

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 11, 2023

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STATE OF TENNESSEE v. SEBAKIRE CRODE

**Appeal from the Circuit Court for Rutherford County
No. 83612 Howard W. Wilson, Judge**

No. M2021-01371-CCA-R3-CD

A Rutherford County jury found Defendant, Sebakire Crode, guilty of driving under the influence (DUI), third offense. The trial court sentenced him to eleven months, twenty-nine days, with Defendant to serve 150 days in jail and the balance on probation. On appeal, Defendant argues the evidence was insufficient to convict him of driving under the influence and that he received an excessive sentence. After review, we affirm the judgment of the trial court.

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

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and CAMILLE R. MCMULLEN, JJ., joined.

Benjamin Lewis, Murfreesboro, Tennessee (on appeal); H. Scott Saul, Nashville, Tennessee (at sentencing); Gerald L. Melton, District Public Defender, and Caleb McCain, Assistant District Public Defender (at trial), for the appellant, Sebakire Crode.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Jennings Jones, District Attorney General; and Ashley Chisum-Hall and Brent Pierce, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

These charges stem from a February 24, 2019 traffic stop in which Defendant was pulled over for speeding. At trial, Officer Christopher Golden of the LaVergne Police Department testified that on the morning of the offense, he was conducting stationary radar traffic enforcement along Stones River Road in LaVergne, near the Hurricane Creek boat ramp. He was sitting in his police car, which was visible to passing drivers, observing

passing cars and using his radar to confirm their speeds if needed. The speed limit was 35 miles per hour, and Officer Golden stated that most drivers who were driving over the speed limit tended to slow down once they saw the police car. Officer Golden said that if a car had its brakes applied, the front of the car would appear to “dip.”

At 9:42 a.m., Officer Golden’s vehicle was passed by a car, driven by Defendant, that did not slow down and appeared to be speeding. The officer’s radar confirmed Defendant’s car was traveling 53 miles per hour in the 35 mile per hour zone, so Officer Golden pulled out and got behind the car and turned on his car’s blue lights to initiate a traffic stop. At first, Defendant’s car did not slow down. Officer Golden testified the car continued driving at the same rate of speed longer than most cars did when being pulled over; eventually, Defendant turned on his car’s hazard lights and pulled over.

When Officer Golden approached the car’s open window, he smelled “an odor that [he] recognized due to [his] training and experience was marijuana exuding from inside the car.” Officer Golden also noticed Defendant had bloodshot eyes. When Defendant gave his proof of vehicle registration to Officer Golden, the officer saw marijuana “shake,” or small pieces of marijuana leaf, on the paperwork. Officer Golden testified that in his training and experience, red eyes, the odor of marijuana on a person, decrease in short-term memory, and “divided attention” were typical observations for officers in marijuana-based DUI cases. Prior to becoming a police officer, Officer Golden had been a paramedic and an Emergency Medical Technician (EMT) for a number of years. As a paramedic and an EMT, he had encountered individuals under the influence of marijuana “many times.” The officer also said that in his training and experience, drivers under the influence of marijuana often drive over the speed limit because “they perceive the speed to be slower than it actually is.”

Officer Golden testified that it was readily apparent that the native language of Defendant, who spoke with an accent, was not English, but at no point did Defendant appear to have difficulty understanding or conversing with the officer. The officer stated Defendant seemed “to have a firm grasp” of English, and “was able to effectively communicate with” the officer. For example, when Officer Golden asked Defendant to produce his license, registration, and proof of insurance, Defendant appeared to understand the officer’s request and produced the requested paperwork “without hesitation.”

After a while, Officer Golden instructed Defendant to step out of the car. Defendant opened the door in response to the command, but Defendant’s car kept rolling, as if Defendant had not put the car in park or applied the parking brake. Officer Golden told Defendant the car was rolling, but Defendant “didn’t seem to react” at first. After Officer Golden told Defendant about the rolling car for a second time, Defendant stopped the car, put it in park and exited the car. After Defendant exited his car, Officer Golden decided to

search Defendant's person. The officer saw part of a small plastic bag sticking out of Defendant's shoe; the bag contained a marijuana cigarette. Defendant said at the time he was pulled over he was driving to a friend's house to deliver the cigarette to a friend.

The officer told Defendant he (Golden) was writing Defendant a ticket for simple possession of the marijuana cigarette. Based on his interaction with Defendant to this point, Officer Golden believed Defendant was under the influence of marijuana; the officer ruled out a head injury or other possible cause for Defendant's actions. However, Officer Golden, exercising his discretion as a law enforcement officer, gave Defendant the opportunity to have someone else come to the scene and drive him away. Otherwise, Officer Golden told Defendant, the officer would conduct field sobriety tests. Defendant chose to take the field sobriety tests.

The first test Officer Golden administered is commonly known as the horizontal gaze nystagmus (HGN) test. The officer testified that in this test, "I will have [the subject] stand feet together, hands to their sides. . . . [W]hen I give it, I will use my finger, and I will have them watch my finger with their eyes without turning their heads." In this test, Defendant did not follow Officer Golden's finger; instead, Defendant "would either anticipate where I would be moving it or he was looking somewhere else entirely." The video of the test, taken from Officer Golden's dash camera and played for the jury in court, shows that at least twice during the test, Officer Golden told Defendant he was "anticipating" instead of "following," or that Defendant was not watching the officer's fingers.

Officer Golden then conducted the walk-and-turn test. The officer told Defendant to take nine heel-to-toe steps on a straight line, counting each step aloud, then turn around and repeat the process. Officer Golden demonstrated the test to Defendant before Defendant began. The officer described Defendant's performance:

So in this case he did not stand the way I told him to do so.

After I explained and demonstrated the test, I asked him if he understood. He indicated he did.

He took nine steps forward without counting. When he got to the ninth step, he stopped.

He asked me whether -- what are you supposed to do at that point.

I told him, I already asked you if you understood the test. You told me you did. I can't explain anything further to you at this point.

So at that point he stepped off the line. He turned in a way different than what I explained or what I demonstrated to him; and he walked back the opposite direction.

This time he took 10 steps. And after the 10th step, he turned around again -- also not the way that I explained to him, and he took another set of steps at this time -- took 10, as well.

Defendant did not count aloud on the first set of steps but did count aloud during the second and third sets. Officer Golden said Defendant performed unsatisfactorily on the test based on an "incorrect number of steps; stopping once he started; the improper turn; and the stepping off the line."

The third test Officer Golden administered was the one-legged stand test. The officer explained that in this test, the subject would keep his hands at his sides while lifting one foot six inches off the ground and parallel with the ground. The subject would count aloud (1,001, 1,002, etc.) until the officer told the subject to stop. Officer Golden demonstrated the test to Defendant, who lifted his foot before the officer had finished explaining the test. After the officer corrected Defendant and prompted Defendant to begin the test, Defendant performed the test. Defendant did not count aloud as instructed, but Officer Golden acknowledged Defendant "maintain[ed] his hands to his side. He didn't sway. He didn't hop. He didn't put his foot down."

Based on Defendant's performance on these three tests, coupled with the other factors described earlier—Defendant's "red eyes; his slowed reaction time; the way he was driving the speed and everything; the smell of marijuana"—Officer Golden arrested Defendant for driving under the influence. Officer Golden acknowledged that during the field sobriety tests Defendant "wasn't stumbling around, like people typically associate with a DUI," but in the officer's view Defendant "wasn't performing cognitively or mentally the way somebody should, were they not impaired." Officer Golden also stated that during the time he transported Defendant to the police station following the arrest, Defendant "repeatedly ask[ed] the same questions" about the post-arrest process. Officer Golden testified Defendant's apparent short-term memory loss and "deteriorated" focus were consistent with someone using marijuana.

Once the Defendant arrived at the police station, he gave consent for his blood to be drawn. The blood was drawn at 11:30 a.m., or just under two hours after Defendant's arrest. Special Agent Sarah Douglas of the TBI Crime Laboratory tested the blood. Her testing

indicated the presence of Delta 9 THC, the active drug in marijuana, as well as 11-hydroxy-THC, the active metabolite of the drug. The agent stated that the effects of THC last about four hours for the “average” person. She also said the inactive metabolite of THC was found in Defendant’s blood, but the inactive metabolite would have had no effect on Defendant.

The agent testified that a person with THC in his system could, potentially, exhibit slowed reaction time, an “impaired ability [for] multitasking or doing divided-attention tasks,” difficulty concentrating, and short-term memory lapse. The agent opined that a THC-affected person “could either be going 20 [miles per hour] over or 20 under [the speed limit] and think [they were] going the speed limit.” She acknowledged that she had no way to know how Defendant was affected by his marijuana use at the time of the traffic stop.

Defendant did not testify or present any witnesses on his behalf. After its deliberations, the jury found Defendant guilty of driving under the influence. The case then proceeded to a bifurcated hearing in which the State presented evidence of Defendant’s two prior convictions for driving under the influence: A March 2014 conviction in Kentucky and a December 2014 conviction in Davidson County, Tennessee. Based on this evidence, the jury found Defendant guilty of driving under the influence, third offense. This appeal followed.

II. Analysis

A. Jurisdiction

Although not addressed by either party, this court first addresses the jurisdictional issues in this case. The judgments of conviction were entered October 8, 2021. The attorney Defendant retained for the sentencing hearing did not file a motion for new trial. Defendant filed a pro se pleading with this court on November 17, 2021, stating his intent to appeal. This court entered an order on January 25, 2022, remanding this case to the trial court for the appointment of counsel. This court’s order did not mention any potential jurisdictional issues concerning the lack of a motion for new trial or the apparent untimeliness of the notice of appeal. The trial court entered an order appointing counsel February 1, 2022. Defendant’s brief recognizes that a timely motion for new trial was not filed.

Regardless of whether Defendant’s pro se filing in this court was a motion for new trial (albeit one filed in the wrong court) or notice of appeal, the filing was untimely. “A motion for new trial shall be in writing or, if made orally in open court, be reduced to writing, within thirty days of the date the order of sentence is entered.” Tenn. R. Crim. P. 33(b). The time for filing a motion for new trial is mandatory and may not be extended. Tenn. R. Crim. P. 45(b); *State v. Johnson*, 980 S.W.2d 414, 418 (Tenn. Crim. App. 1998).

“The thirty (30) day provision is jurisdictional [in the trial court], and an untimely motion is a nullity.” *Johnson*, 980 S.W.2d at 418 (alteration added). However, it is not necessary to file a motion for a new trial to obtain appellate review of a claim that the evidence is insufficient to support the conviction. *See, e.g., State v. Patterson*, 966 S.W.2d 435, 440 (Tenn. Crim. App. 1997). Indeed, any issues that would result in a dismissal may still be reviewed by this court. Tenn. R. App. P. 3(e); *State v. Williams*, 675 S.W.2d 499, 501 (Tenn. Crim. App. 1984).

Additionally, Tennessee Rule of Appellate Procedure 4(a) provides that the notice of appeal must be filed “within 30 days after the date of entry of the judgment appealed from.” In criminal cases, however, “the ‘notice of appeal’ document is not jurisdictional and the timely filing of such document may be waived in the interest of justice.” *Id.* The court observes that the State does not challenge this court’s jurisdiction on appeal.

Accordingly, this court will review the sufficiency of the evidence and sentencing as argued by Defendant on appeal.

B. Sufficiency of Evidence

Defendant argues the evidence produced at trial was insufficient for the jury to find him guilty beyond a reasonable doubt of driving under the influence. We disagree.

The standard of review of a claim challenging the sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citing *Johnson v. Louisiana*, 406 U.S. 356, 362 (1972)); *see* Tenn. R. App. P. 13(e); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011). This standard of review is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both. *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)).

A guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, therefore, the burden is shifted to the defendant to demonstrate why the evidence is insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)). On appellate review, “we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom.” *Id.* at 729 (quoting *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010)); *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). In a jury trial, questions involving the credibility of the witnesses and the weight and value to be given to evidence, as well as all factual disputes raised by such evidence, are resolved

by the jury as the trier of fact. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *State v. Pruett*, 788 S.W.2d 405, 410 (Tenn. 1990). Therefore, we are precluded from re-weighing or reconsidering the evidence when evaluating the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

Defendant was found guilty of driving under the influence, third offense. Defendant does not challenge the jury's finding that he had two prior convictions for driving under the influence; he only asserts the evidence was insufficient for the jury to find he was intoxicated at the time of the offense. As relevant to this case, "It is unlawful for any person to drive or to be in physical control of any automobile . . . on any of the public roads and highways of this state" while such person is under the influence of marijuana, and that such drug "impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess[.]" Tenn. Code Ann. § 55-10-401(1).

In the light most favorable to the State, the evidence produced at trial showed Officer Golden clocked Defendant's car at fifty-three miles per hour in a thirty-five miles-per-hour zone. When Officer Golden pulled behind Defendant's car and turned on his police car's blue lights to initiate the traffic stop, Defendant did not immediately slow down, but maintained his speed before eventually pulling over. When Officer Golden approached Defendant, the officer noticed the smell of marijuana emanating from Defendant's car, Defendant's eyes were red, and the officer saw marijuana "shake" on Defendant's auto insurance card. When Officer Golden had Defendant exit the car, Defendant first tried to do so while the car was still rolling, which prompted the officer to tell Defendant twice to stop the car before exiting. And when Officer Golden had Defendant conduct three field sobriety tests, he performed relatively poorly on two of them—during the HGN test Defendant anticipated where the officer's finger was going instead of following its actual path, and during the walk-and-turn test Defendant did not follow the officer's instructions precisely. A dash camera video from Officer Golden's police car depicting the entire traffic stop was played for the jury at trial, and the video supports Officer Golden's testimony.

Additionally, both Officer Golden and Agent Douglas testified that persons under the influence of marijuana had the potential to encounter short-term memory difficulties, and in this case Defendant asked Officer Golden repeated questions about the field sobriety tests and the reasons for his being pulled over (and ultimately arrested) even after Officer Golden explained himself clearly throughout the two men's interaction. Such evidence supports a conclusion that Defendant lacked the "clearness of mind" he would normally possess. And after Defendant's blood was drawn, revealing the presence of both THC and an active THC metabolite, it was rational for the jury to conclude marijuana was the cause.

Defendant contends his difficulties with comprehending the officer's instructions resulted from English not being Defendant's first language. However, Officer Golden testified that Defendant, through his words and actions, never expressed any difficulty in understanding the officer. In the video of Defendant's traffic stop and subsequent arrest Defendant appears to have little difficulty speaking and understanding English. Defendant also contends the State failed to show that the marijuana in Defendant's system at the time of his arrest affected him. However, the jury chose to believe the testimony of Officer Golden and Agent Douglas regarding the potential effects of a person with marijuana in his system and Officer Golden's testimony regarding Defendant's appearance, actions, and performance during the encounter and on the field sobriety tests. After doing so, the jury concluded Defendant was driving under the influence of marijuana at the time of the traffic stop. The evidence was sufficient for the jury to find Defendant guilty of driving under the influence beyond a reasonable doubt, and he is not entitled to relief on this issue.

C. Sentencing

Defendant next argues the trial court imposed an excessive sentence. As stated above, Defendant received a sentence of eleven months, twenty-nine days, with 150 days to serve in the county jail and the balance to be served on probation. Defendant argues the 150-day jail term was excessive, given that the minimum punishment for third-offense driving under the influence is 120 days. *See* Tenn. Code Ann. § 55-10-402(a)(3)(A) (sentence for driving under the influence, third offense, is confinement in county jail or workhouse for no less than 120 days and no more than eleven months, twenty-nine days). Defendant also asserts the trial court erred by not granting the attorney representing him at the sentencing hearing adequate time to prepare for the hearing. We disagree.

1. Sentencing Hearing

Defendant was represented by the Sixteenth Judicial District Public Defender's Office at trial, but Defendant hired private counsel for the sentencing hearing. The new attorney did not file a notice of appearance or a continuance motion before the October 8, 2021 sentencing hearing. Rather, at the beginning of the hearing, counsel told the trial court,

I have been contacted by the Defendant. He has some other matters going on. He wants me to try to help him with those, as well as this case. I told him all I could do is file a notice of appearance with the Court and ask for a continuance to try to review the sentencing report and be prepared for sentencing.

I do know, after speaking with State, they had to subpoena a Metro Nashville Police officer, who arrested the Defendant after this case began. He is here to testify today about the facts and circumstances related to the arrest of the Defendant.

The Defendant told me he is coming in from Kentucky and should be here at 9:45.

So I would ask the Court to consider a continuance.

The trial court denied the continuance, and the sentencing hearing proceeded.

At the hearing, Officer Michael Hones with the Metropolitan Nashville Police Department testified that on August 25, 2021—after the trial in this case—he investigated a traffic accident on Interstate 40 in Davidson County in which Defendant’s car hit two tractor-trailers and crashed into the median. When Officer Hones encountered Defendant, he was unsteady on his feet and struggled to stand without assistance. Defendant also had slurred speech and bloodshot eyes. Officer Hones did not conduct field sobriety tests due to Defendant’s claim he was injured. The officer arrested Defendant for DUI and had Defendant’s blood drawn, but the officer was unaware of the results of the tests on that blood. Defendant presented no evidence at the sentencing hearing.

The presentence report in this case indicated that in addition to the two prior DUI convictions identified at trial, Defendant had prior misdemeanor convictions for criminal impersonation, assault, and evading arrest. The State argued Defendant should serve the full sentence of eleven months, twenty-nine days, in custody based on his then-pending DUI charge in Davidson County; the prosecutor stated, “He was arrested again, which means that he failed to comply with release into the community. He endangered citizens in multiple counties.” The Defendant also failed to respond to interview requests for the presentence report, which the State argued showed “he is not willing to comply with what the Court has asked him to do.” Defense counsel countered that Defendant only had prior misdemeanor convictions and did not have a significant criminal history. Defense counsel also argued Defendant’s wearing a SCRAM bracelet (an alcohol monitoring device) while not in custody “would help in terms of the public safety question that the State raised.” Defense counsel also requested that the trial court place Defendant on probation pending appeal.

In imposing sentence, the trial court applied two sentence enhancement factors. The court found Defendant had a history of criminal convictions, based on Defendant’s prior misdemeanor convictions (excluding the DUI convictions), and the court also found Defendant had failed to comply with conditions of a sentence involving his release into the

community, based on his post-trial DUI arrest. *See* Tenn. Code Ann. §§ 40-35-114(1) and (8). The trial court applied the mitigating factor provided in section 40-35-113(1), finding that this offense “neither caused nor threatened serious bodily injury.” The trial court also expressed concern over Defendant’s unwillingness to “tak[e] responsibility for the crimes he’s committed” based on Defendant’s failure to cooperate with the presentence investigation and his arriving 45 minutes late to the sentencing hearing. The trial court sentenced Defendant to eleven months, twenty-nine days, with 150 days to be served in jail (120 days to be served at 100 percent), and the balance of the sentence on supervised probation. The trial court imposed several conditions on Defendant’s probation; Defendant is not challenging these conditions on appeal.

2. Standard of Review

Our supreme court has recognized that “sentences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a ‘presumption of reasonableness.’” *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A reviewing court should uphold the sentence “so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute.” *Id.* at 709-10.

Driving under the influence, third offense, is a Class A misdemeanor. As this court recently recognized, “our supreme court has not specifically considered whether the *Bise* standard applies to misdemeanor sentencing determinations[.]” *State v. Demario Antijuan Jones*, No. W2022-01270-CCA-R3-CD, 2023 WL 3451553, at *2 (Tenn. Crim. App. May 2, 2023). The Tennessee Supreme Court has, however, stated that “the abuse of discretion standard of appellate review accompanied by a presumption of reasonableness applies to all sentencing decisions.” *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014) (citing *State v. Pollard*, 432 S.W.3d 851, 864 (Tenn. 2013)). Specifically, our supreme court has stated this standard also applies to “questions related to probation or any other alternative sentence.” *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). Accordingly, this panel will apply the *Bise* standard to its review of Defendant’s sentence.¹

In determining the proper sentence, the trial court must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by

¹ Other panels of this court have also applied *Bise* in reviewing misdemeanor sentencing. *See Demario Antijuan Jones*, 2023 WL 3451553, at *2; *State v. Willard Hampton*, No. W2018-00623-CCA-R3-CD, 2019 WL 1167807, at *12 (Tenn. Crim. App. Mar. 12, 2019) (citing to four other cases from this court applying *Bise* to misdemeanor sentencing).

the parties on the mitigating and enhancement factors set out in Tenn. Code Ann. §§ 40-35-113 and -114; (6) any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee; (7) any statement the defendant made in the defendant's own behalf about sentencing; and (8) results of the validated risk and needs assessment conducted by the Department of Correction and contained in the presentence report. *See* Tenn. Code Ann. § 40-35-210; *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). 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. Tenn. Code Ann. § 40-35-103.

A sentence imposed for a misdemeanor offense must be specific and in accordance with the principles, purposes, and goals of the sentencing act. Tenn. Code Ann. §§ 40-35-104, -302(b); *State v. Cooper*, 336 S.W.3d 522, 524 (Tenn. 2011) (per curiam); *State v. Palmer*, 902 S.W.2d 391, 394 (Tenn. 1995). For misdemeanor sentences, the trial court designates “a percentage of that sentence which the offender must serve becoming eligible for consideration of rehabilitative programs,” usually not to exceed seventy-five percent. *Palmer*, 902 S.W.2d at 394; *see* Tenn. Code Ann. § 40-35-302(d). However, “the legislature has specifically excluded DUI offenders from the provisions of the Act when the application of the Act would serve to either alter, amend, or decrease the specific penalties provided for DUI offenders.” *Palmer*, 902 S.W.2d at 394. “A trial judge may designate a service percentage in a DUI case . . . but that percentage may not operate to reduce the mandatory minimum sentencing provisions of the DUI statute.” *Id.*

“Ultimately, in sentencing a defendant, a trial court should impose a sentence that is ‘no greater than that deserved for the offense committed’ and is ‘the least severe measure necessary to achieve the purposes for which the sentence is imposed.’” *Demario Antijuan Jones*, 2023 WL 3451553, at *3 (quoting Tenn. Code Ann. §§ 40-35-103(2), (4)). However, a person convicted of a misdemeanor offense has no presumption of entitlement to a minimum sentence. *State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999) (citations omitted). Furthermore, “a trial court need only consider the principles of sentencing and enhancement and mitigating factors in order to comply with the legislative mandates of the misdemeanor sentencing statute.” *State v. Troutman*, 979 S.W.2d 271, 274 (Tenn. 1998). In sum, “the trial court has more flexibility in misdemeanor sentencing than in felony sentencing.” *Johnson*, 15 S.W.3d at 518.

In this case, the record reflects the trial court properly considered the principles of sentencing and sentenced Defendant within the statutory range. The evidence produced at the sentencing hearing supported the trial court's application of the two statutory enhancement factors, the weight the trial court gave these factors, and the trial court's relative lack of weight given to the mitigating factor it found applicable. Defendant claims he was prejudiced by the trial court's imposing a 150-day sentence when the statutory

minimum for his offense was 120 days, but a criminal defendant is not entitled to a minimum sentence for a misdemeanor. *See Johnson*, 15 S.W.3d at 518. Defendant presented no evidence at the sentencing hearing and has raised no argument, either at the sentencing hearing or on appeal, that would lead this court to conclude the trial court abused its discretion in imposing Defendant's sentence.

This court also concludes Defendant was not prejudiced by sentencing counsel's alleged lack of preparation at the sentencing hearing. Defense counsel's arguments at the sentencing hearing were reasonable, and given the discretion afforded trial judges in imposing sentence and the Defendant's DUI arrest shortly after being convicted for DUI in this case, the trial court would have been justified in ordering a lengthier sentence. However, the trial court imposed a sentence that was only thirty days more than the minimum sentence. Thus, if defense counsel was unprepared for the sentencing hearing, such lack of preparation did not prejudice Defendant, given the relatively favorable sentence he received.

Defendant's arguments concerning his sentence are without merit and do not entitle him to relief.

III. Conclusion

Based on the foregoing analysis and the record as a whole, we affirm the judgment of the trial court.

MATTHEW J. WILSON, JUDGE