

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY 1999 SESSION

FILED

February 17, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

STATE OF TENNESSEE,

Appellee,

V.

SHANNON BENEDICT,

Appellant.

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No. 01C01-9811-CC-00473

STEWART COUNTY

Hon. Allen W. Wallace, Judge

(Aggravated Burglary, Theft)

For Appellant

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OPINION FILED:

AFFIRMED AND REMANDED

NORMA MCGEE OGLE, JUDGE

OPINION

The appellant, Shannon Benedict, appeals the sentences imposed by the Stewart County Circuit Court pursuant to his pleas of guilt on May 20, 1998, to the offenses of aggravated burglary and theft. Following a sentencing hearing on September 29, 1998, the trial court sentenced the appellant as a standard, Range I offender, to five years incarceration for the aggravated burglary conviction and two years incarceration for the theft conviction. The trial court further ordered consecutive service of the sentences. On appeal, the appellant challenges the length of his sentences.

Specifically, the appellant argues that the trial court failed to adequately consider sentencing principles. Moreover, the appellant contends that, in sentencing him for aggravated burglary and theft, the trial court incorrectly considered the appellant's previous history of criminal convictions or behavior, Tenn. Code Ann. § 40-35-114 (1) (1996),¹ and disregarded the following mitigating factors: (1) the appellant's criminal conduct neither caused nor threatened serious bodily injury, Tenn. Code Ann. § 40-35-113 (1) (1997); (2) the appellant lacked substantial judgment in committing the offenses due to his youth, Tenn. Code Ann. § 40-35-113 (6); (3) the appellant committed his offenses due to his addiction to cocaine, Tenn. Code Ann. § 40-35-113 (13); and (4) the appellant possesses potential for rehabilitation, Tenn. Code Ann. §§ 40-35-113 (13) and 40-35-103 (5) (1997).

Appellate review of the length of a sentence is de novo. Tenn. Code.

¹The appellant in his brief also notes that the record does not support the application of the enhancement factor that the appellant had a previous history of unwillingness to comply with the conditions of a sentence involving release in the community. Tenn. Code Ann. § 40-35-114 (8). First, we note that the record does not reflect that the trial court applied this factor. Second, pursuant to our de novo review, we note that the appellant committed an aggravated burglary and a robbery following his release on bond from incarceration for the present offenses. In the past, in contrast to its interpretation of Tenn. Code Ann. § 40-35-114 (1), this court has arguably interpreted a "previous history" under Tenn. Code Ann. § 40-35-114 (8) to mean violations of a sentence involving release in the community occurring before the commission of the offenses for which a defendant is being sentenced. See State v. Smith, No. 03C01-9807-CR-00259, 1999 WL 619042, at *3 (Tenn. Crim. App. at Knoxville, August 17, 1999). Cf. State v. Hayes, 899 S.W.2d 175, 186 (Tenn. Crim. App. 1995); State v. Watson, No. 03C01-9809-CR-00325, 1999 WL 462911, at *4 (July 9, 1999); State v. Davis, No. 03C01-9712-CR-00543, 1999 WL 135054, at *10 (Tenn. Crim. App. at Knoxville), perm. to appeal denied, (Tenn. 1999). In any event, regardless of whether Tenn. Code Ann. § 40-35-114 (8) is applicable in this case, we decline to disturb the sentencing determinations of the trial court for the reasons set forth above.

Ann. § 40-35-401(d) (1997). In conducting its de novo review, this court must consider, among other factors, the evidence received at the trial. Tenn. Code. Ann. § 40-35-210 (1997). With respect to those appellants who have pled guilty, “the guilty plea hearing is the equivalent of trial, in that it allows the State the opportunity to present the facts underlying the offense.” State v. Keen, 996 S.W.2d 842, 843 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1999). “For this reason, a transcript of the guilty plea hearing is often (if not always) needed in order to conduct a proper review of the sentence imposed.” Id. at 844.

In this case, the appellant has failed to include in the record before this court the transcript of the guilty plea hearing. Just as the burden is upon the appellant to demonstrate the impropriety of his sentences, Tenn. Code. Ann. § 40-35-401, Sentencing Commission Comments, the burden is upon the appellant to ensure that the record before this court conveys a fair, accurate and complete account of what transpired in the court below with respect to those issues that are the bases of appeal. Tenn. R. App. P. 24(b). While some of the basic facts underlying the appellant’s offenses appear in the indictments, the transcript of the sentencing hearing, and the pre-sentence report, we decline to disturb the trial court’s sentencing determinations in the absence of a complete record. Keen, 996 S.W.2d at 844.

For the foregoing reasons, we affirm the judgment of the trial court. However, although not raised by the parties on appeal, we note that the judgments of conviction in this case do not set forth the trial court’s order that the appellant’s sentences be served consecutively, not only to one another, but also to the appellant’s sentences for his felony convictions in Montgomery County. Accordingly, we remand this case to the trial court for the entry of corrected judgments.

Norma McGee Ogle, Judge

CONCUR:

Jerry L. Smith, Judge

Thomas T. Woodall, Judge