

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
JUNE 1996 SESSION

FILED
December 17, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
 v.)
)
 JON CONNORS, also known as)
 JON ROBERT CONNORS,)
)
 APPELLANT.)

No. 03-C-01-9506-CC-00176
Blount County
D. Kelly Thomas, Jr., Judge
(Aggravated Sexual Battery and
Aggravated Assault)

FOR THE APPELLANT:

Natalee S. Hurley
Asst. District Public Defender
318 Court Street
Maryville, TN 37804-4912

OF COUNSEL:

R. Mack Garner
District Public Defender
318 Court Street
Maryville, TN 37804-4912

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter
500 Charlotte Avenue
Nashville, TN 37243-0497

Darian B. Taylor
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

Michael L. Flynn
District Attorney General
363 Court Street
Maryville, TN 37804-5906

Edward P. Bailey, Jr.
Assistant District Attorney General
363 Court Street
Maryville, TN 37804-5906

OPINION FILED: _____

REVERSED AND REMANDED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Jon Connors, also known as Jon Robert Connors,¹ entered into a plea bargain agreement with the State of Tennessee. The appellant entered pleas of guilty to the offenses of aggravated sexual battery, a Class B felony, and aggravated assault, a Class C felony. The trial court sentenced the appellant pursuant to the plea bargain. The following Range I sentences were imposed: (a) confinement for eight years in the Department of Correction for the offense of aggravated sexual battery and (b) confinement for four (4) years in the Department of Correction for the offense of aggravated assault. The trial court ordered the two sentences are to be served concurrently in conformity with the plea bargain agreement. In this Court, the appellant contends the trial court abused its discretion by (a) denying his motion to withdraw his pleas of guilty, and (b) refusing to impose an alternative sentence to incarceration. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issues, it is the opinion of this Court that the judgments of the trial court should be reversed and this cause remanded to the trial court for further proceedings consistent with this opinion. The sentences imposed are illegal. This makes consideration of the two issues presented for review moot.

The appellant was indicted for aggravated sexual battery by the Blount County Grand Jury on January 31, 1994. A *capias* was issued for his arrest as he was not in custody when the indictment was returned. Bond was set at \$10,000. The appellant was arrested on March 14, 1994 pursuant to the *capias*. The appellant was released from custody after posting a \$10,000 surety bond. The district public defender was appointed to represent the appellant.

On August 1, 1994, the appellant was indicted for the offense of aggravated assault. The offense was committed while the appellant was on bail for the aggravated sexual battery offense.

¹The indictment in the aggravated sexual battery case shows the appellant's name as "Jon Connors." The indictment in the aggravated assault case shows the appellant's name to be "Jon Robert Connors."

The appellant entered pleas of guilty to both offenses on August 16, 1994. The trial court sentenced the appellant on February 22, 1995, pursuant to the plea bargain agreement.

The judgments in this case are illegal, void, and subject to being vacated because the sentences violate Rule 32(c)(3)(C), Tennessee Rules of Criminal Procedure. State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978); Samuel C. McDaniel v. State, Hamilton County No. 03-C-01-9202-CR-00048 (Tenn. Crim. App., Knoxville, November 13, 1992), per. app. denied (Tenn., March 1, 1993); Ronald Lee Lyons v. State, Dickson County No. 01-C-01-9104-CC-00119 (Tenn. Crim. App., Nashville, October 10, 1991). Rule 32 provides that when a person commits a felony while on bail for another offense and the person is convicted of both offenses, the two sentences are required to be served consecutively. The rule makes the manner of serving the sentences mandatory regardless of what the judgment might recite. In other words, the manner of serving the sentences is non-negotiable, and the provisions of the rule cannot be altered by a plea bargain agreement.

Since the plea bargain agreement provided the sentences were to be served concurrently, the appellant is entitled to withdraw his pleas of guilty upon remand of this case to the trial court. Burkhart, 566 S.W.2d at 873; McDaniel, supra; Lyons, supra. If the appellant opts to go to trial and is convicted of both offenses, the sentences imposed must be served consecutively. The trial court has no other option.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

GARY R. WADE, JUDGE

PAUL G. SUMMERS, JUDGE