IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 12, 2023

STATE OF TENNESSEE v. TAYLOR BRENT FARLEY

Appeal from the Circuit Court for Sequatchie County
No. 2021-CR-23 Justin C. Angel, Judge

No. M2022-01691-CCA-R3-CD

Defendant, Taylor Brent Farley, pleaded guilty to one count of attempted delivery of fentanyl, a Class C felony. Defendant sought judicial diversion, but the trial court denied diversion and imposed a six-year sentence on Community Corrections. On appeal, Defendant contends the trial court erred by denying judicial diversion. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

MATTHEW J. WILSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and KYLE A. HIXSON, JJ., joined.

Howard L. Upchurch, Pikeville, Tennessee, and L. Thomas Austin, Dunlap, Tennessee, for the appellant, Taylor Brent Farley.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Courtney C. Lynch, District Attorney General; and Steven H. Strain, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Background

A. Procedural History

In May 2021, the Sequatchie County Grand Jury indicted Defendant for one count of second degree murder by the distribution or delivery of fentanyl. Tenn. Code Ann. § 39-13-210(a)(3). On June 9, 2022, Defendant entered a guilty plea, pursuant to a plea agreement, to the reduced charge of attempted delivery of fentanyl, a Class C felony. *See id.* §§ 39-17-417(c)(1) (delivery of fentanyl), 39-12-101 (attempt). As a Range I, standard

offender, Defendant faced a sentence of fifteen to twenty-five years for the indicted offense, but under the terms of the plea agreement the parties agreed to a six-year sentence on the reduced charge. The parties also agreed Defendant would serve no more than one year in the county jail. The manner of service for Defendant's sentence was decided by the trial court at a sentencing hearing held on November 30, 2022.

B. Factual Summary

At the plea hearing, the State offered the following factual basis for Defendant's guilty plea:

> If this case came to trial, the State would be calling as its primary witness, Ayriel Novack, special agent with the Tennessee Bureau of Investigation. The State would show that on the 12th day of November, 2020, in Sequatchie County, that [Defendant] did deliver a substance containing fentanyl to one Garrett Castle [the victim]. That there was a text message, or electronic communications between [Defendant] and [the victim]. [The victim] had actually electronically transferred the funds to purchase the narcotics. That [the victim] ingested the narcotics. We would be calling a medical examiner out of Nashville, who performed the autopsy on the body of the [victim], and he would testify that the cause of death was an overdose of fentanyl, and that would essentially be the State's proof in this case.

II. Sentencing Hearing

At the hearing, Tennessee Bureau of Investigation (TBI) Special Agent Heath Frizzell, a criminal investigator who worked on this case, testified that based on his work in TBI's drug investigative division, he believed there was a "[v]ery serious" problem with drug overdose deaths in the Twelfth Judicial District and nationwide. He acknowledged fentanyl posed an especially serious problem because fentanyl users would have "no idea how much they're getting in each" pill containing fentanyl.

Leann Raber, the victim's mother, testified that she had known Defendant since Defendant was a child. Despite this longstanding relationship, Ms. Raber denied that Defendant had expressed remorse to her over the victim's death. In her victim impact statement, which she read into evidence at the sentencing hearing, Ms. Raber stated that she considered Defendant "one of the family" before the victim's death. She then described Defendant as the victim's "enabler," asserting that Defendant was aware of the victim's "struggle with addiction, and [Defendant] knew the lengths [she and the victim's step-father] were going through to help him recover." She added:

> I even let you pick him up from rehab. You could have given him drugs on that day for all I know. And what blows my mind in this whole situation, is that you would not help the TBI officers, agents, and the officers. You wouldn't help [them] work [the victim's] case.

The State also introduced the written victim impact statement of Robert Raber, the victim's stepfather. Mr. Raber wrote that he found his stepson's body slumped over his bed, facedown. When Mr. Raber touched the victim, his body was "ice cold," and "[the victim's] face was smashed in from where he was facedown. All his blood was [pooled] to his face which made his face black." Mr. Raber wrote, "That replays in my head multiple times a day," and "I ask myself what could I have done differently." He also wrote that after the victim's death, "There is a missing piece in our family." He explained how the victim's sister "walks around lost on most days," and how the victim's mother lays in bed when she gets home from work. Mr. Raber also wrote that after the victim's death, Defendant sent the victim's mother harassing text messages, and Defendant blamed Mr. Raber for having him arrested for the victim's death. Mr. Raber and his family asked the trial court to deny Defendant judicial diversion.

The State also introduced the presentence report completed by the Tennessee Department of Correction before this sentencing hearing. The presentence report reflected that three days after the victim's body was found, Defendant spoke with TBI Agents Novak and Frizzell. Defendant told the agents that at the time of the victim's death, Defendant lived with the victim and "had a close relationship" with him, but Defendant claimed "he had no idea" from whom the victim had obtained fentanyl pills. Defendant also claimed that he had last seen the victim two days before his death and had spent the evening before the victim's death with a female acquaintance.

Four months later, after the TBI investigation uncovered electronic communications and a money transfer between the victim and Defendant, the two TBI agents interviewed Defendant again. Defendant continued to deny seeing or speaking with the victim the day before his death. Defendant also denied using fentanyl for at least eight months, but he acknowledged that he "moved" fentanyl pills two weeks before the victim's death and that he bought fentanyl pills a few days before the victim's death. When confronted with phone records suggesting Defendant and the victim spoke by phone the day before the victim died, Defendant told the agents that he could not remember the substance of the conversation. When confronted with records of online messages sent between Defendant and the victim concerning the victim's sending Defendant money for fentanyl, Defendant told the agents that the victim owed Defendant money and Defendant "never sold fentanyl pills." According to the presentence report, Defendant then ended this

interview, apparently the last interview between Defendant and law enforcement before he was indicted.

Defendant presented the testimony of two friends and one family member on his behalf. Donnie Johnson, who had worked with Defendant, described Defendant's work ethic as a "[nine] out of [ten]," and that "he's a very talented young man. He catches on quick. He's a real good operator, equipment operator." Mr. Johnson shared that his son also overdosed three years prior, and sympathized with the victim's mother. Kelvin Davis, a foreman who also worked with Defendant when Defendant was hired as an apprentice, also testified. Mr. Davis stated that Defendant had a strong work ethic and was always on time for work.

Defendant's father, Travis Farley, testified next and began by describing Defendant and the victim as "best friends. . . . [I]nseparable." He then explained Defendant's job, and noted that Defendant graduated early from his apprenticeship. He stated that Defendant was supervising six people and worked ten-hour shifts, six days a week. Mr. Farley stated that on Defendant's days off, he was usually home or helping his grandfather at work. He was aware of Defendant's involvement in drugs at some point, but he "wasn't really sure about it [till] all of this [came] about" because "it wasn't at my house, you know." He then explained Defendant's frequent, random drug testing and noted that they were all negative. He stated that immediately after the victim's death:

> [Defendant] came back home and there was a lot of sleepless times, and a lot of hard times around the house. At that point, he didn't really have any motivation to do nothing. You know, just sit around the house and . . . like I say a lot of sleepless nights and a lot of long talks, you know.

Now, two years after the victim's death, Mr. Farley stated that there were still a lot of sleepless nights for Defendant, who consumed himself with work. Mr. Farley stated that, in his opinion, Defendant had not moved on. Mr. Farley conceded that he was unaware Defendant had lied to the TBI, and prior to 2020, he saw no signs of drug use in Defendant. Mr. Farley also acknowledged he was unaware Defendant admitted to the TBI that he (Defendant) sold fentanyl several weeks before the victim's death. Mr. Farley stated that at the time, he and Defendant did not have a lot of contact because of how much they both worked.

Defendant offered an unsworn allocution, explaining his close relationship with the victim and describing "the honor and privilege of serving as a pallbearer . . . at [the victim's] funeral." He also acknowledged that he "knew a lot about [the victim's] struggles, and [the victim] knew a lot about my struggles. His death was the most traumatic

thing that I've ever had happen in my life, or had to go through." Defendant conceded that he had trouble sleeping "knowing [his] activities contributed to [the victim's] passing."

At the close of the proof, the State did not argue against judicial diversion explicitly but addressed the factors the trial court was required to consider. The State observed that that Defendant "lied to the TBI agents about the circumstances of the victim's death on several occasions[.]" The State also noted Defendant did not express remorse for the victim's death until the sentencing hearing. Furthermore, the State expressed "concern" regarding a diversionary sentence considering "the deterrence value to the defendant and to others given the terrible problem we have with overdoses[.]"

Defense counsel responded by arguing that if the trial court denied Defendant judicial diversion, the tragedy of the victim's death would be "compounded by yet another harsh tragedy created by laws and courts," namely, forcing Defendant to go through life "encumbered and branded as a felon." Defense counsel noted that the trial court "cannot simply deny diversion because . . . a victim's parents are opposed to diversion." Defense counsel argued Defendant was amenable to correction, had no criminal record other than the conviction giving rise to this case, and had avoided using drugs since the victim's death. Defense counsel explained Defendant was a favorable candidate for diversion based on the Defendant's stable employment and family support. Defense counsel contended the circumstances of the victim's death were not aggravated given the close relationship between Defendant and the victim and the victim's voluntary drug use. Regarding deterrence, Defense counsel argued judicial diversion would require Defendant to be accountable to the trial court, and counsel argued that denying diversion would not be in the public's best interest because "branding this 22[-]year[-]old man as a felon for the rest of his life is not going to serve the interest of the public." Additionally, defense counsel informed the trial court that he and co-counsel advised Defendant and his family not to speak with the victim's family previously because "when there's any type of criminal prosecution, which there was in this case, lawyers are trying to insulate their client as best as possible."

The trial court denied the Defendant's request for judicial diversion and ordered Defendant to serve his six-year sentence on Community Corrections. The trial court also ordered the Defendant to pay the victim's funeral costs of $6,201 and headstone costs of $1,500. This timely appeal followed.

III. Analysis

Defendant argues the trial court erred by refusing his request for judicial diversion. The State argues that the trial court properly acted within its discretion in denying judicial diversion to Defendant.

A. Standard of Review

The Tennessee Supreme Court has recognized 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). Our supreme court has stated that "the abuse of discretion standard of appellate review accompanied by a presumption of reasonableness applies to all sentencing decisions." *State v. King*, 432 S.W.3d 316, 324 (Tenn. 2014) (citing *State v. Pollard*, 432 S.W.3d 851, 864 (Tenn. 2013)). This standard also applies to "questions related to probation or any other alternative sentence." *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). The supreme court has also stated this standard of appellate review applies to a trial court's decision to grant or deny judicial diversion. *See King*, 432 S.W.3d at 324.

However, to be afforded deference on appeal, the trial court must "place on the record any reason for a particular sentence." *Bise*, 380 S.W.3d at 705. In the context of judicial diversion, the presumption of reasonableness does not apply when "the trial court fails to consider and weigh the applicable common law factors[.]" *King*, 432 S.W.3d at 327-28. The same holds true for alternative sentencing decisions. *Caudle*, 388 S.W.3d at 29. But as this court has observed:

> [T]rial courts need not comprehensively articulate their findings concerning sentencing, nor must their reasoning be "particularly lengthy or detailed." *Bise*, 380 S.W.3d at 706. Instead, the trial court "should set forth enough to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority." *Id.* [(citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007))].

State v. Sheets, No. M2022-00538-CCA-R3-CD, 2023 WL 2908652, at *4 (Tenn. Crim. App. Apr. 12, 2023) (alterations in original), *no perm. app. filed*.

In short, the trial court's sentencing decision will be upheld on appeal "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *Bise*, 380 S.W.3d at 709-10. A defendant bears the burden of proving the sentence is improper. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts; *see also State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

In determining the proper sentence, the trial court must consider: (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 the mitigating and enhancement factors set out in Tennessee Code Annotated sections 40-35-113 and 114; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; (7) any statement the defendant made in the defendant's own behalf about sentencing; and (8) the result of the validated risk and needs assessment conducted by the Department of Correction and contained in the presentence report. Tenn. Code Ann. § 40-35-210(b); *see State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). The trial court must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. Tenn. Code Ann. § 40-35-103.

B. Judicial Diversion

Following a determination of guilt by plea or trial, a trial court may defer further proceedings and place a qualified defendant on probation without entering a judgment of guilt. *Id.* § 40-35-313(a)(1)(A); *State v. Dycus*, 456 S.W.3d 918, 925 (Tenn. 2015). The trial court's deferral of proceedings under section 40-35-313 is commonly referenced as "judicial diversion." "Upon successful completion of the probationary period under judicial diversion, 'the court shall discharge the person and dismiss the proceedings against the person.'" *Dycus*, 456 S.W.3d at 925 (quoting Tenn. Code Ann. § 40-35-313(a)(2)). Following such dismissal, the defendant may seek expungement of the defendant's criminal record. *Id.* (first citing Tenn. Code Ann. § 40-35-313(a)(1)(A); and then citing *State v. King*, 432 S.W.3d 316, 323 (Tenn. 2014)). As such, "judicial diversion is not a sentence; rather, the grant or denial of judicial diversion is simply a decision to defer a sentence or to impose one." *Sheets*, 2023 WL 2908652, at *6 (citing *King*, 432 S.W.3d at 324-25). "Our supreme court has described judicial diversion as a 'legislative largess' available to a qualified person." *Id*. (quoting *State v. Schindler*, 986 S.W.2d 209, 211 (Tenn. 1999)).

A trial court may order judicial diversion for certain qualified defendants who: are found guilty of or plead guilty or nolo contendere to a Class C, D, or E felony or a lesser crime; have not previously been convicted of a felony or a Class A misdemeanor; and are not seeking deferral for a sexual offense. *See* Tenn. Code Ann. § 40-35-313(a)(1)(B)(i). Yet a defendant eligible for judicial diversion is not entitled to diversion as a matter of law. *See State v. Bonestel*, 871 S.W.2d 163, 168 (Tenn. Crim. App. 1993), *overruled on other grounds by State v. Hooper*, 29 S.W.3d 1, 9 (Tenn. 2000)). The grant or denial of judicial diversion is within the discretion of the trial court, and will be reviewed for an abuse of discretion with a presumption of reasonableness. *See King*, 432 S.W.3d at 329.

In determining whether to grant diversion, the trial court must consider the following factors: (1) the accused's amenability to correction; (2) the circumstances of the

offense; (3) the accused's criminal record; (4) the accused's social history; (5) the accused's physical and mental health; (6) the deterrence value to the accused as well as others; and (7) whether judicial diversion will serve the interests of the public as well as the accused. *State v. Electroplating*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998) (first citing *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996); and then citing *Bonestel*, 871 S.W.2d at 168).

Our supreme court has observed that when a trial court identifies the relevant *Parker/Electroplating* factors and "places on the record its reasons for granting or denying judicial diversion, the appellate court must apply a presumption of reasonableness and uphold the grant or denial so long as there is any substantial evidence to support the trial court's decision." *King*, 432 S.W.3d at 327 (footnote omitted). A presumption of reasonableness does not require the trial court to apply all the factors; it requires only that the trial court consider all of them, and then render its decision using the factors applicable to the case. *Id.* Nor need trial courts provide a lengthy or detailed explanation of their reasoning; they must only "'set forth enough to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority.'" *Bise*, 380 S.W.3d at 706 (quoting *Rita*, 551 U.S. at 356-57). But if the trial court fails to consider and weigh all the relevant factors, "the appellate courts may either conduct a de novo review or, if more appropriate under the circumstances, remand the issue for reconsideration." *King*, 432 S.W.3d at 327-28. Such a decision "is within the discretion of the reviewing court." *Id.* at 328.

C. Application

In this case, the trial court stated on the record that it had reviewed each of the *Parker/Electroplating* factors. The trial court addressed each factor individually and made detailed on-the-record findings as to those factors applicable to Defendant's case. Thus, under *King*, *Bise*, and related cases, this court shall review the trial court's sentencing determination with considerable deference. After review, we conclude the trial court did not err in denying diversion in this case.

In reviewing the *Parker/Electroplating* factors individually, the trial court found three of the factors weighed in Defendant's favor. The trial court observed that Defendant was amenable to correction, citing Defendant's good behavior, stable employment, and negative drug screens since his arrest. The trial court gave this factor "great weight" in Defendant's favor. The trial court similarly found that Defendant had no criminal history other than the present offense and weighed this factor in Defendant's favor. Regarding Defendant's social history, in his brief Defendant argues that the trial court's description of "the Defendant/Appellant as a drug dealer was contrary to the record and substantial evidence shows just the opposite." However, Defendant admitted to law enforcement that

he and the victim had a history of buying and exchanging pills. Despite this history, the trial court weighed the "social history" factor in Defendant's favor after finding that Defendant had stable employment, family support, and no criminal history. We conclude the trial court's factual findings as to these three factors and the weight afforded these factors were supported by the record.

Regarding Defendant's physical and mental health, the trial court stated there were no "physical issues that [it needs] to consider" and no mental health "factors or proof here that [it needs] to consider for that factor." Defendant takes issue with the trial court's findings, stating in his brief that the presentence report reflected that Defendant had no mental disabilities and that his physical health was excellent. Defendant argues that "[t]he [c]ourt ignored this evidence and did not place any weight, positive or negative, on this factor, despite substantial evidence which supported a favorable finding." However, as stated above, trial courts are given great discretion when considering whether to grant judicial diversion, and the presumption of reasonableness does not require the trial court to apply all the factors. Instead, a trial court need only consider all factors and apply the factors applicable to the case. *King*, 432 S.W.3d at 327. Further, trial courts must provide enough information to show appellate courts that it considered the parties arguments and has a reasoned basis for its decision. *Id.* Defendant's brief does not identify any substantial evidence that the trial court unreasonably disregarded, and Defendant has not explained how the physical and mental health factor makes Defendant a more favorable candidate for judicial diversion. Therefore, we find no error in the trial court's analysis of this factor.

The trial court found that the remaining three factors weighed against granting diversion and concluded that the three factors outweighed those factors supporting diversion. In addressing the circumstances of the case, the trial court stated:

> You have a friend that gives another friend drugs, that friend knows that the drugs contain fentanyl, which anybody that -- unless you've had your head in the sand the past couple of years you understand how dangerous and lethal, toxic, deadly, the fentanyl is. It's a horrible substance that, you know, officers are afraid to even touch without gloves at crime scenes and yet [Defendant] knew that the pills contained fentanyl and purposely gave those to his friend to consume. So -- and that consumption caused the death of [the victim].
>
> So in looking those are circumstances of the offense and those are about as egregious as you can get, and so those circumstances do not favor you at all, and the [c]ourt weighs that heavily as well.

Defendant argues that the trial court erred when it stated that "anybody" understands how dangerous, lethal, toxic, and deadly fentanyl is. Defendant claims that nothing in the record supports this assertion and states, "While the circumstances were certainly tragic, they were not aggravated, brutal, malicious or depraved." However, as stated above, reviewing courts use a deferential standard of review so long as the trial court "articulate[s] in the record its reason for imposing the sentence." *Bise*, 380 S.W.3d at 705-06. In this case, the trial court clearly articulated its reasoning for applying this factor. The record supported the trial judge's finding that Defendant provided the victim fentanyl despite the Defendant's awareness of the victim's drug use, and Agent Frizzell testified regarding overdose issues facing the Twelfth Judicial District. Thus, we conclude the record supports the trial court's findings as to this factor and the weight accorded by the trial court.

Regarding deterrence value to the accused and as others, the trial court found:

> [D]eterrence is hard to measure, but it is still the standard of which we have to make these decisions in. And again, everybody that lives in this area knows how dangerous drugs are. The uptick in overdoses, the dangerous qualities of fentanyl, everybody knows that, and we are trying to deter that behavior. We are trying to deter that coming into our -- into our community. And it was testified to, I believe you had contacted somebody in Chattanooga, bought it in Chattanooga and then brought it over into the valley. I mean that's the exact type of behavior that we don't want to happen. There's a reason, you know, that we live in the valley, we don't live over in Chattanooga. We are trying to avoid some of the issues they have over there, we don't want [them] brought over the mountain.
>
> And so the deterrence value to the defendant, who knows. I'm hoping that this, what's happened in the past couple of months is a sign of, that you've changed your life and that you are moving forward with your life, I hope that's the case. But also in deterring that behavior, I'd just fix the sentence that will deter you from . . . doing anything like that ever again the rest of your life.
>
> Also to send the message to the community that we will not tolerate this type of behavior. We cannot tolerate going and getting drugs from Chattanooga and bring it to the valley and giving fentanyl to our friends, that's something that we have to deter. That is the -- that factor has the most weight and value that I could possibly give to it, and it really -- outweighs every other factor when I balance it and compare it to all the other factors.

Defendant argues that the trial court's analysis of this factor, particularly the trial court's emphasis on the danger of fentanyl and the importance of protecting the community by deterring individuals from bringing narcotics, "over the mountain," was unsupported by the record. However, as stated above, Agent Frizzell, a TBI narcotics investigator with twenty years' experience, testified at the sentencing hearing and categorized the overdoses in the district as "very serious" considering how dangerous fentanyl is. Thus, after reviewing the record, we conclude that the trial court's application of this factor and the weight afforded it were supported by the record.

Finally, as to whether judicial diversion would serve the public's interest, the trial court stated:

> I'm not going to repeat myself, but . . . granting you judicial diversion on this case would not serve the interest of the public. It is a -- that would be completely forgiving an activity that was intentional that took the life of your friend. If this had been an accident, and there was proof in the record that shows that. If there was proof that showed that, then I would have a different analysis today. But the intent, the knowing aspect of knowing there was fentanyl, giving it to your friend on purpose, that's -- that's something that, if I just grant -- if people just keep doing that and I just keep granting judicial diversion on that, that is not going to show give the best interest to the public or the defendant.

Defendant argues that the trial court improperly weighed the "public interest" factor, citing several cases where trial courts have given a more sympathetic analysis of these factors. However, as stated previously the trial court is given great discretion to consider these factors, and its ruling must be upheld so long as there is any substantial evidence to support its decision. *King*, 432 S.W.3d at 327. The trial court's factual findings and weight afforded this factor are supported by the record, so this court will not disturb the trial court's discretion as to this issue.

In sum, the discretion afforded to the trial court in deciding whether a defendant is entitled to judicial diversion is substantial, and nothing in the record here indicates that the trial court improperly considered the *Parker/Electroplating* factors it found relevant. The trial court's findings as to the judicial diversion factors and the weight afforded them were supported by the record. Accordingly, we affirm the trial court's denial of judicial diversion in this case.

IV. Conclusion

For the reasons stated above, we affirm the judgment of the trial court.

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MATTHEW J. WILSON, JUDGE