

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY 1998 SESSION

FILED
March 13, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
)
 v.)
)
)
)
 CHERYL D. SUDDUTH,)
)
 APPELLANT.)

No. 02-C-01-9703-CR-00094

Shelby County

Arthur T. Bennett, Judge

(Sentencing)

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, Cheryl D. Sudduth (defendant), was convicted of forgery in excess of \$10,000, a Class C felony, following her plea of guilty to the offense. The trial court, finding the defendant to be a standard offender, imposed a Range I sentence consisting of a \$1,000 fine and confinement for four (4) years in the Shelby County Correctional Center. The trial court suspended the defendant's sentence and placed her on probation for a period of five (5) years. In this court, the defendant contends the trial court abused its discretion by refusing to grant her judicial diversion. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issue presented for review, it is the opinion of this court that the judgment of the trial court should be affirmed.

The facts in this case were stipulated to at the submission hearing. The STM Mortgage Company of Dallas, Texas, issued a check in the amount of \$17,704.24. The check was made payable to Ronald Sudduth and Cheryl Sudduth and Cummins Construction Company (correctly spelled "Cummings"). The defendant forged the name of Cummings Construction Company on the back of the check by using a company stamp without permission between September 20, 1991, and October 15, 1991.

The defendant was indicted on April 16, 1992, by the Shelby County Grand Jury. It appears the defendant was not in custody when she was indicted. A *capias* was issued for her arrest on April 16, 1992. She was arrested and placed in the Shelby County Jail on April 22, 1992.

The defendant was thirty-one years of age when she was sentenced. She was single. She has one daughter who was thirteen years of age at sentencing. The defendant is a graduate of State Technical Institute in Memphis. She graduated in 1979.

According to the presentence report, the defendant was employed by the Shelby County Government from 1985 until 1990. She was fired, but the reason she was fired is not provided. She worked for Federal Express from May of 1992 until October of 1992. She resigned from this position. Her last place of employment was Spiffy Cleaners. It appears she was released because the business closed.

When a defendant contends the trial court committed error in refusing to impose a

sentence pursuant to Tenn. Code Ann. § 40-35-313, commonly referred to as “judicial diversion,” the standard of review is an abuse of discretion. State v. Bonestel, 871 S.W.2d 163, 167 (Tenn. Crim. App. 1993); State v. Anderson, 857 S.W.2d 571, 572 (Tenn. Crim. App. 1992); State v. George, 830 S.W.2d 79, 80 (Tenn. Crim. App. 1992). Thus, this court must determine whether the trial court abused its discretion in refusing to grant the defendant judicial diversion.

In this case, the trial court considered the defendant’s acquisition of a stamp for endorsing the check from the victim’s business. She had a prior conviction for driving without a license. The court also took into consideration the defendant’s apparent lack of candor. The trial court stated: “What you want to do is tell the truth. And see, you were kind of shading it about a couple of things. . . .” The trial court also considered the circumstances of the offense and the amount in controversy.

The trial court did not abuse its discretion in refusing to grant judicial diversion. The factors considered by the trial court support its decision in this regard.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

DAVID G. HAYES, JUDGE