

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY SESSION, 1996

<p>FILED</p> <p>December 30, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

STATE OF TENNESSEE,)

Appellee,)

VS.)

JOSH HUTCHINSON,)

Appellant.)

C.C.A. NO. 01C01-9512-CC-00430

HICKMAN COUNTY

HON. DONALD P. HARRIS
JUDGE

(Rape-Denial of Probation)

FOR THE APPELLANT:

DALE M. QUILLEN
95 White Bridge Road, Suite 208
Nashville, TN 37205

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General and Reporter

ROBIN L. HARRIS
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243

JOE D. BAUGH, JR.
District Attorney General

RONALD L. DAVIS
Assistant District Attorney
P. O. Box 937
Franklin, TN 37065-0937

OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

ORDER

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Appellant complains that the trial judge abused his discretion in denying Appellant probation. We affirm the decision of the trial court.

Appellant was convicted on a plea of nolo contendere to the offense of rape by force or coercion, a Class B felony. Tenn. Code Ann. Sec. 39-13-503. Appellant does not therefore enjoy the presumption that he is entitled to a sentence which does not involve incarceration. See, Tenn. Code Ann. Sec. 40-35-102(6).

The record reflects that Appellant was a friend of the twelve year old victim's family. Exploiting this relationship, Appellant repeatedly and on separate occasions committed forcible oral and vaginal rape upon the victim. As a result the young victim suffered great psychological trauma, was hospitalized, medicated and even attempted suicide. Appellant also wrote a letter to the victim expressing his desire to engage in this same conduct with the victim's sister.

The trial court found that the especially shocking and reprehensible nature of this offense and the need to avoid depreciating the seriousness of the offense outweighed any favorable evidence in favor of granting probation. Having conducted a de novo review of the trial court's decision with a

presumption that it is correct, we find that the law and evidence amply supports the decision to deny Appellant probation.

We further find that an opinion in this matter would not have any precedential value. Therefore, we affirm the decision of the trial court pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals.

JERRY L. SMITH, JUDGE

CONCUR:

DAVID H. WELLES, JUDGE

WILLIAM M. BARKER, JUDGE

OPINION

JERRY L. SMITH, JUDGE

CONCUR:
