

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2017

FILED

07/31/2017

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MANDRELL SANDERS

Appeal from the Criminal Court for Shelby County
No. 15-02277 Lee V. Coffee, Judge

No. W2016-01354-CCA-R3-CD

The Defendant, Mandrell Sanders, was convicted by a Shelby County Criminal Court jury of aggravated burglary, a Class C felony, and was sentenced to fourteen years in the Tennessee Department of Correction. On appeal, the Defendant argues that the trial court imposed an excessive sentence and erred in denying his request for probation. After review, we affirm the sentencing decision of the trial court.

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

ALAN E. GLENN, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR. and J. ROSS DYER, JJ., joined.

Monica A. Timmerman, Bartlett, Tennessee (on appeal); Mandrell Sanders, pro se, and Michael J. Gatlin (advisory counsel), Memphis, Tennessee (at trial), for the appellant, Mandrell Sanders.

Herbert H. Slatery III, Attorney General and Reporter; David H. Findley, Senior Counsel; Amy P. Weirich, District Attorney General; and Stacy M. McEndree and Austin Nichols, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

In the light most favorable to the State, the proof at trial showed that Aaron Snowden, a reserve police officer for the City of Memphis, observed the Defendant burglarizing the home of his neighbor, Clyde Brown. Officer Snowden notified the police, and a radio call of the report was dispatched. The Defendant had a smartphone application that allowed him to hear police radio communications and, upon hearing the call, immediately ran out of Mr. Brown's house. Officer Snowden saw the Defendant run

into another home, which Officer Snowden later learned was the home of the Defendant's mother. Another officer, Ennis Jackson, arrived to the scene and arrested the Defendant. The Defendant subsequently told Officer Jackson that he burglarized Mr. Brown's home to steal items he could sell in order to buy drugs.

The Defendant, representing himself at trial, testified consistently with his statement to Officer Jackson. The Defendant admitted to entering Mr. Brown's home, looking around and leaving after not finding anything of value, but then re-entering after a few moments to conduct a more thorough search. The Defendant said that he burglarized Mr. Brown's home because he did not want to ask his mother for money and that he had a death in the family and did not know how to deal with it other than by using drugs. He admitted that he had used drugs since the age of thirteen or fourteen and that he had a history of criminal convictions, including burglary. He asserted that he only had the smartphone application for listening to the police radio to know what was going on in the neighborhood.

Upon this proof, the jury convicted the Defendant, as charged, of aggravated burglary.

Thereafter, the trial court conducted a sentencing hearing, at which the Defendant's presentence report was entered into evidence. The presentence report showed that the thirty-five-year-old Defendant had a history of criminal behavior and convictions beginning in his teenage years. In addition to the felonies used to establish his range, the Defendant had misdemeanor convictions for vandalism, reckless endangerment, drug possession, and criminal trespass. As a juvenile, the Defendant was found delinquent on three counts of burglary. The Defendant reported being a member of the Gangster Disciples gang but claimed to have not been active since 2008. The Defendant reported using drugs and alcohol since the age of thirteen and dropping out of school in the eleventh grade. The Defendant only reported two years of work history, from 2010 through 2012.

The Defendant acknowledged that the presentence report was accurate. He said that he left the gang life in 2008 after getting shot. However, he continued to use drugs, despite attending a rehabilitation program. He elaborated that he did not complete the program because he had sex with one of the residents, but he asserted that he could complete a treatment program if given another chance. The Defendant testified that he had three children, ranging in age from five to thirteen. He acknowledged that he did not pay any child support but said he was not under an order to do so. The Defendant admitted to having a lengthy record, including juvenile offenses, but he said his crimes were the result of his childhood sexual abuse by a relative. The Defendant claimed that drugs were the root of his problem and that he had successfully stopped using them of his

own willpower from 2008 to 2011, contrary to his statement in the presentence report of continual use until 2015. The Defendant acknowledged that he had been afforded probation on two previous occasions and had successfully completed it both times. He admitted having six felony convictions, including the instant offense. The Defendant said that he installed the police scanner application on his phone in 2014 just to “keep[] up with the crimes and stuff that w[ere] going on in Memphis.” The Defendant claimed that, if given another chance, he would stop committing crimes, stating, “I really want to do better.”

In sentencing the Defendant, the trial court first determined that the Defendant was a Range III, persistent offender, based on his prior felonies. The court gave great weight to the Defendant’s having a previous history of criminal behavior and criminal convictions in addition to that necessary to establish his range. Tenn. Code Ann. § 40-35-114(1). In this regard, the court noted that the Defendant had been engaged in criminal behavior for almost twenty years, beginning with a multitude of arrests for juvenile offenses and then numerous convictions as an adult. The court observed that that the Defendant’s arrest timeline showed he was on probation in 2013 when he committed vandalism, even though he did not receive a probation violation. The court also noted that, as a juvenile, the Defendant had been found delinquent on three counts of burglary, which would have constituted a felony if committed as an adult, and gave that factor great weight. *Id.* § 40-35-114(16). The court noted the Defendant’s prior gang history, extensive and long-time use of drugs, and failed attempt at rehabilitation. The court recalled that the Defendant’s testimony at the sentencing hearing regarding his voluntary stoppage of drug use was contrary to his telling the jury that he “had a very bad drug problem.” The court did not accredit the Defendant’s testimony about why he had the application for hearing the police radio on his phone. As mitigation, the trial court found that the Defendant’s crime did not cause or threaten serious bodily injury. *Id.* § 40-35-113(1). Weighing the factors, the court found that the minimum sentence of ten years was not sufficient. Noting that the Defendant had a sustained intent to violate the law, the court imposed a sentence of fourteen years – one year less than the maximum.

With regard to the Defendant’s request for probation, the trial court noted that the Defendant’s persistent offender status precluded favorable consideration for such. The court found that confinement was necessary to protect the public from further criminal acts of the Defendant given his evidenced sustained intent to violate the law. The court also found that confinement was necessary to avoid depreciating the seriousness of the offense and to serve as a deterrence to others. The court noted that home invasions in Shelby County were increasingly prevalent. The court observed that the Defendant had previously been afforded probation and drug rehabilitation, to no avail. The court found that the Defendant was not eligible for probation and that community corrections was not warranted given the Defendant’s prior failure at rehabilitation and refusal to seek

treatment. The court determined that it was unlikely that the Defendant would abide by the terms of an alternative sentence. Noting that the Defendant could seek drug treatment in prison, the trial court stated it would not “release [the Defendant] on the street and hope that he does not continue to take property.”

ANALYSIS

On appeal, the Defendant argues that the trial court imposed an excessive sentence and erred in denying his request for probation. He asserts that the facts of the case “do not lend themselves to a fourteen-year sentence,” and his “previous performance on probation” shows that “he responds well to monitoring.”

A trial court is to consider the following when determining a defendant’s sentence and the appropriate combination of sentencing alternatives:

- (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 the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
- (7) Any statement the defendant wishes to make in the defendant’s own behalf about sentencing.

Tenn. Code Ann. § 40-35-210(b).

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range, regardless of the presence or absence of enhancement or mitigating factors, and “sentences should be upheld so long as the statutory purposes and principles, along with any enhancement and mitigating factors, have been properly addressed.” State v. Bise, 380 S.W.3d 682, 706 (Tenn. 2012). Accordingly, we review a trial court’s sentencing determinations under an abuse of discretion standard, “granting a presumption

of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act.” Id. at 707. This standard of review also applies to “questions related to probation or any other alternative sentence.” State v. Caudle, 388 S.W.3d 273, 278-79 (Tenn. 2012).

Under the revised Tennessee sentencing statutes, a defendant is no longer presumed to be a favorable candidate for alternative sentencing. State v. Carter, 254 S.W.3d 335, 347 (Tenn. 2008) (citing Tenn. Code Ann. § 40-35-102(6)). Instead, the “advisory” 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.” Tenn. Code Ann. § 40-35-102(6).

A defendant shall be eligible for probation, subject to certain exceptions, if the sentence imposed on the defendant is ten years or less. Id. § 40-35-303(a). A defendant is not, however, automatically entitled to probation as a matter of law. The burden is upon the defendant to show that he is a suitable candidate for probation. Id. § 40-35-303(b); State v. Goode, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997); State v. Boggs, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). In order to meet this burden, the defendant “must demonstrate that probation will ‘subserve the ends of justice and the best interest of both the public and the defendant.’” State v. Bingham, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995) (quoting State v. Dykes, 803 S.W.2d 250, 259 (Tenn. Crim. App. 1990)).

There is no bright line rule for determining when a defendant should be granted probation. Bingham, 910 S.W.2d at 456. Every sentencing decision necessarily requires a case-by-case analysis. Id. Factors to be considered include the circumstances surrounding the offense, the defendant’s criminal record, the defendant’s social history and present condition, the need for deterrence, and the best interest of the defendant and the public. Goode, 956 S.W.2d at 527. Also relevant is whether a sentence of probation would unduly depreciate the seriousness of the offense. See State v. Davis, 940 S.W.2d 558, 559 (Tenn. 1997); Bingham, 910 S.W.2d at 456.

In determining if incarceration is appropriate in a given case, a trial court should consider whether:

- (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). Furthermore, the defendant's potential for rehabilitation or lack thereof should be examined when determining whether an alternative sentence is appropriate. Id. § 40-35-103(5).

In determining the length of the Defendant's sentence, the trial court applied two enhancement factors: the Defendant had a history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range, and the Defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult. See Tenn. Code Ann. § 40-35-114(1), (16). The trial court found one mitigating factor, the Defendant's criminal conduct neither caused nor threatened serious bodily injury, but did not afford it "significant weight." Id. § 40-35-113(1). Accordingly, the trial court sentenced the Defendant to fourteen years, one year less than the maximum in his range. Id. § 40-35-112(c)(3). The record reflects that the trial court properly considered the enhancement and mitigating factors, imposed a sentence within the applicable range for the Defendant's Class C felony offense, and made the requisite findings in support of its ruling.

The record also supports the trial court's denial of probation, of which the Defendant was statutorily ineligible because the sentence he received was greater than ten years, see Tenn. Code Ann. § 40-35-303(a), or other alternative sentence. The trial court carefully considered at length the relevant sentencing principles and applied them to the facts of the case. As the trial court noted, the Defendant has evidenced a sustained intent to violate the law, as well as a refusal to seek treatment. The Defendant has been afforded probation before, yet he continues to violate the law. The trial court surmised that it was unlikely that the Defendant would abide by the terms of an alternative sentence and stated that "this Court will not release [the Defendant] on the street and hope that he does not continue to take property." We discern no abuse of discretion in the sentence imposed by the trial court.

CONCLUSION

Based on the foregoing authorities and reasoning, we affirm the sentencing decision of the trial court.

ALAN E. GLENN, JUDGE