

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1998

FILED

January 6, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

C.C.A. NO. 03C01-9712-CC-00539

Appellee,)

VS.)

ANDERSON COUNTY

TIMOTHY HUNLEY,)

HON. JAMES B. SCOTT, JR.
JUDGE

Appellant.)

(Sentencing)

ON APPEAL FROM THE JUDGMENT OF THE
CRIMINAL COURT OF ANDERSON COUNTY

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED _____

AFFIRMED IN ACCORDANCE WITH RULE 20

DAVID H. WELLES, JUDGE

ORDER

The Defendant, Timothy Hunley, appeals as of right pursuant to Tennessee Rule of Appellate Procedure 3(b). Defendant appeals the sentence imposed for his conviction upon guilty plea to theft of property valued more than \$1,000, a Class D felony. By the terms of his plea, Defendant agreed to a sentence of two years as a Range I standard offender, with the manner of service of the sentence to be determined by the trial judge. Defendant contends that the trial court erred by denying him probation or other alternative sentence, requiring him instead to serve his sentence in confinement. We find no abuse of the trial court's discretion and affirm Defendant's sentence.

Defendant pleaded guilty to theft of a generator valued at approximately \$1400. The victim's wife testified at Defendant's probation hearing that he "threatened to burn [their] home down" after he was charged with the theft, and that the victim and his wife had called the sheriff's department "numerous times" because Defendant had waited in his car near their house or circled the house. Defendant denied these allegations; however, the trial court found that Defendant lacked credibility. The record supports this finding.

Defendant's presentence report reflects convictions for theft of property valued less than \$500, public intoxication, resisting arrest, another theft less than \$500, and another public intoxication in 1996 alone. In addition, the presentence report reveals that Defendant was convicted in 1992 for DUI, driving on suspended license, and public intoxication. In 1986 Defendant was convicted of

reckless driving and armed robbery, among other offenses for which complete information was unavailable. In 1990, presumably while serving his sentence for robbery, Defendant was convicted of felony escape. Finally, the report indicates, "At this time [Defendant] has two DUI charges pending in Knox and Union Counties as well as a charge of possession of alcohol on TVA property." According to the presentence report and testimony at his probation hearing, Defendant was released from the state penitentiary only five weeks prior to the theft at issue here.

Defendant has exhibited an unwillingness to comply with the laws of this state for nearly half his life. We find no error in the trial court's denial of alternative sentencing in this case. Based on a thorough reading of the record, the briefs of the parties, and the applicable law, the judgment of the trial court is affirmed in accordance with Rule 20 of the Court of Criminal Appeals of Tennessee.

DAVID H. WELLES, JUDGE

CONCUR:

JAMES CURWOOD WITT, JR., JUDGE

L.T. LAFFERTY, SENIOR JUDGE