IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

FILED

March 29, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
APPELLEE,	)	
	)	No. 01-C-01-9504-CC-00112
	)	
	)	Humphreys County
v.	)	
	)	Allen W. Wallace, Judge
	)	
	)	(Sentencing)
LINDA BOATMAN,	)	
	)	
APPELLANT.	)	

FOR THE APPELLANT:

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OPINION FILED:_____

AFFIRMED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Linda Boatman, entered pleas of guilty to the offenses of vehicular assault, a Class D felony, and aggravated assault, a Class C felony pursuant to a plea bargain agreement. The trial court sentenced the appellant to confinement for three (3) years in the Department of Correction as a Range I offender pursuant to the agreement. However, the trial court denied the appellant's request for an alternative sentence to confinement. The appellant contends that the trial court abused its discretion by failing to grant her an alternative sentence. Based upon a de novo review of the record, this Court is of the opinion that the trial court did not abuse its discretion as the appellant contends. Consequently, the judgment of the trial court is affirmed.

The record of the submission hearing was not included in the record transmitted to this Court. While this hampers the Court's statutory duty to conduct a de novo hearing, the record is sufficient for this Court to consider the issue on the merits.

The appellant was twenty-nine years of age when she was sentenced. She was previously convicted of telephone harassment, passing worthless checks, and possession of a Schedule VI drug. The appellant was granted probation for one of the offenses. The probation was subsequently revoked. The appellant has admittedly engaged in criminal behavior. She admits to using marijuana on occasion. She also admits to using cocaine on five separate occasions. Each possession of these illicit drugs constituted a criminal offense. While the appellant was waiting disposition of the offenses in question, she was arrested and charged with five separate offenses. Three of these offenses involved assaults. The fourth was telephone harassment, and the fifth offense involved the destruction of property. In this case, two additional offenses, driving while under the influence and a second count of vehicular assault, were dismissed as part of the plea bargain agreement.

The appellant was arrested and charged with additional offenses after the presentence report was prepared for the trial court. Four days before the sentencing hearing, the appellant was arrested by the Humphreys County Sheriff's Department. While a deputy sheriff attempted to talk to her about a complaint regarding her ex-husband and visitation with her children, the appellant was in "a combative type mood, cursing, [and]

causing a disturbance." The deputy advised her that if she did not calm herself, he was going to arrest her for disorderly conduct. She refused to cooperate. The deputy finally arrested her. It took three law enforcement officers to physically carry her into the jail. She was described as being "extremely violent" and made every effort to escape from the officers. She was "screaming, cursing, kicking the best that she could, [and] swinging her arms." She kicked the jailer in the groin on two different occasions. Once the appellant was confined to a cell, "she screamed and beat and banged and hollered and cussed . . . at the top of her lungs" for an extended period of time.

At the sentencing hearing, a psychologist testified that the appellant has trouble controlling her anger. It stems in part from problems that she has apparently failed to address. The witness thought that most of the anger found its origin in the sexual abuse she encountered as a child. He also indicated that the appellant abused alcohol. She was taking two drugs for depression and anxiety. The witness recommended a regimen of treatment for the appellant.

The appellant saw this psychologist on twenty-six occasions in 1992. However, he did not see her again until October 24, 1994, shortly before the sentencing hearing was initially scheduled. He had seen her a total of three times between that date and the date of the sentencing hearing. He advised the trial court that most of the offenses she had committed were after she had discontinued treatment.

The appellant testified that she had been confined a total of eighty-one days during 1994. She admitted having a stick and threatening to hit her boyfriend's daughter on December 22, 1993. Later that day, using her car she intentionally and repeatedly struck the rear of the car belonging to her boyfriend's former wife. She had to quit when the bumpers of the two cars became attached. According to the appellant, the woman told her that she was going to kill her. So the appellant "went after her." While awaiting disposition on these 1993 charges, in 1994 she got into an affray with her former husband at a ball field. Another time, she literally "tore up" her brother's house. She engaged in this conduct because she was "mad at myself." The appellant gave the following explanation as to why she should be given an alternative sentence:

> Because I feel like I've been punished enough. I've punished

> myself enough. I've punished my family enough, and my friends. And I was supposed to be honorable to Judge Wallace and I messed up again because I had a bad day.

The appellant did not apologize to the trial court for betraying his confidence in her. Nor did she express any remorse for the present offenses or the offenses she committed while this prosecution was pending against her. The court indicated she owed $10,000 for the damage to the motor vehicle.

When denying the alternative sentence to incarceration, the trial court noted:

> [W]e have tried probation and it hasn't worked. Three times at the Parthenon Pavilion Mental Health, that hasn't worked. . . . Had her in mental health treatment, that hasn't worked. She spent almost as much time in jail up there as most of the deputies have. That hasn't worked.

In other words, the trial court has utilized every means available to assist the appellant. Each course of action has failed.

As the record indicates, the trial court has given the appellant alternative sentences in the past. She violated the sentences. Treatment at different institutions did not help the appellant. Short sentences in the county jail have not deterred the appellant. It is obvious that the appellant went back to the mental health center a couple of weeks prior to the sentencing hearing only to enhance her chances of continued favorable treatment -- not because she felt she needed treatment and wanted help. In summary, it is unfortunate that the appellant is beyond the rehabilitative stage. If the trial court had granted an alternative to incarceration, history reveals that the appellant would violate the terms of the sentence as she has in the past. The trial court imposed the only course of action that had not been tried -- incarceration in the Department of Correction. Hopefully, the appellant will realize her errant ways, realize her need for treatment, and avail herself of the rehabilitative programs at her place of confinement.

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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PAUL G. SUMMERS, JUDGE

_____
JOSEPH M. TIPTON, JUDGE