

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
May 23, 2023 Session

**FILED**  
07/06/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. JAMES PITTS**

**Appeal from the Criminal Court for Knox County  
No. 113586 G. Scott Green, Judge**

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**No. E2022-01375-CCA-R3-CD**

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The defendant, James Pitts, pled guilty to one count of aggravated assault in exchange for a sentence of six years with the manner of service to be determined by the trial court. Following a sentencing hearing, the trial court ordered the defendant's six-year sentence be served in confinement. On appeal, the defendant argues that the trial court erred in imposing a sentence of incarceration rather than an alternative sentence. After reviewing the record, the parties' briefs and oral arguments, and the applicable law, we conclude the trial court failed to acknowledge most of the relevant statutory considerations or articulate the reasons for the sentence of confinement in accordance with the purposes and principles of sentencing. Therefore, we remand the case for the limited purpose of having the trial court make the appropriate findings on whether the defendant should receive an alternative sentence or a sentence of incarceration, noting that the trial court shall fully articulate its reasoning in accordance with the applicable statutes and case law. Accordingly, the judgment of the trial court is reversed, and the case is remanded to the trial court.

**Tenn. Crim. App. P. 3 Appeal as of Right; Judgment of the Criminal Court  
Reversed and Remanded**

J. ROSS DYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and ROBERT H. MONTGOMERY, JR., J., joined.

James A.H. Bell, Knoxville, Tennessee, for the appellant, James Pitts.

Jonathan Skrmetti, Attorney General and Reporter; Courtney N. Orr, Senior Assistant Attorney General; Charmé P. Allen, District Attorney General; and Ashley McDermott, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

### *Facts and Procedural History*

In August 2018, the defendant was charged by presentment with two counts of aggravated sexual battery for offenses committed against his step-granddaughter, K.T.<sup>1</sup> An order was later filed to add a third count, for aggravated assault,<sup>2</sup> to which the defendant entered a plea of guilty on September 9, 2022. Under the terms of the plea agreement, the two counts of aggravated sexual battery were dismissed, and the State agreed not to prosecute allegations involving another victim, E.C., the victim's younger cousin. The underlying facts of the offense were stipulated to by the parties as follows:

[O]n or between the 14th day of August, 2013, and the 30th day of September, 2015, here in Knox County, Tennessee, [the defendant] did unlawfully and knowingly cause serious bodily injury to K.T. in violation of T.C.A. 39-13-102, against the peace and dignity of the State of Tennessee.

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[W]ere this case to go to trial, the [S]tate anticipates that the witnesses listed in the presentment would show that this offense occurred between August 14th, 2013, and September 30th of 2015, when the victim was in the third grade and attending Copper Ridge Elementary School.

This defendant is the maternal step-grandfather of the victim [K.T.] The victim in this case, [ ], was eight to nine years old at the time of these incidents. We anticipate that K.T. would testify that this defendant, who she called "Poppy," picked her up from school and took her to his home here in Knox County, that on several occasions while his pants were unzipped he had K.T. touch his penis with her hand. She reported that after this abuse occurred Poppy would change his clothes. The proof would show that K.T. disclosed the abuse to her mother in late 2017. On October 3rd of 2017, K.T. was forensically interviewed at Childhelp U.S.A. and did report the abuse to a forensic interviewer.

The parties also stipulated that the serious bodily injury sustained by K.T. was severe emotional trauma.

The victim also made a statement at the guilty plea hearing describing how the defendant's actions had impacted her life. The victim said that the defendant had taken "so

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<sup>1</sup> It is the policy of this Court to refer to minor victims by initials only.

<sup>2</sup> The defendant affirmatively waived the statute of limitations for this count.

much of [her] childhood away from [her].” The defendant caused her “so much pain, guilt, and stress because [she] truly believed it was [her] fault.” She had to go to therapy to “cope with all the trauma” she suffered “just for [the defendant’s] pleasure.” The victim stated that although the defendant took away her innocence as a child, she was now a stronger person and knew she could get through anything.

After voir diring the defendant and hearing the victim’s statement, the trial court found the defendant’s plea was freely and voluntarily entered, found there was a sufficient basis to support the plea, and accepted the defendant’s plea.

The trial court conducted a sentencing hearing on September 9, 2022, at which the victim, K.T., testified. The victim reiterated the emotional trauma she suffered due to the defendant’s actions and requested the trial court to deny probation. With regard to the underlying facts, the victim testified that the defendant was her grandfather, and he would sometimes take her out for lunch or ice cream when she was in elementary school. The victim could not remember how the abuse started, but the defendant made the victim touch his penis on at least five occasions over the years. The abuse happened over the period of time when the victim was in the second through fourth grades.

The victim did not report the abuse to her mother until she was in the seventh grade. She was suffering from anxiety, having panic attacks on a regular basis, and dealing with feelings of guilt that she could not express. The victim also worried that her younger cousin, E.C., would be subjected to the same abuse. After she reported the abuse, the victim attended therapy for almost a year to cope with the emotional aftereffects of the trauma. The victim recalled that when her grandmother heard about the victim’s allegations, her grandmother expressed concern that it was also happening to the victim’s cousin.

Over defense objection, the victim’s cousin, E.C., who was not a named victim in the case, testified about the sexual abuse she suffered from the defendant, her step-grandfather. E.C. stated that the defendant touched her “very inappropriately” from the time she was in kindergarten until she was in fifth grade. E.C. elaborated that the defendant touched the outside of her vagina and her breasts with his mouth and hands. According to E.C., the defendant would touch her “literally everywhere. Like there was no place[]” he did not touch. E.C. recalled that the abuse happened “very, very frequently” when her family lived with the defendant and “almost every time” she visited the defendant when they did not live together. On one occasion when E.C.’s family was living with the defendant, the defendant woke E.C. while she was sleeping, pulled down his pants, and made E.C. “touch his penis and put it in [her] mouth.” E.C. told the defendant she did not want to do what he was asking, but he did not care and proceeded with his actions.

E.C. testified that the defendant told her not to report the abuse, and she was afraid it would “mess with [her] family” if she told anyone. E.C.’s family learned of the abuse when E.C.’s stepmother found E.C.’s diary in which she had written that the defendant “liked my girl parts.” E.C.’s stepmother gave the diary to the authorities, and DCS became involved at that point.

The defendant’s presentence report and psychosexual reports from both Virginia and Tennessee were entered into evidence.<sup>3</sup> The presentence report showed that the defendant had a prior conviction in Virginia for “indecent phone calls” in 1991. The Strong-R assessment from the Tennessee Department of Correction concluded the defendant was a low risk to reoffend.

The State argued that the defendant’s sentence should be served in confinement to avoid depreciating the seriousness of the offense and to protect society by restraining the defendant who had a long history of criminal conduct based on testimony that the defendant had sexually abused his granddaughters numerous times over a period of several years. The State also asserted that the defendant’s likelihood for rehabilitation was low due to the defendant’s insistence that the victim’s claims were a “misinterpretation of what happened.”

The defendant argued that his sentence should be served on probation, noting the positive behaviors he had maintained during the pendency of the case. He also noted that he had moved out of state and away from the victim and E.C. The defendant averred that the psychosexual reports concluded that he was a low risk to reoffend, and he asserted that the original charges and allegations “were abandoned and went away” when he pled guilty to aggravated assault.

After hearing arguments from the parties, the trial court ordered the defendant’s six-year sentence be served in confinement. The court found K.T. and E.C. to be “very, very credible” witnesses. The court also noted that the defendant’s guilty plea had significantly lessened his sentencing exposure compared to the original charged offenses of aggravated sexual battery and charges that could have arisen from E.C.’s allegations. The court commented that the defendant had “already received a significant and enormous break” and questioned whether it would have accepted the defendant’s plea had it known all the facts at the time the plea was entered. The defendant appealed from the trial court’s sentencing determination.<sup>4</sup>

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<sup>3</sup> The defendant was living in Virginia and had an evaluation conducted there as well, but the trial court stated it was only going to rely on the report from Tennessee.

<sup>4</sup> The trial court also denied bond pending appeal, and both this Court and the Tennessee Supreme Court denied the defendant’s motion for review of that order.

## *Analysis*

On appeal, the defendant argues the trial court abused its discretion in failing to consider the sentencing factors and summarily denying alternative sentencing based solely on the nature of the offense. The State responds that the trial court properly ordered the defendant to serve his sentence in confinement.

In determining an appropriate sentence, a 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 mitigating and enhancement 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 the defendant makes on his own behalf as to sentencing; and (8) the potential for rehabilitation. Tenn. Code Ann. §§ 40-35-103(5), -113, -114, -210(b).

The standard of review for questions related to probation or any other alternative sentence is an abuse of discretion with a presumption of reasonableness for within-range sentences reflecting a decision based upon the principles and purposes of sentencing. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). “[A] trial court’s decision to grant or deny probation will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination.” *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014) (order) (per curiam). However, our supreme court has reiterated that the ruling in *State v. Bise*, 380 S.W.3d 682 (Tenn. 2012), “specifically requires trial courts to articulate the reasons for the sentence in accordance with the purposes and principles of sentencing in order for the abuse of discretion standard with a presumption of reasonableness to apply on appeal.” *State v. Pollard*, 432 S.W.3d 851, 861 (Tenn. 2013) (citing *Bise*, 380 S.W.3d at 698-99). “[A]ppellate courts cannot properly review a sentence if the trial court fails to articulate in the record its reasons for imposing the sentence.” *Bise*, 380 S.W.3d at at 705 n.41.

Generally, probation is available to a defendant sentenced to ten years or less. Tenn. Code Ann. § 40-35-303(a). However, no criminal defendant is automatically entitled to probation as a matter of law. *State v. Davis*, 940 S.W.2d 558, 559 (Tenn. 1997). Rather, the defendant bears the burden of proving his or her suitability for alternative sentencing options. *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008) (citing Tenn. Code Ann. § 40-35-303(b)). The defendant must show that the alternative sentencing option imposed “will subserve the ends of justice and the best interest of both the public and the defendant.” *Carter*, 254 S.W.3d at 347 (quoting *State v. Housewright*, 982 S.W.2d 354, 357 (Tenn.

Crim. App. 1997)) (internal quotation marks omitted). In determining a defendant's suitability for an alternative sentence, a trial court must 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) the deterrence value to the defendant and others. *See State v. Trent*, 533 S.W.3d 282, 291 (Tenn. 2017).

Before imposing a sentence of full confinement, the trial court should consider whether “[c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;” “[c]onfinement 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 “[m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]” Tenn. Code Ann. § 40-35-103(1)(A)-(C); *see State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006). “If the seriousness of the offense forms the basis for the denial of alternative sentencing, Tennessee courts have held that 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.” *Trotter*, 201 S.W.3d at 654 (quotations omitted).

In addition, the sentence imposed should be (1) “no greater than that deserved for the offense committed,” and (2) “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” Tenn. Code Ann. § 40-35-103(2), -103(4). The party appealing a sentence bears the burden of establishing that the sentence was improper. *Id.* Tenn. Code Ann. § 40-35-401, Sentencing Comm’n Cmts.

While great deference is given to the trial court in sentencing matters, the trial court is required to at least make minimal findings. Here, however, the record reveals that the trial court essentially determined the defendant had received enough of a “break” by being allowed to plead guilty to aggravated assault, and the court focused on the sentence the defendant would have received had he been convicted of multiple counts of aggravated sexual battery or rape of a child. The trial court failed to acknowledge any other relevant statutory considerations or articulate the reasons for the sentence of confinement in accordance with the purposes and principles of sentencing. As our supreme court has said, “although . . . 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.” *Trent*, 533 S.W.3d at 292. Therefore, we remand the case for the limited purpose of allowing the trial court to make the appropriate findings on whether the defendant should

receive an alternative sentence or a sentence of incarceration, noting that the trial court shall fully articulate its reasoning in accordance with the applicable statutes and case law.

*Conclusion*

Based upon our review, we remand the case to the trial court for further proceedings consistent with this opinion.

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J. ROSS DYER, JUDGE