

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs December 20, 2022

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DARRIN JEREMIAH BAKER

**Appeal from the Criminal Court for Knox County
No. 120142 Steven Wayne Sword, Judge**

No. E2022-00385-CCA-R3-CD

The Defendant, Darrin Jeremiah Baker, appeals from his guilty pleaded convictions for possession with the intent to sell or deliver more than 0.5 gram of methamphetamine, a Class B felony; attempted possession with the intent to sell or deliver less than fifteen grams of heroin, a Class C felony; possession with the intent to sell or deliver less than fifteen grams of fentanyl, a Class C felony; and driving under the influence, a Class A misdemeanor. *See* T.C.A. §§ 39-17-417 (possession of heroin and fentanyl) (Supp. 2022), -17-434 (possession of methamphetamine) (2018), 55-10-401 (driving under the influence) (2020), 39-12-101 (attempt) (2018). The Defendant pleaded guilty as a Range I offender and agreed to an effective ten-year sentence. After a sentencing hearing, the trial court ordered the Defendant to serve his sentence in the Department of Correction. On appeal, the Defendant contends that the court erred in denying alternative sentencing. We affirm the judgments of the trial court.

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

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TOM GREENHOLTZ, JJ., joined.

Eric Lutton, District Public Defender; Keith Lowe, Assistant District Public Defender, for the appellant, Darrin Jeremiah Baker.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; Sean McDermott, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The transcript of the guilty plea hearing is not in the record, but the presentence report reflects that on September 26, 2021, a Tennessee state trooper initiated a traffic stop because the Defendant was driving erratically. The trooper observed that the Defendant had “red, watery eyes, droopy eyelids and very slurred speech.” The Defendant stated that he did not have a valid driver’s license or identification, that he was traveling from Ohio to Knoxville, and that he believed he was still in Ohio. While talking to the Defendant, the trooper noticed a “large quantity of currency on the seats, floorboards and coming from [the Defendant’s] pockets.” The trooper also noticed a partially opened backpack on the backseat that contained a plastic ziplock bag. The trooper attempted to have the Defendant perform field sobriety tests but had to stop them “prematurely due to [the Defendant’s] inability to follow instructions.” The Defendant was unsteady on his feet and appeared intoxicated. The trooper requested a blood sample and explained the implied consent law, but the Defendant was “unable to focus on the request and appeared to be too impaired to understand[.]” A search of the Defendant’s person and vehicle revealed \$3,903.00 in cash, forty-four grams of methamphetamine, thirty-five grams of heroin, twenty-seven grams of fentanyl, and some additional pills. The Defendant was charged with three counts of intent to sell or deliver controlled substances and one count of driving under the influence. On December 6, 2021, the Defendant waived his right to a trial by jury and entered a plea of guilty by information to an effective ten-year sentence with a request for alternative sentencing to be determined by the trial court.

On February 25, 2022, the trial court conducted a sentencing hearing. The presentence report, an addendum to the presentence report detailing the Defendant’s criminal history in Michigan, and the Day Reporting Center (DRC) Assessment and Recommendation were received as exhibits. According to the presentence report, the twenty-eight-year-old Defendant grew up in Michigan and lived primarily with his mother and regularly saw his father until his father’s death. The Defendant reported that he was never married but had a five-year-old daughter in Michigan. The Defendant reported that he moved to Tennessee in May 2021 to be with his girlfriend and for a “fresh start.” The Defendant dropped out of high school in the eleventh grade and received his GED from an alternative education program. He reported former employment in Michigan as a laborer from 2018 to 2021. The Defendant completed a ninety-day substance abuse treatment program in 2017, and until September 2021, used marijuana and opioids daily, used cocaine and heroin weekly, and used methamphetamines and Suboxone “a couple of times.” The Defendant reported that his mental and physical health were “fair,” that he was not prescribed any medications, and that he consumed one pint of liquor every other day from the age of eighteen until

September 2021. According to the Strong-R Assessment, the Defendant was a high risk for drug use.

The addendum to the presentence report identified three prior felony drug incidents and a violation of probation from Michigan: (1) a May 16, 2019 conviction for the delivery or manufacture of cocaine, (2) January 30, 2020 convictions for two counts of delivery or manufacture of cocaine, (3) March 19, 2021 convictions for two counts of delivery or manufacture of narcotics or cocaine and two counts of possession of a narcotic or cocaine, and (4) a pending June 17, 2021 violation of probation.

The DRC's Assessment and Recommendation found the Defendant ineligible for its program as a result of the Defendant's previous drug charges in Michigan and his inability to maintain sobriety despite having completed a substance abuse treatment program in 2017.

The State highlighted the Defendant's criminal history and numerous prior convictions for trafficking in narcotics in Michigan and noted that the Defendant was still facing a pending violation of probation. The State expressed its concern regarding "the pipeline of drugs coming from Detroit to Knoxville and the consequences it has in our community" and the fact that measures less restrictive than confinement have "frequently and recently been applied to [the Defendant] and . . . did nothing to slow his drug trafficking[.]"

Defense counsel noted that while the Defendant had previous drug convictions, they were all within a "relatively brief time period." Counsel also emphasized that although the DRC deemed the Defendant ineligible, the DRC would work with the Defendant if he were ordered to participate. Counsel further stated that the Defendant's high risk for drug use could be addressed on probation.

In an allocution, the Defendant stated that he had come to Tennessee "to try to make [his] life better, but [he] slipped back up with some more drug use." He apologized for his relapse and asked the court if he "could get into some . . . form of help."

The trial court analyzed the statutory factors regarding alternative sentencing. The court noted that while the Defendant had prior felony drug convictions, they all occurred after 2019. The court concluded that because of their proximity in time, the number of prior felony convictions was not so significant as to warrant confinement to protect society from further crimes the Defendant might commit.

However, the trial court found the Defendant's current offenses were serious enough to warrant confinement. The court noted that the Defendant had trafficked in three controlled substances, two of which were Schedule I controlled substances, and the

other was a Schedule II controlled substance. The court found that granting the Defendant alternative sentencing would depreciate the seriousness of the offenses.

The trial court found that although confinement would not “have much of a deterrent effect on anybody else,” less restrictive measures than confinement had proven unsuccessful in stopping the Defendant’s criminal conduct. It noted that the Defendant had prior felony drug convictions on three dates within a two-year time period. It also noted that the Defendant had a pending violation of probation in Michigan. Although the court found that the Defendant had drug addiction issues that could be treated, it said that the Defendant had not taken advantage of any opportunities during the past two years to address his addiction and to seek rehabilitation. After considering all the statutory factors, the court found the Defendant was “not a suitable candidate for probation.” The court ordered the Defendant to serve his sentence in the Department of Correction. This appeal followed.

The Defendant contends that the trial court erred by denying his request for alternative sentencing. The State responds that the court did not abuse its discretion.

The standard of review for questions related to probation or any other alternative sentence is an abuse of discretion with a presumption of reasonableness. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). Generally, probation is available to a defendant sentenced to ten years or less. T.C.A. § 40-35-303(a) (2018). 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 T.C.A. § 40-35-303(b); *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008).

A sentence is based upon “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); see *State v. Trotter*, 201 S.W.3d 651, 653 (Tenn. 2006). A trial court is permitted to sentence a defendant to incarceration when:

- (A) [c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) [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; or
- (C) [m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

T.C.A. § 40-35-103(1)(A)-(C) (2018); *see Trotter*, 201 S.W.3d at 654.

As an initial matter, we begin by addressing the fact that no transcript from the guilty plea hearing was included in the record. When a record does not include a transcript of the hearing, this court should determine on a case-by-case basis whether the record is sufficient for a meaningful review. *Caudle*, 388 S.W.3d at 279; *see State v. Bise* 380 S.W.3d 682, 707 (Tenn. 2012). In this case, the presentence report contains a detailed recitation of the events surrounding the Defendant's traffic stop and his subsequent arrest. We determine that the record is sufficient to allow for meaningful appellate review of the trial court's sentencing decision. *Caudle*, 388 S.W.3d at 279.

The record reflects that the trial court followed the statutory guidelines for sentencing, including consideration of the appropriate factors. *See* T.C.A. § 40-35-103(1)(A)-(C) (2019); *Trotter*, 201 S.W.3d at 654. The court found the Defendant was not a candidate for alternative sentencing given the Defendant's prior criminal history, his current charges involving the interstate transport of controlled substances, his failure to seek rehabilitative help while on probation in Michigan, and his pending violation of probation in Michigan.

The Defendant contends that the trial court placed undue weight on the State's suggestion of a "drug pipeline" from Detroit to Knoxville. We do not agree. The record reflects that the court did not focus on a pipeline, but on the serious nature of the Defendant's criminal conduct involving the transport of controlled substances, including heroin and fentanyl, to Tennessee, his prior criminal activity, and his continued criminal activity while on probation. The court considered all the appropriate factors, and the record supports the court's determinations. We conclude that the court did not abuse its discretion in denying alternative sentencing and ordering the Defendant to serve his sentence in confinement. The Defendant is not entitled to relief.

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE