

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 11, 2023

FILED

08/08/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. EULA BEASLEY

**Appeal from the Criminal Court for Davidson County
No. 2021-B-978 Angelita Blackshear Dalton, Judge**

No. M2022-00842-CCA-R3-CD

The Defendant-Appellant, Eula Beasley, entered a guilty plea in the Davidson County Criminal Court to aggravated robbery (count one) and possession of a firearm with a prior conviction for a crime of violence (count two), for which he received an eight-year sentence for each count with the manner of service to be determined by the trial court. Following a sentencing hearing, the trial court ordered these sentences to be served consecutively, for an effective sentence of sixteen years in the Tennessee Department of Correction. In this appeal as of right, the Defendant contends that the trial court erred in imposing consecutive sentences. Upon our review, we affirm the judgments of the trial court.

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

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and MATTHEW J. WILSON, JJ., joined.

Daniel J. Murphy, Lewisburg, Tennessee, for the Defendant-Appellant, Eula Beasley.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Glenn Funk, District Attorney General; and Janice Norman, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On April 11, 2022, the Defendant entered a guilty plea and stipulated to the following facts in support of the plea:

Your Honor, in case [2021-B-978], the State v. Eula Beasley, had this case gone to trial the State's proof would have been that on March 20th at

approximately 1:30 in the morning at the Exxon Plus Market located at 3400 West End Avenue, there were clerks that were working at the market that day, [the Defendant] entered that Exxon store, he had a gun, he pointed it at the clerks, and he robbed them for \$150 of cash.

The investigation by the Metro Nashville Police Department revealed that at least one of the employees was able to identify [the Defendant] as the person that robbed the Exxon store on that night as well as during an interview with detectives [the Defendant] denied being involved in a robbery, even though the detectives had not mentioned that that is what they were investigating at that point in the interview, based on those facts the State recommends the previously announced plea agreement.

On May 27, 2022, the trial court conducted a sentencing hearing, and the presentence report was admitted as an exhibit. The presentence report showed the Defendant had self-reported a good family structure, that he had dropped out of high school in the eleventh grade, and that he had been using drugs since the age of fourteen or fifteen years old. He received a “VOC-ED” certification while incarcerated and reported employment with Rotiers as a cook for fourteen years, Kim’s Boutique as a laborer for one year, and another construction company for one year. The investigator was unable to verify the Defendant’s employment as a cook because the business was permanently closed, but Kim’s Boutique and the other construction company verified the Defendant’s employment. The report also confirmed participation in drug treatment programs in the jail, “Design for Living,” and “Buffalo Valley.” The Defendant self-reported additional treatment at Centerstone, which was not verified by the report. The Defendant further reported that his mental health was fair, and his physical health was good. The report verified the Defendant’s prior criminal history as including convictions of robbery, seven misdemeanor thefts, six domestic violence assaults, three possessions of unlawful drug paraphernalia, two criminal trespasses, misdemeanor vandalism, criminal impersonation, and driving on a suspended, cancelled, or revoked license. The presentence report also included a section listing forty various charges that were found to be dismissed, retired, or returned as nolle prosequi by the State; however, the precise disposition for each charge is not listed. The Strong R Assessment tool rated the Defendant “high” for drug use and recommended a forensic social worker assessment and a cognitive based intervention program.

The Defendant testified that he was familiar with the presentence report and acknowledged that he had been “in and out of the criminal justice system for a pretty long time.” He agreed most of his crimes were committed to support his drug addiction. He said he had a “real bad drug habit” and had been “struggling with it all [his] life.” He started abusing cocaine at age fourteen or fifteen because his sister introduced him to it. He acknowledged that his sister had passed away, but he said that he “still see[s] her.” He

said he was not currently on any drugs and did not have access to any drugs while incarcerated. He agreed he was receiving mental health treatment while incarcerated. He further agreed that he had previously been in a mental health institution and the Mental Health Cooperative. He said he had been going to these institutions “for a while” because he had been “suicidal a few times” and depressed. He said he had not received “much” treatment in these facilities because “they just evaluate you, give you a prescription or medications and send you on your way.” He explained that he had been going to these facilities for “[m]aybe . . . a decade[,]” but he had been homeless for twenty-five years. The Defendant acknowledged reviewing the mental health records with trial counsel, and the records from local psychiatric hospitals, Mental Health Cooperative and Middle Tennessee Mental Health Institute (MTMHI), were admitted into evidence under seal. The Defendant reaffirmed that he had been diagnosed with depression and that the treatment had not been effective.

As to the instant offense, the Defendant explained that he had been doing cocaine all day and was “just wandering around.” He said he found the gun used in the offense on the sidewalk and put it in his pocket. He walked for “some miles” and entered the Exxon Plus Market to get a beer. He explained what happened next as follows:

I was just standing there, standing there, and I just got the urge, like I say, I didn’t pull the gun out, this isn’t supposed to happen, I didn’t pull the gun out to rob them, as soon as I pulled the gun out the man at the cash register just hit the cash register button and put the, the whatever, the thing the money go in and I just took it.

The Defendant took the cash and “[w]ent straight and bought drugs.” He said he believed he should receive a concurrent sentence because he was not a bad person. The robbery “was just something that [sic] just [he] couldn’t control.” Additionally, if given a concurrent sentence, the Defendant agreed to take advantage of the programs while incarcerated, get a job upon release, and lead a productive life. He said he had children and wanted to be a part of their lives.

On cross-examination, the Defendant agreed that prior to the instant offense, he had entered a Tiger Mart convenience store and stole some candy. He denied that he had been banned from the store prior to the theft. The trial court inquired as to the status of that case, and the prosecutor advised that it had been dismissed pursuant to the instant plea agreement. Asked how he would get money to buy cocaine, the Defendant admitted that he shoplifted from convenient stores with the intent to resell the stolen goods on the street. When the prosecutor suggested that the Defendant would need to sell “a lot of candy bars” to buy cocaine, the Defendant explained he was not simply stealing a single candy bar. The Defendant would steal \$100 worth of candy several times a week and sell it at “bootleg

houses” for \$50. About eight or nine years prior to this offense, he participated in two treatment programs while incarcerated but did not complete them. He explained his sentence expired before he could complete one program, and the other program was only twenty-eight days.

While not entirely clear from the record, the prosecutor then began to question the Defendant about charges that were not reflected in the presentence report. The Defendant denied having a robbery from 1995, but he said “it might have [been] a theft or something. I caught a robbery charge in like 2011 and then this one.” Asked to explain an aggravated burglary “that he committed” in 1996 or 1999, the Defendant said that he sold his niece stolen merchandise. When she did not fully pay him, he “pushed the door open while she was there” and took back part of the items he sold her. Asked to explain the circumstances of another prior robbery, the Defendant said that his girlfriend stole someone’s pocketbook, but he took the charge for her. The Defendant denied committing a robbery of a Dollar General store, but he nevertheless admitted that he had a “bad habit of . . . getting drunk – getting high and . . . doing stuff” he was not supposed to do.

Prior to the close of proof, the State requested the trial court to consider the Defendant’s “record” in determining the Defendant’s sentence, which was apparently not included in the presentence report. Upon inquiry by the trial court, the State advised that the record was included in the discovery provided to the Defendant. There was no objection from the Defendant during this exchange. However, the Defendant’s record was not exhibited to the hearing nor provided in the record on appeal. Following the argument of the parties, the trial court imposed consecutive sentencing and reasoned as follows:

All right. I am looking at his record which is quite extensive. I mean, at some point it’s all very repetitive, but it is quite extensive. The Court has while during testimony did review the records from MTMHI and the Mental Health Cooperative and [] what the Court gleaned and it is not contrary to what [defense counsel] has argued with regard to [the Defendant’s] mental health status, his depression, but what I gather from it and I’m no doctor and I try to interpret those records as best as I can and make sure that I’m reading them as accurately as I can, but it seems that a lot of it is drug induced mental health issues, and let me, I will say this Court definitely does not take mental health disorders and the need to properly address them lightly.

The Court acknowledges that the very unfortunate thing that we deal with in our justice system is trying to find the best way to handle situations where people are dealing with mental health disorders. We’re seeing an increased number of people who come through our courts who have mental health disorders and unfortunately, you know, we’re charged in the justice

system, the judges, the attorneys, sometimes probation, community correction, whoever, to try to you know, I am not a mental health professional but we're often charged with the responsibility of handling these cases and trying to determine what is best and appropriate under the circumstance.

[The Defendant] is before the Court having pled guilty to aggravated robbery. That's a serious offense. Aggravated robbery and felon in possession of a weapon, very serious offenses. The Court acknowledges that, that there may be a level of mitigation when the Court factors in his mental health disorders, but the Court – it does not take away from the factors as outlined under 40-35-115, 40-35-117(b)(1) and he basically testified to this.

He in his testimony, he talked about how he often will commit the thefts to make money to buy drugs, commit the thefts of stealing of hundreds of dollars['] worth of candy bars in order to make money to buy drugs. The Court finds that 40-35-115(b)(1) applies.

The defendant is a professional criminal who has knowingly devoted his life to criminal acts as a major source of livelihood, steals candy bars, makes – to sell, to make money to buy drugs. The Court finds that that applies.

The Court finds that number 2 applies. He has an extensive record of criminal activity. I mean, at some point the Court had to stop counting because it was just very extensive, as the State pointed out, more than [thirty] years' worth of criminal conduct.

I counted and I stopped counting, I counted at least five convictions for domestic assault, at least three convictions for possession of drug paraphernalia, at least seven convictions for theft, at least three convictions for criminal trespass, criminal impersonation, and then there is the robbery that he says, he admits to being convicted of a robbery.

He disagrees with the facts of the robbery, but you know, he has a robbery on his record, so he has a very extensive record. When we look at [the Defendant's] history of conduct and how it has progressed over the years under State v. Wilkerson, [905 S.W.2d 933 (Tenn. 1995)], the Court has to determine if consecutive sentencing is going to be necessary to protect the public from further serious criminal conduct by the [D]efendant.

Again, when you look at his history of conduct and, again, I am not at all minimizing the impact of the mental health disorder. I am not at all minimizing that because that is something serious that the Court has to take into consideration, but the Court also has to look at [the Defendant's] conduct and his history of conduct and when his history of conduct involves robbery, assaults, admitted drug use and, again, his mental health issues are drug induced, admitted drug use and how it has progressed.

The Court finds that consecutive sentencing is necessary to protect the public from further serious criminal conduct by [the Defendant], so as such the Court finds that count 2 shall be served consecutively to . . . count 1. All right. And that's the order of the Court. Now, I will say this, the Court will submit a letter to the TDOC for consideration. I can't tell TDOC where to house people, but I will ask them to consider DeBerry.

The Defendant filed a timely notice of appeal, and this matter is now properly before this court for review.

ANALYSIS

The Defendant contends the trial court erred in imposing consecutive sentencing. Specifically, the Defendant argues the trial court "did not adhere to the sentencing considerations" and failed to explicitly articulate how the aggregate sixteen-year sentence was the least severe measure necessary to protect the public from the Defendant's future criminal conduct. Additionally, the Defendant argues there was no proof offered at the sentencing hearing in support of Tennessee Code Annotated sections 40-35-115(b)(1), that the defendant was a professional criminal who has knowingly devoted his life to criminal acts as a major source of livelihood, and (b)(2), that the defendant is an offender whose record of criminal activity is extensive. The State responds that the trial court properly imposed consecutive sentencing in this case. We agree with the State.

An abuse of discretion with a presumption of reasonableness standard of review applies to a trial court's decisions regarding consecutive sentencing. State v. Pollard, 432 S.W.3d 851, 859 (Tenn. 2013). "So long as a trial court properly articulates reasons for ordering consecutive sentences, thereby providing a basis for meaningful appellate review, the sentences will be presumed reasonable and, absent an abuse of discretion, upheld on appeal." Id. at 862 (citing Tenn. R. Crim. P. 32(c)(1); State v. Bise, 380 S.W.3d 682, 705 (Tenn. 2012)). "If, however, the trial court applies inappropriate mitigating and/or enhancement factors or otherwise fails to follow the Sentencing Act, the presumption of correctness fails." State v. Carter, 254 S.W.3d 335, 344-45 (Tenn. 2008). This court must give "deference to the trial court's exercise of its discretionary authority to impose

consecutive sentences if it has provided reasons on the record establishing at least one of the seven grounds listed in Tennessee Code Annotated section 40-35-115(b).” Pollard, 432 S.W.3d at 861. As relevant here, a trial court may order sentences to run consecutively pursuant Tennessee Code Annotated section 40-35-115 if the court finds by a preponderance of the evidence that “the defendant was a professional criminal who has knowingly devoted his life to criminal acts as a major source of livelihood” or “[t]he defendant is an offender whose record of criminal activity is extensive.” Tenn. Code Ann. §§ 40-35-115(b)(1), (2). “[A]n extensive criminal history, standing alone, is enough to justify the imposition of consecutive sentencing.” State v. Nelson, 275 S.W.3d 851, 870 (Tenn. Crim. App. 2008) (citing State v. Adams, 973 S.W.2d 224, 231 (Tenn. Crim. App. 1997)). The trial court must impose a sentence “no greater than that deserved for the offense committed” and “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” Id. §§ 40-35-103(2), (4).

Upon our review, we conclude that the trial court did not abuse its discretion in imposing consecutive sentencing. At the top of its sentencing analysis, the trial court noted that it had reviewed the mental health records offered into evidence by the Defendant and determined that the Defendant had “drug induced mental health issues[.]” The trial court afforded the Defendant “some level of mitigation” based on the Defendant’s mental health records; however, when weighed against the seriousness of the offenses, the trial court determined that “it does not take away from the factors as outlined under 40-35-115, 40-35-117(b)(1)[.]” In support of section (b)(1), that the defendant was a professional criminal who has knowingly devoted his life to criminal acts as a major source of livelihood, the trial court relied on the Defendant’s testimony that “he often will commit the thefts to make money to buy drugs, commit the thefts of stealing of hundreds of dollars[’] worth of candy bars in order to make money to buy drugs.” The Defendant testified that he would steal \$100 worth of candy several times a week and sell it at “bootleg houses” for \$50. In addition, although the presentence report showed that the Defendant self-reported employment as a cook for fourteen years, this was unverified. Moreover, his criminal history appeared to span over thirty years, and the only verified employment was for two years. This court has previously upheld application of section (b)(1) based on similar facts, and we do the same here. See Gray v. State, 538 S.W.2d 391, 393 (Tenn. 1976) (defining a professional criminal as “one who has knowingly devoted [him]self to criminal acts as a major source of livelihood or who has substantial income or resources not shown to be derived from a source other than criminal activity”); State v. McGowen, No. M2004-00109-CCA-R3-CD, 2005 WL 2008183, at *23 (Tenn. Crim. App. Aug. 18, 2005) (affirming application of section (b)(1) upon finding that appellant confessed to engaging in thefts “everyday” in order to support his \$200 to \$300 per day drug habit); State v. Smith, No. 01C01-9502-CR-00031, 1995 WL 599012, at *4 (Tenn. Crim. App. Oct. 12, 1995) (upholding application of (b)(1) where record showed appellant had been engaged in a

range of criminal activity over a period of twenty-seven years with no employment history). The record amply supports application of section (b)(1).

In support of section (b)(2), that the defendant is an offender whose record of criminal activity is extensive, the trial court noted that the Defendant's criminal history included "more than [thirty] years' worth of criminal conduct" and "counted at least five convictions for domestic assault, at least three convictions for possession of drug paraphernalia, at least seven convictions for theft, at least three convictions for criminal trespass, criminal impersonation[.]" Here, even without the convictions the Defendant admitted to during the hearing, which were apparently reflected in a separate report, the presentence report showed the Defendant had a criminal history consisting of convictions of robbery, seven misdemeanor thefts, six domestic violence assaults, three unlawful possessions of drug paraphernalia, two for criminal trespass, a misdemeanor vandalism, a criminal impersonation, and a driving on a suspended, cancelled, or revoked license. See State v. Perry, 656 S.W.3d 116, 129 (Tenn. 2022) (in making the finding that an offender has an extensive record of criminal activity, courts should consider "often the number of convictions, both currently before the trial court for sentencing and prior convictions or activity"). This was more than sufficient to support application of section (b)(2).

Finally, the Defendant likens his case to State v. Biggs, 482 S.W.3d 923 (Tenn. Crim. App. 2015) and argues that the trial court violated Tennessee Code Annotated Section 40-35-103(4) in failing to explicitly state that the aggregate sixteen-year sentence was the least severe measure necessary to achieve the purposes for which the sentence is imposed. This case is factually distinguishable from Biggs, and we decline to apply its reasoning here. Moreover, while the Defendant correctly observes that the trial court did not explicitly state that the aggregate sixteen-year sentence was the least severe measure necessary to achieve the purposes of the sentence imposed, our law does not require trial courts to do so. Section 40-35-103(4), whether the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed, is a sentencing principle. While consideration of this principle is mandatory in sentencing, the Tennessee Supreme Court has not required trial courts to explicitly articulate this principle upon sentencing. See Tenn. Code Ann. § 40-35-210(b)(3) (requiring that the sentencing court "shall consider," among other things, "[t]he principles of sentencing and arguments as to sentencing alternatives"); State v. Henderson, No. W2022-00882-CCA-R3-CD, 2023 WL 4105937, at *6 (Tenn. Crim. App. June 21, 2023) (explicit consideration of section 40-35-103(4) is not required so long as record shows the trial court articulated reasons for imposing the sentence such that it facilitates appellate review). Here, as set forth above, the trial court's justification for imposing the sixteen-year sentence facilitated appellate review and was fully supported by the record. The trial court's determination also implicitly reflects that the sixteen-year sentence was the least severe measure necessary to achieve

the purposes of the sentence imposed. Accordingly, the Defendant is not entitled to relief as to this issue.

CONCLUSION

Upon our review, the record does not preponderate against the trial court's imposition of consecutive sentencing. Accordingly, we affirm the judgments of the trial court.

CAMILLE R. MCMULLEN, PRESIDING JUDGE