IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1997 SESSION

FILED

January 21, 1998

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 01C01-9702-CC-00040
Appellee,	)
	) Bedford County
V.	)
	) Honorable Charles Lee, Judge
	)
MARK ROBERT CARTER,	) (Sentencing)
	)
Appellant.	)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Mark Robert Carter, pled guilty to reckless endangerment and received a sentence of one year and six months in jail. At his sentencing hearing, the appellant requested probation, but his request was denied. He now appeals to this Court.

The appellant's sole issue on appeal is whether the trial court properly denied probation as part of his sentence. We affirm.

On April 23, 1996 around midnight, the appellant, who was nineteen years old, was drag racing at a high rate of speed in an area of town that is heavily traveled. When the police tried to pull the appellant over, he ran from the police. Two weeks before, on April 9, 1996, the appellant pled guilty to reckless driving from an incident occurring on January 31, 1996. During that incident, the appellant, who had attended a party and had been drinking, drove down an icy road toward the Tyson plant, which employs a number of people. When questioned at his sentencing hearing for that offense, the appellant responded that he had learned his lesson, and he received six months probation.

The appellant argues that he should have received probation a second time. He maintains that he has steady employment and has supported himself for the past several years. Also, he argues that while on probation for his prior reckless driving offense, he reported to his probation officer and paid his fines and costs as ordered. He admits that "he made a foolish mistake and was running around being stupid," and now realizes the error of his ways.

The state contends that the trial court properly denied probation. It recognizes that the appellant is only nineteen years old and has a good employment history. However, the state notes that the trial court "placed great weight on the fact that only two weeks before the defendant committed the crime in this case, he pled guilty to a similar crime and received six months probation."

Furthermore, the state maintains that the appellant admitted to underage drinking. In denying the appellant's request for probation, the trial court stated that "probation doesn't mean anything to the defendant other than he has to pay his court costs and that is the only impression the first probation made."

When an appellant challenges the length, range, or manner of service of a sentence, this Court conducts a de novo review with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d) (1990). However, this presumption is conditioned on an affirmative indication 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).

The appellant bears the burden of showing that the sentence was improper. Id. In determining whether the appellant has met this burden, this Court must consider (a) the evidence adduced at trial and the sentencing hearing; (b) the presentence report; (c) the principles of sentencing; (d) the arguments of counsel; (e) the nature and characteristics of the offense; and (f) the appellant's potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-103(5), -210(b) (1990).

Although the appellant received probation as a result of the January 31, 1996 incident, he obviously had not learned his lesson because he continued to engage in dangerous and illegal behavior. He not only put his own life in danger, but also the lives of many others. The trial judge was correct when he stated that "[t]he defendant's actions are [a] prelude to death on the highway." Probation is a privilege, not a right. This is the lesson that the appellant must now learn. We affirm the trial court's judgment.

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PAUL G. SUMMERS, Judge

CONCUR:

_____
JOSEPH B. JONES, Presiding Judge

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WILLIAM M. BARKER, Judge