

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs April 4, 2023

**FILED**  
04/17/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. JERMAINE CAMPBELL**

**Appeal from the Criminal Court for Shelby County  
Nos. 21-02660, C2104316 Glenn Ivy Wright, Judge**

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**No. W2022-01039-CCA-R3-CD**

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The defendant, Jermaine Campbell, pleaded guilty to aggravated statutory rape, and the trial court imposed a sentence of eight years' incarceration in the Tennessee Department of Correction. On appeal, the defendant argues the trial court erred in denying his request for alternative sentencing. After reviewing the record and considering the applicable law, we conclude that a new sentencing hearing is necessary because the trial court failed to place the appropriate findings on the record. Additionally, corrected judgment forms are needed in counts one and two. Accordingly, the judgment of the trial court is reversed, and the case is remanded to the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed  
and Remanded**

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and JILL BARTEE AYERS, JJ., joined.

Phyllis Aluko, District Public Defender, Harry E. Sayle III (on appeal), and Phoebe Gille (at guilty plea hearing), Assistant District Public Defenders, for the appellant, Jermaine Campbell.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan H. Wardle, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; and Devon Dennis, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

***Facts and Procedural History***

On March 16, 2022, the defendant pleaded guilty to aggravated statutory rape (count three).<sup>1</sup> Pursuant to the plea agreement, the State and the defendant agreed the defendant would receive an eight-year sentence as a Range III offender and that he would be placed on the sex offender registry. The facts underlying the plea, as explained by the State, were as follows:

[O]n July 16, 2021, [the victim's mother] called Memphis Police Department officers to her home [] after learning that her 12-year-old daughter [M.M.] had been sexually active with individuals who were believed to be adults.<sup>2</sup> [M.M.] told investigators she had been communicating with [a] 26-year-old male via Facebook Messenger and the [victim and the] man had a sexual relationship.

[The victim's mother] provided a cell phone that had been used by [M.M.] and gave written consent for investigators to search the place. Ultimately, Facebook account information led the police to the user account of [the defendant.] [During t]he second meeting with investigators [M.M.] positively identified [the defendant] as being known to her as J. She told investigators she met [the defendant] online. He came to her home twice. She advised that the first time he came over she performed oral sex on him and then they had penile/vaginal intercourse on the second time.

[The defendant's] cell phone records indicate that his device was using cell towers in the area of [M.M.'s] home during the time frame that both sexual encounters occurred.

This did occur in Shelby County.

The defendant then testified on his own behalf, apologizing to the victim and her family “for putting them through so much trouble.” He asked the trial court to place him on probation and stated that he would “abide by all the rules.” He acknowledged that he was on diversion for statutory rape at the time that he committed the crimes against M.M. but testified that he had not received sex offender treatment following his prior conviction. Instead, he sought treatment with a mental health counselor and a drug and alcohol counselor. The defendant testified that if he were granted probation he would live with his

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<sup>1</sup> The defendant was originally charged with two counts of rape of a child (counts one and two), but the State agreed to amend the indictment to include count three and dismiss counts one and two as part of the plea agreement.

<sup>2</sup> It is the policy of this Court to refer to victims of sexual abuse by their initials. For purposes of this opinion, “the victim” will refer to M.M. unless otherwise noted.

grandmother after a nearby elementary school permanently closed in the spring. Until then, because of his status on the sex offender registry, he would live in a shelter downtown. The defendant also believed that he could return to his previous employer in order to support himself and his grandmother. The defendant stated that he was recently prescribed medication for depression and bipolar disorder and agreed that, although he had not taken any medications prior to his arrest, he would continue taking them if granted probation.<sup>3</sup>

On cross-examination, the defendant stated that the victim reached out to him on social media and asked him to come to her house. He reluctantly went to the victim's home but stopped after the second visit. However, the victim continued contacting him on social media. The defendant acknowledged that he did not ask the victim how old she was and proceeded to have sex with her despite being on diversion for statutory rape.

Following the defendant's testimony, there was a discussion about whether the victim's family wanted the defendant to serve his sentence on probation. While defense counsel indicated that the victim's family agreed with the decision to place the defendant on probation, the State took no position but did point out that the defendant was getting a "big break" by pleading guilty to aggravated statutory rape instead of rape of a child.

At the conclusion of the hearing, the trial court took the matter of probation under advisement, stating

if you have a letter from the mom of this 12[-]year[-]old saying she wants [the defendant] to have probation . . . not that it's okay to give it to him but that she wants him to have probation, then I'll consider doing it at that time.

On July 1, 2022, a second hearing was held during which the victim's mother and the defendant testified. The victim's mother stated that her family has attended therapy since the incident and that the victim now suffers from bladder issues. Additionally, she testified she received threats at both her home and through text messages regarding this case. She stated she never told the prosecutor's office that it was ok for the defendant to receive probation but that she will respect the trial court's sentencing decision.

The defendant testified again, stating that the inmate re-entry program contacted him and advised him that they would assist him in finding employment, schooling, and housing, if needed. He also spoke with the counselor at the Penal Farm who told the defendant that he would help him get into a halfway house. The defendant stated that he "learned from [his] mistakes."

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<sup>3</sup> Although references to both the defendant's presentence report and psychosexual evaluation were made throughout the defendant's testimony, neither were introduced into evidence at the hearing.

In denying probation, the trial court noted

Okay. We don't need to have another hearing. I'm pretty sure I said after the last hearing was that I could not put him on probation having committed the same offense unless the parents of the other child said they didn't oppose it. I think I probably said something like that, so . . . And they are here today and they oppose it, and I understand that.

Sir, I feel for your grandmother. She's probably a good person. She probably doesn't deserve to be dragged through this. And I know you don't sound like you're a terrible guy. You don't. You sound like you're okay, okay guy. But you can't do this. There are certain things you just cannot do, and you cannot do this. You can't have sex with people's children.

How would you feel if it was your child? I've got these folks telling me they want you to go to jail. What do you think I'm going to do? You've done it – done it before. Application for probation is denied.

### *Analysis*

The defendant's sole issue on appeal is the trial court's denial of alternative sentencing. Specifically, the defendant argues the trial court's ruling "does not reflect consideration of the purposes and intent or principles that apply in implementing the statutory requirements of the sentencing guidelines." The State contends the trial court properly denied the defendant's request for probation.

A trial court's decision to grant or deny probation is reviewed under an abuse of discretion standard with a presumption of reasonableness when the sentence reflects the purposes and principles of sentencing. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). "[A] trial court's decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination." *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014) (order) (per curiam). The burden of establishing suitability for probation rests with a defendant, who must demonstrate that probation will "subserve the ends of justice and the best interest of both the public and the defendant." *State v. Souder*, 105 S.W.3d 602, 607 (Tenn. Crim. App. 2002) (quoting *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)); see Tenn. Code Ann. § 40-35-303(b); *State v. Russell*, 773 S.W.2d 913, 915 (Tenn. 1989); *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008).

Generally, probation is available to a defendant sentenced to ten years or less. Tenn. Code Ann. § 40-35-303(a). A defendant who is convicted as an especially mitigated or standard offender of a Class C, D, or E felony is considered a favorable candidate for probation. Tenn. Code Ann. § 40-35-102(6)(A). In determining whether incarceration is appropriate, the trial court should consider whether:

- (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.

Tenn. Code Ann. § 40-35-103(1)(A)-(C). Additionally, a court should consider a defendant's potential or lack of potential for rehabilitation when determining if an alternative sentence is appropriate. *Id.* § 40-35-103(5).

Here, the trial court failed to make any findings with regard to its denial of alternative sentencing. After the victim's mother testified that she did not want the defendant to receive probation, the trial court stated "I've got these folks telling me they want you to go to jail. What do you think I'm going to do? You've done it – done it before. Application for probation is denied." The trial court did not indicate whether it examined the statutory considerations for imposing confinement nor did it place in the record its reasons for imposing the sentence. *See* Tenn. Code Ann. §§ 40-35-103(A)-(C), -103(5). Although the trial court is afforded wide discretion in sentencing decisions, the trial court retains an affirmative duty to state on the record, either orally or in writing, its findings of fact and reasons for imposing a specific sentence to facilitate appellate review. *See* Tenn. Code. Ann. § 40-35-209(c), -210(e). While the trial court correctly noted that the defendant committed the instant offense while on diversion for the exact same offense, he failed to make a finding that measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant. *See Id.* § 40-35-103(1)(C). Given the complete lack of findings of fact in this case, we conclude that a new sentencing hearing is in order to determine the defendant's suitability or lack thereof for probation.

Finally, we note one issue concerning the judgments in this case. While the transcript from the guilty plea hearing shows the State was entering a nolle prosequi as to counts one and two, the trial court did not enter separate judgment forms for these counts. *See* Tenn. R. Crim. P. 32(e)(3) ("If the defendant is found not guilty or for any other reason

is entitled to be discharged, the court shall enter judgment accordingly.”); *State v. Berry*, 503 S.W.3d 360, 364 (Tenn. 2015) (order) (“For charges resulting in a not guilty verdict or a dismissal, the trial court should ‘enter judgment accordingly’ as to the respective count.”). Therefore, upon remand, the trial court should also enter corrected judgments reflecting the dismissal of counts one and two.

### ***Conclusion***

Based upon the record and the parties’ briefs, we remand the case to the trial court for further proceedings consistent with this opinion.

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J. ROSS DYER, JUDGE