

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
DECEMBER SESSION, 1998

FILED

February 11, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee)
)
vs.)
)
BILLY CHARLES BOHANAN,)
)
Appellant)

No. 03C01-9709-CC-00434

SEVIER COUNTY

Hon. Richard R. Vance, Judge

(Sentencing)

For the Appellant:

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The appellant, Billy Charles Bohanan, appeals the sentencing decision of the Sevier County Circuit Court following his guilty pleas to the felony sale of marijuana, a class E felony, and conspiracy to sell marijuana, a class A misdemeanor. The trial court imposed the minimum sentence of one year for the felony drug conviction and a concurrent sentence of eleven months twenty-nine days for the conspiracy conviction. The court also ordered that, after service of sixty days in the county jail, both sentences were suspended with the remainder to be served in the Community Corrections program. In this appeal as of right, the appellant contends that the trial court erred in denying total probation.

The judgment of the trial court is affirmed.

At the guilty plea hearing, the factual basis for the appellant's guilty pleas was stipulated as follows:

[O]n October the 31st, 1996, Detective Mark Turner of the Sevier County Sheriff's Department was working undercover attempting to purchase marijuana. On that date he came in contact with Mr. Bohannon, and he had met him at the Big Lots parking lot here in Sevierville. They had a discussion, and Mr. Bohannon and another co-defendant had agreed to get Officer Turner some marijuana, and he paid them \$140.00.

They left the parking lot, and returned a short time later, and at that time they delivered to Officer Turner, in exchange for the \$140, 20.3 grams of marijuana.

On the date of these offenses, the appellant was 20 years old, divorced and living with his parents. He was employed with Dykes Floor Covering with a good work record. At the hearing, the appellant offered, apparently as evidence of good citizenship, his application of membership in the Seymour Volunteer Fire Department. The record reflects that this application was submitted two days before his sentencing hearing and approximately one year after his arrest for the current convictions. The appellant's prior criminal history reflects traffic offenses, which

included one conviction for drag racing, and a conviction for contributing to the delinquency of a minor, which resulted in a suspended sentence.

In denying total probation, the trial court noted the appellant's eager willingness to distribute drugs to unknown persons in his community, the negative influence of drugs in society, the appellant's prior criminal history and that the appellant was the leader in the commission of these offenses.

When a defendant complains of his or her sentence, we must conduct a *de novo* review with a presumption of correctness. Tenn. Code Ann. § 40-35-401(d) (1990). This presumption, however, "is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). Because the record reflects that the trial court properly considered the principles of sentencing, the sentences on appeal are afforded the presumption of correctness. Additionally, the burden of showing that the sentence imposed is improper is upon the appealing party. Sentencing Commission Comments, Tenn. Code Ann. § 40-35-401(d).

The record fully supports the trial court's denial of total probation. The factors related by the trial court are appropriate considerations for determining the necessity of incarceration. See Tenn. Code Ann. § 40-35-103(1)(A) and 1(B) (1990). See also State v. Zeolia, 928 S.W.2d 457, 461 (Tenn. Crim. App. 1996) (permitting the court to consider enhancing factors set forth in Tenn. Code Ann. § 40-35-114, as they are relevant to Tenn. Code Ann. § 40-35-103 considerations). Moreover, we note, upon *de novo* review, a probated sentence was recently applied unsuccessfully to the appellant. Tenn. Code Ann. § 40-35-103(c).

Based upon the foregoing, the sentencing decision of the trial court is affirmed.

DAVID G. HAYES, Judge

CONCUR:

JERRY L. SMITH, JUDGE

JAMES CURWOOD WITT, JR., JUDGE