

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 6, 2023

FILED

06/28/2023

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DALE ANTHONY WILBOURN

**Appeal from the Circuit Court for Madison County
No. 22-218 Donald H. Allen, Judge**

No. W2022-01199-CCA-R3-CD

The Defendant, Dale Anthony Wilbourn, was convicted of the offenses of evading arrest and making an improper turn. The trial court sentenced the Defendant to a total effective term of six years to be served in custody. On appeal, the Defendant argues that the evidence is insufficient to support his conviction for evading arrest and that the trial court erred in not imposing an alternative sentence to incarceration.¹ On our review, we respectfully disagree with the Defendant and affirm the judgments of the trial court.

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

TOM GREENHOLTZ, J., delivered the opinion of the court, in which J. ROSS DYER and JOHN W. CAMPBELL, SR., JJ., joined.

Austin W. Bethany, Assistant Public Defender, Jackson, Tennessee, for the appellant, Dale Anthony Wilbourn.

Jonathan Skrmetti, Attorney General and Reporter; Mary Elizabeth King, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

¹ Because the Defendant does not challenge the sufficiency of the evidence sustaining his conviction for making an improper turn, we do not address that conviction further. *See* Tenn. R. App. P. 13(b) (“Review generally will extend only to those issues presented for review.”).

FACTUAL BACKGROUND

A. TRIAL

On November 29, 2021, the Madison County grand jury charged the Defendant, Dale Anthony Wilbourn, with the offenses of making an improper turn and evading arrest as a Class E felony offense. At trial, the State presented the testimonies of Deputy James Martin and Deputy Jacob Nickell, both members of the Madison County Sheriff's Office. On the night of July 22, 2021, the deputies were on patrol in Jackson, targeting potential crimes such as drug transactions and human trafficking. During their patrol, they spotted a blue Chrysler 300 making a sudden left turn out of a gas station without signaling.

Deputy Martin, who was driving an unmarked Ford Explorer, activated his blue lights and sirens in an attempt to initiate a traffic stop. However, the Defendant, who was driving the Chrysler 300, failed to stop and instead accelerated away.

Shortly after Deputy Martin activated his emergency equipment, the Defendant made a left turn without signaling, cutting across on-coming traffic. The Defendant then led the deputies on a chase through a residential area until he turned down a dead-end street.

Upon reaching the literal end of the road, the Defendant abandoned his vehicle and tried to escape on foot. When the deputies also came to a stop, Deputy Nickell quickly gave chase. Although the Defendant ran about twenty to twenty-five yards, he surrendered and returned to Deputy Nickell. The entire incident was captured on the dashboard camera of Deputy Martin's vehicle, and the video footage was entered as evidence at trial.

Following the proof, the jury found the Defendant guilty of the offenses of evading arrest and making an improper turn. The jury also recommended a fine of \$500.00 and \$50.00 for each offense, respectively.

B. SENTENCING HEARING

During the sentencing hearing, the trial court reviewed the facts of the case from trial, as well as the Defendant's statement given as part of the presentence investigation report. The trial court first found the presence of three enhancement factors. It found, for example, that the Defendant had eight felony and fifteen misdemeanor convictions, which was more than necessary to establish the appropriate sentencing range. *See* Tenn. Code Ann. § 40-35-114(1) (2019). It also found that the Defendant had prior probation violations and had committed acts as a juvenile that would constitute felony offenses if committed by

an adult. Tenn. Code Ann. § 40-35-114(8), (16). Specifically with respect to the prior probation violations, the court found that “[a]t least on 9 different occasions, he violated probation or violated release rules by committing new offenses.” The court gave great weight to the adult criminal conduct and probation violations, but gave “slight weight” to his juvenile record due to the passage of time.

In mitigation, the trial court found that the Defendant’s conduct did not cause or threaten serious bodily injury and that he had a “fairly decent work history.” Tenn. Code Ann. § 40-35-113(1), (13) (2019). However, the court gave each factor “slight weight for mitigation.”

The trial court found that the Defendant was a career offender. It sentenced the Defendant to a term of six years for the evading arrest conviction and a term of thirty days for the improper turn conviction. The court aligned the sentences concurrently, imposed the fines recommended by the jury, and ordered that the Defendant’s driving privileges be revoked for two years.

In considering the manner in which the sentences would be served, the trial court considered the circumstances surrounding the offense, the Defendant’s history of criminal conduct, his physical and mental conditions, and his history of probation violations. Finding that the Defendant “simply would not abide by any rules of probation” and that “measures less restrictive than confinement have frequently been applied to this defendant without success,” the court ordered that the sentences be served in custody at sixty-percent release eligibility.

After the trial court denied the Defendant’s motion for a new trial on August 16, 2022, the Defendant filed a timely notice of appeal on August 31, 2022. In this appeal, the Defendant challenges the legal sufficiency of the evidence supporting his conviction for felony evading arrest. He also asserts that the trial court erred in imposing a sentence of confinement. For the reasons given below, we respectfully disagree and affirm the judgments of the trial court.

ANALYSIS

A. LEGAL SUFFICIENCY OF THE EVIDENCE

The Defendant’s first issue is whether the evidence was legally sufficient to support his conviction for felony evading arrest. “The standard for appellate review of a claim challenging the sufficiency of the State’s evidence is ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt.” *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “The standard of review is the same whether the conviction is based upon direct or circumstantial evidence.” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (internal quotations and citations omitted).

On appeal, this Court “neither re-weighs the evidence nor substitutes its inferences for those drawn by the jury.” *State v. Wagner*, 382 S.W.3d 289, 297 (Tenn. 2012) (citing *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997)). Moreover, the trier of fact, and not this Court, resolves “all questions as to the credibility of trial witnesses, the weight and value of the evidence, and issues of fact raised by the evidence.” *State v. Lewter*, 313 S.W.3d 745, 747 (Tenn. 2010). “Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009).

As charged in this case, the offense of evading arrest required the State to prove beyond a reasonable doubt that the defendant operated “a motor vehicle on any street, road, alley or highway in this state, to intentionally flee or attempt to elude any law enforcement officer, after having received any signal from the officer to bring the vehicle to a stop.” Tenn. Code Ann. § 39-16-603(b)(1) (2018). In this case, the testimony of the officers, as well as the video recording of the events, shows that the Defendant was operating a motor vehicle on the streets of Jackson. The video shows that the officers were pursuing the Defendant in a vehicle with its blue lights and siren activated. Moreover, a reasonable juror could find that the Defendant intended to flee or attempted to elude the officers, as he accelerated away from the officers, turned in front of on-coming traffic, and then tried to run away from the officers once he reached the end of the road. *See State v. Derring*, No. W2017-02290-CCA-R3-CD, 2019 WL 244471, at 6* (Tenn. Crim. App. Jan. 16, 2019), *perm. app. denied* (Tenn. May 17, 2019) (holding that the evidence was sufficient to support a conviction for evading arrest where, after the officers activated their blue lights, the defendant accelerated way, ignored traffic laws, and ran away on foot after the car crashed).

In response, the Defendant argues that because the deputies were in an unmarked car, he could not be “sure that the vehicle behind him was a legitimate law enforcement vehicle.” He also asserts that that “once he exited the vehicle and realized law enforcement was attempting to arrest him, he walked back towards the deputies with his hands raised.”

Unfortunately for the Defendant, no proof in the record supports the notion that he was somehow confused as to the identity of his pursuers. The video provides no support for this argument, and no other proof was introduced at trial as to the Defendant’s intention.

A reasonable juror could find that the Defendant intentionally fled from officers and later surrendered only because he was out of other options. As such, we conclude that the proof is legally sufficient to support the Defendant's conviction for felony evading arrest.

B. ALTERNATIVE SENTENCING

The Defendant next argues that the trial court abused its discretion when it denied his request for an alternative sentence to incarceration. When a defendant challenges whether he or she should have been granted probation or any other form of alternative sentencing, we review the trial court's decision for an abuse of discretion, accompanied by a presumption of reasonableness when the sentence falls within the applicable statutory range and reflects the purposes and principles of sentencing. *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). As the appealing party, the Defendant "bears the burden of showing that the imposition of probation was improper." *State v. Ring*, 56 S.W.3d 577, 586 (Tenn. Crim. App. 2001).

The Defendant here asserts that he is a "prime candidate" for alternative sentencing, and he asks this Court to fully suspend the trial court's imposed sentence and place him on supervised probation. For its part, the State argues that the trial court properly weighed the applicable considerations to the Defendant's case and appropriately found that the Defendant was not a suitable candidate for alternative sentencing. We agree with the State.

Of course, "[a]ny sentence that does not involve complete confinement is an alternative sentence." *State v. Crabtree*, No. M2021-01154-CCA-R3-CD, 2023 WL 2133831, at *19 (Tenn. Crim. App. Feb. 21, 2023) (citation omitted), *no perm. app. filed*. "There is no bright line rule for determining when probation should be granted," and "[e]ach sentencing decision necessarily involves a case-by-case analysis." *State v. Bingham*, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995), *overruled on other grounds*, *State v. Hooper*, 29 S.W.3d 1, 10 (Tenn. 2000).

"The Sentencing Act encourages trial courts to utilize alternative sentences." *Ray v. Madison Cnty.*, 536 S.W.3d 824, 833 (Tenn. 2017). Nevertheless, pursuant to Tennessee Code Annotated section 40-35-103(1), sentences involving confinement may be ordered if they are based on one or more of the following considerations:

- (A) whether "[c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct";
- (B) whether "[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

- (C) whether “[m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.”

Our supreme court has also recognized that “[t]he guidelines applicable in determining whether to impose probation are the same factors applicable in determining whether to impose judicial diversion.” *State v. Trent*, 533 S.W.3d 282, 291 (Tenn. 2017) (quoting *State v. Scott*, No. M2010-01632-CCA-R3-CD, 2011 WL 5043318, at *11 (Tenn. Crim. App. Oct. 24, 2011)). To that end, “[w]hen considering probation, the trial court should consider the nature and circumstances of the offense, the defendant’s criminal record, the defendant’s background and social history, the defendant’s present condition, including physical and mental condition, the deterrent effect on the defendant, and the best interests of the defendant and the public.” *See State v. Feagins*, No. E2022-00311-CCA-R3-CD, 2023 WL 2784813, *3 (Tenn. Crim. App. Apr. 4, 2023) (internal quotation marks and citation omitted), *no perm. app. filed*.

The record shows that the Defendant could be considered for an alternative sentence because his crimes were eligible for probation and the trial court imposed a sentence for each crime of ten years or less. Tenn. Code Ann. § 40-35-303(a). However, because the Defendant is a career offender, he is not considered to be a favorable candidate for probation. *See* Tenn. Code Ann. § 40-35-102(6)(A) (2019); *State v. Harris*, No. M2014-00375-CCA-R3-CD, 2015 WL 3563076, at *14 (Tenn. Crim. App. June 9, 2015) (“Defendant in this case is a career offender. Therefore, he is not a favorable candidate for alternative sentencing.”), *no perm. app. filed*. That said, we have recognized that

[e]ven if the court determines that a defendant is not a favorable candidate for an alternative sentence, the court can still impose an alternative sentence on an eligible defendant if the defendant proves that he or she is a suitable candidate for the alternative sentence. Likewise, the court can sentence a favorable candidate, who is eligible for an alternative sentence, to confinement if the defendant fails to prove that he or she is a suitable candidate for an alternative sentence.

State v. Demoss, No. M2019-01583-CCA-R3-CD, 2020 WL 4199987, at *8 (Tenn. Crim. App. July 22, 2020) (citing *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008)), *perm. app. denied* (Tenn. Nov. 12, 2020).

Importantly, “[t]he primary goal of probation, under the [Sentencing] Act and the decisions of the appellate courts of this state, is [the] rehabilitation of the defendant.” *State*

v. Burdin, 924 S.W.2d 82, 86 (Tenn. 1996); Tenn. Code Ann. § 40-35-103(5) (2019) (“The potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed.”). Our legislature has also recognized that “effective rehabilitation” is often achievable only with the “voluntary cooperation of defendants.” Tenn. Code Ann. § 40-35-102(3)(C).

In this case, the trial court imposed an incarcerative sentence after considering, among other things, the Defendant’s extensive criminal history, his lack of rehabilitative potential, and his failure to abide by probation conditions. On this last point, the trial court observed that “[a]t least on 9 different occasions, he violated probation or violated release rules by committing new offenses.” From these violations, the court found that the Defendant “simply would not abide by any rules of probation, if given the opportunity.”

We agree that the trial court considered the relevant statutory considerations in weighing whether to impose an alternative sentence. Our sentencing principles require, among other things, that trial courts consider a defendant’s prior criminal history and his or her compliance with release conditions insofar as those factors are relevant to the likelihood of future rehabilitation. *See* Tenn. Code Ann. § 40-35-102(5) (providing that those “possessing criminal histories evincing a clear disregard for the laws and morals of society and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration.”). To this end, we have observed that a lengthy criminal history can “demonstrate a pattern of repeated unlawfulness” and reflect that the defendant’s “past interactions with the criminal justice system have not caused [him or her] to reform his [or her] conduct.” *State v. Cole*, No. W2020-01675-CCA-R3-CD, 2022 WL 252096, at *6 (Tenn. Crim. App. Jan. 27, 2022), *no perm. app. filed*. We have also recognized that a defendant’s history of violating probation conditions may show that “effective rehabilitation” is not “reasonably feasible.” *Cf. id.* Indeed, “[t]he fact that Defendant had prior probationary sentences revoked *alone* would support the imposition of a sentence of confinement [pursuant to Tenn. Code Ann. § 40-35-103(1)(C)].” *State v. Shields*, No. M2017-00870-CCA-R3-CD, 2018 WL 623600, at *3 (Tenn. Crim. App. Jan. 30, 2018) (emphasis added), *no perm. app. filed*.

We agree with the trial court that the Defendant’s record of criminal conduct and his history of violating probationary conditions demonstrate that he likely will not comply with measures meant to ensure his effective rehabilitation. This history also shows that the Defendant does not take his need for rehabilitation seriously. *Cf. State v. Carter*, 254 S.W.3d 335, 348 (Tenn. 2008) (“The Defendant’s conduct while on release status demonstrates that he does not take seriously the need for his rehabilitation. The Defendant’s history establishes that he should not be given probation for the instant homicide offense.”); *see State v. Crisp*, No. E2019-01223-CCA-R3-CD, 2020 WL 3172672, at *2 (Tenn. Crim. App. June 15, 2020) (affirming denial of an alternative

sentence when “Defendant had a long history of criminal conduct” and had “been unsuccessful in completing an alternative sentence multiple times”), *no perm. app. filed*. As such, we hold that the court acted within its discretion in ordering a sentence of full confinement. *See* Tenn. Code Ann. § 40-35-103(1)(A), (C).

CONCLUSION

In summary, we hold that the evidence is legally sufficient to support the Defendant’s conviction for felony evading arrest. We also hold that the trial court acted within its discretion to impose a sentence of incarceration. We respectfully affirm the judgments of the trial court.

TOM GREENHOLTZ, JUDGE