IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

SEPTEMBER 1997 SESSION

STATE OF TENNESSEE,	)	
	)	No. 02-C-01-9611-CC-00434
APPELLEE,	)	
	)	Obion County
v.	)	
	)	William B. Acree, Jr., Judge
CHARLIE MARSHALL FLOYD,	)	
	)	(Sentencing)
APPELLANT.	)	

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

O P I N I O N

The appellant, Charlie Marshall Floyd (defendant), was convicted of selling cocaine, a Class B felony, by a jury of his peers. The trial court found that the defendant was a multiple offender and imposed a Range II sentence consisting of confinement for fifteen (15) years in the Department of Correction. In this Court, the defendant contends the sentence imposed by the trial court was excessive because the court failed to apply mitigating factor (1), Tenn. Code Ann. § 40-35-113(1), namely, his criminal conduct neither caused nor threatened serious bodily injury, when determining the length of the sentence within the appropriate range. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issue presented for review, it is the opinion of this Court that the judgment of the trial court should be affirmed.

This Court has conducted a de novo review of the record as required by Tenn. Code Ann. § 40-35-401(d). This Court has previously held that mitigating factor one (1) is not applicable where the defendant is convicted of selling cocaine. State v. Keel, 882 S.W.2d 410, 422 (Tenn. Crim. App.), per. app. denied (Tenn. 1994); State v. Larry D. Jones, Davidson County No. 01-C-01-9112-CR-00368, 1992 WL 146719 (Tenn. Crim. App., Nashville, June 30, 1992), per. app. denied (Tenn. October 26, 1992); State v. Charles Fulkerson, Knox County No. 03-C-01-1101-CR-00032, 1992 WL 6881 (Tenn. Crim. App., Knoxville, January 21, 1992). However, assuming arguendo that this factor is applicable, the weight which would be given to this factor would be negligible. It would not be sufficient to cause the sentence to be reduced given the fact the defendant has sixteen prior convictions, eight misdemeanor convictions, and eight felony convictions. Some of the felony convictions are drug-related offenses. Furthermore, the offense was committed while the defendant was on probation for prior convictions, and a prior community corrections sentence had been revoked due to subsequent convictions.

The trial court found the defendant was a professional criminal and his employment record was sketchy. The trial court reached this conclusion based upon the defendant's sixteen convictions. In addition, the defendant had a drug-related offense pending in Obion County when the sentencing hearing was conducted.

The trial court did not abuse its discretion by refusing to consider mitigating factor (1). The court simply followed existing law.

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JOE B. JONES, PRESIDING JUDGE

CONCUR:

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DAVID H. WELLES, JUDGE

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JOE G. RILEY, JUDGE