

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
APRIL 1996 SESSION

FILED

June 10, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9506-CC-00171
 Appellee,)
) Henry County
 V.)
) Honorable Julian P. Guinn, Judge
)
 CHAD EDWARD WYATT,) (Sentencing)
)
 Appellant.)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Chad Edward Wyatt, pled guilty to two counts of theft of property and one count of criminal responsibility. He received an effective sentence of two (2) years incarceration with all but the first ninety (90) days suspended. On appeal, he contends that the trial court should have either placed him on community corrections or suspended his entire sentence. We affirm the trial court.

At the sentencing hearing, the appellant's proof consisted of the following: he was 20 years old, employed, had no prior criminal record, and was willing to pay restitution. Based upon these circumstances, he requested community corrections or probation. The state opposed the appellant's request based upon the following considerations: (1) the appellant was involved in three separate crimes occurring over a period of time; (2) the appellant had used knowledge he gained as a Shoney's employee to steal \$ 1,400.00 from the Shoney's safe; (3) the appellant had taken 34,000 baseball and basketball cards from Martha's Antiques; (4) the appellant had taken approximately \$ 770.00 in items from S & S Auto; and (5) the appellant still owed approximately \$ 400.00 in restitution to Dollar Amusement.

The trial court found that the appellant was a proper candidate for alternative sentencing. However, the court also found that the appellant had committed three separate and distinct offenses occurring over a period of time. The court conveyed particular concern in the appellant's "disloyalty" demonstrated by using knowledge, gained as an employee, to burglarize his employer. The trial court concluded that in the interest of both justice and society and for the sake of deterrence, the appellant should serve 90 days continuous incarceration. The balance of his sentence will be served on supervised probation.

When a sentencing issue is appealed, this Court shall conduct a de novo review with the presumption that the trial court's findings are correct. Tenn. Code Ann. § 40-35-401(d) (1990); State v. Byrd, 861 S.W.2d 377, 379 (Tenn. Crim. App. 1993). The presumption of correctness is conditioned upon an 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 conducting a de novo review of a defendant's sentence, including the manner in which he or she is to serve the sentence, this Court must consider: (1) the evidence received at the trial and the sentencing hearing, (2) the pre-sentence report, (3) the principles of sentencing and arguments to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating and enhancement factors, (6) any statements made by the defendant in his or her own behalf, and (7) the defendant's potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-210 & -103 (1990). Among the factors applicable to the probation determination are the circumstances of the offense, the defendant's criminal record, social history, present condition, the deterrent effect upon the defendant, and the best interest of the defendant and the public. State v. Grear, 568 S.W.2d 285 (Tenn. 1978).

Sentences involving confinement are to be based on the following considerations contained in Tenn. Code Ann. § 40-35-103(1) (1990):

(A)

Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B)

Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C)

Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant. . . .

As can be gleaned from the record, (A) and (C) are not implicated. Therefore, whether or not appellant should be denied probation will be decided under Tenn. Code Ann. § 40-35-103(1)(B) (1990).

The record reflects that the trial court followed the sentencing principles and imposed a lawful sentence. In rejecting appellant's request for community corrections or full probation, the trial court emphasized: (1) the nature and number of the appellant's offenses, (2) the need for deterrence, and (3) the need to protect the interest of society. We will not disturb a trial court's sentence when statutory procedure is followed and the court's findings are supported by the record.

PAUL G. SUMMERS, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge