



## O P I N I O N

Defendant was indicted for aggravated child abuse and pled guilty to aggravated assault. After a hearing, the trial court sentenced defendant as a Range I standard offender to five years, suspended upon service of one hundred forty days, followed by six years probation. In this appeal as of right, defendant contends that his sentence is too long and that it should be fully suspended. Upon our review of the record, we affirm the judgment of the trial court.

Aggravated assault is a Class C felony. See T.C.A. § 39-13-102(d). The Range I sentence for a Class C felony is three to six years. See T.C.A. § 40-35-112. Where there are both enhancing and mitigating factors, the trial court must start at the minimum sentence in the range, enhance the sentence as appropriate, and then reduce the sentence as appropriate. See T.C.A. § 40-35-210(e).

The proof at the sentencing hearing established that defendant slapped the three-year-old son of his live-in girlfriend on both sides of his face, and then lifted and carried the child by his cheeks. The child suffered bruises and abrasions to his face, had nightmares, and required counseling. The child's mother had left her son in defendant's care while she ran an errand.

After hearing several witnesses and reviewing the presentence report and other documents, the trial court applied three enhancement factors: that defendant has a previous history of criminal convictions; that the victim was particularly vulnerable because of age or physical disability; and that defendant had abused a position of private trust. See T.C.A. § 40-35-114(1), (4) & (15). The court gave these enhancement factors "much weight."<sup>1</sup> The court also took into account defendant's past military history as a

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<sup>1</sup>The court also found as an enhancement factor that the personal injuries inflicted on the child were particularly great, based upon the emotional injuries he suffered. See T.C.A. § 40-35-114(6). However, the trial court also stated that this factor had no impact on the length of defendant's sentence. We therefore decline to address the issue of whether the evidence was sufficient to support imposition of this factor.

mitigating factor. See T.C.A. § 40-35-113(13). The court did not give this factor “nearly as much weight” as the enhancing factors.

Upon applying the enhancing factors, the trial court increased defendant's sentence to the maximum of six years. The court then reduced the sentence to five years on application of the single mitigating factor. The court then determined that service of one hundred forty days was appropriate to avoid depreciating the seriousness of the offense; to provide deterrence; and as deserved for the seriousness of the offense. See T.C.A. § 40-35-103(1)(B) & (2).

The evidence does not preponderate against the trial court's findings. Because no error of law requiring a reversal of the trial court's judgment is apparent on the record, and because the judgment is not a determination of guilt and was rendered in a proceeding without a jury, we affirm the trial court's judgment in accordance with Rule 20 of the Court of Criminal Appeals of Tennessee.

It is so ordered.

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JOHN H. PEAY, Special Judge

CONCUR:

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GARY R. WADE, Presiding judge

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NORMA MCGEE OGLE, Judge