

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 5, 2004

STATE OF TENNESSEE v. LAWRENZO MENTON

Appeal from the Criminal Court for Shelby County
Nos. 00-02081, 82, 83, 84 W. Otis Higgs, Jr., Judge

No. W2004-00350-CCA-R3-CD - Filed January 13, 2005

DAVID G. HAYES, J., separate concurring opinion.

I join with the majority in concluding that the record is insufficient to justify the imposition of consecutive sentences and that the defendant's length of sentences requires modification.

The majority opines that modification is compelled by the holding of *Blakely v. Washington*, 542 U.S. ___, 124 S.Ct. 2531 (2004). For those reasons expressed in *State v. Carlos Eddings*, No W2003-02255-CCA-R3-CD (Tenn. Crim. App. at Jackson, June 2, 2004) (Hayes, J., dissenting), I find any sentencing challenge to the length of sentence under *Blakely* is now waived for failure to object to the sentencing error at the trial level. Tenn. R. App. P. 36(a). Nonetheless, after *de novo* review, I agree with the majority that the trial court erred in applying enhancing factors (3), (4), (6), (11), and (17). I also agree that only factor (2) is supported by the record.

For this reason, I join with the majority in modifying the defendant's sentences as reflected by the opinion.

David G. Hayes, Judge