IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

STATE OF TENNESSEE,	)	
	)	
APPELLEE,	)	No. 03-C-01-9508-CR-00223
	)	
	)	Hamilton County
v.	)	
	)	Douglas A. Meyer, Judge
	)	
ROBERT EUGENE SKYLES,	)	(Sentencing)
	)	
APPELLANT.	)	

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Robert Eugene Skyles, was convicted of vehicular homicide, a Class C felony, leaving the scene of an accident, a Class A misdemeanor, and driving while license suspended, a Class B misdemeanor, after pleading guilty to these offenses.[1] The trial court found the appellant to be a standard offender and imposed a Range I sentence consisting of confinement for three (3) years for vehicular homicide. The trial court sentenced the appellant to confinement for eleven months and twenty-nine days for leaving the scene of an accident, and confinement for six months for driving while license suspended. The trial court ordered all three sentences to be served in the Hamilton County Workhouse. The appellant is required to serve eleven months and twenty-nine days in the vehicular homicide case with the balance of the sentence suspended. The appellant will be required to serve a period of two years on probation. In this Court, the appellant contends the trial court abused its discretion by failing to suspend the entire sentence or grant the appellant a community corrections sentence for the entire sentence. After a thorough review of the record, the briefs submitted by the parties, and the law which governs the issue, it is the opinion of this Court the judgment of the trial court should be affirmed.

On the evening of March 27, 1992, Verdell Pryor was walking on Central Avenue in Chattanooga. He had a beer in his hand and staggered as he walked. The appellant, Robert Eugene Skyles, was driving down Central Avenue and struck Pryor in front of Frank's Superette.

The appellant did not stop at the scene of the accident. Pryor's body was dragged several blocks and across a set of railroad tracks before it became dislodged from the appellant's truck. Pryor's body left a trail of blood 691 feet long. The appellant's license was suspended at the time of the accident. He had been illegally driving to work daily, and he drove his employer's truck daily.

The appellant testified at the sentencing hearing he believed his truck struck a box

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[1]This is the second appeal in this case. This Court reversed the judgments of the trial court and remanded this case for a new sentencing hearing. Robert Eugene Skyles v. State, Hamilton County No. 03-C-01-9309-CR-00299 (Tenn. Crim. App., Knoxville, October 5, 1994).

near Frank's Superette. He was completely unaware he had injured a human being. The appellant returned to his home, turned on the television, and learned of Mr. Pryor's demise as he watched the evening news. At that point, the appellant testified he first realized his involvement in the death. He did not admit his responsibility to anyone because he claimed he "was too scared to say anything." There was no evidence that the appellant was intoxicated the night of the accident, though he admitted he had one beer at 10 o'clock that morning.

A month after the accident, the police arrested the appellant. According to his uncontradicted testimony, he was cooperative, showed the police his vehicle, and agreed to testify against his passenger, if necessary. The appellant offered the police a different version of the events than he presented at the sentencing hearing. The appellant told Officer Simpson that as he approached Frank's Superette, he looked in the rear view mirror to see the traffic behind him and when he again observed the on-coming traffic, he saw someone in the street and hit him.

Since the accident, the appellant has neither driven nor had anything to drink and has volunteered with many organizations such as Habitat for Humanity and Community Kitchen. He testified he thinks about the victim every day and feels that he lives in a prison of his own.

The trial court found that confinement was necessary to prevent depreciating the seriousness of the offense.

When an accused challenges the manner of serving a sentence, it is the duty of this Court to conduct a de novo review on the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." Tenn. Code Ann. § 40-35-401(d). However, there are exceptions to this requirement. First, the requirement that this Court presume the determinations made by the trial court are correct is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). Second, the presumption does not apply to the legal conclusions reached by the trial court in sentencing the accused. Third, the presumption does not apply when the determinations made by the trial court are predicated upon

uncontroverted facts.

An accused who raises sentencing issues in this Court has the burden of establishing that the sentence imposed by the trial court was erroneous. Sentencing Commission Comments to Tenn. Code Ann. § 40-35-401(d); State v. Ashby, 823 S.W.2d at 169; State v. Fletcher, 805 S.W.2d 785, 786 (Tenn. Crim. App. 1991).

If an accused has been convicted of a Class C, D or E felony and sentenced as an especially mitigated or standard offender, there is a presumption, rebuttable in nature, that the accused is a favorable candidate for alternative sentencing unless disqualified by statute. Tenn. Code Ann. § 40-35-102 provides in part:

> (5) In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration.
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> (6) A defendant who does not fall within the parameters of subdivision (5) and is an especially mitigated or standard offender convicted of a Class C, D, or E felony is presumed to be a favorable candidate for alternative sentencing options in the absence of evidence to the contrary.

The sentencing process must necessarily commence with a determination of whether the accused is entitled to the benefit of the presumption. State v. Ashby, 823 S.W.2d at 169. As the Supreme Court said in Ashby: "If the determination is favorable to the defendant, the trial court must presume that he is subject to alternative sentencing. If the court is presented with evidence sufficient to overcome the presumption, then it may sentence the defendant according to the statutory provisions." 823 S.W.2d at 169. The presumption can be successfully rebutted by facts contained in the presentence report, evidence presented by the state, the testimony of the accused or a defense witness, or any other source provided it is made a part of the record.

The accused was entitled to the presumption that he was a favorable candidate for alternative sentencing.

Probation is a privilege or act of grace which may be granted to an accused who is eligible and worthy of this largesse. Stiller v. State, 516 S.W.2d 617 (Tenn. 1974). An accused is eligible for probation if the sentence actually imposed is eight (8) years or less,

unless the accused stands convicted of (a) manufacturing, delivering, selling or possessing with the intent to manufacture, deliver or sell a Schedule I drug, Tenn. Code Ann. § 39-17-417(b), (b) manufacturing, delivering, selling or possessing with the intent to manufacture, deliver or sell certain quantities of illicit narcotics, Tenn. Code Ann. § 39-17-417(I), (c) aggravated kidnapping, Tenn. Code Ann. § 39-13-304, (d) aggravated robbery, Tenn. Code Ann. § 39-13-402, or (e) aggravated sexual battery, Tenn. Code Ann. § 39-13-504. See Tenn. Code Ann. § 40-35-303(a). In the case sub judice, the appellant was eligible for probation for the offense of vehicular homicide. The sentence imposed was three (3) years and the offense in question is not one of the enumerated offenses.

The defendant has the burden of establishing suitability for full probation, even where the defendant is entitled to the statutory presumption of alternative sentencing. Tenn. Code Ann. § 40-35-303(b); State v. Bingham, 910 S.W.2d 448, 455 (Tenn. Crim. App. 1995). In determining whether an accused should be granted probation, the trial court and this Court must consider and weigh all of the Stiller factors. State v. Michael, 629 S.W.2d 13, 15 (Tenn. 1982); Franks v. State, 543 S.W.2d 613, 615 (Tenn. Crim. App. 1976). The Stiller factors include the accused's criminal record, social history, present physical and mental condition, the circumstances of the offense, the deterrent effect upon the criminal activity of the accused as well as others, and the accused's potential for rehabilitation or treatment in determining whether the accused should prevail. Stiller v. State, 516 S.W.2d at 620. See Tenn. Code Ann. § 40-35-103(5); State v. Dykes, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990). In addition, there are other factors which a trial court may consider in refusing to suspend all or a portion of an accused's sentence.

In the case sub judice, the trial court was justified in refusing the appellant full probation. “Denial of probation may be based solely upon the circumstances of the offense when they are of such a nature as to outweigh all other factors favoring probation.” State v. Bingham, 910 S.W.2d at 456; State v. Fletcher, 805 S.W.2d 785, 788-89 (Tenn. Crim. App. 1991). The appellant claimed to be unaware that the victim was dragged beneath his truck for several blocks. He claimed he mistook the victim’s body for a box that would do no harm to his truck; he claimed to have no indication that he had struck anything other than an inanimate object. Remarkably, when he watched the news and learned of the

victim's unpleasant demise, he immediately realized he had killed a human being a few hours earlier. The appellant still made no effort to accept responsibility or explain his allegedly mistaken belief. He admitted involvement only when the police came to arrest him for the crime of vehicular homicide, thirty days after the incident.

The appellant was previously convicted of driving while intoxicated and driving with a suspended license. The State of Georgia had suspended the appellant's license when he failed to report an accident.

The appellant was given a form of alternative sentencing, namely, split confinement. In light of the facts of the offense, the appellant's criminal record, and his failure to obey a prior court order not to drive a motor vehicle, the appellant did not demonstrate his suitability for full probation.

The appellant is statutorily ineligible for a community corrections sentence. A defendant who is convicted of a crime against the person as set out in parts one though five of chapter 39, title 13 of the Tennessee Code is ineligible for such an alternative sentence. Tenn. Code Ann. § 40-36-106(a)(2); State v. Meeks, 779 S.W.2d 394, 397-98 (Tenn. Crim. App.), per. app. denied (Tenn. 1988). The appellant stands convicted of vehicular homicide, which is such a crime against the person. Tenn. Code Ann. § 39-13-213; State v. Goins, Hamblen County No. 336 (Tenn. Crim. App., Knoxville, April 11, 1991), per. app. denied (Tenn. 1991).

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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GARY R. WADE, JUDGE

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PAUL G. SUMMERS, JUDGE