

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

MARCH SESSION, 1995

FILED

September 27, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE)
)
 APPELLEE)
)
V.)
)
)
)
FRED B. HAWKINS)
)
 APPELLANT)

NO. 01-C-01-9412-CR-00430

SUMNER COUNTY

HON. CHARLES H. BEATY, JUDGE

(Tattooing a minor - 2 counts; statutory
rape; theft under \$500.00; contributing
to the delinquency of a minor - 2 counts;
burglary of an automobile; and failure
to appear)

FOR THE APPELLANT:

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District Public Defender
(At hearing and on appeal)
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FOR THE APPELLEE:

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AFFIRMED

OPINION FILED: _____

JERRY SCOTT, PRESIDING JUDGE

OPINION

The appellant was indicted for twenty-six separate offenses. These included two counts of tattooing a minor; three counts of tattooing without a permit; seven counts of contributing to the delinquency of a minor; two counts of theft of property valued at under \$500.00; one count of making a false police report; one count of vandalism under \$500.00; four counts of child neglect; two counts of theft of property valued at over \$500.00; one count of burglary of an automobile; one count of aggravated burglary; one count of rape; and one count of failure to appear.¹ He entered pleas of guilty to two counts of tattooing a minor; two counts of contributing to the delinquency of a minor; one count of theft of property valued at under \$500.00; one count of burglary of an automobile; one count of statutory rape; and one count of failure to appear. For the statutory rape, he received a sentence of two years in the state penitentiary and for the burglary of an automobile, he received a sentence of one year in the state penitentiary. He was designated a Range I standard offender. All of the other offenses are misdemeanors, for which he received a sentence of eleven months and twenty-nine days in the county jail for each offense. The felonies were ordered to be served consecutively for an effective sentence of three years in the state penitentiary and all the misdemeanors were ordered to be served concurrently with each other and concurrently with the felony sentences. On appeal he presents one issue, contending that the trial judge erred by refusing to place him on probation.

¹Two of the minors against whom the appellant committed offenses were six and nine years old. He was charged with allowing them to "inhale an accelerant" for the purpose of becoming "high." The others were teenagers.

Since a sentencing issue has been raised in this appeal, we have conducted a de novo review on the record, with a presumption that the determinations of the trial judge are correct. Tenn. Code Ann. § 40-35-401(d).

At the sentencing hearing, the appellant testified that he is remorseful for his criminal conduct, that he has a place to live and that he has a part-time job. He testified that he is addicted to alcohol, marijuana and Scotch Guard. He continues to get drunk about twice a week and he last smoked marijuana a week before the sentencing hearing. The trial judge specifically found that he did not believe the appellant's statements of his remorse. The appellant admitted that after his arrest for these offenses that "off and on the police have been called out on (him)" for other alleged violations of the law.

The trial judge found that the appellant did not tell the truth at all times during the sentencing hearing. In State v. Neeley, 678 S.W.2d 48, 49, (Tenn. 1984), our Supreme Court held that untruthfulness is a factor which may be considered in determining the appropriateness of probation for a criminal defendant. Probation may be denied based upon that factor alone. State v. Dykes, 803 S.W.2d 250, 259-60 (Tenn.Crim.App. 1990).

It is clear that the appellant is not a proper candidate for probation and the trial judge did not err in denying him that privilege.

The judgment is affirmed.

JERRY SCOTT, PRESIDING JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

DAVID G. HAYES, JUDGE