IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1996 SESSION

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 02C01-9601-CC-00011
	)	
	)	Lake County
v.	)	
	)	Hon. Joe G. Riley, Jr., Judge
	)	
KEITH BRANDON LYTE,	)	(Sentencing)
	)	
Appellant.	)	

For the Appellant:

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OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The defendant, Keith Brandon Lyte, appeals as of right from his sentences imposed by the Lake County Circuit Court for his two convictions of possession of over one-half gram of cocaine for resale, Class B felonies. As a Range I, standard offender, he received concurrent sentences of ten years in the custody of the Department of Correction and was fined $2,000.00 for each conviction. The defendant contends that the trial court erred by refusing to grant him some form of sentencing alternative to confinement. We disagree.

Pursuant to an agreement, the defendant pled guilty to two counts of possession of more than one-half gram of cocaine for resale. At the sentencing hearing, Dinah Ellison, the defendant's parole officer, testified that at the time of the offenses the defendant was on parole from a conviction for voluntary manslaughter. The defendant also stipulated that a longer period of incarceration for drug offenses served as a general deterrent and that there was a need for general deterrence in Lake County.

The defendant, twenty-two years old at the time of the offenses, testified that he has two children he supports by paying $50.00 per week in child support for each child. He said that selling crack cocaine was not his main source of income and that he only sold drugs to make ends meet. The defendant expressed plans to get a job and to attend college to obtain a degree in journalism. On cross-examination, the defendant acknowledged that children were present on each occasion that he sold crack cocaine to an undercover agent.

The presentence report reflects that the defendant graduated from high school and had been employed by five different employers. Among the defendant's skills is carpentry and painting. Although the defendant denied any abuse of alcohol or

drugs, he admitted that he had used marijuana since the age of eighteen or nineteen. In addition to his conviction for voluntary manslaughter, the defendant was convicted as a juvenile of armed robbery.

The trial court imposed a ten-year sentence and denied alternative sentencing. In sentencing the defendant, the trial court recognized as mitigating factors (1) that the defendant's conduct did not cause or threaten serious bodily injury and (2) that the defendant entered a guilty plea. However, it placed little weight on the entry of the guilty plea because the defendant accepted the plea agreement after the jury was selected. The trial court expressed great concern over the defendant's prior criminal history and the fact that the defendant committed the crimes while on parole. Likewise, it stated that it considered the circumstances of the offenses, the defendant's potential for rehabilitation, and the need for deterrence of selling cocaine.

In this appeal, the defendant contends that the trial court erred by refusing to sentence him to some alternative to confinement, such as probation or a sentence under the Community Corrections Act. Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. §§ 40-35-401(d), -402(d). As the Sentencing Commission Comments to these sections note, the burden is now on the appealing party to show that the sentencing is improper. This means that if the trial court followed the statutory sentencing procedure, made findings of fact that are adequately supported in the record, and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

However, "the presumption of correctness which accompanies the trial court's action 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). In this respect, for the purpose of meaningful appellate review,

> the trial court must place on the record its reasons for arriving at the final sentencing decision, identify the mitigating and enhancement factors found, state the specific facts supporting each enhancement factor found, and articulate how the mitigating and enhancement factors have been evaluated and balanced in determining the sentence. T.C.A. §§ 40-35-210(f) (1990).

State v. Jones, 883 S.W.2d 597, 599 (Tenn. 1994).

In conducting a de novo review, we must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his own behalf and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-102, -103 and -210; see Ashby, 823 S.W.2d at 168; State v. Moss, 727 S.W.2d 229, 236-37 (Tenn. 1986).

First, we note that the defendant is not eligible for probation because he received a sentence in excess of eight years. See T.C.A. § 40-35-303(a). Also, the defendant is not statutorily presumed to be a favorable candidate for a sentence other than confinement for these Class B felonies. See T.C.A. § 40-35-102(6) (stating that a "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").

Relative to the defendant's argument that a community corrections sentence would have been appropriate, we note that the defendant met the requirements for eligibility for alternative sentencing under the Community Corrections

Act because he was convicted of a drug-related offense not involving a crime against a person. See T.C.A. § 40-36-106(a)(2). However, eligibility for a community corrections sentence does not equate with entitlement. See State v. Taylor, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987).

Given the defendant's prior criminal history and his commission of the offenses while on parole, the trial court's denial of a community corrections sentence is supported by the record. Because the defendant has failed to demonstrate that the sentence imposed by the trial court is improper, the judgment of the trial court is affirmed.

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_____Joseph M. Tipton, Judge

CONCUR:

_____
Joe B. Jones, Presiding Judge

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Jerry L. Smith, Judge