

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1999 SESSION

FILED

December 15, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee,)
)
VS.)
)
DONALD RAY PANNELL,)
)
Appellant.)

NO.M1999-00178-CCA-R3-CD

MARSHALL COUNTY

HON. CHARLES LEE,
JUDGE

(Burglary; Automobile Burglary;
Theft Under \$500)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

OPINION

_____Defendant was convicted by a Marshall County jury of burglary, automobile burglary, and theft under \$500. He was sentenced as a career offender to twelve years, six years and eleven months and twenty-nine days, respectively. The trial court ran the felony sentences consecutively for an effective sentence of eighteen years. In this appeal as of right, the sole issue raised by defendant is whether the trial court erred in ordering consecutive sentencing. After a careful review of the record, we **AFFIRM** the judgment of the trial court.

BACKGROUND

The facts giving rise to these convictions are not at issue. However, defendant's past record of criminal activity is relevant to the issue before the Court.

Defendant was forty-nine years old at the time of sentencing. Defendant's criminal career began in 1974 and has continued, more or less uninterrupted, until the present. He has over thirty criminal convictions, eleven of which are felonies. Over twenty of the prior convictions are theft-related offenses. As noted by the trial judge, defendant has either been incarcerated or committing criminal offenses during most of the past twenty-five years.

The parties stipulated that the defendant qualified as a career offender due to the nature and number of his prior felony offenses. Therefore, a twelve-year sentence for the Class D burglary and a six-year sentence for the Class E automobile burglary are mandated by statute. See Tenn. Code Ann. § 40-35-108(c). Thus, the consecutive nature of the sentences is the sole issue for our

review.

Finding that the defendant had an extensive prior criminal history and that society needed protection from defendant's criminal acts, the trial court ran the felony sentences consecutively for an effective sentence of eighteen years. We decline to disturb the sentence.

ANALYSIS

This Court's review of the sentence imposed by the trial court is *de novo* with a presumption of correctness. Tenn. Code Ann. § 40-35-401(d). This presumption is conditioned upon an affirmative showing in the record that the trial judge considered the sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

A court may order sentences to run consecutively if the court finds by a preponderance of the evidence that "[t]he defendant is an offender whose record of criminal activity is extensive." Tenn. Code Ann. § 40-35-115(b)(2). Unquestionably, defendant's prior criminal record consisting of over thirty offenses is indeed "extensive." The general principles of sentencing also require that the length of sentence be "justly deserved in relation to the seriousness of the offense" and "be no greater than that deserved for the offense committed." State v. Lane, ___ S.W.2d ___, ___ (Tenn. 1999)(citing Tenn. Code Ann. §§ 40-35-102(1) and 103(2)).

We conclude the trial court did not err in ordering the sentences to be served consecutively. The aggregate sentence was justly deserved in relation to the seriousness of the offenses and was not greater than that deserved. This issue is without merit.

CONCLUSION

Based upon our review of the record, we **AFFIRM** the judgment of the trial court in all respects.

JOE G. RILEY, JUDGE

CONCUR:

JAMES CURWOOD WITT, JR., JUDGE

ALAN E. GLENN, JUDGE