IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1998 SESSION

FILED

January 7, 1999

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 01C01-9702-CC-00086
Appellee,	)
	) Humphreys County
V.	)
	) Honorable Allen W. Wallace, Judge
	)
JAMES W. WILLS,	) (Violation of Community Corrections)
	)
Appellant.	)

FOR THE APPELLANT:

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OPINION FILED: _____

REVERSED AND REMANDED

PAUL G. SUMMERS,
Judge

O P I N I O N

James W. Wills appeals as of right from a judgment of the Circuit Court of Humphreys County revoking his twelve-year community corrections sentence and resentencing him to an effective term of eighteen years in the Tennessee Department of Correction. The trial court did not conduct a sentencing hearing prior to this resentencing; and the record is devoid of any indication as to how the present sentence was determined. Based upon these and other failures to comply with the Sentencing Reform Act of 1989, the appellant asks this Court to set aside his present sentence and remand this case for a sentencing hearing and resentencing.[1] We so order. The appellant does not contest the revocation of his community corrections sentence.

The law in this area is clear. A trial court is empowered to resentence an offender upon the proper revocation of his or her community corrections sentence. See T.C.A. § 40-36-106(e)(4) ("The court shall also possess the power to revoke the sentence imposed at any time due to the conduct of the defendant . . . , and the court may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in any community based alternative to incarceration."). However, the new sentence is not to be arbitrarily established. See State v. Keith F. Batts, No. 01C01-9210-CR-00326 (Tenn. Crim. App. filed Feb. 18, 1993, at Nashville).

"[W]hen a trial court opts to resentence an accused to a sentence which exceeds the length of the initial sentence, the trial court must conduct a sentencing hearing pursuant to the Tennessee Criminal Sentencing Reform Act of 1989; and the sentence imposed must conform to the provisions of the Act." Id. (emphasis added) (citing T.C.A. §§ 40-35-209(a); -210(a)-(e)). "The court must state its reasons for imposing a new sentence on the record." State v.

[1] The state does not contest this appeal.

John Eric Lipscomb, No. 01C01-9506-CR-00185 (Tenn. Crim. App. filed Feb. 13, 1996, at Nashville); see T.C.A. §§ 40-35-209(c); 40-35-210(f)-(g).

This Court cannot provide effective review unless the trial court indicates on the record its reasoning for the sentence imposed. For this reason, T.C.A. § 40-35-210(f) requires that "[w]henever the court imposes a sentence, it shall place on the record either orally or in writing what enhancement or mitigating factors it found, if any, as well as findings of fact as required by § 40-35-209." Section 40-29-209 (c) provides that the record of the sentencing hearing "shall include specific finding of fact upon which application of the sentencing principles was based." The new sentence "must be based on evidence in the record of the trial, the sentencing hearing, the presentence report, and the record of prior felony convictions . . . ." T.C.A. § 40-35-210(g); State v. Tony Barrett, No. 01C01-9511-CR-00360 (Tenn. Crim. App. filed Aug. 22, 1996, at Nashville). These provisions are mandatory. See id. (citing State v. Gauldin, 737 S.W.2d 795 (Tenn. Crim. App. 1987). That we review the sentence de novo does not relieve the sentencing court from compliance with these requirements.

In the present case, the trial court did not follow these statutory mandates. The court conducted no sentencing hearing, and there is nothing in the record to indicate that the court considered the general sentencing purposes, see T.C.A. § 40-35-102, the statutory sentencing considerations, see T.C.A. § 40-35-103, or the applicability of any enhancement or mitigating factors, see T.C.A. §§ 40-35-113; -114. The record does not include a presentence report, and there is no indication whether one was prepared. See T.C.A. §§ 40-35-205(a); -210(g). Finally, the sentencing court ordered that three of the appellant's sentences run consecutively. However, the sentencing court did not record any finding as to why consecutive sentencing was warranted. See T.C.A. § 40-35-115 (b), (d) (enumerating criteria for the imposition of consecutive sentencing and requiring concurrent sentencing absent a finding of one of these criteria).

The revocation of the appellant's community correction sentence is affirmed. The sentences imposed below are set aside, and the case is remanded for a sentencing hearing and resentencing in accordance with this opinion.

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PAUL G. SUMMERS, Judge

CONCUR:

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JOE G. RILEY, Judge

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L. T. LAFFERTY, Senior Judge