IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY 2000 SESSION

FILED
February 10, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	C.C.A. No. 03C01-9906-CR-00227
	)	
vs.	)	Sullivan County
	)	
DONALD SCOTT BRIDGES,	)	Hon. Phyllis H. Miller, Judge
	)	
Appellant.	)	(Sentencing)
	)	

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OPINION FILED:_____

AFFIRMED

JAMES CURWOOD WITT, JR., JUDGE

OPINION

The defendant, Donald Scott Bridges, appeals from the trial court's imposition of incarcerative sentencing for twenty crimes to which he pleaded guilty. Bridges plea was based upon an agreement regarding the length of each sentence and a total effective sentence of nine years. However, the manner of service was left open for the trial court's determination. In this appeal, he contends that the trial court erred in ordering him to serve the sentence in the Department of Correction, rather than in split confinement. Upon review of the record, the briefs of the parties, and the applicable law, we find no reversible error. Accordingly, we affirm the judgment of the trial court.

The defendant's convictions stem from four criminal episodes. On June 19, 1998, the defendant and his girlfriend tailgated the vehicle of another couple until the couple stopped. The defendant and his girlfriend then assaulted the couple. The couple attempted to flee the scene in their car, but the defendant and his girlfriend chased them, and the defendant rammed the couple's car with the car he was driving. The defendant's driving forced a third vehicle off the road. The pursued couple eventually reached the safety of a residence, and when they looked outside they saw that their car had been further damaged, and they saw the defendant's vehicle leaving the scene.

On June 21, 1998, a law enforcement officer spotted the defendant's car and associated it with the incident of June 19. The officer's attention was drawn by the excessive speed of the defendant's vehicle and damage consistent with the June 19 incident. The officer initiated pursuit, and the defendant fled for a time before eventually yielding. When stopped, the defendant, his girlfriend, and a juvenile runaway were in the car, along with two bottles of liquor, marijuana, and a large butcher knife. The juvenile was under the influence of alcohol, and he admitted taking eight Xanax pills in order to keep the officer from discovering them.

On January 16, 1999, the home of George Salyers was burglarized and several items were taken. The defendant admitted that he committed the burglary and theft. Some of the stolen items were later recovered from the

defendant's grandmother's home.

On February 12, 1999, the home of Phyllis Ratliff was burglarized and personal property was stolen. Shoe prints in the snow led to the home where the defendant was living. A search of the residence yielded several of the stolen items. The defendant later admitted the burglary and theft.

Under his agreement with the state, Bridges pleaded guilty to the following crimes and accepted the following sentences:

S41,890
Count 1 - Assault causing bodily injury - eleven months, 29 days
Count 2 - Aggravated assault - four years
Count 3 - Aggravated assault - four years
Count 4 - Leaving scene of accident involving property damage more than $400 - 30 days
Count 5 - Reckless endangerment - one year
Count 6 - Driving without license - 30 days
Count 7 - Speeding - 30 days
Count 8 - Evading arrest - one year
Count 9 - Driving without license - 30 days
Count 10 - Consumption of alcohol under age 21 - eleven months, 29 days
Count 11 - Possession of marijuana - eleven months, 29 days, $250 fine
Count 12 - Possession of drug paraphernalia, eleven months, 29 days, $750 fine
Count 13 - Unlawful carrying or possession of weapon - 30 days
Count 14 - Contributing to the delinquency of a minor - eleven months, 29 days

All sentences concurrent for effective sentence of four years.

S42,459
Count 1 - Aggravated burglary - five years
Count 2 - Theft of property valued over $1,000 - two years
Count 3 - Aggravated burglary - five years
Count 4 - Theft of property valued under $500 - eleven months, 29 days

Sentences are concurrent for an effective sentence of five years, but consecutive to sentence in S41,890.

S42,566
Count 1 - Aggravated burglary - five years
Count 2 - Theft of property valued over $1,000 - two years

Sentences are concurrent for an effective sentence of five years, concurrent with S42,459 but consecutive to sentence in S41,890.

The plea agreement left open for the trial court's determination the manner of service of the defendant's effective nine-year sentence.

The defendant's appeal concerns only the imposition of incarceration, rather than split confinement, for the manner of service of the nine-year sentence.

When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this court to conduct a *de novo* review of the record with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. §40-35-401(d) (1997). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). "The burden of showing that the sentence is improper is upon the appellant." Id. In the event the record fails to demonstrate the required consideration by the trial court, review of the sentence is purely *de novo*. Id. If appellate review reflects the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this court must affirm the sentence, "even if we would have preferred a different result." State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In making its sentencing determination, the trial court, at the conclusion of the sentencing hearing, determines the range of sentence and then determines the specific sentence and the propriety of sentencing alternatives by considering (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 the enhancement and mitigating factors, (6) any statements the defendant wishes to make in the defendant's behalf about sentencing, and (7) the potential for rehabilitation or treatment. Tenn. Code Ann. §40-35-210(a), (b) (1997); Tenn. Code Ann. §40-35-103(5) (1997); State v. Holland, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993).

The critical issue before the court below and before this court on appeal is whether the defendant should have been allowed to serve his sentence in some manner other than incarceration in the Department of Correction. On appeal, he advocates himself as an appropriate candidate for split confinement.

The defendant came before the court as a presumed favorable

candidate for alternative sentencing. See Tenn. Code Ann. § 40-35-102(6) (1997). This presumption may be rebutted, however, by evidence to the contrary. Id. Such "evidence to the contrary" is demonstrated by proof that

> (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
> (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
> (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant . . . .

Tenn. Code Ann. § 40-35-103(1) (1997).

In the case at bar, the trial court based its determination that an incarcerative sentence was most appropriate for the defendant upon findings regarding the nature and circumstances of the offenses and the defendant's recent, repeated failures to abide by the law when not confined. The record demonstrates that the eighteen-year-old defendant went on "crime sprees" on June 19, 1998 and June 21, 1998, resulting in the convictions in S41,890. While on bond for the S41,890 offenses and on probation in Washington County for convictions of driving while intoxicated, evading arrest, and marijuana possession, he engaged in two additional criminal episodes, resulting in the S42,459 and S42,566 convictions. The defendant's juvenile record is notable for failed drug and alcohol rehabilitation and violation of the rules of aftercare. The defendant acknowledged the senselessness of his crimes, claiming he was keeping company with an older woman who exerted improper influences on him, rather than being a productive member of society. The trial court correctly noted the cumulative flagrancy of these offenses, which included home burglaries, endangerment of others upon the public roads, an intentional, deliberate assault of another person, and harboring a juvenile runaway and enabling him to have access to illicit drugs.

The defendant claims that the trial court failed to consider the deterrent and punitive effect of the 145 days that the defendant had spent in the county jail at the time of the sentencing hearing. The defendant argues that based upon his testimony that his time in jail had made him realize the consequences of his actions as an adult, the court should have granted split confinement as a more

favorable means of serving his sentence. However, upon appellate review, the defendant has failed to demonstrate the impropriety of the incarcerative sentence. Despite his young age, this defendant has already garnered an abysmal record in the juvenile and adult justice systems. His commission of the twenty current offenses, and in particular his commission of several of these twenty offenses while on probation and bond for earlier offenses, demonstrates with great clarity that measures less restrictive than confinement hold little or no prospect of causing the defendant to live within the bounds of the law.

Because the defendant has failed to carry the burden of demonstrating the impropriety of the trial court's imposition of incarcerative sentencing, we affirm.

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JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

_____
GARY R. WADE, PRESIDING JUDGE

_____
NORMA McGEE OGLE, JUDGE