

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 3, 2023

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. FREDERICK PEAT

**Appeal from the Criminal Court for Shelby County
No. C2003541, 20-02079 Carolyn W. Blackett, Judge**

No. W2022-01348-CCA-R3-CD

A Shelby County jury convicted the defendant, Frederick Peat, of aggravated rape, for which he received a sentence of twenty-five years in confinement. On appeal, the defendant contends the evidence presented at trial was insufficient to support his conviction. The defendant also argues the trial court erred in preventing him from impeaching the victim with evidence of the victim's prior convictions and in imposing an excessive sentence. After reviewing the record and considering the applicable law, we affirm the judgment of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

Shae Atkinson (on appeal) and Eric Mogy and Michael Campbell (at trial), Memphis, Tennessee, for the appellant, Frederick Peat.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Steve Mulroy, District Attorney General; and Dru Carpenter and Jermal Blanchard, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

This case arises from an incident occurring between the defendant and the victim at an abandoned apartment building in Shelby County, Tennessee. For his actions, the defendant was charged with aggravated rape, a Class A felony. At trial, the State presented the following facts for the jury's review.

S.T.¹ testified that early on the morning of April 24, 2019, she walked to an apartment complex near her house to purchase marijuana from a man she knew as Mr. Frank. Although Mr. Frank lived in one of the apartments in the complex, the majority of the units were abandoned. When the victim knocked on Mr. Frank's door, the defendant, who was standing outside of another apartment, told the victim that Mr. Frank was not at home and offered to sell her marijuana. However, the victim ignored him. The defendant began "whistling at [the victim and] trying to come on to [her]" as she walked away. When she refused to engage with him, the defendant shouted obscenities at her. Although the victim had almost exited the apartment complex, she began "pass[ing] words back and forth" with the defendant, and the defendant responded by pulling a gun on the victim and stating, "B***h, you know what time it is." While still pointing his gun at the victim, the defendant "ushered" her to him at which time he placed the gun against her back and forced her into a nearby apartment. Although the victim saw another man inside the apartment, she did not feel comfortable asking him for help because the defendant referred to the man as his brother. After exiting the apartment, the defendant attempted to open another door, but it was locked. He then took the victim to an area behind the apartment complex with discarded mattresses where he forced the victim to perform fellatio on him. Afterward, the defendant made the victim undress and forced her to have vaginal intercourse. Although the victim carried a screwdriver in her bra for protection, she did not try to use it because she was too scared. As the victim was putting her clothing back on, she hid the pink house shoes that she was wearing near the mattress because she wanted the police to find them. When the defendant was finished, the man from the apartment came outside and told him "to hurry up because [their] boss was coming." While the defendant was distracted, the victim was able to run away and call the police. The victim acknowledged that she had prior convictions for theft, aggravated assault, and criminal impersonation.

On cross-examination, the victim denied telling police that someone initially answered Mr. Frank's door or that she did not see a gun. She also denied telling police that Mr. Frank's name was Mr. Black. The victim acknowledged that her preliminary hearing testimony did not mention the defendant's taking her inside an apartment before raping her. However, she denied lying during the preliminary hearing, stating she "just didn't say it I guess." The victim also conceded that, although she initially stated the first sexual contact between herself and the defendant was the oral sex behind the apartments, she told the nurse at the Rape Crisis Center that the defendant forced her to put her hand in his pants and touch his penis. The victim reiterated that she saw the defendant with a gun during the entire incident and stated that she was "probably confused" when she testified at the preliminary hearing that the defendant put the gun away. She agreed that she told police

¹ It is the policy of this Court to refer to victims of sexual crimes by their initials. For purposes of this opinion, "the victim" will refer to S.T. unless otherwise noted.

that she left her underwear at the crime scene with her house shoes and denied turning them in to the Rape Crisis Center. She testified that she was unaware why crime scene investigators were unable to recover the underwear from the crime scene. The victim denied having consensual sex with the defendant for money or blackmailing him when he refused to pay her. The victim repeatedly stated that she “told everybody the same thing. The rape trauma center, the police, and [Lieutenant Vikki] Shabazz.” The victim agreed that she gave an official statement to Lieutenant Shabazz following the attack, and, during cross-examination, trial counsel read the victim’s written statement, which was admitted into the record as evidence:

I was going over to Mr. Frank[’s] house on 4th and Georgia in some apartments around three a.m. after coming from the club Faces on Crump to get some weed for in the morning. I’ve been – I’ve been there many times before to buy weed by myself so I didn’t think anything of it.

I saw the male as I walked up to Mr. Frank’s door. The male said hey, you are cute and fine, but I just smiled and kept going to Mr. Frank’s door to get some weed. When I knocked on Mr. Frank’s door no one came to the door. The man that was trying to talk to me had to see that no one answered the door too. So he said to me hey, I got it. He said Mr. Frank ain’t there. I said I’m good. He said hey, what you looking for? I got it. I told him I was good.

I started to walk back to the other side of the street. He then went from being fine to calling me b*****s and stuff. Like cussing. So I turned around and started saying saying stuff to him too, like cussing and stuff, because I’m from the street. I kept walking but kept turning around because he kept saying stuff. I saw he had his hand in his pocket. I had a screw driver in my t*****s. He said b***h, come here. I said f**k you and kept walking. I heard a sound like a gun and turned around. I saw the gun and I said oh, man, I got ten dollars. I thought I was being robbed. I knew it was the real thing. He kept pointing a gun and ushering me back to him.

He had – he made me go into an empty apartment where there was another man inside. The man said something to him about work and asked him – asked has the boss man pulled up yet. I was standing in front of him and he was standing behind me with the gun. He said no, he hasn’t came yet but he’ll be here in a minute. I guess I have – I guess I had a look on my face and the man asked him was everything good. He said yeah. This – this my girl. I said everything was good because I was scared because of the – I was scared because of the gun. The man with the gun said that was his brother.

The brother was a real old man, but I really didn't remember nothing about him.

So he direct[ed] me back out the door to the back or the side of the apartments to another apartment but the door was locked. He made me go out back where the apartments – I mean where the mattress – where there was a mattress. He made me give him oral sex first and then he told me to take off my clothes. And I guess I was taking too long so he snatched my clothes off. I start – he started penetrating me from the back with his penis inside my vagina. The rape lasted about 15 minutes.

The brother yelled out Memphis, Memphis. I guess he was calling the guy name that was raping me. So he said b***h, keep up and better not say nothing. I got up and put my clothes on, but I had on some pink house shoes and I left one shoes (sic) and my panties and left. I caught myself hiding them so that when I call the police they could find them. I didn't see him and I hurry up and I walked off and called 911 immediately as I was walking off. The man didn't – the man – the man didn't to do me like that. The man didn't to do me like that. He didn't try to fight me or nothing. He just threaten me with the gun. I thought I was strong enough that it happen. This made me feel like I was so weak.

Officer Turner² with the Memphis Police Department (“MPD”) responded to a report of a criminal assault at the victim’s residence. After speaking with the victim, who was crying but “able to answer a few questions,” Officer Turner located the crime scene at an abandoned apartment complex at 4th and Georgia. At the rear of the complex, Officer Turner discovered a mattress on the ground which matched the description given by the victim. Following his discovery, Officer Turner remained on the scene until crime scene investigators arrived to collect evidence.

Officer Gillard³ with the MPD’s Crime Scene Unit processed the scene, photographing and collecting all evidence. In particular, Officer Gillard collected pink house shoes and the top of a mattress. On cross-examination, Officer Gillard testified that he did not collect any underwear at the crime scene.

Kristine Gable, an expert in sexual assault examinations and a sexual assault nurse examiner at the Rape Crisis Center, performed a medical examination on the victim on

² Officer Turner’s first name does not appear in the record.

³ Officer Gillard’s first name does not appear in the record.

April 24, 2019. Prior to the examination, the victim provided a history of the assault which was read into the record:

50[-]year-old female reports she was walking to buy weed from Mr. Frank. Along the way an unknown male tried to speak with her, saying, "What's up with you?" [The victim] replied, "Nothing," and kept walking. The male told her, "Don't try to leave me, I've got a gun in my pocket," and pointed his gun towards [the victim] and kept his hand in his pocket. He added, "You know what time it is." Patient states she kept trying to walk but he told her to come here, pointed his pocket at her and told her to touch it. The gun. Patient states he told her, "This ain't no game. I'm fixing to blow your head off." [The victim] tearfully states, "I thought he was going to blow my brains out." He then told her to grab his d**k. She did and snatched my hand back. She then felt something hard that felt like a gun in the pocket.

After trying to make her open a locked door of a U-shaped apartment building near Georgia and 4th Street he forced her around behind the building where there were bricks and mattresses because she thinks there's work being done on the building. The male told her to keep her eyes closed and not look at him, "But every chance I got I looked."

While pointing what he said was a gun in his pocket at [the victim] the male made her "Pull my pants down and get on a mattress." She states, "I was so scared." He forced unprotected penile/oral penetration, no ejaculation, and penile/vaginal penetration, unknown ejaculation.

Afterward, the male told her to get dressed and asked where her panties were. He looked for them, but she put them in her pocket. [The victim] states a man came out of the building and said something to them. The assailant made [the victim] go to an empty house but she saw a white car and yelled at it, thinking it was a police car, but it wasn't. She then walked real fast down the street and called the police. Patient was taken to Methodist University Hospital ER where she reports no exam, no testing, no meds before being brought to Rape Crisis Center.

Although the victim was forthcoming and cooperative throughout the exam, Ms. Gable noted that the victim was "tearful, tense and sobbing" when discussing the assault and the gun. During the victim's pelvic exam, Ms. Gable reported that she did not find any visible injuries and explained that this is not uncommon in cases where the victim is an adult female. Ms. Gable also collected oral swabs, vulvar swabs, vaginal swabs, the victim's underwear, and pajama pants.

Lieutenant Vikki Shabazz with the MPD was assigned to the victim's case the day after the assault. She spoke with the victim on the phone and received a brief synopsis of the incident. A month later, the victim gave a written statement, which Lieutenant Shabazz testified differed in one way from her initial conversation. The victim initially implied that her assailant had a gun but never stated that she saw one. However, in her written statement, the victim remembered seeing a physical gun. According to Lieutenant Shabazz, it is typical for a victim's statement to change over time because they may not remember everything immediately. After the initial testing was done on the victim's rape kit, Lieutenant Shabazz was informed that an unknown male profile was added to CODIS. In January 2020, Lieutenant Shabazz was notified that the defendant's name matched the unknown profile in CODIS. Using this information, Lieutenant Shabazz prepared a photographic lineup from which the victim was able to identify the defendant.

On cross-examination, Lieutenant Shabazz agreed that in her initial conversation with the victim, the victim stated that she was on her way home from the club when she decided to go to Mr. Black's apartment to purchase marijuana. However, Lieutenant Shabazz testified that "Mr. Black" was a typo and that she intended to type "Mr. Frank." Lieutenant Shabazz also conceded that the victim initially told her that the defendant answered Mr. Frank's door, advised her that his name was Memphis, and told her that Mr. Frank was not home. Lieutenant Shabazz testified that because she was only trying to get a summary of what happened over the phone, her initial conversation with the victim may not have had all of the same details as the victim's written statement. However, in both the victim's initial conversation and written statement, "the timelines were exactly the same," and "[the victim] stayed consistent about the sexual assault."

Agent Mark Dunlap, an expert in forensic biology with the Tennessee Bureau of Investigation ("TBI"), analyzed the victim's rape kit, which included vaginal, vulvar, and oral swabs, underwear, a shirt, and a pair of pants. The vulvar swabs confirmed the presence of a limited number of spermatozoa. The non-sperm fraction contained a DNA profile which was consistent with a mixture of at least two individuals. Although the major contributor profile was consistent with the victim, the minor contributor's profile was limited and, therefore, interpretation of the minor profile was inconclusive. The sperm fraction of the vulvar swabs also contained a DNA profile consistent with a mixture of at least two individuals. The major contributor profile was consistent with the victim, and the minor profile was from an unknown male. Examinations of the vaginal and oral swabs did not reveal the presence of semen. The unknown male profile was entered into CODIS, and in January 2020, the TBI received the defendant's name in connection with the unknown profile. In March 2020, Agent Dunlap received a saliva standard from the defendant from which he extracted a DNA profile. After comparing the defendant's DNA profile to the unknown male profile from the victim's vulvar swabs, Agent Dunlap opined

that the partial minor profile from the vulvar swabs was consistent with the standard from the defendant.

The defendant called Officer Ariel Luke Waits who testified that he and his partner, Officer Turner, responded to the victim's 911 call on April 24, 2019. The victim informed Officer Waits that she went to Mr. Frank's apartment to purchase marijuana. However, another man, who introduced himself as Memphis, answered the door and told her that Mr. Frank was not at home. The man told her that he had a gun in his pocket and attempted to get the victim to come inside the apartment. The man, who still had his hand in his pocket, forced the victim to go behind the apartment building and raped the victim on a mattress. The victim told Officer Waits that she left her pink house shoes near the mattress before she went home. On cross-examination, Officer Waits testified that he was in training in 2019 and described the victim as "very emotional" when he spoke with her.

Following deliberations, the jury found the defendant guilty of aggravated rape, and the trial court imposed a sentence of twenty-five years in confinement at 100 percent. The defendant filed a motion for new trial which the trial court denied. This timely appeal followed.

Analysis

On appeal, the defendant argues the evidence presented at trial was insufficient to support his conviction. He also argues the trial court erred in preventing him from impeaching the victim with evidence of the victim's prior convictions and in imposing an excessive sentence. The State contends the evidence is sufficient, the trial court properly precluded the defendant from impeaching the victim with convictions over ten years old, and the trial court properly sentenced the defendant.

I. The Victim's Prior Convictions⁴

The defendant argues the trial court erred in preventing him from impeaching the victim with evidence of her prior convictions. He contends the trial court failed to determine whether the victim's prior convictions' "probative value on credibility outweighed its unfair prejudice on the substantive issues." The State submits the trial court properly precluded the defendant from impeaching the credibility of the victim with felony convictions over ten years old.

⁴ For the sake of clarity, we have reordered and renumbered the issues from the order they appeared in the defendant's brief.

Prior to trial, the defendant filed a motion for permission to admit into evidence the victim's 1991, 1996, 1997, 1998, 1999, 2001, 2005, 2006, 2007, and 2008 convictions for theft of property. The defendant conceded the convictions fell outside of the ten-year time frame proscribed in Tennessee Rule of Evidence 609 but argued that because the jury would already hear about the victim's 2012 conviction for theft of property and 2019 conviction for aggravated assault there would be no prejudicial effect if the jury heard about the victim's remaining convictions. The State argued that the admission of the victim's older convictions was unnecessary and cumulative and that the 2012 theft conviction was sufficient "for them to do what they need[ed] to do with regard to her credibility." The trial court excluded the evidence of the victim's theft convictions prior to 2012, finding

I do not want the confusion of the jury to say that just because she has this extensive record of thefts, whether they be misdemeanors or [felonies], that there's absolutely no possibility that some other crime cannot be done against her. So I think the very fact that we have two crimes that shows and introduces her credibility is enough.

Tennessee Rule of Evidence 609 permits the admission of "evidence that the witness has been convicted of a crime" solely "[f]or the purpose of attacking the credibility of a witness." Tenn. R. Evid. 609(a). However, evidence of a prior conviction is not admissible if more than ten years have elapsed since the date the witness was released from confinement, or if the witness was not confined, the date of conviction. Tenn. R. Evid. 609(b). Convictions that exceed this time limit may be admitted if the proponent gives the adverse party sufficient notice and the trial court "determines in the interests of justice that the probative value of the conviction, supported by specific facts and circumstances, substantially outweighs its prejudicial effect." *Id.*

The defendant argues the trial court failed to determine whether the victim's prior convictions' "probative value on credibility outweighed its prejudicial effect on the substantive issues." However, a close reading of the trial court's ruling shows that the trial court was concerned the victim's "extensive record of thefts" might cause the jury to believe "that some other crime cannot be done against her." While not explicitly stated, the trial court found that the probative value of the convictions did not substantially outweigh their prejudicial effect, and therefore, we conclude the trial court did not abuse its discretion in excluding the evidence of the victim's out-of-date convictions. Furthermore, the jury heard evidence of the victim's 2012 conviction for theft, 2019 conviction for aggravated assault, and 2019 conviction for criminal impersonation. The defendant is not entitled to relief on this issue.

II. Sufficiency

The defendant next argues the evidence is insufficient to sustain his conviction. Specifically, he contends the evidence did not establish that he used a weapon or any article intended to make the victim reasonably believe he had a weapon. He also argues the victim's ever-changing stories precluded any rational juror from hearing the proof presented and finding him guilty. The State contends the evidence is sufficient.

When the sufficiency of the evidence is challenged, the relevant question of the reviewing court 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); *see also* Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); *State v. Evans*, 838 S.W.2d 185, 190-92 (Tenn. 1992); *State v. Anderson*, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court has stated the following rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus, the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere, and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 1963)). "A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient." *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982).

Guilt may be found beyond a reasonable doubt where there is direct evidence, circumstantial evidence, or a combination of the two. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977); *Farmer v. State*, 343 S.W.2d 895, 897 (Tenn. 1961)). The standard of review for sufficiency of the evidence "is the same whether the conviction is based upon direct or

circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and reconcile all conflicts in the evidence. *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008) (citing *Byrge v. State*, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence and the inferences to be drawn from this evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence are questions primarily for the jury. *Dorantes*, 331 S.W.3d at 379 (citing *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006)). This Court, when considering the sufficiency of the evidence, shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. *Id.*

As charged in the present indictment, an aggravated rape “is unlawful sexual penetration of a victim by the defendant” through force or coercion “and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon[.]” Tenn. Code Ann. § 39-13-502(a)(1).

Viewed in the light most favorable to the State, the victim went to Mr. Frank’s apartment to purchase marijuana. The defendant, who was standing outside in the apartment complex, approached the victim and offered to sell her marijuana, but the victim ignored him and began walking away. The defendant shouted obscenities at the victim, and the victim turned around and “pass[ed] words back and forth” with the defendant. The defendant then pulled a gun on the victim, placed the gun against her back, and forced her into a nearby apartment. However, they left a few minutes later because there was another man in the apartment. The defendant then tried to open another apartment, but it was locked so he took the victim behind the apartment complex where he forced the victim to perform fellatio on him and forced her to have vaginal intercourse. Analysts found the defendant’s DNA on vulvar swabs taken from the victim. By finding the defendant guilty of aggravated rape, the jury accredited the victim’s testimony that the defendant was “armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon[.]” *See id.* The jury resolved the factual issue in favor of the State, and this Court is not free to re-evaluate the question. *Campbell*, 245 S.W.3d at 335. Accordingly, the record is sufficient to support the defendant’s aggravated rape conviction.

The defendant also points to various inconsistencies in the testimony of the victim and questions the credibility of the victim to challenge the sufficiency of the proof against him. However, the credibility of the victim and any inconsistencies in the victim’s testimony were assessed by the jury, and it is not for this Court to second-guess the credibility and factual determinations made by the trier of fact. *Id.* The defendant is not entitled to relief on this issue.

III. Sentencing

The defendant argues the trial court erred in imposing an excessive sentence. The defendant argues the trial court erred in sentencing him to the maximum sentence considering his “light criminal history.” The State contends the trial court exercised proper discretion in determining the length of the defendant’s sentence.

In determining an appropriate sentence, a trial court must consider the following factors: (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 the parties on mitigating and enhancement factors; (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 makes on his own behalf as to sentencing; and (8) the potential for rehabilitation. Tenn. Code Ann. §§ 40-35-103(5), -113, -114, -210(b). In addition, “[t]he sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed.” *Id.* § 40-35-103(4).

Pursuant to the 2005 amendments, the Sentencing Act abandoned the statutory presumptive minimum sentence and rendered enhancement factors advisory only. *See* Tenn. Code Ann. §§ 40-35-114, -210(c). Although the application of the factors is advisory, a court shall consider “[e]vidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.” *Id.* § 40-35-210(b)(5). The trial court must also place on the record “what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.” *Id.* § 40-35-210(e).

When an accused challenges the length and manner of service of a sentence, this Court reviews the trial court’s sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). If a trial court misapplies an enhancing or mitigating factor in passing sentence, said error will not remove the presumption of reasonableness from its sentencing determination. *Bise*, 380 S.W.3d at 709. This Court will uphold the trial court’s sentencing decision “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. Moreover, under such circumstances, appellate courts may not disturb the sentence even if we had preferred a different result. *See State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). The party challenging the sentence imposed by the trial court has the

burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.; *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

Here, the defendant was convicted of a Class A felony and faced a sentencing range of fifteen to twenty-five years. Tenn. Code Ann. § 40-35-112(a)(1). Although the State requested enhancement factor (1) at the sentencing hearing, the trial court did not address enhancement or mitigating factors but imposed a sentence of twenty-five years to be served at 100 percent. The trial court noted the defendant's sentence was

based on the [c]ourt's review of [the defendant's] presentence report in which there are numerous guilty pleas, convictions, or other offenses that may obviously not be as major as the aggravated rape; however, it sho[w]s that he has a long history of not abiding by the laws of the court or the State of Tennessee.

Also, the fact that he has a certified copy for Lauderdale County of another felony, that does trouble me that, again, he has no respect for that law, does not follow directions, and is constantly getting in and out of trouble.

And this case is very much still on my mind. It was a horrific case. The witness or the victim was traumatized to the point that it was difficult for her to testify. And the fact that I think that – you know, the facts of the case, the facts that, you know, it wasn't even a situation where he took her inside a house from anybody to be able to see her, but to do it on a mattress outside is just horrific to me that somebody would do that.

But primarily on his record, based upon the graphic and horrific facts that were set forth during the trial of the actual aggravated rape, the fact that the jury came back with a conviction of aggravated rape, the [c]ourt's going to sentence him to 25 years at [100] percent[.]

Although the trial court should consider enhancement and mitigating factors, the enhancement factors are advisory only. *See* Tenn. Code Ann. §40-35-114; *see also* *Bise*, 380 S.W.3d at 701; *State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008). Our supreme court has stated that “a trial court's weighing of various mitigating and enhancement factors [is] left to the trial court's sound discretion.” *Carter*, 254 S.W.3d at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” *Id.* at 343 (quoting Tenn. Code Ann. § 40-35-210(d)). Appellate courts are “bound by a trial court's decision as to the length imposed so long as it is imposed in a manner consistent

with the purposes and principles set out in sections -102 and -103 of the Sentencing Act.”
Id. at 346.

Here, our review of the record indicates that, although the trial court failed to address enhancement and mitigating factors, it imposed a within range sentence after properly considering the evidence adduced at trial and the sentencing hearing, the presentence report, the principles of sentencing, the parties’ arguments, and the nature and characteristics of the crime. Tenn. Code Ann. §§ 40-35-103(5), -210(b). Therefore, the defendant’s sentence is presumed reasonable, and the defendant is not entitled to relief.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

J. ROSS DYER, JUDGE