

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 19, 2017

FILED 07/13/2017 Clerk of the Appellate Courts
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STATE OF TENNESSEE v. WILLIE HARDY, JR.

**Circuit Court for Montgomery County
No. 41400478**

No. M2016-01748-CCA-R3-CD

JOHN EVERETT WILLIAMS, J., concurring in part and dissenting in part.

I agree with the majority’s conclusion that the evidence was sufficient to support the Defendant’s conviction for aggravated robbery and that the record supports the length of the Defendant’s within-range sentences. However, I respectfully dissent from the majority’s conclusion regarding the trial court’s imposition of consecutive sentences.

I agree that the trial court failed to make the requisite findings provided in *State v. Wilkerson*, 905 S.W.2d 933, 937-39 (Tenn. 1995), in concluding that the Defendant is a “dangerous offender” pursuant to Tennessee Code Annotated section 40-35-115(b)(4). However, I disagree with the majority’s conclusion that the Defendant’s criminal history did not support a finding that his “record of criminal activity is extensive” pursuant to section 40-35-114(b)(2). The record reflects that the Defendant has three prior felony convictions in Illinois for aggravated fleeing or attempting to elude police and was convicted of violating the terms of his probation on two prior occasions. According to the presentence report, the Defendant admitted to smoking marijuana daily since the age of thirteen. *See State v. Koffman*, 207 S.W.3d 309, 324 (Tenn. Crim. App. 2006) (holding that “an extensive record of criminal activity may include criminal behavior which does not result in a conviction”). Based on the deference that this court must give to the trial court’s exercise of its discretionary authority to impose consecutive sentences, I cannot conclude that the trial court abused its discretion in finding that the Defendant had an extensive record of criminal activity and in imposing consecutive sentences. Accordingly, I would affirm the judgments of the trial court.

JOHN EVERETT WILLIAMS, JUDGE