

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
DECEMBER SESSION, 1997

**FILED**

March 23, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )

Appellee )

vs. )

ROBERT H. McCURDY, )

Appellant )

No. 03C01-9706-CR-00232

UNION COUNTY

Hon. LEE ASBURY, Judge

(Aggravated Sexual Battery)

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**SEPARATE CONCURRING OPINION**

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I concur in the results reached by the majority. For those reasons expressed in State v. Cooper, No. 01C01-9604-CC-00150 (Tenn. Crim. App. at Nashville, Nov. 17, 1997) (Hayes, J., concurring), I write separately to note my agreement with the trial judge that the so-called truth in sentencing provisions, as codified in Tenn. Code Ann. § 40-35-201, are unconstitutional. Accordingly, I find no error in the trial court's rejection of the requested instructions.

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DAVID G. HAYES, Judge