

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 3, 2004

STATE OF TENNESSEE v. CHRISTOPHER KIRKENDALL

Appeal from the Criminal Court for Shelby County
Nos. 02-02068, 69 Chris Craft, Judge

No. W2004-00784-CCA-R3-CD - Filed September 16, 2004

THOMAS T. WOODALL, J., concurring in part and dissenting in part.

I agree that under *Blakely v. Washington*, 542 U.S. _____, 124 S.Ct. 2531 (2004), enhancement factors (3), (10), and (21) of Tennessee Code Annotated section 40-35-114 cannot be applied in sentencing Defendant. However, instead of modifying the sentence, I would remand for a new sentencing hearing. In light of *Blakely*, I feel that the trial court should be given the opportunity to impose the appropriate punishment upon the only valid enhancement factor in this case: proof of a prior conviction(s) of defendant as an adult.

THOMAS T. WOODALL, JUDGE