

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
DECEMBER SESSION, 1995

FILED

March 20, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
Appellee) No. 03C01-9504-CR-00110
vs.) BLOUNT COUNTY
JAMES E. ALLRED,) Hon. D. Kelly Thomas, Jr., Judge
Appellant) (Violation of Motor Vehicle Habitual
Offender Act)

For the Appellant:

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For the Appellee:

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OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

David G. Hayes
Judge

OPINION

The appellant, James E. Allred, pled guilty in the Circuit Court of Blount County to violating the Motor Vehicle Habitual Offenders Act, a class E felony. Tenn. Code Ann. § 55-10-616(b) (1993). The trial court sentenced the appellant to 2 years incarceration in the Tennessee Department of Correction as a standard, range I offender. Tenn. Code Ann. § 40-35-112(a)(5)(1990). The trial court then granted the appellant an alternative sentence of split confinement, comprising 180 days incarceration in the county jail followed by a period of supervised probation. Tenn. Code Ann. § 40-35-104(c)(4)(1994 Supp.); Tenn. Code Ann. § 40-35-306 (1990). Moreover, the trial court ordered that the appellant be eligible for work release. Tenn. Code Ann. § 40-35-104(6); Tenn. Code Ann. § 40-35-315 (1990). The appellant now appeals his sentence, contending that the trial court should have imposed the minimum sentence of 1 year in conjunction with total probation.

The record reflects that, at the sentencing hearing, the trial court properly considered appropriate sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). Thus, we afford the trial court's sentencing determination a presumption of correctness. Tenn. Code Ann. § 40-35-401(d)(1990). After performing a *de novo* review, applying the presumption of correctness, we conclude that the record fully supports the trial court's determination.

The appellant's history of criminal convictions and criminal behavior is more than sufficient to outweigh the mitigating factor, that the appellant's conduct neither caused nor threatened bodily injury, and justify the imposition of a maximum sentence of two years. Tenn. Code Ann. § 40-35-114(1) (1994 Supp.). The appellant's history of criminal convictions includes a prior felony

conviction for violation of the Motor Vehicle Habitual Offenders Act and seven prior misdemeanor convictions. Additionally, at the sentencing hearing, the appellant admitted to past abuse of marijuana.

The appellant's criminal history also weighs against total probation.¹ State v. Bonestel, 871 S.W.2d 163, 169 (Tenn. Crim. App. 1993). Specifically, the appellant's use of marijuana since his arrest for the instant offense demonstrates his poor potential for rehabilitation. Id. See also State v. Bingham, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995); Tenn. Code Ann. § 40-35-103(5) (1990). Moreover, the appellant has previously received sentences involving probation, which have failed to deter the appellant from further criminal conduct. Id. The appellant's failure to appear at his sentencing hearing on the originally scheduled date also indicates that the appellant is not amenable to rehabilitation. Id. Furthermore, the appellant now denies culpability for the offense to which he pled guilty. State v. Dowdy, 894 S.W.2d 301, 306 (Tenn. Crim. App. 1994) ("a defendant's credibility and willingness to accept responsibility for the offense are circumstances relevant to determining his rehabilitation potential"). Finally, the appellant's statement to the presentence officer, that he was "tired of being hounded by Officer Simerly," reflects his refusal to accept responsibility for his conduct. Id.

After consideration of the entire record and the controlling law, we conclude that the sentence imposed was clearly justified and that no error of law exists that would require a reversal. Accordingly, the judgment of the trial court is affirmed in accordance with Rule 20 of the Court of Criminal Appeals of Tennessee.

¹ We note that habitual motor vehicle offenders are eligible for probation under the Tennessee Criminal Sentencing Reform Act of 1989. State v. Alexander, No. 02C01-9412-CR-00286 (Tenn. Crim. App. at Jackson, October 11, 1995); State v. Fife, No. 03C01-9401-CR-00036 (Tenn. Crim. App. at Knoxville, June 15, 1995).

DAVID G. HAYES, Judge

CONCUR:

WILLIAM M. BARKER, Judge

JERRY L. SMITH, Judge