

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

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| <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">January 22, 1997</p> <p style="text-align: center;"><b>Cecil Crowson, Jr.</b><br/>Appellate Court Clerk</p> |
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|---------------------|---|-----------------------------------|
| STATE OF TENNESSEE, | ) | C.C.A. NO. 03C01-9601-CR-00020    |
|                     | ) |                                   |
| Appellee            | ) | KNOX COUNTY                       |
|                     | ) |                                   |
| v.                  | ) | HON. RICHARD BAUMGARTNER,         |
|                     | ) | JUDGE                             |
| BRYANT CANSLER,     | ) |                                   |
|                     | ) | theft (over \$1,000 and less than |
| Appellant           | ) | \$10,000)                         |

**For the Appellant:**

**For the Appellee:**

Mark E. Stephens  
District Public Defender

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Knoxville, TN 37902

OPINION FILED \_\_\_\_\_

AFFIRMED.

JOHN K. BYERS  
SENIOR JUDGE

**OPINION**

The defendant pled guilty to theft of property valued at \$3,744, a Class D felony, and was sentenced to serve two years. The trial judge ordered him to serve 90 days, after which he was to be released under probation. As a condition of his probation, he must pay restitution.

The defendant challenges the trial court's denial of full probation.

We affirm the trial court's judgment.

The defendant has had a long-standing addiction to cocaine. He stole a truck from his employer, Purdy Brothers Trucking Company, and sold a part of the cargo to get money to purchase cocaine. When the truck was recovered, the defendant had sold \$3700 worth of the cargo. After committing this offense, the defendant stole a friend's truck, abandoned it and stole some tools from it, for which he pled guilty to two charges of misdemeanor theft. He has a series of prior convictions, ranging over 15 years, most of which are for bad checks.

The defendant has a fairly constant work history, and his present employer, for whom he has worked previously, wrote the trial court a letter, describing the defendant as a good employee. The defendant enrolled in and completed an eight-week program of treatment at Miracle Lake Christian Training and Counseling Center.

We review a sentencing issue *de novo* on the record, accompanied with the presumption that the trial court's determinations are correct. T.C.A. § 40-35-401(d). The burden is on the defendant to show that the sentence he received is improper. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). However, the presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *Ashby*, 823 S.W.2d at 169.

The sentencing principles require the trial court to consider the circumstances of the offense, the defendant's criminal record, social history, potential for rehabilitation or treatment, his present physical and mental condition and the

deterrent effect upon and best interest of the defendant and the public. *State v. Bonestel*, 871 S.W.2d 163, 169 (Tenn. Crim. App. 1993).

The defendant points out that he is statutorily presumed to be a favorable candidate for alternative sentencing. T.C.A. § 40-35-102. He also argues that the trial court only considered the appellant's criminal record in requiring a period of incarceration.

However, the trial judge continued the sentencing hearing twice to learn more about the Miracle Lake treatment program, in which the defendant was enrolled, and for the defendant to complete the program. He commented that this was "a tough case" as far as determining the proper sentence because of the defendant's fairly good work history and his completion of the drug rehabilitation program. He further commented, however, that he was troubled by the criminal record in this case, including the numerous bad check convictions and the defendant's misdemeanor theft offenses committed after he pled guilty to this offense but before he was sentenced.

The trial court's determination to not allow full probation is supported by the record. We affirm the trial court's judgment, with costs of appeal assessed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

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Joe B. Jones, Presiding Judge

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Paul G. Summers, Judge