

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION VI

STATE OF TENNESSEE)

-VS-)

DEFENDANT)

Indictment No. _____

Count No. _____

SENTENCING FINDINGS OF FACT
FOR OFFENSES COMMITTED ON OR AFTER JUNE 7, 2005

This cause came on to be heard on the sentencing of the defendant on a conviction for the offense of _____. In determining the appropriate sentence for this offense, this Court has considered the evidence presented at the trial and/or sentencing hearing, the presentence report, the sentencing principles embodied in Tenn. Code Ann. § 40-35-103 and any arguments made as to alternative sentencing, the nature and characteristics of the criminal conduct involved, the evidence and information offered on enhancing and mitigating factors, any statistical information provided by the Administrative office of the Courts, any statement the defendant made, if any, on his own behalf about sentencing, and the defendant's potential for rehabilitation or treatment.

FROM ALL OF WHICH THE COURT FINDS AS FOLLOWS:

RANGE OF SENTENCE

The defendant is found to be:

_____ **AN ESPECIALLY MITIGATED OFFENDER** (Tenn. Code Ann. § 40-35-109)

- (1) The defendant has no prior felony convictions; AND
- (2) The court finds mitigating, but no enhancement factors.

_____ **A RANGE ONE STANDARD OFFENDER** (Tenn. Code Ann. § 40-35-105)

_____ **A RANGE TWO MULTIPLE OFFENDER** (Tenn. Code Ann. § 40-35-106)

- (1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; OR
- (2) One (1) Class A prior felony conviction if the defendant's conviction offense is a Class A or B felony.

_____ **A RANGE THREE PERSISTENT OFFENDER** (Tenn. Code Ann. § 40-35-107)

- (1) Any combination of five (5) or more prior felony convictions within the conviction class or higher, or within the next two (2) lower felony classes, where applicable, OR
- (2) At least two (2) Class A or any combination of three (3) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony.

A CAREER OFFENDER (Tenn. Code Ann. §40-35-108)

- (1) Any combination of six (6) or more Class A, B or C prior felony convictions, and the defendant's conviction offense is a Class A, B or C felony; OR
- (2) At least three (3) Class A or any combination of four (4) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony; OR
- (3) At least six (6) prior felony convictions of any classification if the defendant's conviction offense is a Class D or E felony.

ENHANCEMENT FACTORS (Tenn. Code Ann. § 40-35-114)

The Court finds the following enhancement factors which are not themselves essential elements of this offense:

- _____ (1) The defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range;
- _____ (2) The defendant was a leader in the commission of an offense involving two (2) or more criminal actors;
- _____ (3) The offense involved more than one (1) victim;
- _____ (4) A victim of the offense was particularly vulnerable because of age or physical or mental disability;
- _____ (5) The defendant treated, or allowed a victim to be treated, with exceptional cruelty during the commission of the offense;
- _____ (6) The personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great;
- _____ (7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement;
- _____ (8) The defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community;
- _____ (9) The defendant possessed or employed a firearm, explosive device or other deadly weapon during the commission of the offense;
- _____ (10) The defendant had no hesitation about committing a crime when the risk to human life was high;
- _____ (11) The felony resulted in death or serious bodily injury, or involved the threat of death or serious bodily injury, to another person, and the defendant has previously been convicted of a felony that resulted in death or serious bodily injury;
- _____ (12) During the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of, or serious bodily injury to, a victim or a person other than the intended victim;
- _____ (13) At the time the felony was committed, one (1) of the following classifications was applicable to the defendant:
 - (A) Released on bail or pretrial release, if the defendant is ultimately convicted of the prior misdemeanor or felony;
 - (B) Released on parole;
 - (C) Released on probation;
 - (D) On work release;
 - (E) On community corrections;
 - (F) On some form of judicially ordered release;
 - (G) On any other type of release into the community under the direct or indirect supervision of any state or local governmental authority or a private entity contracting with the state or a local government;
 - (H) On escape status; or
 - (I) Incarcerated in any penal institution on a misdemeanor or felony charge or a misdemeanor or felony conviction;

_____ (14) The defendant abused a position of public or private trust, or used a professional license in a manner that significantly facilitated the commission or the fulfillment of the offense;

_____ (15) The defendant committed the offense on the grounds or facilities of a pre-kindergarten through grade twelve (pre-K-12) public or private institution of learning when minors were present;

_____ (16) 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;

_____ (17) The defendant intentionally selected the person against whom the crime was committed or selected the property that was damaged or otherwise affected by the crime, in whole or in part, because of the defendant's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, ancestry or gender of that person or the owner or occupant of that property; however, this subdivision (17) should not be construed to permit the enhancement of a sexual offense on the basis of gender selection alone;

_____ (18) The offense was an act of terrorism or was related to an act of terrorism;

_____ (19) If the defendant is convicted of the offense of aggravated assault pursuant to [§ 39-13-102](#), the victim of the aggravated assault was a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, a state registered security officer/guard, an employee of the department of correction or the department of children's services, an emergency medical or rescue worker, emergency medical technician or paramedic, whether compensated or acting as a volunteer; provided, that the victim was performing an official duty and the defendant knew or should have known that the victim was such an officer or employee;

_____ (20) If the defendant is convicted of the offenses of rape pursuant to [§ 39-13-503](#), sexual battery pursuant to [§ 39-13-505](#) or rape of a child pursuant to [§ 39-13-522](#), the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance or controlled substance analogue;

_____ (21) If the defendant is convicted of the offenses of aggravated rape pursuant to [§ 39-13-502](#), rape pursuant to [§ 39-13-503](#), rape of a child pursuant to [§ 39-13-522](#) or statutory rape pursuant to [§ 39-13-506](#), the defendant knew or should have known that, at the time of the offense, the defendant was HIV positive;

_____ (22)(A) If the defendant is convicted of the offenses of aggravated arson pursuant to [§ 39-14-302](#) or vandalism pursuant to [§ 39-14-408](#), the damage or destruction was caused to a structure, whether temporary or permanent in nature, used as a place of worship and the defendant knew or should have known that it was a place of worship;

(B) As used in subdivision (22)(A), "place of worship" means any structure that is:

(i) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to [§ 67-5-212](#), based on ownership and use of the structure by a religious institution; and

(ii) Utilized on a regular basis by a religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship;

_____ (23) The defendant is an adult and sells to or gives or exchanges a controlled substance, controlled substance analogue or other illegal drug with a minor; (for use after 7-1-07)

_____ (24) The offense involved the theft of property and, as a result of the manner in which the offense was committed, the victim suffered significant damage to other property belonging to the victim or for which the victim was responsible; (for use after 7/1/08)

_____ (25)(A) The defendant commits an offense:

(i) During the time period between the first occurrence of events or conduct that later results in a declaration of a state of emergency by a county, the governor, or the president of the United States and the time the county, governor, or the president of the United States terminates the state of emergency, as provided in [§ 58-2-107](#);

(ii) Within the area or areas threatened by the emergency, as established by the county's, governor's, or president's declaration of a state of emergency; and

(iii) Knowing of the existence of the emergency;

(B) As used in this subdivision (25):

(i) "Emergency" means an occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or harm to the population, or substantial damage to or loss of property; provided, that natural threats may include disease outbreaks and epidemics; and

(ii) "Offense" means the defendant is convicted of a violation of [§ 39-14-103](#), [§ 39-14-104](#), [§ 39-14-408](#), or any other offense involving theft or vandalism that is graded by value pursuant to [§ 39-14-105](#), and the value of the property or service taken or property damaged is no greater than the value provided in [§ 39-14-105](#) for a Class E felony; (for use after 7/1/16).

_____ (26) The defendant committed the offense of robbery pursuant to [§ 39-13-401](#), aggravated robbery pursuant to [§ 39-13-402](#), or especially aggravated robbery pursuant to [§ 39-13-403](#), on the premises of a licensed pharmacy in an effort to unlawfully obtain, sell, give, or exchange a controlled substance, controlled substance analogue, or other illegal drug. (for use after 7/1/17)

_____ (27) The defendant commits a violent offense, as classified in [§ 40-35-120\(b\)](#), against a uniformed law enforcement officer or uniformed member of the armed forces or national guard; and the defendant intentionally selected the person against whom the crime was committed, in whole or in part, because of the person's status as a law enforcement officer or member of the armed forces or national guard;

_____ (28) At the time the instant offense was committed, the defendant was illegally or unlawfully in the United States; and

_____ (29) The offense involved the theft of a firearm from a motor vehicle, as defined in [§ 55-1-103](#).

MITIGATING FACTORS (Tenn. Code Ann. § 40-35-114)

The court finds the following mitigating factors:

- _____ (1) The defendant's criminal conduct neither caused nor threatened serious bodily injury;
- _____ (2) The defendant acted under strong provocation;
- _____ (3) Substantial grounds exist tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- _____ (4) The defendant played a minor role in the commission of the offense;
- _____ (5) Before detection, the defendant compensated or made a good faith attempt to compensate the victim of criminal conduct for the damage or injury the victim sustained;
- _____ (6) The defendant, because of youth or old age, lacked substantial judgment in committing the offense;
- _____ (7) The defendant was motivated by a desire to provide necessities for the defendant's family or the defendant's self;
- _____ (8) The defendant was suffering from a mental or physical condition that significantly reduced the defendant's culpability for the offense, however, the voluntary use of intoxicants does not fall within the purview of this factor;
- _____ (9) The defendant assisted the authorities in uncovering offenses committed by other persons or in detecting or apprehending other persons who had committed the offenses;
- _____ (10) The defendant assisted the authorities in locating or recovering any property or person involved in the crime;
- _____ (11) The defendant, although guilty of the crime, committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated the criminal conduct;
- _____ (12) The defendant acted under duress or under the domination of another person, even though the duress or the domination of another person is not sufficient to constitute a defense to the crime; or
- _____ (13) Any other factor consistent with the purposes of this chapter: _____

FINDINGS ON CONSECUTIVE SENTENCING

DISCRETIONARY CONSECUTIVE SENTENCING

This Court finds in ordering consecutive sentencing that:

- _____ The defendant is a professional criminal who has knowingly devoted such defendant's life to criminal acts as a major source of livelihood;
- _____ The defendant is an offender whose record of criminal activity is extensive;
- _____ The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;
- _____ The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high; and both of the following factors apply:
 - _____ (a) the circumstances surrounding the commission of the offense are aggravated, and
 - _____ (b) the aggregate length of the sentences reasonably relates to the offense of which the defendant stands convicted.
- _____ The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;
- _____ The defendant is sentenced for an offense committed while on probation; or
- _____ The defendant is sentenced for criminal contempt.
- _____ The defendant has additional sentences not yet fully served.

MANDATORY CONSECUTIVE SENTENCING

This Court finds that:

- _____ The defendant committed a felony while on parole or other release program.
- _____ The defendant committed a felony while on bail for a felony for which the defendant was ultimately convicted.
- _____ The defendant committed an escape or a felony committed while on escape.

PROBATION CONSIDERATIONS

This Court has also considered the following if deciding to grant or deny an alternative sentence to incarceration:

- _____ The presentence report, if not waived.
- _____ The defendant's physical/mental condition and social history.

- _____ The facts and circumstances surrounding the offense, and the nature and circumstances of the criminal conduct involved.
- _____ The prior criminal history of the defendant, or lack thereof.
- _____ The previous actions and character of the defendant.
- _____ Whether or not the defendant might reasonably be expected to be rehabilitated, and the defendant's potential or lack of potential for rehabilitation, including the risk that during the period of probation the defendant will commit another crime.
- _____ Whether or not it reasonably appears that the defendant will abide by the terms of probation.
- _____ Whether or not the interests of society in being protected from possible future criminal conduct of the defendant are great.
- _____ Whether or not measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.
- _____ Whether or not a sentence of full probation would unduly depreciate the seriousness of the offense.
- _____ Whether or not confinement is particularly suited to provide an effective deterrent to others likely to commit similar offenses.
- _____ Whether or not the offense was particularly enormous, gross or heinous.

THE DEFENDANT IS HEREBY SENTENCED TO a term of _____ in the
 _____ County Jail
 _____ Local workhouse
 _____ Department of Correction
 concurrent with _____
 consecutive to _____
 and a fine of \$ _____.
 Alternative sentence, if any: _____

The above findings are hereby ordered to be made a part of the record in this cause.

IT IS SO ORDERED this _____ day of _____, 20 ____.

JOHN W. CAMPBELL
 Judge of Division VI
 Criminal Court of Tennessee
 30th Judicial District