IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1999 SESSION

FILED

October 22, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	**)**	
	)	**C.C.A. NO. 01C01-9903-CC-00105**
Appellant,	**)**	
	)	**MAURY COUNTY**
VS.	**)**	
	)	**HON. ROBERT L. HOLLOWAY, JR.,**
SHELIA SHARPTON,	**)**	**JUDGE**
	)	
Appellee.	**)**	(Sentencing)

FOR THE APPELLANT:

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OPINION FILED:_____

AFFIRMED

JOHN H. PEAY,
Judge

O P I N I O N

The defendant, Shelia Sharpton[1], pursuant to a plea agreement, pled nolo contendere to two counts of vehicular homicide, a Class C felony. The defendant was sentenced to a term of four years on each count to run consecutively. The trial court subsequently suspended the entire sentence. The State now appeals and contends that the trial court erroneously suspended the defendant's sentence. After a review of the record and applicable law, we find no merit to the State's contentions and thus affirm the judgment of the trial court.

The facts surrounding the defendant's conviction are tragic. On March 8, 1996, the defendant, after consuming at least two alcoholic beverages in her home, drove to the local skating rink to pick up her daughter. Alice Brown, a young female friend of the defendant, accompanied the defendant to the skating rink. After the defendant's daughter and another young girl, Krystal Dodson, entered the vehicle, the defendant drove to a nearby Kwik-Sak to purchase wine coolers. After purchasing the alcohol and driving away from the store, the defendant's vehicle was involved in a one car accident. As a result of this accident, the defendant's daughter, Ms. Brown, and Ms. Dodson were killed. Shortly after the accident, the defendant's blood alcohol level was measured at .13.

The State now contends that the trial court erroneously suspended the defendant's sentence. When the State complains of a defendant's sentence, we must conduct a de novo review with a presumption of correctness. T.C.A. § 40-35-402(d). The burden of showing that the sentence is improper is upon the appealing party. T.C.A.

[1] Although the correct spelling of the defendant's first name is unclear from the record, it is the policy of this Court to adhere to the spelling of a defendant's name as set out in the indictment.

§ 40-35-401(d) Sentencing Commission Comments. 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). In the case at bar, the record indicates that the trial court did consider the sentencing principles and the relevant facts and circumstances. As such, our standard of review is de novo with a presumption of correctness.

In addition, if our review reflects that the trial court followed the statutory sentencing procedure, imposed a lawful sentence after having given due consideration and proper weight to the factors and principals set out under the sentencing law, and that the trial court's findings of fact are adequately supported by the record, then we may not modify the sentence even if we would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

The Sentencing Reform Act of 1989 sets out sentencing considerations which are guidelines for determining whether or not a defendant should be incarcerated. These include the need "to protect society by restraining a defendant who has a long history of criminal conduct," the need "to avoid depreciating the seriousness of the offense," the determination that "confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses," or the determination that "measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant." T.C.A. § 40-35-103(1).

In determining the specific sentence and the possible combination of sentencing alternatives, the court shall consider the following: (1) any evidence from the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing

and the arguments concerning sentencing alternatives, (4) the nature and characteristics of the offense, (5) information offered by the State or the defendant concerning enhancing and mitigating factors as found in T.C.A. §§ 40-35-113 and -114, and (6) the defendant's statements in his or her own behalf concerning sentencing. T.C.A. § 40-35-210(b). In addition, the legislature established certain sentencing principles which include the following:

> (5) In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration; and
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> (6) A defendant who does not fall within the parameters of sub-division (5) and is an especially mitigated or standard offender convicted of a Class C, D or E felony is presumed to be a favorable candidate for alternative sentencing options in the absence of evidence to the contrary.

T.C.A. § 40-35-102.

After reviewing the statutes set out above, it is clear that the intent of the legislature is to encourage alternatives to incarceration in cases where defendants are sentenced as standard or mitigated offenders convicted of C, D, or E felonies. However, it is also clear that there is an intent to incarcerate those defendants whose criminal histories indicate a clear disregard for the laws and morals of society and a failure of past efforts to rehabilitate.

In the case at bar, the defendant pled guilty to a Class C felony and, as such, she is presumed to be a favorable candidate for alternative sentencing. T.C.A. § 40-35-102. The State contends that the circumstances and seriousness of the offense, coupled with the need for deterrence, render a sentence of full probation erroneous. We

agree that the facts of this case are indeed tragic. However, the law presumes the defendant to be a favorable candidate for probation and this Court presumes the trial court's sentence to be correct. See T.C.A. §§ 40-35-102, -402(d); Ashby, 823 S.W.2d at 169. Based on the foregoing presumptions and applicable law and the fact that the State has failed to carry its burden of overcoming such presumptions, we cannot find that the trial court abused its discretion in granting the defendant full probation. As such, we affirm the sentence as imposed.

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JOHN H. PEAY, Judge

CONCUR:

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DAVID H. WELLES, Judge

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JOHN EVERETT WILLIAMS, Judge