

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 14, 2001

STATE OF TENNESSEE v. LINDA GAIL PHILPOTT

**Direct Appeal from the Circuit Court for Bedford County
No. 14623**

NO. M2000-01999-CCA-R3-CD - FILED MAY 2, 2001

James Curwood Witt, Jr., J., concurring and dissenting.

I concur that a sentencing alternative of split confinement should be utilized in the present case; however, I respectfully disagree that confinement for 35 days is appropriate. A consecutive sentence of 20 days confinement for each count would be more in line with the sentence approved by this court in the remarkably similar case of *State v. Cynthia D. Stacey*, No. 03C01-9803-CC-00091 (Tenn. Crim. App., Knoxville, May 24, 1999) (approving 180 days of confinement followed by two years of community corrections, for defendant who, as a home health care worker, stole money from an elderly couple in her care). The cases are very similar, and in light of *Cynthia D. Stacey*, the present case, on its own facts, suggests a more punitive, deterrent sentence than 35 days in confinement. Thus, I would extend the confinement portion of the sentence to an aggregate of 140 days.

James Curwood Witt, Jr., Judge