

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

FILED
August 28, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
Appellee,)
)
)
v.)
)
)
REGINALD BONNER,)
)
)
Appellant.)

No. 02C01-9507-CR-00191
Shelby County
Hon. Carolyn Wade Blackett, Judge
(Second Degree Murder)

For the Appellant:

Howard L. Wagerman
100 North Main, Suite 2003
Memphis, TN 38103
(AT TRIAL)

Howard L. Wagerman
Howard B. Manis
100 North Main, Suite 2003
(ON APPEAL)

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
Ellen H. Pollack
Assistant Attorney General of Tennessee
450 James Robertson Parkway
Nashville, TN 37243-0493

John W. Pierotti, Jr.
District Attorney General
and
Paul F. Goodman
201 Poplar Ave.
Memphis, TN 38103

OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Reginald Bonner, appeals as of right from the Shelby County Criminal Court's refusal to sentence him under the Tennessee Community Corrections Act of 1985. See T.C.A. §§ 40-36-101--106. Pursuant to agreement, the defendant pled guilty to second degree murder, a Class A felony, and was sentenced as a Range I standard offender to twenty years in the Department of Correction. He petitioned for a community corrections sentence, claiming that he had special needs for treatment in the community for a drug problem, but the trial court held that he was ineligible. The defendant contends that he is eligible for such a sentence. We disagree.

The defendant acknowledges that this court has previously held that eligibility for the special needs provision of the Community Corrections Act, T.C.A. § 40-36-106(c), is limited to persons whose offenses and sentences make them eligible for probation. See, e.g., State v. Staten, 787 S.W.2d 934 (Tenn. Crim. App. 1989); State v. Lanny Crowe, No. 01C01-9503-CC-00064, Wayne Co. (Tenn. Crim. App. July 6, 1995); State v. Robert Wilson, No. 03C01-9209-CR-00305, Blount Co. (Tenn. Crim. App. Mar. 22, 1993). However, the defendant contends that this court has misinterpreted the statute, noting that at least one panel of this court has indicated dissatisfaction with previous precedent. In State v. Timothy Blackburn, No. 02C01-9111-CC-00253, Henderson Co. (Tenn. Crim. App. June 30, 1993), app. denied, (Tenn. Oct. 11, 1993), this court again held that community corrections eligibility under T.C.A. § 40-36-106(c) was limited to those with probation eligibility, but it stated that "the result may not best serve the defendant, the ends of justice, or the public"

We believe, though, that the real significance of Blackburn is that this court adhered to prior precedent and the Tennessee Supreme Court denied review. In

this respect, we note that the circumstances in the present case are quite similar to those in Staten. In Staten, the defendant was sentenced to the statutory minimum of twenty years for bank robbery upon his guilty plea. The defendant was held to be ineligible for community corrections under the special needs provision because the minimum sentence for bank robbery was too high to allow probation. In the present case, the defendant's punishment for a Class A felony committed by a Range I, standard offender was fifteen to twenty-five years, well above the eight-year maximum sentence that will allow for probation eligibility.

Therefore, the defendant is ineligible, by law, for a community corrections sentence in this case. The judgment of conviction is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Paul G. Summers, Judge

Jerry L. Smith, Judge