

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1996 SESSION

<p>FILED</p> <p>February 12, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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STATE OF TENNESSEE,

Appellee,

V.

JEFFERY WALTERS,

Appellant.

)
) C.C.A. No. 01C01-9512-CC-00425
)
) Williamson County
)
) Hon. Cornelia A. Clark, Judge
)
) (Denial of Pretrial Diversion)
)

FOR THE APPELLANT:

Barton E. Kelly
 Attorney at Law
 102 West 7th Street
 P.O. Box 692
 Columbia, TN 38402-0692

FOR THE APPELLEE:

Charles W. Burson
 Attorney General & Reporter

William David Bridgers
 Assistant Attorney General
 Criminal Justice Division
 450 James Robertson Parkway
 Nashville, TN 37243-0493

Joseph D. Baugh
 District Attorney General

Mark L. Puryear, III
 Asst. Dist. Attorney General
 P.O. Box 937
 Franklin, TN 37065-0937

OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

The appellant, Jeffery Walters, was indicted on one count of filing a false police report, two counts of filing fraudulent insurance claims, one count of conspiracy to file false insurance claims, and one count of destroying a manufacturer's vehicle identification number. The appellant sought pretrial diversion, which was denied by the district attorney general. The appellant sought review of the denial, and the trial judge affirmed the action of the district attorney general. The appellant sought and received an interlocutory appeal by permission of the trial court pursuant to Rule 9, Tenn. R. App. P..

On appeal the appellant contends that the trial court abused its discretion when it affirmed the district attorney general's denial of his pretrial diversion. We disagree and affirm the decision of the trial court.

FACTS

In December 1994, the appellant informed the Franklin Police Department that his GMC van had been stolen from a store parking lot. He subsequently filed a \$39,000 claim with Allstate Insurance Company to cover his loss from the theft. Later that week, he filed a \$3,800 claim with American Modern Homes Insurance Company to cover the replacement cost of the van's contents.

A day after the appellant reported his van stolen his father was stopped by a Michigan sheriff's deputy for hauling a trailer with no lights. The sheriff's deputy discovered a motor and transmission from a GMC vehicle. The motor and transmission were traced to the appellant's allegedly stolen van.

In mid-January, after his father had been stopped in Michigan, the appellant requested that his theft report be withdrawn. The Franklin police

located the van, less the engine and transmission, in a storage lot the next day. After the van was recovered, the appellant withdrew the two false insurance claims.

The decision to grant pretrial diversion rests within the discretion of the district attorney general. Tenn. Code Ann. § 40-15-105(b)(3) (1994 Supp.). State v. Hammersley, 650 S.W.2d 352 (Tenn. 1983). In making the initial determination, the district attorney must consider: (1) the circumstances of the offense; (2) the appellant's criminal record; (3) the appellant's social history; (4) the appellant's physical and mental condition; and (5) the likelihood that the appellant will benefit from the pretrial diversion program. Id. at 355. The nature and circumstance of the alleged offense are not only appropriate factors to be considered upon application for diversion but may alone provide a sufficient basis for denial. State v. Sutton, 668 S.W.2d 678 (Tenn. Crim. App. 1984).

The district attorney general's decision regarding pretrial diversion is presumptively correct, and the trial court will only reverse the decision when the appellant establishes that there has been a patent or gross abuse of prosecutorial discretion. State v. Houston, 900 S.W.2d 712, 714 (Tenn. Crim. App. 1995); Hammersley, 650 S.W.2d at 356. In order to establish abuse of discretion, "the record must show an absence of any substantial evidence to support the district attorney general's refusal to grant pretrial diversion." Id. Furthermore, the trial court may not substitute its judgment for that of the district attorney general when his or her decision is supported by the evidence. State v. Watkins, 607 S.W.2d 486, 489 (Tenn. Crim. App. 1980).

For purposes of our review, the findings of the trial court are binding on this Court unless the evidence preponderates against such findings. Houston, 900 S.W.2d at 715. We do not review the case to determine if the trial judge has abused his or her discretion. Rather, we determine if the evidence

preponderates against the finding that the district attorney general has or has not abused his or her discretion. Watkins, 607 S.W.2d at 489.

The record reveals that the district attorney general conceded that the appellant's social and family history were "exemplary." His memo denying diversion points out that he considered the appellant's background and letters of reference in making his decision. He, however, concluded that based on the circumstances of the offenses and due to the appellant's failure to take full responsibility for his actions, he was not amenable to rehabilitation. Furthermore, the district attorney general considered that the appellant's elaborate scheme evidenced a sustained intent to commit the offenses. The record reveals that the district attorney general considered and weighed the appropriate factors before making his decision.

This Court finds that the evidence does not preponderate against the trial court's decision. We find nothing in the record that illustrates a gross abuse of discretion by the district attorney general. Accordingly, the trial court's decision that the prosecutor did not abuse his discretion is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

WILLIAM M. BARKER, Judge

JOE G. RILEY, Judge