

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
MAY 1996 SESSION

FILED

June 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9511-CR-00338
 Appellee,)
) Shelby County
 V.)
) Honorable Chris B. Craft, Judge
)
 JOSEPH L. POWERS,) (Vehicular Homicide)
)
 Appellant.)

FOR THE APPELLANT:

Randall B. Tolley
Attorney at Law
242 Poplar Avenue
Memphis, TN 38103

Wayne Emmons
Attorney at Law
763 Brookhaven Circle
Memphis, TN 38117

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

Mark H. Chen
Assistant Attorney General
Civil Rights & Claims Division
404 James Robertson Parkway
Suite 2000
Nashville, TN 37243-0488

John W. Pierotti
District Attorney General

James C. Beasley, Jr.
Asst. Dist. Attorney General (former)
Third Floor, Criminal Justice Complex
201 Poplar Avenue
Memphis, TN 38103

OPINION FILED: _____

AFFIRMED

PAUL R. SUMMERS,
Special Judge

OPINION

The appellant, Joseph L. Powers, pled guilty to vehicular homicide. He was sentenced to six years confinement. He now appeals and presents the following issues for this Court to review:

- (1) whether the trial court failed to consider mitigating factors,
- (2) whether the trial court erred in denying probation or alternative sentencing, and
- (3) whether his sentence was excessive.

We affirm the judgment of the trial court.

The appellant lost control of his vehicle and struck a utility pole. An occupant in his vehicle died as the result of this accident. The appellant was transported to the hospital and his blood was tested. He registered a blood alcohol level of .21 percent.

The appellant applied for probation and a hearing was held. Following the hearing, the trial judge denied the appellant's application for probation or alternative sentencing. The judge began his determination with the presumption that the appellant was a favorable candidate for alternative sentencing. In rebutting that presumption, the trial judge found that: (1) the appellant had a "horrible prior criminal history";¹ (2) the appellant had a previous history of unwillingness to abide by the terms of his release;² (3) the appellant was a poor candidate for rehabilitation;³ (4) confinement was necessary to avoid depreciating the seriousness of the offense; (5) it was in society's best interest

¹The appellant's presentence report indicates the following convictions: fraud on an insurance fund check, two separate convictions for grand larceny, malicious mischief, burglary in the first degree, burglary in the second degree, petit larceny, three DUIs, two cases of driving while license suspended, and reckless driving.

²The appellant has violated conditions of a previous probationary sentence, been arrested twice for contempt of court, and committed first degree burglary and grand larceny while on bond for a prior first degree burglary charge.

³The trial court noted that the appellant was still apparently drinking despite having attended both alcohol safety school, on three or four separate occasions, and Alcoholics Anonymous pursuant to a condition of a prior release.

to protect society from someone who has "three DUIs, violates his probation, continues to drive with a revoked license, kills someone, and apparently is probably still drinking"; (6) measures less restrictive than confinement have been unsuccessfully applied to the appellant; and (7) the appellant had apparently been less than candid with the court.

We find that the record amply supports the trial judge's findings. Moreover, we can find no error of law mandating reversal. The trial court's order denying the appellant's application for probation or alternative sentencing is, therefore, affirmed in accordance with Tenn. R. Ct. Crim. App., Rule 20.

AFFIRMED

PAUL R. SUMMERS, Special Judge

CONCUR:

PAUL G. SUMMERS, Judge

DAVID G. HAYES, Judge