IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 22, 2023 Session

STATE OF TENNESSEE v. CLAUDE JAMES FEAGINS

Appeal from the Criminal Court for Sullivan County
No. S72839-40 James F. Goodwin, Jr., Judge

No. E2022-00311-CCA-R3-CD

The Defendant, Claude James Feagins, appeals the trial court's denial of his request for an alternative sentence. The Defendant pleaded guilty to burglary, misdemeanor theft, felony theft (Class D), and reckless endangerment. A six-year effective sentence resulted, with the manner of serviced to be determined by the trial court at a sentencing hearing. After a sentencing hearing, the trial court imposed an effective sentence of six years of incarceration. On appeal, the Defendant asserts that the trial court abused its discretion when it ordered him to serve his sentences in confinement. After review, we affirm the trial court's judgments.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and JOHN W. CAMPBELL, SR., J., joined.

Ilya I. Berenshteyn, Bristol, Tennessee, for the appellant, Claude James Feagins.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Barry P. Staubus, District Attorney General; and Lauren E. Williams, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION
I. Facts

In 2021, the Defendant pleaded guilty to burglary and theft of property valued at less than $1000, in case number S72839, on the factual basis that he had stolen a set of tools from a Lowe's in Kingsport, TN. For his convictions, the trial court imposed a sentence of six years for burglary and concurrent sentence of eleven months and twenty-nine days for theft. The Defendant also pleaded guilty, in case number S72840, to theft of property valued at more than $1000 but less than $2500 and to reckless endangerment. For

these convictions, the trial court imposed four-year sentences to be run concurrently with his sentences in case number S72839. By agreement, the sentences in both cases were to be served in a manner to be determined by the trial court at a hearing. Furthermore, the sentences were ordered to be run consecutively to the Defendant's sentence for a prior conviction in case number S70334.

At the sentencing hearing pertaining to case numbers S72839 and S72840, pursuant to his request for alternative sentences, the Defendant presented the following evidence: Dr. Joyce Noto testified that she was employed by Comprehensive Community Services, a program working with drug and alcohol addicted patients. She stated that the Defendant had applied and been pre-admitted to the program.

Jane Carico testified that she was a Certified Peer Recovery Specialist and part of the Sullivan County Anti-Drug Coalition on the Overdose Response Team. She had visited the Defendant in jail and felt he was an excellent candidate for an intensive recovery program.

James Feagins, the Defendant's father, testified that, if the trial court granted the Defendant an alternative sentence, he would help the Defendant to maintain sobriety and attend his prescribed treatment and appointments. April Lawson, the Defendant's wife, testified similarly to his father. She testified that the Defendant had two children who wanted to be with their father.

The State presented Randy McCready, who testified that he was the Retail Crime Investigator at Lowe's and had investigated a string of thefts at multiple stores in 2018 that were determined to be committed by the Defendant. He testified that the Defendant had committed twelve thefts, from different Lowe's stores in the region, of approximately $5,000 of merchandise. Mr. McCready stated that, throughout 2018, the Defendant was arrested multiple times and that, after posting bond, he would return to a different Lowe's and steal again.

At the conclusion of the hearing, the trial court heard arguments and then made the following statement:

> In determining the appropriate manner of service for this sentence, in these offenses, the Court has considered the evidence presented at the Plea Submission Hearing, at this Sentencing Hearing, the Presentence Report in its entirety, including, the STRONG-R Assessment, the separate statement written by [the Defendant] on his own behalf, the Victim Impact Statement by Mr. McCready. . .

Now, [the Defendant], comes to this court with a criminal record [as follows:] Possession of Drugs from 2018, more driving, more thefts, vandalisms, more driving, Criminal Impersonation, more driving, Criminal Impersonation, Public Intoxication, Evading Arrest, Failure to Appear, more Thefts, Aggravated Assault, Evading, another Aggravated Assault, . . . Reckless Endangerment, Thefts, Drug Paraphernalia, [more] thefts, another Domestic Violence, Vandalism, driving, more driving, Reckless Endangerment, Evading Arrest, more evading, Reckless Endangerment, False Imprisonment, Driving While Impaired, Implied Consent, . . . another Possession of Drugs and Drug Paraphernalia in amongst a bunch of driving, next page is driving, as well as one Possession of Drugs, ... He apparently has an active Warrant out of Scott County, Virginia dated August 28, 2019. . . . . But I go through the record for a couple of reasons, the first one is that it's important to know the kinds of crimes that [the Defendant] committed in the past, and the Court has to weigh his criminal history in its total when I make the final determination as to how he's going to serve this sentence. It's also interesting that in a 27-page criminal history, he had 3 charges, not 3 pages of charges, he had 3 charges for Possession of Drugs. The rest of that behavior, the felonies, and misdemeanors, and many of those were felonies, as the State pointed out, I think [the Defendant] if he had had a trial and was being sentenced would in all likelihood be a Career Offender, and not just a Range II. But it illustrates the difference in just possession of drugs, and full-on drug seeking behavior in addiction. So, his prior record and his prior history of violations, those are negative factors. The steps that [the Defendant] has taken on his own, that I've heard testified to by Dr. Noto, and Ms. Carico, the information in Collective Exhibit I, that Collective Exhibit demonstrated that while incarcerated he has taken advantage of classes and resources to at least start the road to recovery, so, that's a positive factor. He has family support, from his father, and his wife, that's positive factors.

The fact that he has a hold out of the Commonwealth of Virginia is a negative factor. When looking at the nature of the crimes, it's obviously a negative factor that he kept going back to the same retail establishments and stealing over, and over, and over. And the fact that he's a Range II Offender, takes him out of the presumption for Alternative Sentencing. However, the fact that he keeps committing thefts, there's a statute that says, if it's just a theft charge that those individuals are presumed to be favorable candidates for Alternative Sentencing. So, the nature of the criminal conduct and the fact that he kept going over, and over, and over to the same, or maybe not the same store, but the same chain of stores, is a negative factor. [The Defendant] has a long history with drugs and alcohol. . . . So, that even of

> itself is a negative factor but, it's tempered somewhat with the recent attempts at the beginnings of recovery that he's taken, as shown in Collective Exhibit I. The Court in weighing the positive and the negative factors finds that the negative factors outweigh the positive factors. This 6-year sentence is made up of two case numbers, 72839 and 72840, the Court finds that because of his, primarily his lengthy criminal history, and his numerous violations of probation that are set out in the report, that [the Defendant] is not a candidate for straight probation. But the Court is at least hopeful, is probably the right word, that [the Defendant] really wants to make a change. So, . . . in Case 72840 [the Defendant] will have to serve that 4-year sentence as a Range II Multiple Offender, 35% release eligibility. In 72839, [the Defendant], 6-year sentence will be placed on supervised probation, and he'll be on probation for a period of 8 years, because that's the maximum that I can give, and it follows within the range of as a D felony. So, part of that probation will be running while he's serving that 4-year sentence, but he'll have 4 years of supervised probation even though it's going to be a 2-year effective. And as conditions of that probation, he's to actively participate in and complete the C.C.S. Program, if they're still available, and if not, a comparable long term drug treatment program.

It is from these judgments that the Defendant now appeals.

II. Analysis

On appeal, the Defendant argues that the trial court abused its discretion when it only partially granted his request for alternative sentences because it imposed a total effective sentence for the Defendant's convictions that was more restrictive than necessary and when a viable alternative had been presented. The State responds that the trial court properly determined that the Defendant's criminal history and rehabilitation chances outweighed the factors in favor of granting an alternative sentence and did not abuse its discretion when it ordered him to serve a portion of his sentences in incarceration. We agree with the State.

"[T]he abuse of discretion standard, accompanied by a presumption of reasonableness, applies to within-range sentences that reflect a decision based upon the purposes and principles of sentencing, including the questions related to probation or any other alternative sentence." *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). The defendant bears "the burden of showing that the sentence is improper." *Ashby*, 823 S.W.2d at 169. A trial court's decision regarding probation will only be invalidated if the court "wholly departed from the relevant statutory considerations in reaching its determination." *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014). Under an abuse of discretion

standard, an appellate court may not substitute its judgment for that of the trial court. *Id*. at 475.

With regard to alternative sentencing, Tennessee Code Annotated section 40-35-102(5) provides as follows:

> In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration.

A defendant shall be eligible for probation, subject to certain exceptions, if the sentence imposed on the defendant is ten years or less. T.C.A. § 40-35-303(a) (2018). A defendant is not, however, automatically entitled to probation as a matter of law. The burden is upon the defendant to show that he or she is a suitable candidate for probation. T.C.A. § 40-35-303(b) (2018); *State v. Goode*, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997); *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). In order to meet this burden, the defendant "must demonstrate that probation will 'subserve the ends of justice and the best interest of both the public and the defendant.'" *State v. Bingham*, 910 S.W.2d 448, 456 (Tenn. Crim. App.1995) (quoting *State v. Dykes*, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)).

There is no bright line rule for determining when a defendant should be granted probation. *Bingham*, 910 S.W.2d at 456. Every sentencing decision necessarily requires a case-by-case analysis considering "the nature of the offense and the totality of the circumstances . . . including a defendant's background." *State v. Ashby*, 823 S.W.2d 166, 168 (Tenn. 1991) (quoting *State v. Moss*, 727 S.W.2d 229, 235 (Tenn. 1986)). In determining if incarceration is appropriate in a given case, a 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.

T.C.A. § 40-35-103(1) (2018). "When considering probation, the trial court should consider the nature and circumstances of the offense, the defendant's criminal record, the defendant's background and social history, the defendant's present condition, including physical and mental condition, the deterrent effect on the defendant, and the best interests of the defendant and the public." *State v. Brian Allen Cathey*, No. E2015-01284-CCA-R3-CD, 2016 WL 2641766, at *3 (Tenn. Crim. App., at Knoxville, May 6, 2016) (citations omitted). The court should also consider the defendant's truthfulness. *State v. Bunch*, 646 S.W.2d 158, 160 (Tenn. 1983). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. T.C.A. § 40-35-103.

In this case, the trial court denied the Defendant's request for an alternative sentence in case number 72840, based on multiple factors, including the Defendant's extensive and lengthy criminal history of theft and other felonies, as well as his multiple unsuccessful attempts at community release during which he reoffended, both of which the trial court stated weighed heavily against a granting of an alternative sentence. The trial court considered several factors, including his social support system, which it deemed weighed in favor of the Defendant's request. The trial did grant, in case number S72839, a probationary sentence based on the court's hope that the Defendant intended to rehabilitate himself and avail himself of the services offered to him. The record establishes that the Defendant had a long history of criminal activity and, based on his record, was eligible for a much harsher punishment than he received. The trial court, in its discretion, gave the Defendant another chance to abide by the terms of his release by ordering probation in case number S72839. Based on the evidence, we conclude that the Defendant has not established that the trial court abused its discretion by denying him an alternative sentence in case number S72840. The Defendant is not entitled to relief.

III. Conclusion

Based on the foregoing reasoning and authorities, we affirm the trial court's judgments.

_____

ROBERT W. WEDEMEYER, JUDGE