

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY 1996 SESSION

**FILED**  
November 15, 1996  
Cecil W. Crowson  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee )  
 )  
 V. )  
 )  
 JOHN L. SMITH, )  
 )  
 Appellant )

NO. 01C01-9510-CR-00337  
DAVIDSON COUNTY  
HON. THOMAS H. SHRIVER  
JUDGE  
(Sentencing)

FOR THE APPELLANT:

Lionel R. Barrett, Jr.  
Washington Square Two, Ste 417  
222 Second Avenue, North  
Nashville, Tennessee 37201

FOR THE APPELLEE:

Charles W. Burson  
Attorney General and Reporter  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0493

Karen M. Yacuzzo  
Assistant Atty. Gen. & Reporter  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0493

Victor S. Johnson, III  
District Attorney General  
Washington Square, Ste 500  
222 Second Avenue, North  
Nashville, Tennessee 37201-1649

Mary Hausman  
Assistant District Attorney General  
Washington Square, Ste 500  
222 Second Avenue, North  
Nashville, Tennessee 37201-1649

OPINION FILED: \_\_\_\_\_

AFFIRMED

William M. Barker, Judge

\_\_\_\_\_  
OPINION

This is the appellant's second appeal as of right to this Court following his convictions in the Davidson County Criminal Court for three (3) counts of aggravated robbery, one (1) count of aggravated assault, and two (2) counts of attempted second degree murder. In his original appeal, the appellant challenged the sufficiency of the evidence to support his convictions, the length of his sentences, and the consecutive nature of the sentencing ordered by the trial court. In that appeal, this Court sustained the convictions and the length of the sentences ordered by the trial court. However, a majority of the panel hearing appellant's first appeal was of the opinion that the trial court failed to place upon the record sufficient facts and reasons for ordering consecutive sentencing. Accordingly, the matter was remanded to the trial court for a new sentencing hearing limited in scope to the issue of consecutive sentencing.

Following remand, the trial court once again ordered consecutive sentencing. The trial court ordered that the appellant's three (3) ten (10) year sentences for the aggravated robberies be served concurrently, that his six (6) year sentence for aggravated assault be served consecutively to the robbery sentences, and that his two (2) twelve (12) year sentences for his attempted second degree murder convictions be served consecutively to each other and consecutive to the aggravated assault sentence. Therefore, appellant's effective sentence is forty (40) years.

Having carefully reviewed the record upon appeal, including the transcript of the resentencing hearing, we are of the opinion that the trial court was justified by the facts and the law in ordering consecutive sentences for these offenses, and accordingly, we affirm.

The facts which gave rise to the appellant's convictions are set forth in detail in this Court's opinion from appellant's initial appeal. See State v. John L. Smith, No 01C01-9309-CR-00308, (Tenn. Crim. App., Nashville, Oct. 20, 1994). Without rehashing those facts, suffice it to say that the appellant's participation in these very serious crimes was egregious and aggravated, resulting in one completely innocent

victim being shot in the leg, police officers being fired upon by the appellant, another victim receiving head wounds by being pistol-whipped by the appellant, a high-speed vehicular chase through the streets of Nashville, and death threats made by the appellant to persons at the scene of the robberies. Moreover, the evidence clearly supports a finding that the appellant was a leader in the commission of these crimes, and that these crimes were committed soon after the appellant had been placed upon probation following an earlier conviction for vehicular theft.

A defendant convicted of more than one criminal offense can be given consecutive sentences if the trial court finds by a preponderance of the evidence that:

- (5) the defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high; [or]
- (6) the defendant is sentenced for an offense while on probation.

Tenn. Code Ann. § 40-35-115(b)(5) & (6) (1990).

Recently, our supreme court held that before a defendant may be sentenced to consecutive sentences as a dangerous offender, “the proof must also establish that the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender.” State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995). Further, the sentence must also comply with the Sentencing Act’s general principles. Id.

At appellant’s resentencing hearing regarding the issue of consecutive sentencing, the trial judge set forth in detail ample findings of fact justifying the consecutive sentencing ordered. First, the trial court found, and the record supports, that the appellant’s behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high. Second, the trial court found that consecutive sentences were reasonably related to the severity of the offenses committed. In that respect, the trial court found that even

though the crimes arose out of one continuous chain of events, there were three separate episodes and multiple victims: first, the robberies themselves, with appellant's accompanying threats and his shooting at an innocent busboy inside the restaurant; second, the shooting of the employee outside the restaurant who in no way posed a threat to the appellant's escape; and finally, the high speed auto chase culminating in a physical altercation between the appellant and a police officer trying to effect his arrest wherein the appellant took the officer's service weapon and fired it at the officer while attempting to flee on foot. The trial court found that the consecutive sentences are necessary to protect the public from further criminal acts by the appellant. The trial court particularly emphasized that the appellant committed these crimes while on probation for vehicular theft and that he threatened to kill several people .

Moreover, it is uncontested that the appellant was on probation for vehicular theft when these offenses occurred. This, in itself, is sufficient to order consecutive sentences. Tenn. Code Ann. § 40-35-115(b)(6) (1990).

Accordingly, the appellant's consecutive sentences are affirmed.

---

WILLIAM M. BARKER

CONCUR:

---

DAVID H. WELLES, JUDGE

---

JERRY L. SMITH, JUDGE