IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER SESSION, 1995

STATE OF TENNESSEE,	)	**MAURY COUNTY**
	)	**CCA NO. 01C01-9503-CC-00080**
Appellee,	)	
	)	**GILES COUNTY**
	)	**CCA NO. 01C01-9503-CC-00085**
VS.	)	
	)	**HON. JIM T. HAMILTON**
SHAWN SIMMONS,	)	**JUDGE**
	)	
Appellant.	)	(Sentencing)

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE CIRCUIT COURT OF MAURY & GILES COUNTIES

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Pursuant to a plea agreement, the Defendant entered pleas of guilty to an assortment of crimes in exchange for an effective sentence of twenty-two years. Less than four months later, the Defendant filed a motion for a reduction of his sentences pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure. It is from the order of the trial court denying the Defendant's motion to reduce his sentences that the Defendant appeals. We affirm the judgment of the trial court.

During 1993, the Defendant found himself indicted in Maury County on charges of attempted first degree murder, aggravated assault, conspiracy to commit aggravated assault, and the sale of cocaine. During the same time frame, the Defendant also found himself indicted in Giles County for aggravated robbery, aggravated assault, possession of a weapon with intent to go armed, theft of property under the value of five hundred dollars, driving on a revoked license, and evading arrest.

All of these charges apparently resulted in extended plea negotiations between the Defendant and the State. A plea agreement was reached and on April 25, 1994 the Defendant petitioned the trial court to accept his guilty pleas to attempted first degree murder, two separate counts of aggravated assault, conspiracy to commit aggravated assault, and theft. In exchange for his guilty pleas, the Defendant agreed to and received an effective sentence of twenty-two years for the above mentioned crimes.[1]

[1]A sixteen-year sentence for his Class A felony and a six-year sentence for one of his Class C felonies were ordered served consecutively. The remaining sentences were ordered served concurrently.

Approximately one month after the pleas were entered, the Defendant filed a motion to be allowed to withdraw his guilty pleas. Subsequent thereto, the Defendant withdrew his motion to withdraw his guilty pleas and filed a Rule 35 motion to reduce his sentences. Even though the sentences were ordered pursuant to a plea agreement, the Defendant argued: (1) That the presumptive sentence was the minimum sentence in the range if there are no enhancement or mitigating factors; (2) that the trial court did not place on the record either orally or in writing what enhancement factors it found; and (3) that the sentence must be based on evidence in the record of the trial.

On this appeal, the Defendant makes the same arguments made to the trial court concerning the reduction of the sentence. He does not argue that his guilty pleas were not voluntarily, understandingly, and knowingly entered. He does not argue that he did not understand what he was pleading to or the sentences he was to receive. He does not argue that any misrepresentation was made to him by anyone in reference to his plea agreement. He does not allege any irregularities concerning the plea agreement into which he entered.

The Defendant does argue that because the trial court did not place in the record the enhancement factors which it considered in sentencing him above the minimum in his range, this court should reduce his agreed sentences to the minimum. He concedes that the order directing that two of his sentences be served consecutively should stand, but argues that his sentence for the Class A felony should be reduced to the minimum of fifteen years and that his sentence for the Class C felony should be reduced to the minimum of three years. This would reduce his effective sentence from twenty-two years to eighteen years.

Because the Defendant's guilty plea was entered pursuant to a plea agreement which included an agreement concerning his sentence, an appeal from the judgment of the trial court sentencing the Defendant was not available. T.R.A.P. 3(b); Tenn. R. Crim. P. 37(b); see Tenn. R. Crim. P. 11(e)(1)(C). Under such circumstances, we do not believe that the Defendant should be allowed to circumvent the clear intent of these rules and pursue his appeal from a subsequent order of the trial court denying his motion to reduce his sentence when no relevant post-sentencing developments are even alleged.

This court recently addressed the application of Rule 35(b) to sentences ordered pursuant to plea agreements. Our learned colleague, Judge Paul G. Summers, observed that an analysis of prior decisions "strongly suggests that an alteration of a defendant's sentence is generally prohibited if it violates the plea agreement entered into under Rule 11(e)(1)(C). State v. McDonald, 893 S.W.2d 945, 947 (Tenn. Crim. App. 1994).

While Judge Summers did not conclude that a guilty plea pursuant to Rule 11(e)(1)(C) waived the right to pursue a Rule 35(b) motion, he noted that generally relief should only be available in situations where unforeseen, post-sentencing developments would permit modification of a sentence in the interest of justice. Id.

Furthermore, it is difficult to sypmathize with the Defendant's plight. The sentences to which he agreed were not illegal. When the Defendant voluntarily, understandingly, and knowingly entered his guilty pleas in exchange for an agreed and legally authorized sentence, he waived the right to appeal his sentence. State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1987). We find no error in the judgment of the trial court denying him relief.

The judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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HEWITT P. TOMLIN, JR., SENIOR JUDGE