

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
MARCH SESSION, 1995

FILED

July 23, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee)

vs.)

ROSIE LEE WOOTEN,)

Appellant)

No. 01C01-9410-CC-00340

COFFEE COUNTY

Hon. JOHN W. ROLLINS, Judge

(Voluntary Manslaughter)

DISSENTING OPINION

I respectfully disagree. Upon *de novo* review, I would grant probation. The facts of this case are unquestionably tragic. The appellant and the victim co-habited for approximately twelve years. Their relationship was characterized by excessive drinking and, on occasion, violence. The appellant contends that she stabbed and killed the victim after he came home drunk, threatened to kill her, and "choke[d] me until I could not breathe." However, assuming these facts support the appellant's incarceration, the record also reflects that the appellant is currently eighty-one years of age. As noted by the majority, she suffers from primary degenerative dementia of the Alzheimer's type, senile onset with depression, dementia associated with alcoholism, and alcohol abuse. Although the appellant was found sane, psychological testing revealed significant mental confusion and disorganization which are progressive in nature. The appellant is totally dependent upon her daughter for primary care. Finally, she has no prior criminal history. Accordingly, incarceration of the appellant would serve no public purpose. Sentencing principles involving deterrence, the need to protect society by restraining a defendant who has a long history of criminal conduct, and rehabilitation simply have no relevance in this case. See Tenn. Code Ann. § 40-35-102(3)(A)-(C)(1990); Tenn. Code Ann. § 40-35-103(1) (1990). Indeed, from the record, it is doubtful that the appellant, if confined to the Department of

Correction, would realize that she was, in fact, imprisoned. Accordingly, based upon the extraordinary circumstances presented, I find probation to be appropriate.

DAVID G. HAYES, Judge