

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

AT KNOXVILLE

JULY 1999 SESSION

August 30, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

STATE OF TENNESSEE,

Appellee,

VS.

TERESA RENEE HODGE,

Appellant.

)
)
)
)
)
)
)
)
)
)

NO. 03C01-9809-CC-00316

BLOUNT COUNTY

HON. D. KELLY THOMAS, JR.,
JUDGE

(Thefts under \$500)

FOR THE APPELLANT:

JULIE A. RICE

P.O. Box 426
Knoxville, TN 37901-0426
(On Appeal)

MACK GARNER

District Public Defender
419 High Street
Maryville, TN 37804
(At Trial)

FOR THE APPELLEE:

PAUL G. SUMMERS

Attorney General and Reporter

ERIK W. DAAB

Assistant Attorney General
Cordell Hull Building, 2nd Floor
425 Fifth Avenue North
Nashville, TN 37243-0493

MICHAEL L. FLYNN

District Attorney General

EDWARD P. BAILEY, JR.

Assistant District Attorney General
Blount County Courthouse
363 Court Street
Maryville, TN 37804-5906

OPINION FILED: _____

AFFIRMED

JOE G. RILEY, JUDGE

OPINION

The defendant, Teresa Renee Hodge, pled guilty to six counts of theft of property under \$500, Class A misdemeanors. Defendant's plea agreement provided for concurrent sentences of eleven months, twenty-nine days on each count, with the manner of service left to the trial court. After a hearing, the trial court ordered defendant to serve fifty percent of her sentence in confinement prior to eligibility for all programs other than work release. In this appeal as of right, defendant contends that the trial court erred in ordering her to serve fifty percent of her sentence in confinement. Upon our review of the record, we **AFFIRM** the judgment of the trial court.

STANDARD OF REVIEW

This Court's review of the sentence imposed by the trial court is *de novo* with a presumption of correctness. Tenn. Code Ann. § 40-35-401(d). The burden is upon the appealing party to show that the sentence is improper. Tenn. Code Ann. § 40-35-401(d) Sentencing Commission Comments.

Misdemeanor sentencing is controlled by Tenn. Code Ann. § 40-35-302, which provides in part that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. See State v. Palmer, 902 S.W.2d 391, 393 (Tenn. 1995). The misdemeanor offender must be sentenced to an authorized determinate sentence with a percentage of that sentence designated for eligibility for rehabilitative programs. Generally, a percentage of not greater than 75% of the sentence should be fixed for a misdemeanor offender. *Id.*

The trial court retains the authority to place the defendant on probation either immediately or after a time of periodic or continuous confinement. Tenn. Code Ann.

§ 40-35-302(e). We further note that the trial court has more flexibility in misdemeanor sentencing than in felony sentencing. State v. Troutman, 979 S.W.2d 271, 273 (Tenn. 1998). One convicted of a misdemeanor, unlike one convicted of a felony, is not entitled to a presumption of a minimum sentence. State v. Baker, 966 S.W.2d 429, 434 (Tenn. Crim. App. 1997); State v. Creasy, 885 S.W.2d 829, 832 (Tenn. Crim. App. 1994).

FINDINGS BELOW

Defendant testified at her hearing that she had committed the thefts to support her cocaine habit, which required \$1,000 worth of cocaine per day. She supplemented her theft income through prostitution. The defendant admitted to having used cocaine on the day before her sentencing hearing. The defendant has several prior convictions and committed the instant offenses while on probation and/or bond.

In sentencing defendant, the trial court noted her lengthy criminal history; her recent violation of the terms of her release in the community; and her use of cocaine after pleading guilty to these offenses. The trial court also noted defendant's candor, stating that her concurrent sentences and fifty percent confinement reflected a "lot of consideration" for her honesty and willingness to plead guilty.¹ The trial court further stated that he would consider "any requested furloughs for treatment, inpatient or otherwise," as they were made, and that, depending upon defendant's behavior, he would consider granting probation prior to the minimum release eligibility date.

¹The trial court could have sentenced defendant to serve seventy-five percent of her sentence. See Tenn. Code Ann. § 40-35-302(d).

CONCLUSION

Defendant contends that the trial court should have sentenced her to "supervised probation conditioned upon successful completion of the Peninsula Hospital in-patient treatment program after service of 25%" of her sentence. While we do not doubt that this is a sentence defendant would prefer, we see no error committed by the trial court in imposing the sentence. Defendant having failed to carry her burden of proving that her sentence is improper, we **AFFIRM** the judgment of the trial court.

JOE G. RILEY, JUDGE

CONCUR:

GARY R. WADE, PRESIDING JUDGE

DAVID H. WELLES, JUDGE