

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 2, 2026

FILED

10/21/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MICHAEL STEVEN BOREL

Appeal from the Circuit Court for Madison County
No. 24-522 Donald H. Allen, Judge

No. W2025-01473-CCA-R3-CD

Defendant, Michael Steven Borel, appeals from the Madison County Circuit Court's order fully revoking his sentence of probation. On appeal, Defendant contends his conduct amounted only to a technical violation and the trial court erred by revoking his probation and ordering him to serve his sentence incarcerated. After review, we conclude the trial court abused its discretion by fully revoking Defendant's probationary sentence for his felony conviction following a finding of a first technical probation violation. Accordingly, we reverse the judgment of the trial court and reinstate Defendant's probation for the felony offense. As to Defendant's probated misdemeanor sentences however, following our de novo review, we affirm the trial court's full revocation of probation.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and Reversed in Part

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

Raven Prean-Morris, Assistant Public Defender – Appellate Division; Patrick G. Niblock, Assistant Public Defender (at revocation hearing); and Austin Bethany (at guilty plea), for the appellant, Michael Steven Borel.

Jonathan Skrmetti, Attorney General and Reporter; G. Kirby May, Assistant Attorney General; Jody Pickens, District Attorney General; and Allison Martin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On February 18, 2025, Defendant pleaded guilty to driving under the influence (“DUI”), DUI per se, DUI fourth offense, two counts of unlawful possession of a weapon, and one count of driving on a revoked license and received an effective sentence of two years to be served on “intensive” probation following service of 150 days in the Madison County Jail.¹ The conditions of Defendant’s probation included completing an alcohol and drug evaluation and successfully following the recommendations; submitting to random monthly drug and alcohol screens; and completing DUI Safety School and MADD Impact Panel within six months. Defendant’s probation was ordered to be supervised by the Veteran’s Treatment Court Program. At Defendant’s plea submission hearing, the trial court cautioned Defendant, “If you don’t show up every week and if you don’t pass [a] drug screen every week then you’re going to serve these entire sentences. Do you understand me?” Defendant acknowledged that he understood. The trial court also told Defendant that he would receive help in the treatment program, “[b]ut, you’ve got to follow the rules of both the Veteran’s Treatment Court and intensive probation. Okay?” Defendant indicated that he understood.

A probation violation warrant was issued on July 14, 2025, alleging that Defendant had been a “no show” for group meetings on May 15, May 22, and July 3, 2025; that he was not checking in consistently; and that he had missed required drug screens and a meeting with Veteran’s Court staff on July 7, 2025 “to address absences and compliance concerns.” The warrant specified that the violations were “technical only.”

At the revocation hearing, the trial court warned Defendant that if he admitted to the violations, his sentences “could possibly be revoked and [he] could possibly be ordered to serve those sentences or some portion of those sentences either here in the Madison County Jail or in the Tennessee Department of Correction[.]” Defendant conferred with his counsel, and counsel admitted that Defendant “failed a few times to report to the Veteran’s Court” and that “they kicked him out of the Veteran’s Court Program[.]” Defendant explained he was “on foot [the] whole time” and “quite literally had to walk just about everywhere” he went. The court inquired, “You just can’t follow the requirements of the Veteran’s Treatment Program?” Defendant responded that he “was trying very hard” to comply with the requirements and expressed his desire to remain in the program. The court stated, “Well, you can’t be in it if you won’t show up.” Defendant agreed.

The probation officer stated that she informed Defendant of the expectations of the program on May 29, “and after that date I think there was [sic] eight more missed check-ins.” On July 7, she called Defendant and gave him a “final warning” not to miss any more

¹ The trial court merged both first offense DUI counts into the fourth offense DUI conviction and imposed a two-year sentence. For each of Defendant’s unlawful possession of a weapon convictions and his driving on a revoked license conviction, the trial court imposed sentences of eleven months and twenty-nine days and six months. All sentences were run concurrently with each other.

scheduled appointments, after which Defendant “never did show up.” Defendant missed ten check-ins, two drug screens, and three group meetings. The probation officer confirmed that Defendant had been terminated from the Veteran’s Treatment Program. Defendant stated his failures to comply were “[j]ust simple mistakes.” Defendant’s counsel noted that this was Defendant’s “first technical violation” and asked that Defendant be reinstated to probation as he had already served thirty-five days while awaiting a hearing on the violation warrant.

The trial court found Defendant “ha[d] in fact violated the terms and conditions of his probation in a substantial way that being that he has failed to complete the Veteran’s Treatment Court Program that was ordered as part of his special conditions of probation.” The trial court reviewed Defendant’s plea agreement, his sentence, and the conditions of his probation. The court then reviewed Defendant’s non-compliance, including his multiple failures to check-in, to submit to drug screens, and to attend group meetings. The trial court noted Defendant’s termination from the program and concluded, “So his probation will be revoked to ser[v]e.”

The court elaborated, “I mean, [Defendant], we gave you a really good option for some treatment, but if you’re not going to show up and you’re not going to participate then we can’t keep you in the treatment program and we can’t keep you on probation.” The court continued, “I don’t consider these technical violations. These are special conditions of probation which is to complete the Veteran’s Treatment Program.” Defendant’s counsel pointed out that the violation warrant designated the violation as technical. The trial court stated, “Well, I know, but these are not technical violations. These are conditions of probation that he has to complete the Veteran’s Treatment Program which he has not completed it. He has been discharged from the program so the probation will be revoked to serve.”

The trial court entered a probation revocation order, and Defendant appealed.

Analysis

Defendant concedes a violation of probation but asserts he only received notice of a technical violation and, thus, the trial court was without authority to fully revoke his probation. The State agrees that Defendant only received notice of a technical violation but argues each of Defendant’s failures to comply constitutes a separate instance of a

technical violation, and therefore, the trial court acted within its discretion by fully revoking probation “for those sixteen technical violations.”²

“On appeal from a trial court’s decision revoking a defendant’s probation, the standard of review is abuse of discretion 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). An abuse of discretion has been established when the “record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred.” *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980); see *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001); *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978). A finding of abuse of discretion “reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” *Shaffer*, 45 S.W.3d at 555 (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)).

When a trial court determines that a violation of probation has occurred and that a defendant’s probation must be revoked, the court must then decide upon an appropriate consequence. *Dagnan*, 641 S.W.3d at 757. A separate hearing is not required, but the court must address the issue on the record in order for its decision to be afforded the abuse of discretion with a presumption of reasonableness standard on appeal. *Id.* at 757-58. “It is not necessary for the trial court’s findings to be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the revocation decision.” *Id.* at 759 (citation omitted). Factors to be considered by a trial court upon revocation include a defendant’s sincerity and amenability to rehabilitation. *Id.* at 758 (citation omitted). “When presented with a case in which the trial court failed to place its reasoning for a revocation decision on the record, the appellate court may conduct a de novo review if the record is sufficiently developed . . . or remand the case to the trial court to make such findings.” *Dagnan*, 641 S.W.3d at 759 (citation omitted).

There are two types of probation violations, technical and non-technical, and each has different consequences. See generally T.C.A. § 40-35-311. A technical violation is “an act that violates the terms or conditions of probation but does not constitute a new felony, new [C]lass A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding, or contacting the defendant’s victim in violation of a condition of probation.” *Id.* § -311(g). A trial court may not order full revocation of a defendant’s probation based upon a technical violation

² The State cites Defendant’s failure to attend three group meetings, ten missed check-ins, two missed drug screens, and Defendant’s failure to attend the meeting scheduled to address his repeated non-compliance with the Veteran’s Treatment Court Program.

unless such violation results in a fourth or subsequent revocation. *Id.* §§ -311(d)(2), (e)(1)(A)(iv). However, where the trial court finds by a preponderance of the evidence that a defendant's violation was non-technical, it may fully revoke the defendant's probation. *Id.* § -311(e)(2).

Here, the record supports the trial court's finding that Defendant violated the special condition of probation that required him to successfully complete the Veteran's Treatment Court Program. Failure to comply with a treatment program ordered as a condition of probation "fits squarely within the definition of a technical violation[.]" *State v. Noel*, 729 S.W.3d 315, 325 (Tenn. Crim. App. 2025). In its brief, the State emphasizes that the violation report alleged Defendant's failure to comply with the Veteran's Treatment Court Program on multiple occasions and his eventual termination from the program. The State avers that each failure to comply was a separate instance, constituting sixteen technical violations. Defendant insists that despite the trial court's finding that Defendant violated the conditions of probation "in a substantial way" through multiple violations, this was Defendant's first instance of a technical violation. We agree with Defendant.

The probation violation report alleged that Defendant violated "Rule #10: I will observe any special conditions imposed by the Court as listed below: Comply with Veteran's Court." The report then details the violation:

[Defendant] was court ordered to complete Veteran's Court. [Defendant] has been a no show for group on 5/15/25, 5/22/25, and 7/3/25. He is not checking in consistently on Reconnect program daily as required, with late check-ins and no check-ins. He has also missed reporting for required drug screens due to not checking in. Veteran's Court staff scheduled a meeting with [Defendant] on 7/7/25 to address his absences and compliance concerns. [Defendant] failed to attend meeting with staff.

This case is analogous to *State v. Norrod*, in which the defendant's various acts of non-compliance with a court-ordered treatment program before leaving the program constituted a single instance of a technical violation or violations. No. M2025-01873-CCA-R3-CD, 2026 WL 2364616, at *5 (Tenn. Crim. App. Aug. 14, 2026), *no perm. app. filed*.

Here, the violation warrant specified a technical violation and alleged that Defendant failed to complete the Veteran's Treatment Court Program as ordered as a special condition of his probation. The record reflects that this violation of probation determination is Defendant's first. Thus, the trial court was without authority to revoke Defendant's probation based upon "one (1) instance of a technical violation *or violations*." *See* T.C.A. § 40-35-311(d)(2) (emphasis added). Despite the trial court's finding that

Defendant violated this condition of his probation on multiple occasions, the violation constitutes a single *instance* of technical violations.

Having concluded that the record supports a finding that Defendant committed a technical violation of probation, we must address the trial court's consequence determination. Defendant received probated sentences for both misdemeanor and felony offenses. The legislature has required courts to treat technical violations in felony cases differently from those in misdemeanor cases. Because this was Defendant's first technical violation, the trial court was not authorized to fully revoke Defendant's probation for his two-year felony sentence. *Id.* Accordingly, we reverse the judgment of the trial court revoking Defendant's suspended felony sentence and remand for reinstatement of Defendant's probation. *See Noel*, 729 S.W.3d at 325.

As to Defendant's suspended misdemeanor sentences, the trial court's authority to revoke is broad. The court may fully revoke a misdemeanor sentence based either on a technical or a non-technical violation, even if the defendant has not previously violated the terms of probation. *See* T.C.A. § 40-35-311(d)(1). A court must evaluate whether probation continues to serve its rehabilitative purpose and whether the defendant remains amenable to correction. *State v. Rand*, 696 S.W.3d 98, 106 (Tenn. Crim. App. 2024). Relevant considerations include the nature and seriousness of the violation, the defendant's history on probation, and the likelihood of future rehabilitation. *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, genuine remorse, and whether the defendant will comply with court orders designed to ensure effective rehabilitation. *Rand*, 696 S.W.3d at 106; T.C.A. § 40-35-102(3)(C). The court may also consider whether the defendant poses a danger to the community. *See* T.C.A. § 40-28-302(1).

In its oral ruling, the trial court focused on Defendant's failure to follow the rules of the Veteran's Court Treatment Program. The court found:

Of course, it appears based upon what I'm being told by the probation officer and the veteran treatment staff that he has failed to check in each and every day as he's required to do. He's failed to meet in group meetings. At least three different Thursday group meetings he's failed to attend. He was brought in and he was given I guess a warning about being absent from these meetings. He was told again about the requirements of the veteran's program. Obviously had to check in daily. I mean, that's just what's required because when you check in they will tell you you've got to show up for a drug screen -- but you're not doing that. You're not showing up to meet with them and you're not even checking in with them which tells me that you're not following the rules of the Veteran's Treatment Program. I'm being told

he's already been terminated from the Veteran's Treatment Program which means that he' violated his conditions of probation by not successfully completing the Veteran's Treatment Program.

These findings support a determination that a violation occurred; however, under *Dagnan*, the consequence determination must extend beyond that. *See Dagnan*, 641 S.W.3d at 758 ("Simply recognizing that sufficient evidence existed to find that a violation occurred does not satisfy this burden."). In the absence of such findings, this Court "may conduct a de novo review if the record is sufficiently developed for the court to do so, or [we] may remand the case to the trial court to make such findings." *Id.*

The record here allows for a de novo review as to the consequence determination on the trial court's revocation of Defendant's misdemeanor probation. Based on the information provided by the probation officer and Defendant's own admissions, Defendant's repeated noncompliance resulted in his discharge from the program. We agree with the trial court that the nature of the violation is significant. "Although the General Assembly classifies the violation as being 'technical in nature,' the failure to comply with treatment recommendations for substance use can be a serious breach, particularly where substance use has been a recurring factor in a defendant's criminal conduct." *Noel*, 729 S.W.3d at 326 ("Effective rehabilitation depends upon the defendant's voluntary cooperation. *See* Tenn. Code Ann. § 40-35-102(3)(C) (2019).").

Defendant's lack of cooperation, which is essential to effective treatment, the timing of his failures within three months of his guilty pleas, his criminal history involving repeated DUI convictions, and his lack of accountability weigh heavily against continued rehabilitation efforts. We conclude that the trial court properly ordered a full revocation of the Defendant's suspended misdemeanor sentences.

CONCLUSION

Based on the foregoing, we conclude that the trial court lacked statutory authority to revoke the suspended felony sentence in Count 3 because the violation constituted a first instance of a technical violation. However, we affirm the full revocation of the suspended misdemeanor sentences following our de novo review. Accordingly, we affirm in part and reverse in part the judgment of the trial court.

S/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE