

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL SESSION, 1996

FILED
September 30, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

VS.)

DANNY WALKER,)

Appellant.)

C.C.A. NO. 02C01-9508-CC-00225

Cecil Crowson, Jr.
Appellate Court Clerk

CROCKETT COUNTY

HON. DICK JERMAN, JR.
JUDGE

(SENTENCING)

FOR THE APPELLANT:

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OPINION FILED _____

REVERSED AND REMANDED

JERRY L. SMITH, JUDGE

OPINION

Appellant Danny Walker appeals the judgment of the Crockett County Circuit Court revoking his community corrections sentence and resentencing him to six years in the Tennessee Department of Correction. On October 13, 1994, Appellant pled guilty to the sale of cocaine under 0.5 grams and was sentenced to three years of community corrections.

After a review of the record, we remand to the trial court for a new sentencing hearing.

As a Range I standard offender convicted of a Class C felony, Appellant was eligible for a sentence of three to six years. See Tenn. Code Ann. § 40-35-112(a)(3) (1990). In the absence of enhancement and mitigating factors, the presumptive length of sentence for a Class B, C, D, and E felony is the minimum sentence in the statutory range. Id. § 40-35-210(c) (Supp. 1995). Initially, Appellant was sentenced to three years, the statutory minimum. Following the revocation of community corrections for cocaine use and a failure to attend community service, Appellant was resentenced to six years, the statutory maximum.

A trial court may revoke a community corrections sentence due to the conduct of the defendant. Id. § 40-36-106(e)(4). Upon revocation, the trial court may also resentence the defendant to incarceration for any period of time up to the maximum sentence provided for the offense. Id. The new sentence may exceed the length of the original sentence. State v. Griffith, 787 S.W.2d 340, 341-42 (Tenn. 1990). However, when the trial court resentences

the defendant to a sentence that exceeds the length of the original sentence, the trial court must conduct a sentencing hearing pursuant to the Tennessee Criminal Sentencing Reform Act of 1989. See Tenn. Code Ann. § 40-35-209(a); see also State v. Ray, No. 01C019501CR00022, 1995 WL 464743, at *4 (Tenn. Crim. App. Aug. 4, 1995); State v. Batts, No. 01-C-01-9210-CR-00326, 1993 WL 39749, at *2-*3 (Tenn. Crim. App. Feb. 18, 1993). The sentence imposed must conform to the provisions of the Act. See Tenn. Code Ann. § 40-35-210(a)-(e); see also Ray, 1995 WL 464743, at *4; Batts, 1993 WL 39749, at *3. Furthermore, the trial court must state on the record its reasons for imposing a new sentence and must make specific findings of fact upon which application of the sentencing principles was based. See Tenn. Code Ann. §§ 40-35-209(c), 40-35-210(f)-(g); see also State v. Patterson, No. 02-C-01-9208-CC-00196, 1993 WL 141639, at *2 (Tenn. Crim. App. May 5, 1993).

When an appeal challenges the length, range, or manner of service of a sentence, this Court conducts a de novo review with a presumption that the determination of the trial court was correct. Tenn. Code Ann. § 40-35-401(d) (1990). However, the presumption of correctness only applies when the record demonstrates that the trial court properly considered the relevant sentencing principles and all relevant facts and circumstances. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). Otherwise the review of the sentence is purely de novo. Id. In conducting a review of the sentence, this Court must consider the evidence, the presentence report, the sentencing principles, the arguments of counsel, the nature and character of the offense, mitigating and enhancement factors, any statements made by the defendant,

and the potential for rehabilitation or treatment. State v. Holland, 860 S.W.2d 53, 60 (Tenn. Crim. App. 1993). The defendant bears the burden of showing the impropriety of the sentence imposed. State v. Gregory, 862 S.W.2d 574, 578 (Tenn. Crim. App. 1993).

At the conclusion of Appellant's sentencing hearing, the trial court remarked as follows:

For the record, I find [Appellant]'s attitude to be sorry. There is no question but what he violated every term of the agreement that he had with Corrections Management. I'm going to resentence him to serve six years in the State Penitentiary. I'll designate him to be a Range I standard offender. I'll give him credit for any time he has served in the program up until the time he missed his first community service. No credit after that. Report back to the Sheriff.

The foregoing is the entirety of the record on the issue of resentencing. The trial court did not make the specific findings of fact necessary under the sentencing act for the presumption of correctness to apply to the sentence imposed. However, due to the inadequacy of the record, this Court is unable to conduct its statutorily-mandated de novo review of the new sentence. See Tenn. Code Ann. § 40-35-401(d); see also State v. Lipscomb, No. O1-C-01-9506-CR-00185, 1996 WL 63947, at *3 (Tenn. Crim. App. Feb. 13, 1996); Batts, 1996 WL 63947, at *4.

Accordingly, this case is reversed and remanded to the trial court for a new sentencing hearing in accordance with the provision of the sentencing act. Any party dissatisfied with the sentence imposed by the trial court may appeal as of right.

JERRY L. SMITH, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

PAUL G. SUMMERS, JUDGE