

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY 2000 SESSION

FILED

February 2, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

VS.

SAMUEL PERRY,

Appellant.

NO. W1999-01472-CCA-R3-CD

SHELBY COUNTY

HON. CHRIS CRAFT,
JUDGE

(Burglary of a Motor Vehicle)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JOE G. RILEY, JUDGE

OPINION

A Shelby County jury convicted defendant of burglary of a motor vehicle, a Class E felony. The trial court sentenced defendant to a maximum four-year sentence as a Range II multiple offender. In this appeal as of right, defendant challenges:

- (1) the sufficiency of the evidence upon which the jury based its conviction; and
- (2) the length of the sentence imposed by the trial court.

Based upon our review of the record, we **AFFIRM** the judgment of the trial court.

I. FACTS

Shortly after midnight on August 14, 1997, Thomas Muse sat watching television in the front office of his family-owned body shop business when his dogs' barking alerted him to a prowler. Muse looked out the window and saw a man trying to open the doors of a car sitting in the shop's driveway.

Muse went outside and found defendant stretched across the front seat of the car pulling at the dashboard. A previously unbroken side window was smashed, and Muse saw the contents of the glove box scattered on the floorboard. Both the car and its glove box were locked earlier that day.

Muse kicked the car door closed on defendant's legs and held it there to protect himself and prevent defendant from exiting the car until the police arrived. When defendant tried to get up or get out of the car, Muse kicked the door again and at one point pushed defendant back onto the seat with a hammer he found on the sidewalk near the car.

Officer Kevin Hailey responded to the scene and found defendant in Muse's car with Muse standing a short distance away. Hailey let defendant out of the car, patted him down and placed him in the back seat of the patrol car. Defendant stated to Hailey and Muse that the only reason for his presence in the car was a need to rest his legs. Officer Hailey testified that defendant was the individual he removed from Muse's car that night.

The defendant chose not to testify in his own behalf.

Based upon this evidence, the jury convicted defendant of burglary of a motor vehicle.

II. SUFFICIENCY OF THE EVIDENCE

Defendant contends the evidence was insufficient to prove guilt beyond a reasonable doubt. In Tennessee, great weight is given to the result reached by the jury in a criminal trial. A jury verdict accredits the state's witnesses and resolves all conflicts in favor of the state. State v. Bigbee, 885 S.W.2d 797, 803 (Tenn. 1994). On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. *Id.*; State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Moreover, a guilty verdict removes the presumption of innocence which the appellant enjoyed at trial and raises a presumption of guilt on appeal. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). The appellant has the burden of overcoming this presumption of guilt. *Id.*

Burglary of a motor vehicle occurs when, without the owner's consent, an individual enters a motor vehicle with the intent to commit theft. Tenn. Code Ann. § 39-14-402(a)(4). Taken in the light most favorable to the state, the proof at trial showed that defendant was found during the early morning hours (between 12:30 and 1:30 a.m.) in a previously locked car belonging to Thomas Muse. Defendant did not have Muse's permission to be in the vehicle; the door glass had been knocked out; and defendant was found "tearing" the car up, tugging at its dashboard with the contents of the glove box strewn on the floorboard. The jury could reasonably infer that the defendant unlawfully entered the motor vehicle with the intent to commit theft.

This evidence is sufficient to sustain defendant's conviction. This issue is without merit.

III. SENTENCING

Defendant asserts that the maximum four-year sentence imposed by the trial court is excessive under the facts of this case. We respectfully disagree.

This Court's review of the sentence imposed by the trial court is *de novo* with a presumption of correctness. Tenn. Code Ann. § 40-35-401(d). This presumption is conditioned upon an affirmative showing in the record that the trial judge considered the sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The burden is upon the appealing party to show that the sentence is improper. Tenn. Code Ann. § 40-35-401(d) Sentencing Commission Comments.

If mitigating and enhancement factors exist, a trial court should start at the minimum sentence, enhance the minimum sentence within the range for enhancement factors and then reduce the sentence within the range for the mitigating factors. Tenn. Code Ann. § 40-35-210(e). No particular weight for each factor is prescribed by the statute, as the weight given to each factor is left to the discretion of the trial court as long as the trial court complies with the purposes and principles of the sentencing act and its findings are supported by the record. State v. Moss, 727 S.W.2d 229, 238 (Tenn. 1986); State v. Leggs, 955 S.W.2d 845, 848 (Tenn. Crim. App. 1997); see Tenn. Code Ann. § 40-35-210 Sentencing Commission Comments.

In this case, the defendant stipulated to his Range II multiple offender status and did not challenge the information contained in the pre-sentence report. The trial court conducted a thorough sentencing hearing wherein it found two enhancement and two mitigating factors. Specifically, the trial court enhanced defendant's sentence due to his history of criminal convictions which included robbery, several burglaries and several thefts, Tenn. Code Ann. § 40-35-114(1); and his previous history of unwillingness to comply with conditions of release in the community. Tenn. Code Ann. § 40-35-114(8). In mitigation, the trial court found that defendant's conduct neither threatened nor caused serious bodily injury, Tenn. Code Ann. § 40-35-113(1); and that defendant suffered from a mental disability that may have affected his ability to find work, which in turn led him to commit thefts. Tenn. Code

Ann. § 40-35-113(13).¹ Additionally, the trial court assigned great weight to the enhancement factors and very little weight to the mitigating factors. Upon these bases, the court imposed a maximum sentence of four years.

Where, as here, our review reflects that the trial court followed the statutory sentencing procedure, imposed a lawful sentence after giving due consideration and proper weight to the factors and principles set out under sentencing law, and the trial court's findings of fact are adequately supported by the record, then we may not modify the sentence even if we would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

We find no reason to disturb the findings of the trial court with regard to the imposed sentence. This issue is without merit.

CONCLUSION

Based upon the foregoing, we **AFFIRM** the judgment of the trial court.

JOE G. RILEY, JUDGE

CONCUR:

JOHN EVERETT WILLIAMS, JUDGE

ALAN E. GLENN, JUDGE

¹The trial court declined to find that defendant's mental disability "significantly reduced [his] culpability for the offense" as required for the application of Tenn. Code Ann. § 40-35-113(8), but agreed that it should have some bearing on his sentencing determination.