IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
April 25, 2023 Session

STATE OF TENNESSEE v. DARYL DEANGELO ROLLINS

Appeal from the Criminal Court for Knox County
No. 119176 Steven Wayne Sword, Judge

No. E2022-00890-CCA-R3-CD

Defendant, Daryl Deangelo Rollins, pled guilty to one count of reckless vehicular homicide and two counts of reckless endangerment, as a Range I offender, in exchange for dismissal of the remaining counts of the indictment with no agreement as to the sentences. After a sentencing hearing, the trial court denied judicial diversion and alternative sentencing. Defendant was sentenced to six years for reckless vehicular homicide, two years on one count of reckless endangerment, and one year on the remaining count of reckless endangerment, to be served concurrently. Defendant appeals, arguing that his sentence for vehicular homicide is excessive, that the trial court improperly applied enhancement factors, and that the trial court erred by denying an alternative sentence. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and TOM GREENHOLTZ, J., joined.

Eric Lutton, Public Defender; Keith Lowe, Assistant Public Defender (at trial), and Jonathan Harwell (on appeal), Assistant Public Defender, Knoxville, Tennessee, for the appellant, Daryl Deangelo Rollins.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Charme P. Allen, District Attorney General; and Randall Kilby, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On June 30, 2021, Defendant was charged via presentment by the Knox County Grand Jury with one count of vehicular homicide, two counts of reckless endangerment, three counts of leaving the scene of an accident, and one count of reckless driving.

Defendant pled guilty to one count of reckless vehicular homicide, a Class C felony, and two counts of felony reckless endangerment with a deadly weapon, both Class E felonies. The remaining counts of the indictment were dismissed. At the plea hearing, counsel for the State explained that had the case gone to trial, the State's proof would have been as follows:

> [O]n May 19 of 2021 Lennox Roper, State's witness and the victim in Count 2, was at his residence at 3401 Luwana Lane, here in Knox County, with Haizley Roper, his 15-month-old infant daughter. He would testify that [Defendant] came by to play video games for a while. They found that Haizley needed some milk and were going to the Walmart on Kinzel Way, here in Knox County, to obtain that.
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> Jajuan Hansford, witness and victim in Count 3, arrived and all went to the Walmart in Mr. Roper's 2020 Dodge Charger, Mr. Roper would testify he parked in front of the store, just to go in for the milk. When he came out, his car had been moved to a parking place. [Defendant] was in the driver seat. Mr. Roper would testify he allowed [Defendant] to continue driving. He had no reason to think he wasn't qualified to do so.
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> Witnesses, then, will testify that, on the way back home, on Buffat Mill Road, here in Knox County, when approaching a stop sign at Spring Hill, that [Defendant] sped up, ran the stop sign, according to witness accounts, going anywhere from 70 to 100 miles an hour, well in excess of the 40-mile-an-hour speed limit, swerved into the other lane to avoid a truck approaching the stop sign from the other direction, went off the road, sideswiped a utility pole, went into and over an embankment, causing the vehicle to come airborne and strike a second utility pole, breaking it. The car then came to a halt off the road and caught fire.
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> Witnesses will testify, [Defendant] got out of the car and left the scene on foot before Knoxville Police Department officers arrived. Lennox Roper and Jajuan Hansford will testify they were left in the burning vehicle and had to break Haizley's car seat to get her out of the car inside the burning vehicle and out of the vehicle.

> Witnesses would testify that Haizley, Lennox Roper[,] and Jajuan Hansford were severely burned, [and] transported to UT Hospital. Haizley was transported by LIFESTAR and then transported to Vanderbilt Hospital. Evidence will show that Haizley died, from burns sustained in this incident, on May 28, 2021. Lennox Roper was treated for severe burns at UT Hospital and Vanderbilt Hospital. And Jajuan Hansford suffered burns on his face and legs, as well as lacerations to his face.

The trial court accepted the plea, reminding Defendant that he was entering a "blind plea" with no agreement as to sentencing. The trial court informed Defendant he was subject to a sentence of three to six years for vehicular homicide and subject to a sentence of one to two years on each count of reckless endangerment. The trial court told Defendant that he could "get straight probation[,] . . . serve some time in jail[,] . . . [or be] sent to the penitentiary." Defendant acknowledged his understanding of the blind plea.

At the sentencing hearing, the presentence report was entered as an exhibit as well as a victim impact statements, photographs of the injuries to Mr. Roper and Haizley, and a letter from Defendant's employer. The trial court heard testimony from several witnesses, including Kiersten Whitehead, Haizley's grandmother. Ms. Whitehead was the first family member to arrive at the scene of the accident. She described her anguish as she saw her granddaughter suffer and her frustration over Defendant's actions of having run away from the accident. Ms. Whitehead stated that she could not "ever take this pain away" from her daughter, Haizley's mother, and that her daughter's grief was "unbearable."

Mr. Hansford, one of the passengers in the vehicle, testified that he was behind Defendant in the back seat of the vehicle during the crash. He explained that he had known Defendant and Mr. Roper for about "13, 14 years." He described Defendant's actions after the wreck as "questionable," "selfish," and "inconsiderate." Mr. Hansford explained that in addition to his physical injuries, his "mental stress" since the accident was "detrimental" to his overall health.

On cross-examination, Mr. Hansford explained that the only door he could use to exit the vehicle after the crash was the driver's side door. He tried to get Haizley out of her car seat as soon as the vehicle came to a stop but quickly realized that only one person could fit into the back seat to access her car seat. Mr. Hansford got out of Mr. Roper's way so that he could reach the child.

Amanda White, Haizley's mother, testified that since her daughter's death, so many aspects of her daily life were forever changed. She thought that Defendant "loved [Haizley] just as much as [she] loved [Haizley]" because he was around her "every day."

In the quiet moments of life, "all [she] can think about is how [she] do[es]n't have [her] other daughter."

Kailynn White, Haizley's aunt, testified that Defendant was looked at "like family" before the accident, and now it was "unbearable" to think about because of how Defendant let them down. She described the void left by Haizley's death in their lives and the profound impact on the children in the family as well as the adults.

Cleo Harshaw, Mr. Roper's mother and Haizley's grandmother, acknowledged that Defendant's own life was affected by his actions in addition to forever changing the lives of Mr. Roper and Haizley's family. Ms. Harshaw was appalled by Defendant's lack of remorse and did not think that there would ever be "justice" for Defendant's actions.

Defendant chose neither to testify nor open himself to cross-examination. He expressed that he was "truly devastated at the loss of Haizley." He apologized to the families and told them that he "loved her" and missed her too. The pre-sentence report indicates Defendant did not provide a written statement for inclusion in the report.

After hearing testimony, reviewing exhibits, and hearing arguments of counsel, the trial court addressed the victim's family by telling them that this was "probably the saddest case" that the trial court had seen in a long time and it was "just a tragic, tragic situation" but that he was "required to set aside emotion and passion and sympathy and judge cases under the law on the merits."

The trial court acknowledged Defendant's plea to one Class C felony and two Class E felonies. The trial court noted that Defendant was a Range I, standard offender subject to a potential sentence in Count 1 of three to six years, and a sentence of one to two years on Counts 2 and 3.

The trial court noted that Defendant was eligible for judicial diversion, and took into account the factors necessary to make that determination. The trial court considered Defendant's "solid history of education" and work as well as "a lot of family support." Those factors weighed in favor of diversion. Defendant lacked a significant criminal record, having only a conviction for driving on a suspended license offense that he pled guilty to five days after the incident that gave rise to the current charges. The record indicates the driving suspension took place in 2020. The trial court determined this weighed against diversion. The trial court noted that Defendant's social history was "good" and Defendant's mental and physical health weighed in favor of diversion. The trial court was "not sure" how to measure the deterrence value to others, commenting that the "loss of life[,] you would hope[,] would deter people more than a criminal conviction." The trial court deemed the "circumstances of the offense" the "most telling aspect in the

request for judicial diversion." Though the trial court did not think Defendant "set out to harm anyone[,]" he "should have been aware that [his] behavior [wa]s likely to cause death or serious bodily injury, and yet engaged in it." The trial court thought Defendant's actions immediately after the wreck were "important" for the court to consider. The trial court determined that "the interest[s] of justice require that [Defendant] not receive judicial diversion."

As to the sentence, the trial court determined that enhancement factor (4), the victim of the offense was particularly vulnerable because of age, applied to the vehicular homicide conviction. *See* T.C.A. § 40-35-114(4). The trial court determined that the injuries inflicted upon Haizley and Mr. Roper were particularly great, applying enhancement factor (6) to both Counts 1 and 2. *See id.* at (6). The trial court determined that even though the child died, she "didn't pass away right away from [her injuries]" and "suffered for a number of days" from the burns. The trial court also determined that Defendant abused a position of private trust, applying enhancement factor (14) to the vehicular homicide conviction. *See id.* At (14). The trial court applied several mitigating factors, determining that Defendant, because of youth, lacked substantial judgment in committing the offense and that Defendant's Strong-R assessment was favorable because Defendant "has been a productive citizen through a good part of his life." The trial court also noted Defendant's work history and support from his current employer. The trial court sentenced Defendant to six years in count 1, finding a sentence at the "top of the range" was "warranted." As to the remaining offenses, the trial court sentenced Defendant to two years in count 2, and one year in count 3.

The trial court ordered concurrent sentencing. The trial court reviewed the factors under Tennessee Code Annotated section 40-35-403, first finding that because Defendant did not have a long criminal history, thus confinement was not necessary to protect society from a defendant with a long criminal history. As to deterrence, the trial court found it "hard to say that this decision [wa]s going to affect too many other people to deter them one way or the other." The trial court noted that Defendant had never been on probation or been through rehabilitation or counseling and that this weighed in favor of probation. The trial court found Defendant's "history shows that he can be a productive citizen" and that finding weighed "favorably for his rehabilitation as does the Strong-R assessment." Lastly, the trial court found that confinement was necessary to avoid depreciating the seriousness of the offense "base[d] solely on the circumstances that we're dealing with the severe pain" suffered by both Haizley and her father. The trial court noted that the family's pain went "beyond the physical pain" that was "felt that day." The trial court did not think that split confinement was appropriate and ordered Defendant to serve his sentence in incarceration. Defendant filed a timely notice of appeal.

Analysis

On appeal, Defendant challenges the trial court's decision to sentence Defendant to the maximum sentence in the range on Count 1, reckless vehicular homicide, and the trial court's decision to deny alternative sentencing.

Imposition of Maximum Sentence for Count 1

Defendant insists that the trial court improperly applied enhancement factors (6) and (14) in enhancing the sentence to the top of the range. Defendant does not challenge the application of enhancement factor (4). With regard to alternative sentencing, Defendant argues that the trial court failed to make findings that this offense was "more egregious than other reckless vehicular homicides" or that the circumstances of the offense outweighed the factors supporting probation. Defendant does not challenge the length of the sentences in Counts 2 and 3 or the trial court's denial of judicial diversion. The State insists that the trial court did not abuse its discretion.

Here, Defendant pled guilty in Count 1 to the Class C felony of reckless vehicular homicide as a Range I, standard offender. The appropriate statute sentencing range for this offense and offender classification is between three and six years. *See* T.C.A. §§ 39-13-213(a)(1); 40-35-112(a)(3). Thus, the trial court's sentence of six years is within the statutorily authorized sentencing range.

We acknowledge that "sentences imposed by the trial court within the appropriate statutory range are to be reviewed under an abuse of discretion standard with a 'presumption of reasonableness.'" *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). In other words, this Court is "bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out" in the Sentencing Act. *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). A trial court abuses its discretion in sentencing when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997) (citing *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996)).

In reaching its decision, the trial court must consider the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on enhancement and mitigating factors; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; (7) any statement by the appellant in his own behalf; and (8) the

result of the validated risk and needs assessment conducted by the department and contained in the presentence report. *See* T.C.A. §§ 40-35-102, -103, -210(b); *see also Bise*, 380 S.W.3d at 697-98. Additionally, the sentence imposed "should be no greater than that deserved for the offense committed" and also "should be the least severe measure necessary to achieve the purposes for which the sentence is imposed." T.C.A. § 40-35-103(2), (4).

The record and transcript from the sentencing hearing reflect that the trial court properly considered all of the factors set out in Tennessee Code Annotated section 40-35-210 before fashioning Defendant's sentence for reckless vehicular homicide. The parties agreed that Defendant was a Range I offender subject to a sentence of up to six years. The trial court applied enhancement factors (4), (6), and (14) to enhance Defendant's sentence. Defendant challenges the application of enhancement factors (6) and (14).

As to the application of enhancement factor (14), this factor applies where "[t]he defendant abused a position of public or private trust." T.C.A. § 40-35-114(14). Here, the trial court determined that this factor applied "because . . . [the victim's] family trusted [D]efendant to take care of her and drive her . . . [and] his driving not only significantly facilitated commission of the offense, but really was the sole cause of the offense." The trial court also considered the age of the victim and the fact that she was unable to decide to ride in the car with Defendant.

Defendant cites *State v. Guiterrez*, 5 S.W.3d 641, 646 (Tenn. 1999), to support his argument that the trial court improperly relied on enhancement factor (14). In *Guiterrez*, the Tennessee Supreme Court explained that to abuse a position of private trust, a relationship must exist between the parties "which promotes confidence, reliability, or faith, [and] usually includes a degree of vulnerability" and that the "exploitation of this vulnerability to achieve criminal purposes" justifies the application of this enhancement factor. *Id.* While this is true, Defendant neglects to point out that *Guiterrez* examined the application of the abuse of trust enhancement factor in the context of an adult defendant and adult victim living in the same household, not an adult defendant and a minor victim who did not share a household or a relationship other than one created by the minor victim's parents. In the context of an adult defendant and minor victim,

> [A]pplication of [this] factor requires a finding, first, that defendant occupied a position of trust, either public or private. The position of parent, step-parent, babysitter, teacher, coach are but a few obvious examples. The determination of the existence of a position of trust does not depend on the length or formality of the relationship, but upon the nature of the relationship. Thus, the court should look to see whether the offender formally or informally stood in a relationship to the victim that promoted confidence, reliability, or faith.

Id. (quoting *State v. Kissinger*, 922 S.W.2d 482, 488 (Tenn.1996)). In this case, the testimony at the sentencing hearing was that Defendant was "around [the victim's family] every day" and the victim's family "supported him in everything." Mr. Roper permitted Defendant to drive his car with the minor victim in the back seat in a car seat. Minors, especially those the age of the victim in this case, are generally incapable of independent reasoning. Haizley was certainly, as noted by the trial court, unable to decide whether she wanted to ride in the car with Defendant as the driver. We understand the reasoning of the trial court in applying this enhancement factor but find it minimally applicable to this particular set of facts.

As to enhancement factor (6), this factor applies where "[t]he personal injuries inflicted upon, . . . the victim w[ere] particularly great." T.C.A. § 40-35-114(6). It is "well established" that "this factor should not be used to enhance a sentence for the offense of vehicular homicide because the death of the victim is an element of the offense." *State v. Williamson*, 919 S.W.2d 69, 82 (Tenn. Crim. App. 1995). In other words, the trial court misapplied enhancement factor (6). The trial court's misapplication of an enhancement factor, however, is not "a basis in and of itself for vacating a sentence." *State v. Trent*, 533 S.W.3d 282, 294 (Tenn. 2017).[1]

Despite the trial court's misapplication of enhancement factor (6), the sentence imposed was within the statutory range and consistent with the purposes and principles of sentencing, and we accordingly conclude there was no abuse of discretion. In *Bise*, the trial court misapplied the single enhancement factor supporting the sentence. *Bise*, 380 S.W.3d at 708. The sentence was nevertheless upheld because the trial court articulated reasons for the sentence which were consistent with the purposes and principles of sentencing. *Id.* at 709. Moreover, Defendant does not challenge the application of enhancement factor (4), and the trial court appropriately applied this enhancement factor. Additionally, we have concluded that although arguably minimally applicable, the trial court appropriately applied enhancement factor (14). "The application of a single enhancement factor can justify an enhanced sentence." *State v. John M. Banks*, No. M2019-00017-CCA-R3-CD, 2020 WL 5015888, at *10 (Tenn. Crim. App. Aug. 25, 2020) (citing *State v. Bolling*, 75 S.W.3d 418, 421 (Tenn. Crim. App. 2001)), *perm. app. denied* (Tenn. Dec. 2, 2020).

[1] We recognized that a trial court may properly consider enhancement factor (6) in a vehicular homicide case when "the manner of [the victim's] death involved particularly great injuries." *State v. Key*, No. M2019-00411-CCA-R3-CD, 2019 WL 7209603, at *5 (Tenn. Crim. App. Dec. 27, 2019), *no perm. app.*

Here, the trial court considered the evidence and the statutorily mandated considerations and referenced the principles and purposes of sentencing. We conclude that, even though the trial court erroneously applied enhancement factor (6), the sentences imposed were within the statutory range and consistent with the purposes and principles of sentencing, and we accordingly conclude there was no abuse of discretion.

Denial of Probation

Defendant also challenges the trial court's decision to order him to serve his sentence in incarceration. Specifically, Defendant challenges the trial court's denial of probation based solely on the seriousness of the offense, arguing that the trial court focused only on the harm caused by the accident rather than the seriousness of the crime as committed and failed to state that the seriousness of the offense outweighed all other factors supporting the grant of probation. The State disagrees.

The abuse of discretion with a presumption of reasonableness standard of review set by our supreme court in *Bise* also applies to a trial court's decision to grant or deny probation. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012) (citing *Bise*, 380 S.W.3d at 708). Under the revised Tennessee sentencing statutes, a defendant is no longer *presumed to be* a favorable candidate for alternative sentencing. *Carter*, 254 S.W.3d at 347 (citing T.C.A. § 40-35-102(6)) (emphasis added). Instead, the "advisory" sentencing guidelines provide that a defendant "who is an especially mitigated or standard offender convicted of a Class C, D or E felony, *should be considered* as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary[.]" T.C.A. § 40-35-102(6)(A) (emphasis added).

Under Tennessee Code Annotated section 40-35-103, the trial court should look to the following considerations to determine whether a sentence of confinement is appropriate:

> (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
> (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
> (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103(1). Furthermore, "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed." *Id.* § 40-35-103(5). In deciding

the suitability of probation, the trial court should consider: "(1) the defendant's amenability to correction; (2) the circumstances of the offense; (3) the defendant's criminal record; (4) the defendant's social history; (5) the defendant's physical and mental health; and (6) special and general deterrence value." *State v. Trent*, 533 S.W.3d 282, 291 (Tenn. 2017). "The guidelines applicable in determining whether to impose probation are the same factors applicable in determining whether to impose judicial diversion" elucidated in *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998). *Trent*, 533 S.W.3d at 291 (quoting *State v. Jeremy Brandon Scott*, No. M2010-01632-CCA-R3-CD, 2011 WL 5043318, at *11 (Tenn. Crim. App. Oct. 24, 2011), *no perm. app. filed*). "The burden of establishing suitability for probation rests with the defendant." T.C.A. § 40-35-303(b). *See Electroplating, Inc.*, 990 S.W.2d at 229. Here, the trial court found that confinement was necessary to avoid depreciating the seriousness of the offense. The court stated:

> And that leaves us with, is confinement necessary to avoid depreciating the seriousness of the offense? And that's what the State has argued today. And when you look at these cases and you're trying to determine what decisions the offense is, you have to compare those not to, you know, a burglary of a business or to a drug s[ale]. You have to compare it to similar offenses.
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> And so is the seriousness of this reckless vehicular homicide greater than vehicular homicides? And is it so serious that if you don't order confinement, it would depreciate the seriousness of that? Likewise, the reckless endangerment.
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> In this case, the Court does find that - - to not confine the defendant would deprecate the seriousness of the offense. And I base that solely on the circumstances that we're dealing with the severe pain that has been suffered by Haizley in her short life and her father, which is going to go beyond the physical pain that he felt that day and continues to feel for the rest of his life. And so there are times when justice just requires to avoid deprec[i]ating the seriousness of the offense that confinement be warranted. And so the Court is going to order that these sentences be served in confinement.

Generally, to deny alternative sentencing based solely on the seriousness of the offense, "the circumstances of the offense as committed must be especially violent, horrifying, shocking, reprehensible, offensive or otherwise of an excessive or exaggerated degree, and the nature of the offense must outweigh all factors favoring a sentence other than confinement." *State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006). In order for a trial court to deny probation solely on the basis of the offense itself, "the circumstances of the offense *as particularly committed in the case under consideration* must demonstrate that the defendant committed the offense in some manner more egregious than is contemplated

simply by the elements of the offense." *Trent*, 533 S.W.3d at 292-93 (emphasis in the original). As explained in *Trent*, the legislature specified that probation is to be considered for certain defendants who commit certain crimes regardless of the basic elements of those crimes. If the denial of probation was based solely on the elements of the offense, the very statutes providing for probation eligibility would become moot. *Id.* at 292. Our supreme court has "emphasize[d] that there are no 'magic words' that trial judges must pronounce on the record, it is also critical that, in their process of imposing sentence, trial judges articulate fully and coherently the various aspects of their decision as required by our statutes and case law." *Id*.

Here, the trial court considered the presentence investigation, Defendant's social history, the circumstances surrounding the offenses, and Defendant's lack of a criminal record. The court noted Defendant's actions after the crash, in that he ran and did not help any of the occupants get out of the burning vehicle. The court considered Defendant's potential for rehabilitation and noted his Strong-R assessment indicated a moderate risk.

Although Defendant had no significant prior criminal record, the trial court noted that he pled guilty to a driving revoked offense after the guilty plea in this matter. The trial court concluded that confinement was necessary to avoid depreciating the seriousness of the offense and that the seriousness of Defendant's offenses was greater than other vehicular homicide and reckless endangerment offenses. In imposing incarceration on this basis, the trial court noted the victim's injuries and the "severe" pain she suffered in the days after the accident before she died.

Our review of the record indicates that the trial court "approache[ed] the process only after thoroughly familiarizing [itself] with the applicable provisions of our Sentencing Act" and properly applied the provision of the Act to the facts of this case. *See Trent*, 533 S.W.3d at 292. The trial court was able to "articulate fully and coherently the various aspects of the[] decision as required by our statutes and case law." *Id.* The trial court relied on the circumstances of the offense as particularly committed in this case by noting that after driving the car at a high rate of speed with passengers in the car, the car wrecked and burst into flames. Haizley, the minor victim, suffered injuries so significant that she was transported from Knoxville to Vanderbilt in Nashville via LifeFlight for treatment. She succumbed to her injuries a little over a week after the accident. Two adult passengers were trapped in the car and only able to exit from the driver's side door. They heroically went back into the burning vehicle to rip the car seat holding the toddler free to get her out of the vehicle, while Defendant ran from the scene. Defendant's actions after the wreck went beyond the recklessness required for the crime, evincing a disregard for the human lives within the vehicle, including his two friends and fifteen-month-old child who was left strapped in a car seat inside a burning vehicle. The trial court noted that the offense was

"tragic" and "sad" and that the injuries to the deceased victim were "severe" noting especially her "suffering" after the accident.

We conclude that no abuse of discretion has been shown. The trial court was clearly heavily swayed by the particular circumstances of the offense as committed in this case and stated on the record that "there are times when justice just requires to avoid deprec[i]ating the seriousness of the offense" in denying alternative sentencing. Defendant's actions at the time of the crash by running away from the scene arguably contributed to the suffering and ultimately the death of the helpless victim. Although the trial court did not use the terms "especially violet, horrifying, shocking, reprehensible, or offensive or otherwise excessive or exaggerated degree," we are satisfied that the language used by the trial court in describing the particular circumstances of the offense as committed here, meets the standard requited by *Trotter*. *See Trotter*, 201 S.W.3d at 654-56.

Moreover, Defendant failed to meet his burden to demonstrate probation would serve the ends of justice and the best interest of both the public and Defendant. The trial court concluded as much when he denied judicial diversion.

Further, our review of the trial court's findings as stated on the record, lead us to conclude that the trial court articulated fully and coherently the various aspects of its decision as required by our statutes, case law, and in keeping with the mandate of *Trent*. Defendant is not entitled to relief.

CONCLUSION

For the foregoing reasons, the judgments of the trial court are affirmed.

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TIMOTHY L. EASTER, JUDGE