IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned On Briefs November 20, 2013

STATE OF TENNESSEE v. CASSIE KRISTIN CHAPMAN

Appeal from the Criminal Court for Sullivan County
No. S60,843 R. Jerry Beck, Judge

No. E2013-01330-CCA-R3-CD - Filed December 27, 2013

Appellant, Cassie Chapman, was indicted by the Sullivan County Grand Jury for two counts of theft over $1,000 and one count of aggravated burglary. She pled guilty to the charges and agreed to a three-year sentence for one count of theft, a two-year sentence for the second count of theft, and a three-year sentence for aggravated burglary. The plea agreement specified that one two-year sentence for theft and the sentence for aggravated burglary would run concurrently with each other but consecutively to the three-year sentence for aggravated burglary would run consecutively to the theft sentences. After a sentencing hearing, the trial court denied alternative sentencing on the theft sentences. Appellant appeals. After a review of the record, we determine that the trial court did not abuse its discretion in sentencing Appellant to incarceration. Accordingly, the judgments of the trial court are affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Trial Court are Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JAMES CURWOOD WITT. JR., and D. KELLY THOMAS, JR., JJ., joined.

Terry L. Jordan, Blountville, Tennessee, for the appellant, Cassie Kristin Chapman.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Barry P. Staubus, District Attorney General; and James F. Goodwin, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

In July of 2012, Appellant was indicted by the Sullivan County Grand Jury in case number S60,843 for one count of theft over $1,000. In case number S60,844, Appellant was indicted for one count of aggravated burglary and one count of theft over $1,000.

In January of 2013, Appellant pled guilty to the charges. At the plea hearing, Appellant stipulated to the facts as set forth in the affidavits of complaint. The factual basis for the plea was as follows:

> On 10/21/2011 the sheriff's office responded to a complaint of motor vehicle theft at 2009 Flanders Street in Sullivan County[,] TN. The victim Gary Sampson stated to Officer Boyd that someone(s) had taken his Chevy van from his residence without his permission. After investigating case I found w[h]ere [Appellant] had sold the vehicle to Joseph E. Banks who buys junk cars. William Maynor who helps Joseph some stated he went to 2009 Flanders Street and met a female who identified herself as [Appellant] and showed her ID which had 2009 Flanders Street Address on it. He stated she wrote out a bill of sale and signed it and he loaded the van up and took it to Joseph[']s house for him. . . .
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> In case S60844:
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> . . . .
>
> On 10/28/2011 patrol responded to 323 Dykes Road in references to aggravated burglary and theft. Victim Judy Dykes suspected her grandson Jason Harrod. During my investigation I interviewed [Appellant], Jason Harrod[']s girlfriend who stated she took Jason and his friend Lee . . . to Ms. Dykes[']s house so the two could break into her house. [Appellant] stated she stopped at a house somewhere past the CCS Center on Lone Star Road and use[d] their phone to call Ms. Dykes[']s residence to see if she was home and there was no answer. She stated she drove the two to [the] house and they went around the back of the house and a short time later Lee came from behind the house carrying 2 or 3 guns in cases and a laptop computer and put them in the trunk of the car. Then Jason came from behind the house and he had pills and a necklace and a picture of his brother. We left and later found out that

> Lee had stolen . . . Lortabs and did not tell us. All of the property taken . . . totals over $1,000. . . .

The plea agreement specified that Appellant would receive a three-year sentence for the car theft, a two-year sentence for the home theft, and a three-year sentence for the aggravated burglary. The three-year sentence for aggravated burglary and the two-year sentence for theft were ordered to run concurrently to each other, but consecutively to the three-year sentence for car theft. The agreement specified that Appellant would receive probation for the aggravated burglary sentence but that the trial court would determine the manner of service of the remainder of the sentence at a sentencing hearing.

The trial court held a sentencing hearing. At the hearing, the trial court reviewed the presentence report and heard testimony from Appellant's grandfather as well as Appellant and Judy Dykes, the victim of the aggravated burglary.

Appellant's grandfather, Harold Chapman, testified that Appellant was living with him and working two part-time jobs until a few weeks prior to the hearing.

Appellant testified that she was working and had given up drugs the year prior to the hearing. Appellant admitted the reason for the crime was to secure money for drugs and rent. She also admitted that she was addicted to pain killers at the time of the incident but denied using any of the medication that was taken from the scene of the crime.

Mrs. Dykes testified that her home was ransacked in the incident. She informed the court that her medication, including medication for cancer, was taken from her home during the burglary.

At the conclusion of the sentencing hearing, the trial court found that Appellant had an extensive record, including prior failures on probation and at drug treatment. The trial court determined that Appellant would be required to serve her sentence of three years.

Appellant filed a timely notice of appeal.

Analysis

On appeal, Appellant insists that the trial court abused its discretion by denying an alternative sentence. Specifically, Appellant argues that the trial court "gave no weight to any evidence presented other than the Appellant's record of prior convictions." The State disagrees.

This Court must apply "a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). This standard of review is also applicable to "questions related to probation or any other alternative sentence." *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). Thus, in reviewing a trial court's denial of an alternative sentence, the applicable standard of review is abuse of discretion with a presumption of reasonableness so long as the sentence "reflect[s] a decision based upon the purposes and principles of sentencing." *Id.* The party appealing the sentence has the burden of demonstrating its impropriety. T.C.A. § 40-35-401, Sent'g Comm'n Cmts.; *see also State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

With regard to alternative sentencing, Tennessee Code Annotated section 40-35-102(5) provides as follows:

> In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, 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 . . . .
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> A defendant who does not fall within this class of offenders:
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> [A]nd who is an especially mitigated offender 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.

T.C.A. § 40-35-102(6); *see also Carter*, 254 S.W.3d at 347. For offenses committed on or after June 7, 2005, a defendant is eligible for probation if the sentence actually imposed is ten years or less. *See* T.C.A. § 40-35-303(a). Appellant herein was eligible for probation because her sentence was ten years or less, and the offenses for which she was convicted were not specifically excluded by statute. T.C.A. § 40-35-303(a).

All offenders who meet the criteria for alternative sentencing are not entitled to relief; instead, sentencing issues must be determined by the facts and circumstances of each case. *See State v. Taylor*, 744 S.W.2d 919, 922 (Tenn. Crim. App. 1987) (citing *State v. Moss*, 727

S.W.2d 229, 235 (Tenn. 1986)). Even if a defendant is a favorable candidate for alternative sentencing under Tennessee Code Annotated section 40-35-102(6), a trial court may deny an alternative sentence because:

> (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
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> (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
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> (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant . . . .

T.C.A. § 40-35-103(1)(A)-(C). In choosing among possible sentencing alternatives, the trial court should also consider Tennessee Code Annotated section 40-35-103(5), which states, in pertinent part, "[t]he 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." T.C.A. § 40-35-103(5); *see also State v. Dowdy*, 894 S.W.2d 301, 305 (Tenn. Crim. App. 1994). The trial court may consider a defendant's untruthfulness and lack of candor as they relate to the potential for rehabilitation. *See State v. Nunley*, 22 S.W.3d 282, 289 (Tenn. Crim. App. 1999); *see also State v. Bunch*, 646 S.W.2d 158, 160-61 (Tenn. 1983); *State v. Zeolia*, 928 S.W.2d 457, 463 (Tenn. Crim. App. 1996); *State v. Williamson*, 919 S.W.2d 69, 84 (Tenn. Crim. App. 1995); *Dowdy*, 894 S.W.2d at 305-06.

Any sentence that does not involve complete confinement is an alternative sentence. *See generally State v. Fields*, 40 S.W.3d 435 (Tenn. 2001). The principles of sentencing require the sentence to be "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." T.C.A. § 40-35-103(2), (4). In addition, "[t]he 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[,]" and "[t]he length of a term of probation may reflect the length of a treatment or rehabilitation program in which participation is a condition of the sentence[.]" Id. § 40-35-103(5).

The trial court's determination of whether the defendant is entitled to an alternative sentence and whether the defendant is a suitable candidate for full probation are different inquiries with different burdens of proof. *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). The trial court shall automatically consider probation as a sentencing alternative for eligible defendants; however, the defendant bears the burden of proving his or her suitability for probation. *Id.* § 40-35-303(b). In addition, "the defendant is not automatically entitled to probation as a matter of law." *Id.* § 40-35-303(b), *Sentencing Comm'n Cmts.* Rather, the defendant must demonstrate that probation would serve "the ends of justice and the best interests of both the public and the defendant." *State v. Souder*, 105 S.W.3d 602, 607 (Tenn. Crim. App. 2002) (citations omitted).

When 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. Kendrick*, 10 S.W.3d 650, 656 (Tenn. Crim. App. 1999) (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978)).

In the case herein, the trial court based its decision to deny alternative sentencing on Appellant's lengthy prior record and past failures at probation. The presentence report indicated that Appellant, at the age of twenty-seven, had two prior convictions for theft, two prior convictions for burglary, one prior conviction for aggravated burglary, a conviction for attempt to obtain drugs by fraud, and a conviction for a bad check. The trial court also noted that Appellant had at least two revocations of probation or supervision on her record and a difficult time complying with alternative sentences, a ground set forth in Tennessee Code Annotated section 40-35-103(1)(C). Appellant has not established that the trial court abused its discretion by denying an alternative sentence. Appellant is not entitled to relief.

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed.

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JERRY L. SMITH, JUDGE