

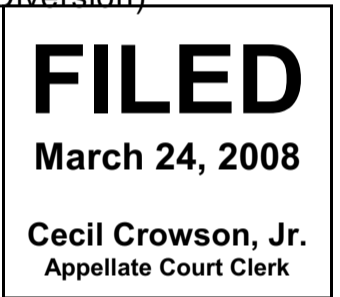
IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY SESSION, 1996

STATE OF TENNESSEE,)	C.C.A. NO. 02C01-9601-CC-00005
)	
Appellant,)	
)	
VS.)	CARROLL COUNTY
)	
CAROLYN L. CURRY,)	HON. C. CREED MCGINLEY
)	JUDGE
Appellee.)	(Rule 9 Appeal - Pretrial Diversion)

CONCURRING OPINION



I concur with Judge Peay's opinion in this case. I write separately to point out that, in my opinion, a finding by the trial judge that the district attorney general did not consider all relevant factors in denying pretrial diversion does not necessarily lead to the conclusion that pretrial diversion will be granted. Even though the district attorney general may have abused his discretion by failing to consider all relevant factors, the denial may be justified after all relevant factors are considered. If such is the case, in a manner somewhat analogous to a "harmless error" analysis, the denial of pretrial diversion should be upheld.

Even though a trial judge may not find an abuse of discretion by the district attorney general in denying pretrial diversion, the trial judge may nonetheless consider granting the defendant the relief known as "judicial diversion." See Tenn. Code Ann. § 40-35-313.

DAVID H. WELLES, JUDGE