

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER 1996 SESSION

FILED

January 30, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS.)
)
 CHANNING HIRTLE,)
)
 Appellant.)

No. 01C01-9601-CC-00046

WILLIAMSON COUNTY

Hon. Cornelia A. Clark, Judge

(Sentencing - Aggravated Burglary
and Theft)

For the Appellant:

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OPINION FILED: _____

AFFIRMED - RULE 20 ORDER

JOE G. RILEY,
JUDGE

ORDER

The appellant, Channing Hirtle, appeals his sentences imposed by the Circuit Court of Williamson County following his guilty plea to three (3) counts of aggravated burglary and three (3) counts of theft under \$500. Hirtle received an effective sentence of 28 years as a persistent offender. Hirtle claims that the trial court erred by relying on his prior criminal record to both enhance his sentences and order consecutive sentencing. Further, Hirtle argues that the trial judge did not apply as a mitigating factor that Hirtle's conduct did not cause or threaten serious bodily injury or harm. Therefore, he claims that his sentences are excessive. We affirm pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

Hirtle was sentenced as a Range III, Persistent Offender, to fourteen (14) years for each count of aggravated burglary and eleven (11) months and 29 days for each count of theft. Each sentence for aggravated burglary was to be served concurrently with the sentence for theft under the same indictment. The sentences for the charges in the second and third indictments were to be served concurrently with one another. However, the sentences for the charges under the second and third indictments were to be served consecutively to the sentences under the first indictment, giving an effective sentence of 28 years. Additionally, because Hirtle committed the crimes while on parole for another offense, each count ran consecutively to time served for the parole violation.

Hirtle's first argument is that a sentencing court is not permitted to apply the same prior convictions to enhance a sentence as well as to support consecutive sentencing. This Court has previously held that there is nothing in the 1989 Sentencing Act which would prohibit consideration of prior criminal convictions and behavior for both enhancement and consecutive sentencing purposes. State v. Melvin, 913 S.W.2d 195, 205 (Tenn. Crim. App. 1995); State v. Meeks, 867 S.W.2d 361, 377 (Tenn. Crim. App. 1993). Therefore, we find no error in the trial judge's decision to consider past criminal convictions to both enhance appellant's sentence and to justify consecutive sentencing.

Additionally, Hirtle contends that the trial court refused to apply as a

mitigating factor that his conduct did not cause or threaten serious bodily injury. See T.C.A. § 40-35-113(1). The state disagrees and suggests that because Hirtle did not offer any evidence proving that his behavior did not cause or threaten serious bodily injury, the trial court is without authority to consider this mitigating factor for sentencing. Regardless, the trial judge has the discretion to determine the weight given to each enhancement and mitigating factor. State v. Moss, 727 S.W.2d 229 (Tenn. 1986); State v. Santiago, 914 S.W.2d 116 (Tenn. Crim. App. 1995). This mitigating factor, even if considered, would be entitled to little weight. Hirtle has a lengthy criminal record and committed the present offenses while on parole. Although there may be mitigating factors involved, these factors are greatly outweighed by the aggravating factors. Under our *de novo* standard of review, we conclude that Hirtle received fair sentences.

The judgment of the trial court is affirmed pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

JOE G. RILEY, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

WILLIAM M. BARKER, JUDGE