

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1997 SESSION

FILED
September 9, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 03C01-9610-CR-00376
 Appellee,)
) Knox County
 V.)
) Honorable Mary Beth Leibowitz, Judge
)
 KRISTINA SCHINDLER,) (Aggravated Burglary)
)
 Appellant.)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Kristina Schindler, was convicted by a jury of aggravated burglary. At her sentencing hearing she requested post-trial diversion. The trial judge denied her request and imposed a three-year suspended sentence and five years probation. She appeals the trial court's denial of her request for post-trial diversion and the manner of service of her sentence. Upon review, we affirm.

The appellant contends that the trial court erred in not granting her post-trial diversion. She argues that the trial court erroneously considered the fact that she had expunged two out-of-state convictions from her record by successfully completing diversion programs on both charges. We disagree.

In determining whether a defendant is qualified for judicial diversion the trial court should consider: (1) the accused's amenability to correction, (2) the circumstances of the offense, (3) the accused's criminal record, (4) the accused's social history, (5) the accused's physical and mental health, and (5) the deterrence value to the accused as well as others. State v. Bonestel, 871 S.W.2d 163, 168 (Tenn. Crim. App. 1993); State v. Hammersley, 650 S.W.2d 352, 355 (Tenn. 1983). The trial court's judgment will not be disturbed absent a showing of abuse of discretion. In order to establish an abuse of discretion, this Court must determine that no substantial evidence exists to support the trial court's findings. State v. Anderson, 857 S.W.2d 571, 572 (Tenn. Crim. App. 1992).

The Tennessee Sentencing Reform Act of 1989 mandates that trial courts consider the past criminal behavior of defendants when making sentencing determinations. Tenn. Code Ann. § 40-35-210 (1990). In the instant case, the trial court was correct in its consideration of the appellant's two past diversion

experiences. This information is very indicative of the lack of deterrence diversion has on the appellant and to her lack of amenability to correction. Furthermore, during her burglary attempt, the appellant severely beat the victim with an ax handle. These factors support the trial court's decision. Diversion was inappropriate for the appellant. This issue is without merit.

In her next issue the appellant contends that the trial court erroneously imposed five years probation on her three-year suspended sentence. She argues that the length of probation cannot legally exceed the term of her sentence. We disagree.

It is well settled that a trial court may fix the length of probation up to the statutory maximum for the class of the offense. Tenn. Code Ann. § 40-35-303 (1990) Sentencing Commission Comments. See State v. Brian Necessary, No. 02C01-9307-CR-00131 (Tenn. Crim. App., at Jackson, Aug. 10, 1994). The sentencing commission intended to give trial courts great latitude in fixing the length of probation to encourage its use as a sentencing alternative. In the instant case, the appellant was convicted of a Class C felony as a Range I standard offender. Therefore, the sentence range is three to six years. The appellant received five years on probation. Her sentence is, therefore, appropriate. This issue is without merit.

After considering the appellant's issues, we find no error of law mandating reversal. Accordingly, we affirm the judgment of the trial court.

PAUL G. SUMMERS, Judge

CONCUR:

GARY R. WADE, Judge

WILLIAM M. BARKER, Judge