

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JANUARY 1998 SESSION

**FILED**

February 10, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 VS. )  
 )  
 DARWIN RODREGUS WINDHAM, )  
 )  
 Appellant. )

NO. 02C01-9705-CC-00196

WEAKLEY COUNTY

HON. WILLIAM B. ACREE,  
JUDGE

(Sentencing - Sale of Cocaine)

FOR THE APPELLANT:

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

AFFIRMED - RULE 20

JOE G. RILEY,  
JUDGE

## ORDER

The defendant, Darwin Rodregus Windham, appeals the sentence imposed by the Circuit Court of Weakley County following his guilty plea to the sale of cocaine over 0.5 grams in Indictment No. 3097 and the sale of cocaine under 0.5 grams in Indictment No. 3098. The trial court sentenced him to concurrent sentences of eight (8) years for the Class B felony sale of cocaine and three (3) years for the Class C felony sale of cocaine. The trial court ordered that, after serving one (1) year in the Weakley County jail, defendant could serve the remainder of his sentence in community corrections. Defendant appeals, claiming that the trial court should have granted probation. We affirm the judgment of the trial court pursuant to Rule 20, Tennessee Court of Criminal Appeals.

Because one of the offenses is a Class B felony, defendant is not entitled to the statutory presumption of alternative sentencing. See Tenn. Code Ann. § 40-35-102(6). Moreover, the defendant carries the burden of establishing suitability for total probation. Tenn. Code Ann. § 40-35-303(b); State v. Boggs, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996). To meet this burden, defendant must show that probation will “subserve the ends of justice and the best interest of both the public and the defendant.” State v. Bingham, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995) (citations omitted). Defendant has not carried his burden.

The trial court sentenced defendant to the presumptive minimum within the range for each offense. Furthermore, defendant was allowed to serve his sentence on community corrections after serving one (1) year in the county jail. Considering the sentencing principles along with the relevant facts and circumstances, including the nature of the offenses, we believe the trial court imposed an appropriate sentence.

After a thorough review of the records, briefs, 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 pursuant to Rule 20, Tennessee Court of Criminal Appeals.

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**JOE G. RILEY, JUDGE**

**CONCUR:**

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**JOE B. JONES, PRESIDING JUDGE**

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**PAUL G. SUMMERS, JUDGE**