

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST SESSION, 1996

STATE OF TENNESSEE, )

Appellee, )

VS. )

KEETA BURDEN, )

Appellant. )

C.C.A. NO. 02C01-9509-CC-00267

OBION COUNTY

HON. W. MICHAEL MALOAN  
JUDGE

(Re-Sentencing)

**FILED**

March 26, 2008

Cecil Crowson, Jr.  
Appellate Court Clerk

FOR THE APPELLANT:

JAMES H. BRADBERRY  
Branberry, Crowe & MacLeod  
P. O. Box 765  
Dresden, TN 38225

FOR THE APPELLEE:

CHARLES W. BURSON  
Attorney General and Reporter

CYRIL V. FRASER  
Assistant Attorney General  
450 James Robertson Parkway  
Nashville, TN 37243

THOMAS A. THOMAS  
District Attorney General

JAMES T. CANNON  
Assistant District Attorney  
414 South Fourth Street  
Union City, TN 38261-0218

OPINION FILED \_\_\_\_\_

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

## ORDER

This is an appeal as of right from the judgment of the Circuit Court of Obion County, granting Appellant's motion to modify her sentence, but denying her full probation. See, Tenn. R. Crim. P. 35. Appellant was convicted upon a plea of guilty of the offense of theft of property in excess of \$60,000, a Class B felony. Her original sentence, imposed April 17, 1995, was to a term of eight years in the Department of Correction as a Range I standard offender. The sentence was suspended except for one year which Appellant was ordered to serve in the Obion County Jail. A probationary period was imposed for the balance of the term and restitution ordered as a condition thereof.

On August 7, 1995, Appellant filed a Motion For Correction or Reduction of Sentence. The sentence was modified to require that Appellant serve only sixty days in the county jail. The trial judge declined to place Appellant on full probation. It is from the denial of outright probation for the full eight year sentence that Appellant seeks relief in this Court. After a careful review of the record and briefs in this matter we are of the opinion that the judgment of the trial court should be affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

We note initially that this is an appeal from a decision with regard to a motion to modify or reduce a previously imposed sentence. Tenn. R. Crim. P. 35. In contrast to the de novo standard of review applicable to sentencing appeals perfected under Tenn. Code Ann. Sec. 40-35-401(d), appeals of Rule 35 decisions are reviewed simply to determine if there has been an abuse of

discretion on the part of the trial judge. State v. Irick, 861 S.W.2d 375 (Tenn. Crim. App. 1993). We also note that, as a Class B felon, Appellant does not enjoy the presumption that she is entitled to a non-incarcerative sentence. See, Tenn. Code Ann. Sec. 40-35-102(6).

There is evidence in this record which would have justified placing Appellant on full probation. However, the record also reflects that despite her claims that the theft from her employer was motivated by the desire to provide bare necessities for her family, Appellant stole approximately \$139,000 over a three year period. Some of this money was used to pay for a van, collectibles such as “Dickens Villages”, and gymnastics classes for Appellant’s children. Appellant’s employers suffered rather severe business difficulties as a result of Appellant’s actions including mounting debt, impaired credit, and impending layoffs of other employees.

Given the circumstances it is not difficult to see how full probation could depreciate the seriousness of the offense. Even were this Court inclined to grant full probation, the record is sufficient to sustain the trial court’s exercise of discretion in declining same. Under these circumstances, we will not disturb the decision of the trial judge and we therefore affirm pursuant to Rule 20, Rules of the Court of Criminal Appeals.

---

JERRY L. SMITH, JUDGE

CONCUR:

---

GARY R. WADE, JUDGE

---

WILLIAM M. BARKER, JUDGE