

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs October 25, 2023

FILED

11/09/2023

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. NICHOLAS THOMAS BEAUVAIS**

**Appeal from the Criminal Court for Bradley County**  
**No. 21-CR-011      Sandra N.C. Donaghy, Judge**

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**No. E2022-01163-CCA-R3-CD**

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Nicholas Thomas Beauvais, Defendant, pleaded guilty as a Range II offender to Class C felony voluntary manslaughter, reserving all sentencing issues for the trial court. Defendant claims that the trial court erred by sentencing him to nine years' incarceration. We determine that the trial court acted within its discretion in sentencing Defendant and affirm the judgment.

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

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which TOM GREENHOLTZ and MATTHEW J. WILSON, JJ., joined.

Patrick Frogge, Executive Director, Tennessee District Public Defender's Conference; Brennan M. Wingerter (on appeal), Assistant Public Defender – Appellate Director; and Donald Leon Shahan, Jr. (at hearing), District Public Defender, for the appellant, Nicholas Thomas Beauvais.

Jonathan Skrmetti, Attorney General and Reporter; Benjamin A. Ball, Senior Assistant Attorney General; Shari Tayloe, District Attorney General; and Dallas Scott III, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On March 3, 2021, the Bradley County Grand Jury indicted Defendant for the second degree murder of Jason Lee Walker, who died after ingesting fentanyl. On June 11, 2021, an agreed order was entered reducing Defendant's bond to \$60,000 with conditions that Defendant enter and complete the in-patient drug rehabilitation program at the Lazarus Project and that he wear a GPS monitor at all times. On July 14, 2021, a

warrant was issued, alleging that Defendant failed to comply with the conditions of his pretrial release by leaving the Lazarus Project and for “involvement in drug activity.” Defendant was arrested on July 15, 2021.

### **Plea Submission Hearing**

On July 11, 2022, Defendant pleaded no contest to Class C felony voluntary manslaughter. The plea agreement provided that Defendant would plead out of range as a Range II offender and that all sentencing issues would be reserved for the trial court. The court confirmed that Defendant understood the ramifications of pleading out of the applicable range and that he understood the range of punishment for a Range II offender convicted of a Class C felony. After the trial court thoroughly advised Defendant of his constitutional rights, the State presented the following factual basis:

Deputies from the Bradley County Sheriff’s Office responded to . . . Buchanan Road here in Bradley County on an overdose. They made contact with Elizabeth Galloway, who showed them where [Mr. Walker] was located within the residence. [Mr. Walker] was not breathing, he was administered Narcan by the Deputies, and transported to Tennova Hospital by EMS, where he was pronounced deceased at . . . 9:54 in the evening.

Ms. Galloway was Mr. Walker’s [m]other, she advised that she had left the residence to pick [Mr. Walker] up from work around 5:30; stated they went straight home and returned to the residence about 6:30. Ms. Galloway advised that around 7:45, [Mr. Walker] left the residence to go to the store to put gas in his vehicle for work the next day -- that he called her about 8:03, and asked if she needed anything.

And then returned home shortly after that about 8:15, when he came inside, he went straight to the restroom at about 8:35, [Mr. Walker’s] son . . . peeked under . . . the bathroom door and discovered [Mr. Walker] was unconscious and not breathing. Detectives Robert Jones and Brandon Coffel responded to the scene, inside the bathroom they collected a pill, foil, and a straw that appeared to be used for narcotics. Also, in Mr. Walker’s clothing, was a spoon, cut straw, and a tube of makeup, and they also collected his cell phone.

Your Honor, that pill that was found in the bathroom was sent off to TBI, and came back as a fentanyl pill. They interviewed Ms. Galloway about Mr. Walker, she told them that he had had a narcotics and alcohol problem

in the past. Specifically, methamphetamine but had quit in 2012, but was suspicious that [Mr. Walker] was using drugs again.

They also interviewed Sahtara Venuto who was [Mr. Walker's] ex-girlfriend, and the [m]other of [Mr. Walker's son]. She stated that they weren't together anymore, but again, suspected that Mr. Walker had a recent relapse and was using drugs again.

Detectives examined the cell phone that belonged to [Mr. Walker], on the phone they located a number, (423) 457-\*\*\*\* who was listed in the contacts as Nic, N-I-C. The messages on the date of June 12[,], 2020[,] included the following from [Mr. Walker] to Nic, "you got what I want?" to which Nic responded, "yeah, not on me, though." A later message from Nic stated, "yeah, come get me," and then a final message was sent to the phone while Detectives were actually at the residence investigating Mr. Walker's death, from Nic that stated, "you like those?"

The Detectives sent subpoenas trying to determine who the person was that was texting (423) 457-\*\*\*\*. At first, they thought it was a Verizon phone, but it turned out not to be. Detectives actually called some of the numbers that were contacts in Mr. Walker's phone to ask about that number. One of those individuals that were called told Detectives that it could have been [Defendant] and that led Detectives . . . on July 9, 2020, to subpoena a trac phone to obtain information on that phone number.

Also, during the course of the investigation, around this July 9th and 10th, Sahtara Venuto provided bank records from a bank account that [Mr. Walker] had at BB&T -- that showed that [Mr. Walker] had made a purchase in an ATM withdrawal at the Chevron Station on 1420 25th [S]treet in Cleveland at 19:01 hours. Detectives attempted to get video from the Shell Station (sic) but it did not go back far enough.

On July the 22nd of 2020, [the] Detectives received information about the trac phone. It showed that the account was paid for by a credit card, belonging to a person that the Detective knew to be the [m]other of [Defendant]. The account showed an email address of Nick Beau, N-I-C-K-B-E-A-U-4-2-1 @GMAIL.COM and a birthday of 4-21-94, according to this Tennessee driver's license, [Defendant's] birth date is 4-21-1994.

On September the 3rd of 2020, [Defendant] was brought in to the Bradley County Sheriff's Office for an interview, he stated that he was

unaware that Mr. Walker had died. While getting general information from [Defendant], he did advise that his phone number, when he had one was (423) 457-\*\*\*\*, he advised that he had run out of minutes. He admitted that he got high with [Mr. Walker] before together, the narcotics that they used were pain medication and heroin. And he also stated that the last time he had seen [Mr. Walker] was in June of 2020 -- stated that there have been times when he and [Mr. Walker] would put their money together to buy the narcotics.

[Defendant] also told the Detective a specific story about that day. He said that he and [Mr. Walker] had went and bought narcotics together from a girl named "Q". He described her as a mix[ed]-race female, about twenty-five years old, and gave a specific phone number, and that they went to the Rocky Top [] on Paul Huff Parkway, and bought narcotics from this number, or from this person with this specific phone number.

The Detectives did an investigation into that particular individual, she -- it was a girl, Regene Williams had a phone number for her. She stated that she did not know [Defendant], and also, an ali[a]s that apparently [Defendant] had used with -- or told Detectives he had used when he spoke with "Q" -- said she didn't know that either. The Detective was able to get her driver's license, and it did match some of the characteristics that [Defendant] described. She was a mix[ed]-race, twenty-seven-year-old female, and so they did a subpoena to AT&T for the number belonging to . . . Regene Williams (423) 310-\*\*\*\*, returned showing her as the user and -- but there were no instances of [Defendant's] phone number being in those records. The autopsy in this case was conducted by Dr. Christopher Lochmuller at the Knoxville Regional Forensic Center, [who] attributed the cause of death of [Mr. Walker] as fentanyl intoxication with a dilated cardiomyopathy of obesity.

The trial court accepted Defendant's no contest guilty plea, ordered a presentence report to be prepared, and set a date for the sentencing hearing.

### **Sentencing Hearing**

By agreement, the presentence report was entered into evidence as Exhibit 1, and certified copies of judgments from the Bradley County General Sessions Court were entered as Collective Exhibit 2. The State presented no additional proof.

Marissa Catherine Beauvais, Defendant's older sister, testified that she and Defendant had a "tumultuous childhood" after their parents divorced. According to Ms.

Beauvais, Defendant was diagnosed with Burkitt lymphoma when he was nineteen and the cancer “progressed to the point of him almost dying once.” Defendant suffered from chronic pain as a result of numerous spinal taps. Defendant “struggled with a lot of post-cancer issues” after he went into remission and was diagnosed with bipolar disorder. Defendant attended Narcotics Anonymous meetings, and Ms. Beauvais went to Nar-Anon meetings to help understand Defendant’s addiction. She and Defendant talked on the phone and on Facebook at least once a week prior to Defendant’s going to jail.

Paula Margaret Aguilar Smith, Defendant’s mother, said that she lived in Cleveland, Tennessee, and that she would “do everything in [her] power” to help Defendant. She said that, when Defendant was in grade school, she discovered that Defendant’s father “had fathered a child that was in a grade under [Defendant].” Ms. Smith said there were “interactions with the child’s mother at school” and that she had to pull Defendant out of school when he was in third grade. She moved her family out of state “to get away from them,” but they moved back to Tennessee in 2012. According to Ms. Smith, Defendant was planning to “go back up to Michigan to go to college” before he was diagnosed with a rare form of non-Hodgkin’s lymphoma. Defendant underwent eleven months of chemotherapy and had eighteen spinal taps “to take spinal fluid out, [and] push chemotherapy in.” After finishing treatment, Defendant had a “neutropenic fever, which ended him up in ICU.” Ms. Smith noted that Defendant had neuropathy in his legs and “constant back pain.” She stated that Defendant had previously sought treatment for his drug use. Ms. Smith believed that Defendant suffered from “a lot of depression” and “need[ed] extensive therapy, just from going back from all the childhood trauma that he’s been through” and “to try to make sure that he knows how to live life without any kind of drug use.” She said that Defendant’s family discussed attending family therapy “to try to do the best that [they could] to help him.”

The presentence report contains Defendant’s “statement” concerning the events surrounding the victim’s death, which reads as follows:

My friend and I went together and got drugs to use as we’d done before. Very shortly afterward he went home [and] overdosed. Police later contacted me about us being together before his death [and] I told them what we did while we were together that night. I truly am sorry to his family. He was my friend.

The presentence report shows that, from 2015 to 2019, Defendant was convicted in Bradley County of nine criminal offenses, including three cases involving simple possession of drugs, three misdemeanor thefts, public intoxication, a traffic offense, and failure to appear. Defendant was also convicted of possession of drug paraphernalia in Polk County. Defendant’s probation was revoked on three occasions. On January 17,

2019, his Bradley County probation in Case No. 6GS1-2018-CR-701 was revoked, and he was sentenced to 364 days at seventy-five percent service. On January 16, 2019, his Polk County probation in Case No. 15-CR-865 was revoked, and he was ordered to serve 180 days concurrently with his Bradley County probation revocation sentence. In December 2019, his Bradley County probation in Case No. 6GS1-2019-CR-5484 was revoked and he was sentenced to 364 days at seventy-five percent.

According to the presentence report, Defendant reported first using marijuana at the age of fifteen, opiates from 2013 until 2020, and heroin from 2020 until he was incarcerated. He also reported having used cocaine and “illicit Suboxone.” He completed a sixty-day drug treatment program at Chestnut Health in Bloomington, Illinois, and was in Lazarus Transitional Halfway House until he was sent back to jail. He said being incarcerated “probably saved [his] life.” He attended Bible classes and a drug program called “Overcomers” while incarcerated. He worked at Stack Southern Bistro from 2020 to 2021 and was employed from 2017 to 2019 by M&M Mars in Cleveland, Ohio, and by Mattoon Motor Mall and Daughtery Auto in Illinois from 2013 to 2017. The Tennessee Department of Correction Strong-R Report shows Defendant has “high needs” for mental health problems.

At the conclusion of the sentencing hearing, the trial court orally announced its ruling. The court noted that, pursuant to the plea agreement, Defendant pleaded outside of the applicable range to the lesser-included offense of voluntary manslaughter. The court noted that the range of punishment for a Range II offender convicted of a Class C felony was six to ten years. The court observed that, shortly after Defendant’s arrest in this case, an agreement was reached to reduce Defendant’s bail bond to \$60,000 conditioned on Defendant’s wearing a GPS monitor and attending a faith-based residential treatment program at Lazarus Project. The court noted that, while at Lazarus Project, Defendant brought fentanyl back to the facility, resulting in people at Lazarus Project testing positive and Defendant’s pretrial release being revoked. The court found that Defendant was “not amenable to supervision within the community” and gave “great weight” to this factor.

The court noted that Defendant had ten misdemeanor convictions, including five drug-related convictions and that Defendant was on probation at the time of the offense in this case. The court also found that Defendant violated the terms of his probation on three previous occasions, resulting in his probation being revoked. The court found that Defendant was diagnosed with bipolar disorder and that he suffered from depression. The court noted that Defendant had strong family support, had a good work history, and had taken courses while incarcerated to help him become a productive citizen. The court noted that, according to the Strong-R Report, Defendant was a moderate risk to re-offend.

The trial court addressed the enhancement factors listed in Tennessee Code Annotated section 40-35-114 and the mitigating factors listed in Tennessee Code Annotated section 40-35-113. The trial court found that because Defendant was being sentenced outside the applicable range, enhancement factor (1) did not apply even though Defendant had a previous history of criminal convictions and criminal behavior. *See* Tenn. Code Ann. § 40-35-114(1). The court applied enhancement factor (7) because the offense was committed to gratify Defendant's own drug addiction; enhancement factor (8) because Defendant failed to comply with the terms of his pretrial release; and enhancement factor (13) because Defendant was released on probation when he committed the offense in this case. *See* Tenn. Code Ann. § 40-35-114(7), (8), (13). The court declined to apply any mitigating factors. The court also considered Defendant's physical and mental condition, his social history, the facts surrounding the offense, and Defendant's family support and Defendant's character.

The trial court next addressed the statistical information provided by the Administrative Office of the Courts ("AOC"). The court noted that there had been a dramatic increase in fentanyl deaths from 2015 to 2019 and that fentanyl deaths had increased by forty-six percent between 2018 and 2019. The court also noted that drug arrests for the Tenth Judicial District had increased significantly since 2018. The court found that forty to sixty-four percent of defendants convicted of voluntary manslaughter received incarcerative sentences and that the average sentence was seven-and-one-half-years.

The trial court next considered the principles of sentencing outlined in Tennessee Code Annotated section 40-35-103 and found that confinement was "necessary to avoid depreciating the seriousness of this offense," pursuant to Tennessee Code Annotated section 40-35-103(1)(B), and that "[m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully" to Defendant, pursuant to Tennessee Code Annotated section 40-35-103(1)(C). The court found that the sentencing considerations weighed heavily toward confinement and sentenced Defendant to nine years' incarceration.

Defendant timely appealed.

### **Analysis**

Defendant claims that: (1) a sentence of nine years is inconsistent with the applicable enhancement and mitigating factors and is longer than the AOC statistical average for comparable Class C felonies, (2) the trial court erred in denying either full or partial probation, and (3) the sentence imposed by the trial court does not reflect the

purposes and principles of sentencing. The State argues that the court acted within its discretion and properly sentenced Defendant. We agree with the State.

### *Length of Sentence*

To facilitate meaningful appellate review of sentencing, the trial court must state on the record the factors it considered and the reasons for imposing the sentence chosen. Tenn. Code Ann. § 40-35-210(e) (2022); *State v. Bise*, 380 S.W.3d at 682, 706 (Tenn. 2012). In *Bise*, the supreme court adopted “an abuse of discretion standard of review, granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act.” *Bise*, 380 S.W.3d at 707. The party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. Tenn. Code Ann. § 40-35-401 (2022), Sentencing Comm’n Cmts.

In determining a specific sentence within a range of punishment, the trial court should consider, but is not bound by, the following advisory guidelines:

- (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; and
- (2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c) (2022).

Even though the trial court should consider enhancement and mitigating factors, such factors are advisory only. *See* Tenn. Code Ann. § 40-35-114 (2022); *see also Bise*, 380 S.W.3d at 698 n. 33, 704; *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). We note that “a trial court’s weighing of various mitigating and enhancement factors [is] left to the trial court’s sound discretion.” *Carter*, 254 S.W.3d at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” *Id.* at 343 (alteration in original) (quoting Tenn. Code Ann. § 40-35-210(d)).

Although Defendant specifically challenges enhancement factor (7), we observe that he does not challenge application of the other enhancement factors. As such, even if enhancement factor (7) were misapplied, it does not show that the trial court wholly departed from the Sentencing Act. On the contrary, the trial court stated on the record the



factors it considered and the reasons for the sentence imposed. The sentence was within the appropriate range and was imposed by the trial court after a “proper application of the purposes and principles of our Sentencing Act[.]” *Bise*, 380 S.W.3d at 707. The trial court did not abuse its discretion in imposing the within-range, nine-year sentence.

### *Alternative Sentence*

We review a trial court’s decision related to probation or any other alternative sentence under the abuse of discretion standard, accompanied by a presumption of reasonableness, if the decision is based upon the purposes and principles of sentencing articulated by the court on the record. *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 Tenn. Code Ann. § 40-35-102(6)). Instead, the 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. A court shall consider, but is not bound by, this advisory sentencing guideline.” Tenn. Code Ann. § 40-35-102(6)(A) (2022).

Defendant was eligible for probation because the sentence imposed by the trial court was less than ten years and because voluntary manslaughter is not an offense made statutorily ineligible for probation. Tenn. Code Ann. § 40-35-303(a)(2022). Even though eligible for probation, Defendant had the burden of establishing that he was suitable for probation and “demonstrating that probation 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)).

Under Tennessee Code Annotated section 40-35-103(1), 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.

Tenn. Code Ann. § 40-35-103(1) (2022).

The trial court noted a dramatic increase statewide in fentanyl deaths from 2015 to 2019 and that fentanyl deaths had increased by forty-six percent between 2018 and 2019, and that drug arrests for the Tenth Judicial District had increased significantly since 2018. The trial court found that confinement was necessary to avoid depreciating the seriousness of the offense and that confinement was particularly suited to provide an effective deterrence to others likely to commit similar offenses. Tenn. Code Ann. § 40-35-103(1)(B) (2022).

The trial court observed that, shortly after Defendant's pretrial release in this case, he violated the conditions of his bail by bringing fentanyl into Lazarus Project, resulting in other residents' testing positive for the drug. The court noted similarities between this occasion and the incident resulting in Mr. Walker's death. The court found that Defendant was "not amenable to supervision within the community" and gave "great weight" to this factor. The court also found that Defendant was on bail at the time he committed the offense in this case and that, in three previous cases, his probation had been revoked. The trial court specifically found the consideration in section 40-35-103(1)(C) supported a sentence of confinement.

The trial court did not abuse its discretion in denying an alternative sentence and ordering Defendant to serve the nine-year sentence in confinement.

#### *Statistical Information*

Tennessee Code Annotated section 40-35-201(b) (2022) requires the trial court to consider "[a]ny statistical information provided by the AOC as to sentencing practices for similar offenses in Tennessee[.]" After considering the statistical information, the trial court noted that forty to sixty-four percent of defendants convicted of voluntary manslaughter receive incarcerative sentences and that the average sentence is seven-and-one-half-years.

Although Defendant argues that the trial court sentenced him above the mean, or the average, of other sentences imposed for Class C felonies generally, two points are important. First, the trial court is not required to sentence at or near the mean for the felony class involved. In fact, simply analyzing the mean apart from the standard deviation tells one nothing about the range of possible sentences included within the analysis. Here, the

trial court's sentence of nine years is well within one standard deviation of the mean for Range II, Class C felonies generally.

Second, the statistical information provided by the AOC does not contain specific data on sentencing for voluntary manslaughter or any crime involving the loss of life. Without knowing how the crime of voluntary manslaughter affects the sentencing range for Class C felonies generally—a class that also includes non-violent felonies such as theft and vandalism—a singular focus of the mean for the general offense class is unlikely to reveal possible sentencing disparities.

Defendant has not shown that his sentence is inconsistent with those imposed in other cases. We conclude that the trial court properly considered the statistical information and the other sentencing factors in this case when it imposed a nine-year sentence. Defendant is not entitled to relief.

### **Conclusion**

The judgment of the trial court is affirmed.

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ROBERT L. HOLLOWAY, JR., JUDGE