

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
January 10, 2023 Session

FILED
01/27/2023
Clerk of the
Appellate Courts

STATE OF TENNESSEE v. SPENCER L. PHILLIPS

**Appeal from the Circuit Court for Robertson County
No. 74CC2-2019-CR-73 William R. Goodman, III, Judge**

No. M2021-01204-CCA-R3-CD

Spencer L. Phillips, Defendant, claims that the trial court abused its discretion by denying probation or an alternative sentence and ordering him to serve his sentence in confinement. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

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

John D. Pellegrin, Gallatin, Tennessee, for the appellant, Spencer L. Phillips.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; David H. Findley, Senior Assistant Attorney General; Garrett Ward, Assistant Attorney General; Robert J. Nash, District Attorney General; and Jason White, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Robertson County Grand Jury indicted Defendant for first degree murder of Steven Bryant Brown, the victim. The indictment was amended to second degree murder by order entered on June 9, 2021. Defendant entered a plea of guilty to voluntary manslaughter, agreeing to an out-of-range, nine-year sentence with thirty-five percent release eligibility and with the manner of service to be determined at a sentencing hearing. Following the sentencing hearing, the trial court denied both probation and an alternative sentence and ordered Defendant to serve the sentence in the Tennessee Department of Correction.

Sentencing Hearing

Ronda Chennault, the victim's mother, testified that the victim was married to Amanda Brown and that they had one daughter. The victim owned and worked at Red's Heating and Cooling.

Amanda Brown testified that she and the victim married in 2012 and that they were married at the time of the victim's death, although they lived in separate residences. After meeting Defendant on social media, Ms. Brown began a romantic sexual relationship with him. She said Defendant had previously told her that the victim and Defendant's wife were having an affair. She said that the victim became upset when, about three months before his death, he discovered that she was having an affair with Defendant. On November 8, 2017, Ms. Brown told the victim that she was going to visit her dad in the hospital. Instead, she left the home, where the victim and their daughter were sleeping, around 1:30 a.m. and went to meet Defendant at her apartment. Around 6:30 a.m., there was a loud knock at the apartment door. When she started to open the door, the victim twisted the knob and pushed in past her, heading straight for the bedroom. An argument ensued between the victim and Defendant. She said she was standing between the two men "trying to get them both, if not one, just to leave." She said that she was pushing the victim toward the door and that Defendant was following them. The victim knocked Ms. Brown's cell phone from her hand as she was trying to call the police. She finally got the victim outside of her apartment. She said that Defendant was in the doorway holding a gun and that the victim asked, "What are you going to do, shoot me?" Ms. Brown got to her vehicle, planning to go to check on her daughter. She heard three shots and saw the victim lying on the sidewalk and Defendant standing in her apartment doorway.

On cross-examination, Ms. Brown agreed that the victim was a large man who had previously told her that he was not afraid to go back to prison. She also agreed that Defendant "was no match, physically" to the victim. She said she told the detective that the victim "gets to the point where he is uncontrollable."

Springfield Police Department (S.P.D.) Lieutenant Charles Bogle was called to the scene of the shooting. Lieutenant Bogle was in charge of the S.P.D. Criminal Investigations Division (C.I.D.). When he got to the scene, he observed that the victim's "head was at the top of the steps and his feet were towards the back of the apartment landing." He said the paramedics told him that they "had rolled [the victim] over but he was pretty much in the same position." Lieutenant Bogle said nothing appeared "disturbed" inside the residence. Lieutenant Bogle photographed and collected four shell casings inside the apartment. He said that, based on the ejection pattern of the weapon used and the location of the shell casings, Defendant would have been in the hallway by

the kitchen when the shots were fired. He said that he noticed what appeared to be a ricochet off the front door and some blood splatter on the door frame.

The autopsy report, entered by agreement, showed four gunshot wounds, designated by letters A, B, C, and D. Gunshot A entered the victim's right lung. Gunshot B entered the victim's left side and injured the victim's left lung and heart. Gunshot C entered the left side of the victim's back. Gunshot D entered the victim's upper left bicep area. Concerning the entrance wounds, Lieutenant Bogle said there was "one in front, one to the side, and two to the back." Lieutenant Bogle said Defendant had no visible injuries.

Lieutenant Bogle said that part of his responsibilities as the person in charge of C.I.D. was to keep statistical information concerning violent crimes in Robertson County. He said there was one homicide in 2019, three in 2020, and three in 2021. All six homicides in 2020 and 2021 involved a firearm. He said that most of the crimes C.I.D. works involve firearms. He said that there were fifty-one aggravated domestic assaults in 2019, thirty-nine in 2020, and seventeen in 2021. He estimated ninety percent of the aggravated domestic assaults involved guns.

Gary Phillips, Defendant's father, testified that Defendant had been married and had one daughter. He said that Defendant worked in a body shop, paid child support, and was active in his daughter's life. He said that Defendant has repeatedly expressed remorse and stated that he "should have just let [the victim] kill him and he wouldn't have had to put us through this."

Lisa Phillips, Defendant's stepmother, testified that Defendant was a good dad and took his daughter to church every Sunday. Mrs. Phillips said that she was a registered nurse and that Defendant had suffered from anxiety and panic attacks for the last decade.

Defendant made an unsworn allocution, stating:

November 9[], 2017, was a day that changed many lives. [The victim] lost his life. His daughter [] will grow up without her father. His friends and family will no doubt miss him terribly. The events that day haunt and torment me and will for the rest of my life. Although my family and friends continue to love and support me, I cannot help but feel like that I have let them down.

....

At the time I shot [the victim], the moments leading up to that, I was terrified. I pulled my firearm in an effort to de-escalate the situation and it

totally backfired. When I discovered that some of the shots that I had fired, went into Mr. Brown's back, I was totally shocked. I was not wearing my glasses at the time and had no idea if any other shots actually hit Mr. Brown or if he was moving away from me.

In retrospect, pulling the firearm may have been a mistake but at the time, I didn't know what else to do? I have replayed those moments over and over in my head many times. If I had to do it over again, I would try to do something to defend myself that would not result in Mr. Brown's death. Mr. Brown had his problems and although, he instigated the situation that led to his death, he did not deserve to die. I would give anything if that day had never happened. I am truly sorry.

Following argument, the trial court entered its findings on the record. The court stated that it had considered the presentence report; the testimony presented at the hearing; the allocution made by Defendant; and the exhibits. The court noted that the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed. The court acknowledged that, according to the presentence report, Defendant had no prior criminal conduct and would have otherwise qualified as a Range I Standard Offender. The court stated:

[W]hen we talk about so as to avoid depreciating the seriousness of the offense, case law which we have to follow requires that the circumstances of the offenses committed, that they be especially violent, horrifying, shocking, reprehensible, offensive or otherwise an excessive or exaggerated degree. In this case, the proof . . . that has been presented is that there may have been verbal threats made to [D]efendant, but the autopsy report reflects that there were no less than four shots fired. Looking at page two of the autopsy report, one of which [was] described as Wound C, was a penetrating gunshot wound to the left side of the back. There were no people there and I recognize the -- and can tell from the photographs that the deceased was certainly a bigger individual than [D]efendant . . . , and I understand that it would cause apprehension.

The Court is greatly concerned about the number of shots that were fired and especially the fact that in this instance . . . there was a wound to the back.

The second part of that requirement deals with the deterrence factor. I guess this is the most disturbing thing. We live in a society that has come to honor the right to have a gun, that anybody can carry a gun that wants to.

The effects of this, as we see in society, as Detective Bogle testified, the statistics of those homicides -- seven homicides in the last three years within the [c]ity [l]imits of Springfield, five out of those seven involve the use of guns. Other offenses so far as weapons charges, ninety-five percent of those cases involve the use of firearms. Other cases involving assaults, aggravated assaults, eighty percent involve the use of firearms. We must do something to serve as a deterrence.

Therefore, the Court finds that 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, . . . even though this was a domestic dispute.

Based upon these findings, and the agreement that was entered into with the parties as to the sentencing in this case, the Court finds that . . . Defendant should be sentenced to a term of -- pursuant to the terms of the agreement, to a term of nine years as a Range [II] Offender, at thirty-five percent in the Tennessee Department of Correction.

Defendant timely appealed.

Analysis

Defendant claims that the trial court abused its discretion in denying both probation and an alternative sentence of split confinement. The State argues that the court properly sentenced Defendant. We agree with the State.

A trial court's within-range sentencing decisions, if based upon the purposes and principles of sentencing, are reviewed under an abuse of discretion standard, accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). The same standard applies to "questions related to probation or any other alternative sentence." *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). "*Bise* specifically requires trial courts to articulate the reasons for the sentence in accordance with the purposes and principles of sentencing in order for the abuse of discretion standard with a presumption of reasonableness to apply on appeal." *State v. Pollard*, 432 S.W.3d 851, 861 (Tenn. 2013) (citing *Bise*, 380 S.W.3d at 698-99); *see also State v. Trent*, 533 S.W.3d 282, 292 (Tenn. 2017).

Defendant was eligible for probation because the actual sentence imposed for his conviction was ten years or less and because the offense for which Defendant was sentenced was not specifically excluded for eligibility by Tennessee Code Annotated

section 40-35-303(a). However, Defendant does not qualify for favorable status consideration because he pled guilty as a Range II Multiple Offender. *See State v. Clifton Lawrence Still*, No. E2021-01009-CCA-R3-CD, 2022 WL 6679903, at *4 (Tenn. Crim. App. Oct. 11, 2022) (citing *State v Homer L. Evans*, No. E2000-00069-CCA-R3-CD, 2001 WL 274069, at *3-4 (Tenn. Crim. App. Mar. 20, 2001)) (recognizing multiple offenders are not presumed favorable candidates for alternative sentencing), *no perm. app. filed*.

A defendant who is eligible for probation has the burden of establishing his or her suitability for probation. Tenn. Code Ann. § 40-35-303(b). Based on the findings announced at the conclusion of the sentencing hearing, the trial court determined that Defendant was not suitable for probation based on Tennessee Code Annotated section 40-35-103(1)(B)—that “[c]onfinement 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[.]” The court articulated its reasons for the sentence in accordance with the purposes and principles of sentencing. The abuse of discretion standard with a presumption of reasonableness therefore applies on appeal to the sentence imposed by the trial court.

The trial court did not abuse its discretion by denying both probation and an alternative sentence and ordering the sentence to be served in confinement. The record supports the court’s determination that confinement was suited to provide an effective deterrent to similarly situated individuals in Robertson County, where guns are used in a large percentage of homicides and aggravated domestic assaults. Similarly, the record supports the court’s finding that, when considering that the victim was shot four times and once in the back, confinement was necessary to avoid depreciating the seriousness of the offense. Defendant is not entitled to relief.

Conclusion

The judgment of the trial court is affirmed.

ROBERT L. HOLLOWAY, JR., JUDGE