

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
SEPTEMBER SESSION, 1997

FILED

October 31, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellant)
)
 vs.)
)
 RUSSELL DAVID FARMER,)
)
 Appellee)

No. 03C01-9405-CR-00161

McMINN COUNTY

Hon. R. STEVEN BEBB, Judge

(Second Degree Murder; burglary;
two counts of theft)

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OPINION FILED: _____

AFFIRMED

David G. Hayes
Judge

OPINION

The defendant, Russell David Farmer, and his two co-defendants were convicted of second degree murder, burglary, and two counts of theft, resulting from the September 6, 1990, beating death of Bill White. Their convictions were affirmed by a panel of this court on July 8, 1993. See State v. Farmer, No. 03C01-9206-CR-00196 (Tenn. Crim. App. at Knoxville, July 8, 1993). However, finding that “some of the enhancement factors used by the judge [were] inappropriate, and because the court did not delineate which factors applied to which offense,” the panel remanded the case to the trial court for a new sentencing hearing. Id.

A new sentencing hearing was held on December 13, 1993. The defendant was resentenced to the maximum sentence of twenty-five years for second degree murder and four years for each of the other convictions. Moreover, finding that the defendant was a dangerous offender, the trial court imposed consecutive sentences, for an effective sentence of thirty-seven years. The sentencing decision of the trial court was again appealed. On appeal after remand, another panel of this court affirmed the length of the sentences imposed, but, concluded that the record, under the criteria announced in State v. Woods, 814 S.W.2d 378, 380 (Tenn. Crim. App.), perm. to app. denied to appeal denied, (Tenn. 1991), did not support the finding that the defendant was a “dangerous offender.” See Farmer v. State, No. 03C01-9405-CR-00161 (Tenn. Crim. App. at Knoxville, Feb. 3, 1995), perm. to app. denied to appeal granted, (Tenn. Oct. 16, 1995). Accordingly, this panel modified the trial court’s order to reflect concurrent, rather than consecutive, sentences. Id. The State filed an application for permission to appeal to the supreme court. After granting permission to appeal, our supreme court remanded this matter to our court for reconsideration of the issue of consecutive sentencing in light of its recent opinion in State v. Wilkerson, 905 S.W.2d 933 (Tenn. 1995).

A complete statement of the facts of this case may be found in State v. Farmer, No. 03C01-9206-CR-00196. We briefly review the facts to provide the necessary background. On October 6, 1990, Farmer and his two co-defendants were present at the home of Bill White, the victim in this case. The defendants ranged in age from seventeen to twenty-two, with Farmer being the oldest. During the evening, Bill White served alcoholic beverages and showed x-rated videos to the defendants. Farmer's two co-defendants testified that, at some point in the evening, Farmer and White went into a rear bedroom to make a telephone call. The two co-defendants heard the sounds of a struggle, and when they finally entered the bedroom, they found Farmer savagely beating the victim with a leather "blackjack." The victim's throat had been cut. At trial, testimony indicated that White made homosexual advances towards Farmer. After the victim was killed, the three young men placed the deceased in the trunk of his car, and dumped his body in a creek not far from his house. The three men returned to the victim's house, where they stole some of White's personal possessions from the home. They then burglarized White's pawn shop, and, subsequently, fled to Alabama. The next day the two co-defendants returned to Tennessee and surrendered. Shortly thereafter, Farmer surrendered to Alabama authorities.

Again, the sole issue on remand is the propriety of consecutive sentences in light of Wilkerson, 905 S.W.2d at 933. Specifically, this court is to reconsider a previous panel's holding that the defendant, Farmer, does not qualify as a "dangerous offender." See Farmer, No. 0301-9405-CR-00161. Upon *de novo* review, this court must consider the evidence heard at trial and at sentencing, the presentence report, the arguments of counsel, the nature and characteristics of the offense, any mitigating and enhancement factors, the defendant's statements, and the defendant's potential for rehabilitation. Tenn. Code Ann. §§ 40-35-102, -103(5), -210(b) (1990); see also State v. Byrd, 861 S.W.2d 377, 379 (Tenn. Crim. App. 1993). Additionally, the determinations of the trial court, in the present case, are

afforded a presumption of correctness and the defendant bears the burden of showing the sentence imposed was improper.¹ See State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991); Sentencing Commission Comments, Tenn. Code Ann. § 40-35-401.

Consecutive sentencing may be imposed in the discretion of the trial court upon a determination that one or more of a statutorily enumerated list of criteria exists, including, that the “defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high.” Tenn. Code Ann. § 40-35-115(b)(4) (1990). This language is essentially a codification of our supreme court’s holding in Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976). Wilkerson, 905 S.W.2d at 938. In Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976), our supreme court qualified this classification by requiring the court to find aggravating factors present before a defendant may be classified as a “dangerous offender.” Gray, 538 S.W.2d at 393.

In Wilkerson, 905 S.W.2d at 933, our supreme court reaffirmed these principles and provided additional guidelines for finding a defendant to be a dangerous offender. The court held that proof that a defendant was a “dangerous offender” standing alone was not enough to sustain the imposition of consecutive sentences. id. at 938. Consequently, under Wilkerson before the sentencing court may discretionarily impose consecutive sentences for one classified as a “dangerous offender,” the following criteria must be met:

(1) the defendant’s behavior indicates little or no regard for human life, and [he has] no hesitation about committing a crime in which the risk to human life is high.”

(2) aggravating factors must be present;

¹We adopt the opinion of the preceding panel of this court in concluding that the record demonstrates that the trial court properly considered sentencing principles and all facts and circumstances relevant to the sentence imposed. See Farmer, No. 03C01-9405-CR-00161.

(3) the terms imposed are reasonably related to the severity of the offenses committed;

(4) consecutive sentences are necessary in order to protect the public from further criminal acts by the offender;

(5) the sentence is in accordance with the principles set forth in the Sentencing Reform Act.

Id. Thus, if a court decides to impose consecutive sentences based upon the inherently dangerous nature of the instant offenses, the court should base its decision upon the presence of aggravating circumstances and not merely on the fact that two or more dangerous crimes were committed. Gray, 538 S.W.2d at 393.

In the present case, the trial court found the following aggravating circumstances: the defendant treated the victim with exceptional cruelty and a deadly weapon was used in the commission of the offenses. Although not applied as an enhancement factor, the record strongly warrants the conclusion that the defendant, the oldest of the three, was a leader in the commission of the offense. Moreover, recounting the circumstances of the murder, the facts reflect that the defendant savagely and brutally beat the victim with a leather blackjack. The victim's throat was slit with a knife. The three co-defendants callously dumped the victim's body in a nearby creek, returned to the victim's house to steal personal possessions, and then proceeded to burglarize the victim's place of business. The circumstances of these offenses are clearly aggravated. We conclude that the proof before us establishes that the appellant had no hesitation about committing a crime when the risk to human life was high. Thus, the offenses committed by the appellant are sufficient to qualify him as a "dangerous offender."

However, this classification alone will not justify consecutive sentencing. Wilkerson, 905 S.W.2d at 938. "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."

Id. In the present case, we find that a sentence of thirty-seven years is reasonably related to the severity of the offenses and is necessary to protect the public from further criminal acts of the appellant. We are unable to conclude that the trial court abused its discretion in ordering consecutive sentences. This issue is without merit.

After a thorough review of the record and the applicable law, we find no error in the judgment of the trial court. Accordingly, the trial court's order imposing consecutive sentences in the present case is affirmed.

DAVID G. HAYES, Judge

CONCUR:

JOHN H. PEAY, Judge

WILLIAM M. BARKER, Judge