA-R3-CD, 2023 WL 7439203, at *3 (Tenn. Crim. App. Nov. 9, 2023), *no perm. app. filed* (Tenn. May 16, 2024). “[I]n all criminal cases, [however] the ‘notice of appeal’ document is not jurisdictional,” and this court may waive the timely filing requirement when the interest of justice mandates such. Tenn. R. App. P. 4(a). Waiver is not automatic, and the appealing party bears the responsibility to demonstrate that the interest of justice merits waiver of an untimely notice of appeal. *Manning*, 2023 WL 7439203, at *3 (citations omitted). “In determining whether waiver is appropriate, this court will consider the nature of the issues presented for review, the reasons for and the length of the delay in seeking relief, and any other relevant factors presented in the particular case.” *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007) (citation omitted). Other relevant factors include an appellant’s failure to acknowledge the late filing and either affirmatively request a waiver of the timely filing requirement or respond to the State’s brief raising the untimely filing as an issue. *Manning*, 2023 WL 7439203, at *5 (citing *Rockwell*, 280 S.W.3d at 214).

In this case, the Defendant has not provided the relevant documentation about his probation revocation for which he is currently incarcerated, other than a brief mention that his probation was revoked in June 2024. He did not appeal this revocation. He then filed a Rule 36.1 motion, which was summarily dismissed, and he did not timely file a notice of appeal. He also did not file a response to the State’s allegation that his notice of appeal was not timely until April of 2026. We do not conclude that the allegations in the Defendant’s response are persuasive.

“If this court were to summarily grant a waiver whenever confronted with untimely notices, the thirty-day requirement of Tennessee Rule of Appellate Procedure 4(a) would be rendered a legal fiction.” *Rockwell*, 280 S.W.3d at 214. In summary, we hold that the “interest of justice” does not weigh in favor of waiving the requirement of a timely-filed notice of appeal. *See, e.g., State v. Nance*, E2024-01113-CCA-R3-CD, 2025 WL 354636, at *2-4 (Tenn. Crim. App. Jan. 31, 2025), *perm. app. denied* (Tenn. May, 23, 2025); *State v. Cooke*, No. M2019-01164-CCA-R3-CD, 2020 WL 3606451, at *2 (Tenn. Crim. App. July 2, 2020). For these reasons, the appeal is dismissed.

III. Conclusion

Based on the foregoing reasoning and authorities, we dismiss the appeal.

ROBERT W. WEDEMEYER
ROBERT W. WEDEMEYER, PRESIDING JUDGE