

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

<p>FILED</p> <p>January 22, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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<p>STATE OF TENNESSEE,</p> <p style="padding-left: 40px;">Appellee,</p> <p>V.</p> <p>STEVEN MARK NEWTON,</p> <p style="padding-left: 40px;">Appellant.</p>	<p>)</p> <p>) C.C.A. No. 03C01-9602-CC-00073</p> <p>)</p> <p>) Sullivan County</p> <p>)</p> <p>) Honorable Frank L. Slaughter, Judge</p> <p>)</p> <p>) (Criminal Attempt to Commit) Aggravated Sexual Battery)</p> <p>)</p>
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FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Steven Mark Newton, was indicted on one count of aggravated rape. He entered a guilty plea to a reduced charge of criminal attempt to commit aggravated sexual battery.¹ After two hearings, probation was denied. He was sentenced to serve four years in the penitentiary. The appellant contends that the trial court erroneously denied him full probation. We affirm.

When a sentencing issue is appealed, this Court shall conduct a de novo review with the presumption that the trial court's findings are correct. State v. Byrd, 861 S.W.2d 377, 379 (Tenn. Crim. App. 1993). The presumption of correctness is conditioned upon an affirmative showing 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).

Tennessee Code Annotated § 40-35-103 (1)(A)-(C) (1990) sets out sentencing considerations which are guidelines for determining whether or not a defendant should be incarcerated. These include: (1) the need to protect society by restraining a defendant having a long history of criminal conduct; (2) the need to avoid depreciating the seriousness of the offense; and (3) that confinement is particularly appropriate to deter others likely to commit similar offenses. In reviewing a grant or denial of probation, this Court also considers (1) the circumstances of the offense, (2) the defendant's criminal record, (3) his/her social history, (4) present physical and mental condition, and (5) the deterrent effect of the sentence. Id. This Court has previously determined that a negative finding of any one of these factors is sufficient to support a denial of probation. State v. Baron, 659 S.W.2d 811, 815 (Tenn. Crim. App. 1983).

¹The appellant inserted his finger into the vagina of his seven year old stepdaughter. He claims that he was "cleaning her." On the record he never admitted to any deviate or wrongful conduct.

Furthermore, lack of candor may be considered in determining the appropriateness of probation. State v. Neeley, 678 S.W.2d 48 (Tenn. 1984). The appellant's candor is probative on the issue of amenability to rehabilitation, the impetus behind probation. His dishonesty with the trial court and with himself reduces his treatment potential.

The record reveals that the appellant had a past criminal record. On more than one occasion he misled the court concerning his past work history. He never acknowledged the wrongfulness of his conduct. A clinical psychologist diagnosed the appellant as a heterosexual pedophile. The psychologist recommended that the appellant neither be exposed to young female children nor be left unsupervised with young males.

The trial judge denied the appellant probation to avoid depreciating the seriousness of the offense and for the protection of society. We do not find an abuse of discretion. The appellant has not overcome the presumption of correctness. The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

JOHN K. BYERS, Senior Judge