IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

MARCH 1996 SESSION

STATE OF TENNESSEE,	*	#02C01-9509-CC-00258
APPELLEE,	*	MADISON COUNTY
VS.	*	Hon. John Franklin Murchison
CHRISTOPHER BLOCKETT AND JERELL SWIFT,	*	(Aggravated Robbery, Attempted Aggravated Robbery, Vehicle Burglary & Theft)
APPELLANTS.	*	

For Appellant Blockett:

Ann Turner Moore
Suite 5
132 Tucker Street
Jackson, TN 38301

For Appellant Swift:

J. Colin Morris
P.O. Box 1623
204 West Baltimore
Jackson, TN 38301

For the Appellee

Charles W. Burson
Attorney General & Reporter
450 James Robertson Parkway
Nashville, TN 37243-0493

Robin L. Harris
Asst. Attorney General
450 James Robertson Parkway
Nashville, TN 37343-0493

James G. Woodall
District Attorney General

Donald H. Allen
Asst. Attorney General
225 Martin Luther King Dr.
P.O. Box 2825
Jackson, TN 38302-2825

OPINION FILED: _____

AFFIRMED AS MODIFIED

William M. Barker, Judge

OPINION

The appellants, Christopher Blockett and Jerell Swift, pled guilty to four counts of aggravated robbery, a class B felony, two counts of attempted aggravated robbery, a class C felony, one count of theft over $1,000, a class D felony, and one count of burglary of a vehicle, a class E felony. As a Range I, standard offender, Blockett received the following sentences to be served in the Department of Correction:[1]

> No. 94-559-- Attempted Aggravated Robbery, a class C felony, six years.
>
> No. 94-560--Two counts of Aggravated Robbery, a class B felony, twelve years, to be served concurrently;
>
> No. 94-561-- Aggravated Robbery, a class B felony, eight years, to be served consecutively to the sentences in no. 94-560;
>
> No. 94-562-- One count of Aggravated Robbery, a class B felony, twelve years, and one count of Attempted Aggravated Robbery, a class C felony, six years, to be served concurrently;
>
> No. 94-563-- One count of Burglary of a Vehicle, a class E felony, two years, and one count of theft over $1,000, a class D felony, four years, to be served concurrently.

Blockett's effective sentence is twenty years. Also a Range I standard offender, Swift received the following sentences:

> No. 94-559-- Attempted Aggravated Robbery, a class C felony, six years;
>
> No. 94-560-- Two counts of Aggravated Robbery, a class B felony, ten years, to be served concurrently;
>
> No. 94-561-- Aggravated Robbery, a class B felony, eight years, to be served consecutively to the sentences in no. 94-560;
>
> No. 94-562-- One count of Aggravated Robbery, a class B felony, ten years, and one count of Attempted Aggravated Robbery, a class C felony, six years, to be served concurrently;

---

[1] The applicable sentencing ranges were as follows: for the class B felonies, eight to twelve years; for the class C felonies, three to six years; for the class D felonies, two to four years; and for the class E felonies, one to two years. Tenn. Code Ann. § 40-35-112(a)(2), (3), (4), & (5).

> No. 94-563-- One count of Burglary of a Vehicle, a class E felony, two years, and one count of theft over $1,000, a class D felony, four years, to be served concurrently.

Swift's effective sentence is eighteen years.

On appeal, the appellants argue that the trial court erred in failing to impose especially mitigated sentences and in failing to impose the presumptive minimum sentence for each offense. The appellants further contend that the trial court erred in imposing consecutive sentences. We conclude that the trial court committed several errors in imposing the sentences. Thus, we affirm the judgments of conviction but modify the sentences as reflected herein.

Patrick Willis, an Investigator with the Jackson Police Department, testified that the appellants were involved in a series of crimes committed in Jackson, Tennessee, in early April of 1994.[2] According to Willis, on April 2, 1994, at approximately 1:00 a.m., the appellants, Larry Tubbs, and Detric Bowers broke into a car owned by Gary Reddick and took over $1,000 of property belonging to Reddick and Cory Wheeler. (Case number 94-563). On April 3, 1994, at approximately 4:35 a.m., the appellants, Tubbs, Bowers, and Keith Guy robbed Calvin Reeves and attempted to rob Hershel Moore. (Case number 94-562). At approximately 5:50 a.m., the appellants, Tubbs, Bowers, and Guy robbed John Coleman and Elsie Stephens as they were leaving the Best Way Inn. (Case number 94-560). Still later, at approximately 6:35 a.m., the appellants, Tubbs, Bowers, and Guy robbed Charles Smith in the parking lot of Kroger's. (Case number 94-561). Finally, on April 4, 1994, at approximately 1:00 a.m., the appellants, Tubbs, Bowers, and Guy attempted to rob an off duty police officer in the parking lot of Wal-Mart. (Case number 94-559). The police officer pulled a gun and shot Blockett several times.

---

[2] The appellants were indicted with several codefendants: Larry Tubbs, Detric Bowers, and Keith Guy. Tubbs was sentenced along with the appellants, but his appeal is not included herein.

According to Willis, all of the victims said that the defendants had been in possession of one handgun. Willis's investigation revealed that the handgun was a B.B. gun that was a replica of a .45 caliber handgun. Willis also testified that Blockett, Swift, and Tubbs gave conflicting statements about the offenses following their arrests. With regard to the vehicle burglary and theft, (case number 94-563), Tubbs said that Blockett broke the window out of the car and took forty compact disks and a leather jacket. With regard to the robbery of Reaves and the attempted robbery of Moore, (case number 94-562), Tubbs said that Blockett used the B.B. gun and demanded the money. Swift also said that Blockett was in possession of the gun. With regard to the robberies at the Best Way Inn, (case number 94-560), Blockett said that Tubbs had the gun and demanded the money from Coleman and Stephens. Tubbs admitted that he said "let's get them," and that he used a mace can to make the victims believe he had a gun. With regard to the robbery at Kroger's, (case number 94-561), Blockett told officers that Tubbs had said, "Let's get that dude." Blockett and Tubbs agreed that Keith Guy was in possession of the B.B. gun; however, Tubbs and Blockett accused one another of spraying the victim with mace. All three individuals admitted that they confronted the victim before the Wal-Mart offense. (Case number 94-559). All agreed that Blockett was in possession of the gun.

Blockett testified during the sentencing hearing that he was fifteen years of age at the time of the offenses and in the tenth grade at South Side High School in Jackson, Tennessee. He had no prior offenses as a juvenile. He met Larry Tubbs about one week before the offenses. He knew Tubbs was "bad news" but admitted that Tubbs was an influence to him. Blockett said that the B.B. gun used in committing the offenses was owned by Bowers. Blockett denied that he used the gun or the mace to rob the victims; however, just prior to the Wal-Mart offense, Tubbs gave him the gun and said it was "his turn" to rob someone. Blockett went along because he was afraid of Tubbs. During the attempted offense, the victim, an off duty police officer, pulled a gun and shot Blockett five times. Blockett said that Swift did not use the gun in any of the offenses.

Swift testified that he was sixteen years of age at the time of the offenses. Like Blockett, he had never been in trouble with the law. Swift admitted that he had known Tubbs for about eight months and that he had introduced Blockett to Tubbs. During one of the offenses, Swift served as "lookout." During two of the robberies he was asleep in the car. He did not use the gun at any time. Swift did not think that merely being at the scene was part of the crime but he testified that he accepted full responsibility for his actions.

Larry Tubbs testified that he was eighteen years old when the crimes were committed.[3] Tubbs admitted that he was involved in the offenses but denied that he planned the crimes or used the gun or the mace. Tubbs also denied that he told Blockett it was "his turn" to commit the robbery before the Wal-Mart offense. According to Tubbs, Swift was "not really" involved and had been asleep in the car during some of the offenses.

Jessie D. Jaycox, an assistant principal at South Side High School, testified that neither Blockett nor Swift had ever had problems at school. Both were "fairly average, good natured" students. Jaycox was "very surprised and shocked" to learn about their involvement in the crimes. Dan Shaw, also an assistant principal at South Side High School, echoed Jaycox's sentiments. Blockett and Swift had never been in major trouble in school and neither had any type of juvenile record. Shaw was "surprised" to learn of their involvement in crimes of this magnitude.

Barry Metzger, the Adult Basic Education Teacher for the McNairy County Jail,[4] testified that both Blockett and Swift had voluntarily enrolled in G.E.D. courses while incarcerated. Metzger said that Blockett was an "exceptional" student with a "very positive

---

[3] The record indicates that Bowers and Guy were also over the age of eighteen.

[4] The appellants were incarcerated in McNairy County due to overcrowded conditions in Madison County.

attitude." He said that Swift was "intelligent" and "very motivated." James Travis, a deputy jailor, testified that Blockett and Swift had displayed good attitudes while in jail. They were helpful and courteous. Michael Lane Teague, a deputy jailor, likewise testified that Blockett and Swift were courteous and cooperative.

Dory Swift, Jerell Swift's aunt, described her nephew as "a good kid" who had been "trouble free." She planned to support him and his plans to further educate himself. Cecilia Swift, Jerell Swift's mother, testified that she believed Jerell learned a lesson from his crimes. Similarly, Sharon Blockett, Christopher Blockett's mother, testified that her son had never been in trouble before these crimes. She planned to support her son and believed he had changed as a result of the offenses and the shooting.

I

When a defendant challenges the length, range or manner of service of a sentence, the reviewing court must conduct a de novo review on the record with a presumption that the determinations made by the trial court were correct. Tenn. Code Ann. § 40-35-401(d). The presumption of correctness 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). The burden of showing that a sentence is improper is on the appealing party. Tenn. Code Ann. § 40-35-401(d)(sentencing commission comments).

In reviewing the record, this court must consider (a) the evidence at the trial and the sentencing hearing, (b) the presentence report, (c) the principles of sentencing, (d) the arguments of counsel, (e) the nature and characteristics of the offenses, and (f) the appellant's potential for rehabilitation. Tenn. Code Ann. § 40-35-210; see also Tenn. Code Ann. § 40-35-102 & 103. In State v. Jones, 883 S.W.2d 597, 599-600 (Tenn 1994), our supreme court said that "[t]o facilitate meaningful appellate review... the trial court must

place on the record its reasons for arriving at the final sentencing decision, identify the mitigating and enhancement factors found, state the specific facts supporting each enhancement factor found, and articulate how the mitigating and enhancement factors have been evaluated and balanced in determining the sentence."

As detailed herein, the trial court did not fully comply with the sentencing act and Jones in terms of relating factual findings and sentencing considerations before imposing the sentences. As a result, we review the sentences de novo.

A

The appellants contend that the trial court should have sentenced them as especially mitigated offenders given the presence of mitigating factors and the lack of enhancement factors. A defendant is eligible for sentencing as an especially mitigated offender if: "(1) [t]he defendant has no prior felony convictions; and (2) [t]he court finds mitigating, but no enhancement factors." Tenn. Code Ann. § 40-35-109(a). A defendant who meets the requirements under the statute, however, is not automatically entitled to sentencing as an especially mitigated offender. State v. Braden, 867 S.W.2d 750, 752 (Tenn. Crim. App. 1993); State v. Teddy DeWayne LeCroy, No. 01C01-9212-CC-00381 (Tenn. Crim. App., Sept. 2, 1993, Nashville). Instead, sentencing pursuant to this statute is discretionary with the trial court. State v. Hicks, 868 S.W.2d 729, 731 (Tenn. Crim. App. 1993).

The trial court sentenced both appellants as Range I standard offenders. The trial court acknowledged that the appellants' youth and remorse were substantial mitigating factors, but it was concerned with the seriousness and the number of the offenses committed in the midst of the crime spree. Although we question the applicability of the enhancement factors found by the trial court as discussed hereinafter, we conclude that the trial court did not abuse its discretion in failing to impose especially mitigated

sentences. See State v. Braden, 867 S.W.2d at 752-53; State v. Teddy DeWayne LeCroy, supra, slip op. at 4. Therefore, the appellants are not entitled to relief on this ground.

B

As part of their second issue, the appellants contend that the trial court ignored the presumptions of minimum sentencing. The record indicates that Blockett was sentenced to the maximum sentence for the offenses in case numbers 94-559, 94-560, 94-562, and 94-563, and to the minimum sentence in case number 94-561. Swift, on the other hand, was sentenced to the maximum sentence for the offense in case number 94-559, the attempted aggravated robbery in case number 94-562, and the offenses in case number 94-563. He was sentenced to the middle of the range for the offense in 94-560 and the aggravated robbery in 94-562, and to the minimum sentence for the offense in 94-561. The trial court noted that Swift's lower sentences reflected his lesser involvement in the crimes.

Pursuant to the sentencing act, the sentence to be imposed is presumptively the minimum within the applicable range unless there are enhancement factors present. Tenn. Code Ann. § 40-35-210(c). Procedurally, the trial court is to increase the sentence within the range based upon the existence of enhancement factors and then reduce the sentence as appropriate for any mitigating factors. Tenn. Code Ann. § 40-35-210(d) & (e). When imposing sentences for multiple offenses, the trial court must make separate findings as to which enhancement and mitigating factors apply to which convictions. See State v. Chrisman, 885 S.W.2d 834, 839 (Tenn. Crim. App. 1994). The weight to be afforded each factor is left to the trial court's discretion so long as it complies with the purposes and principles of the sentencing act, and its findings are adequately supported by the record. See State v. Jones, 883 S.W.2d at 599.

Despite observing that there were no "significant aggravating factors" in the record, the trial court cited two factors in sentencing the appellants. In case numbers 94-560, 94-562, and 94-563, the court found that there had been more than one victim. Tenn. Code Ann. § 40-35-114(3). In case number 94-561, the court found that the victim had received bodily injury from being sprayed with mace. Tenn. Code Ann. § 40-35-114(12). We conclude that the trial court erred in considering these enhancement factors.

First, the multiple victims factor is not applicable when convictions are entered for each victim. State v. McKnight, 900 S.W.2d 36, 54 (Tenn. Crim. App. 1994); State v. Makota, 885 S.W.2d 366, 373 (Tenn. Crim. App. 1994). In case numbers 94-560, 94-562, and 94-563, a conviction was entered for each of the victims alleged in the indictments, and the record does not support a finding that there were any other victims involved. Thus, the factor was improperly applied.

Similarly, the record does not support a finding that one or both of the appellants wilfully inflicted "bodily injury" to a victim from the use of mace in case number 94-561. Tenn. Code Ann. § 40-35-114(12). We note that there are conflicting statements in the record as to who used the mace, and there is no evidence to indicate whether the effect, if any, on the victim amounted to bodily injury. See, e.g., Tenn. Code Ann. § 39-11-106(a)(2)("bodily injury includes a cut, abrasion, bruise, burn or disfigurement; physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty."). In fact, the only reference in the record is Investigator Willis's testimony that the victim did not receive serious bodily injury. In any event, even if the facts supported this factor, its application would be limited to the aggravated robbery in case number 94-561. Because the trial court imposed the minimum sentence for this offense as to Blockett and Swift, it is evident that the factor, although cited by the trial judge, was not used to enhance the sentence.

With regard to mitigating factors, the trial court found that Blockett's and Swift's ages, fifteen and sixteen, respectively, were "substantial" mitigating factors. Tenn. Code Ann. § 40-35-113(6). The trial court also found that the appellants were "truly remorseful" and had been "model prisoners." Tenn. Code Ann. § 40-35-113(13). The record supports these findings; however, it does not indicate whether the trial court gave the factors any weight in reducing the length of the sentences. To the contrary, the trial court imposed the maximum sentence for seven of the eight offenses committed by Blockett and for four of the eight offenses committed by Swift. Thus, it appears that the trial court failed to apply the mitigating factors in the manner contemplated by the sentencing act. Tenn. Code Ann. § 40-35-210(e).

Based upon our de novo review, we conclude as to Blockett that there are no enhancement factors applicable to the vehicle burglary and theft in case number 94-563; thus, the sentence for vehicle burglary is modified from two years to the minimum of one year, and the sentence for theft is modified from four years to the minimum of two years. Similarly, we find no enhancement factors to apply to the aggravated robbery convictions in case number 94-560; thus, both sentences are modified from twelve years to the minimum of eight years. Likewise, we find that no enhancement factors applied to the aggravated robbery of Smith in case number 94-561; thus, we impose the minimum of eight years for the offense. See Tenn. Code Ann. § 40-35-210(c)(if no enhancement factors, the sentence shall be the minimum within the range).

With regard to the aggravated robbery of Reeves and the attempted aggravated robbery of Moore in case number 94-562, we find that Blockett was a leader in the commission of the offense. Tenn. Code Ann. § 40-35-114(2); see also State v. Hicks, 868 S.W.2d at 732 (defendant need only be "a" leader in the offense, not "the" leader). The statements of the defendants and the testimony in the sentencing hearing indicated that Blockett was the one who possessed the gun and demanded the money

from the victims at gunpoint. Thus, we enhance within the range on this basis and then reduce the sentence as appropriate for the applicable mitigating factors. Accordingly, we modify the sentence for aggravated robbery in case number 94-562 from twelve years to ten years, and the sentence for the attempted robbery in case number 94-562 from six years to four years. Finally, we apply the same enhancement factor to the attempted aggravated robbery in case number 94-559, and we modify the sentence from six years to four years.

As for Swift, we find no enhancement factors. Accordingly, the sentences for all of the offenses are modified to reflect the minimum within the applicable ranges. See Tenn. Code Ann. § 40-35-210(c).

C

In issues two and three the appellants argue that the trial court erred in imposing consecutive sentences. They contend that, given their ages and their lack of prior criminal records, they do not fall within the parameters of consecutive sentencing. The trial court, however, made the following statements with regard to Blockett and then reiterated the same grounds as to Swift:

> The court is of the opinion that some consecutive time is authorized here because of the fact that [there were] so many...deadly serious crimes. The court does find that the defendant is an offender who has an extensive criminal record--his record of criminal activity is extensive, but I will say that it is because of these convictions here today. And that he is a dangerous offender whose behavior indicates little or no regard to human life and no hesitation about committing crimes in which the risk to human life is high.

Thus, the trial court found that the appellants had records of extensive criminal activity and were dangerous offenders. Tenn. Code Ann. § 40-35-115(b)(2) & (4). The trial court also observed that consecutive sentences were necessary to deter similar crimes in its judicial

district. The State maintains that the record supports the trial court's finding that the appellants were dangerous offenders and that consecutive sentencing was appropriate.[5]

Consecutive sentencing may be appropriate if the court finds by a preponderance of the evidence one or more of the factors set forth in Tennessee Code Annotated section 40-35-115(b). See also State v. Taylor, 739 S.W.2d 227, 230 (Tenn. 1987); Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976). Our supreme court has recently commented on the rationale behind consecutive sentencing:

> Section 40-35-115 requires proof of particular facts defining an offender subject to consecutive sentences. The rationale for consecutive sentences stated in Gray and Taylor is that they be reasonably related to the severity of the offenses committed and serve to protect the public (society) from further criminal acts by those persons who resort to aggravated criminal conduct. This statement of principle cannot be separated into a set of discrete findings of fact which in every case would justify the imposition of consecutive sentencing. It does, however, recognize those limitations on consecutive sentencing established by the Court, that consecutive sentencing cannot be imposed unless the terms reasonably relate to the severity of the offenses committed and are necessary in order to protect the public from further serious criminal conduct by the defendant.

State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995)(emphasis added).

Initially we note that, aside from stating its conclusions with respect to 115(b)(2) and (b)(4), the trial court did not make adequate findings and conclusions relative to the need for consecutive sentencing or the general principles of sentencing. The court noted the seriousness of the offenses and said that consecutive sentences were necessary to deter similar crimes and to avoid sending the "wrong message" to the community.[6] The court did not, however, relate the question of consecutive sentencing to the need for protecting the public. In particular, little consideration was given to the fact that the

---

[5] The State has not addressed the trial court's finding with regard to Tennessee Code Annotated section 40-35-115(b)(2).

[6] We note that there was no evidence in the record to justify a reliance on the general deterrence consideration. See State v. Ashby, 823 S.W.2d at 169.

appellants had no prior criminal records and had adduced considerable evidence of their potential for rehabilitation. For instance, the appellants had voluntarily enrolled in G.E.D. courses while in custody and were doing well in that regard. The appellants also had the support of family and community members. In sum, it appears that the trial court failed to apply all of the sentencing principles and considerations as required by Wilkerson.

Additionally, the trial court did not make sufficient findings to justify its application of the Tennessee Code Annotated sections 115(b)(2) and (b)(4). With regard to the former, the trial court acknowledged that the appellants had no prior criminal convictions or juvenile records, but it found that the appellants had extensive criminal histories based on the eight offenses committed in this crime spree. Our court has endorsed a similar analysis for consecutive sentencing in some cases under Tennessee Code Annotated section 40-35-115(b)(2). In State v. Cummings, 868 S.W.2d 661, 667 (Tenn. Crim. App. 1992), our court upheld consecutive sentencing based on the extensive criminal activity of a defendant who was charged with eighty counts of violating Tennessee Code Annotated section 53-11-402(a)(3), even though the defendant had no prior criminal convictions. Similarly, in Earl Lamont Mallard v. State, No. 02C01-9412-CC-00291 (Tenn. Crim. App., July 26, 1995, Jackson), our court upheld consecutive sentences where there were "fourteen indictments [including] twenty-nine separate criminal violations which took place over a three month period." See also Jeffrey Lynn Cameron, No. 03C01-9410-CR-00390 (Tenn. Crim. App., Apr. 15, 1996, Knoxville)(sixteen year old defendant who had committed twelve burglaries and eleven thefts in four months and who also had a lengthy juvenile record and an extensive criminal history for consecutive sentencing); State v. Angela Marie Jewell Larzelere, No. 01C01-9506-CC-00187 (Tenn. Crim. App., Jan. 11, 1996, Nashville)(five felonies and nine misdemeanors committed in a two month period justified consecutive sentencing under 115(b)(2)).

On the other hand, consecutive sentencing was rejected under 115(b)(2) where a defendant with no prior criminal record was convicted of committing three acts of forgery and three acts of passing a forged instrument in a one month period. State v. Chapman, 724 S.W.2d 378 (Tenn. Crim. App. 1986). The court said that the offenses had not been "so extensive and continuing for such a period of time as to warrant consecutive sentencing." Id. at 381; see also State v. Betty Berry, No. 915 (Tenn. Crim. App., Apr. 30, 1991, Knoxville)(four counts of forgery and one count of transferring forged paper committed in single day insufficient for consecutive sentencing pursuant to 115(b)(2)).

Clearly, consecutive sentencing on this basis of Tenn. Code Ann. § 40-35-115(b)(2) in the manner endorsed in Cummings and Mallard depends on the facts and circumstances of the offenses and the time span involved in committing the offenses. Here the trial court did not support its use of this factor with adequate factual findings. The record indicates that the crimes occurred within three days and that three of the crimes occurred within three hours. The relatively short duration of the crime spree is coupled with the fact that the appellants had committed no prior crimes or juvenile offenses. Thus, we conclude that consecutive sentences were not warranted solely on the number of convictions entered herein.

Similarly, the record reveals that the trial court did not support its application of the dangerous offender provision under Tennessee Code Annotated section 40-35-115(b)(4). Our supreme court has said:

> Proof that an offender's behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high, is proof that the offender is a dangerous offender, but it may not be sufficient to sustain consecutive sentences. Every offender convicted of two or more dangerous crimes is not a dangerous offender subject to consecutive sentences; consequently, the provisions of Section 40-35-115 cannot be read in isolation from the other provisions of the Act. The proof must also establish that the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender. In addition,

> the Sentencing Reform Act requires the application of the sentencing principles set forth in the Act applicable in all cases. The Act requires a principled justification for every sentence, including, of course, consecutive sentences.

State v. Wilkerson, 905 S.W.2d at 938; see also State v. Woods, 814 S.W.2d 378, 380 (Tenn. Crim. App. 1991). In the present case, the trial court did not make the findings to support its use of 115(b)(4), nor did it relate the factor to the overall principles set forth in the sentencing act. In particular, as discussed above, the trial court did not give due consideration to whether the sentences were necessary to protect the public from further criminal acts by the appellants particularly in light of their ages, favorable backgrounds, and obvious rehabilitative potential. See State v. Gregory Lamont Turner et al., No. 01C01-9402-CR-00068 (Tenn. Crim. App., Nov. 15, 1995, Nashville), perm. to appeal denied, (Tenn. 1996)(consecutive sentencing inappropriate for eighteen year old defendant with no prior criminal record and potential for rehabilitation). Thus, we believe that the factor is not appropriate in this case.

II

For the foregoing reasons, the length of the appellants' sentences are modified and all of the sentences are to be served concurrently. Accordingly, Blockett's effective sentence is modified from twenty years to ten years, and Swift's effective sentence is modified from eighteen years to eight years. In modifying the sentences, we in no way lessen the seriousness of the crimes committed by the appellants. They participated in a series of dangerous felonies over the course of nearly three days and failed to disassociate themselves from further criminal activity. Nonetheless, our review is governed by the sentencing act and the facts and circumstances as presented in the record before this court.

_____
William M. Barker, Judge

_____
Joe B. Jones, Presiding Judge

_____
Gary R. Wade, Judge