

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs September 12, 2023 at Nashville

STATE OF TENNESSEE v. DEONTA BASKIN

Appeal from the Criminal Court for Shelby County
No. 18-05058 Lee V. Coffee, Judge

No. W2022-01796-CCA-R3-CD

The Defendant, Deonta Baskin, was convicted of first degree murder and possession of a firearm by a convicted felon. The trial court sentenced the Defendant to life without parole pursuant to the repeat violent offender statute for his first degree murder conviction to be served consecutively to thirty years' confinement as a Range III, persistent offender for his possession of a firearm by a convicted felon conviction. On appeal, the Defendant argues that the trial court erred by imposing excessive sentences based on his prior convictions. After review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

KYLE A. HIXSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and MATTHEW J. WILSON, JJ., joined.

Gerald S. Green, Memphis, Tennessee, for the appellant, Deonta Baskin.

Jonathan Skrmetti, Attorney General and Reporter; Ronald L. Coleman, Senior Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Alanda Dwyer and James Thomas, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This case arises from the May 23, 2018 shooting and murder of the victim, Marceles Scurlock, at Save's Market in Shelby County, Tennessee. A Shelby County grand jury indicted the Defendant, along with his codefendant, Marcus Green ("codefendant Green"), for premeditated first degree murder and for possession of a firearm by a convicted felon, a

Class B felony. *See* Tenn. Code Ann. §§ 39-13-202(a)(1), -17-1307(b)(1)(A). The Defendant and codefendant Green jointly proceeded to a jury trial.

A. Trial Proceedings

At trial, the proof showed that the victim and his then girlfriend, Patricia Fisher, arrived at Save's Market on May 23, 2018. Ms. Fisher entered the store and purchased cigarettes. When she walked back to the vehicle, the victim told her that something was "going on" and that people were circling the vehicle. Two of these individuals were "Quentin" and "D." Ms. Fisher testified that she and the victim had an argument with Quentin and D three days prior. During this prior argument, Quentin became upset with Ms. Fisher because he thought she was selling marijuana, and he told her not to sell on this "block." Ms. Fisher tried to explain to Quentin that the marijuana was for her cousin's seizures. The victim yelled at Quentin, "Don't holler at my b----," to which Quentin replied, "Don't bring y'all a-- back over here trying to serve somebody." Ms. Fisher stated the previous incident was "[j]ust an argument, nothing physical" and was not "ongoing."

Returning to the May 23, 2018 incident, Ms. Fisher testified that the victim told Ms. Fisher to "go back up" to the store to avoid the conflict. When she did, codefendant Green, a third individual whom Ms. Fisher had never met, approached her and said, "You better get the f--- down off my block." Codefendant Green then brandished a gun, and Ms. Fisher walked back toward the vehicle and the victim. Codefendant Green followed her, and the victim said, "D---, you gonna up a gun on my b----?" Codefendant Green then pointed the gun at the victim. The victim told Ms. Fisher to run, and she ran back into the store and hid behind the counter.

Ms. Fisher testified that the Defendant was also present with the group that day at Save's Market. Though Ms. Fisher did not see the Defendant shoot the victim, she said the gun shots "just kept going." She identified the Defendant and codefendant Green for police from a photographic lineup three days after the shooting. She also identified Quentin and D and stated they had instigated the May 23, 2018 incident. Ms. Fisher identified the Defendant and codefendant Green in court.

A silent video recording of the shooting was entered as an exhibit and reflected what Ms. Fisher had testified to regarding the events. The recording showed that after Ms. Fisher ran back into the store, codefendant Green pointed a gun at the victim, who backed away while holding up his hands. The Defendant walked behind the victim, grabbed him, and restrained him. Codefendant Green hit the victim with his gun, and a struggle ensued. The victim and codefendant Green fell behind a dumpster, partially out of sight. The Defendant

pulled a gun from his waistband and dropped it. The Defendant retrieved his gun, and as the victim and codefendant Green emerged from behind the dumpster, the victim fell to the ground. The Defendant fired multiple shots toward the victim. The Defendant and codefendant Green ran to a vehicle and drove away. A red spot formed on the back of the Defendant's shirt as he ran to the vehicle.

After the shooting, the Defendant called his then girlfriend, Yolanda Wrushen, who was on her way home from work. He asked if she saw police and yellow tape near Save's Market. When she responded that she did, the Defendant stated that he "killed" the victim. Ms. Wrushen identified two photographs the Defendant sent her through text message the day of the shooting. Each photograph showed a bullet wound on the Defendant's body. Ms. Wrushen stated that the Defendant told her he was shot and that when he felt something "wet," he "went in on the guy."

Evidence was collected at the scene and sent to the Tennessee Bureau of Investigation ("TBI") for analysis. Lieutenant Billy Byrd of the Memphis Police Department testified that the victim was unarmed, as no weapon was located on the victim's body or in the victim's vehicle. Special Agent Brock Sain of the TBI testified as an expert in firearms identification. Out of fourteen casings he examined, thirteen were fired from one gun and one was fired from a different gun.

Doctor Marco Ross performed the victim's autopsy and determined the victim's cause of death to be multiple gunshot wounds. The manner of death was homicide. The victim's body had fifteen bullet entrance wounds and two grazes. Multiple wounds on the victim's body were potentially fatal, including ones to the heart, kidney, colon, spine, and lungs. He agreed that the victim likely "suffered immensely" during the attack.

The State rested. The Defendant elected not to testify and presented no further proof. He stipulated that he had a prior felony conviction for his convicted felon in possession of a firearm charge. The jury found the Defendant guilty of first degree murder and being a convicted felon in possession of a firearm.

B. Sentencing Hearing

At the August 26, 2022 sentencing hearing, the State, without objection, entered as exhibits the Defendant's presentence report and a certified copy of the Defendant's "penitentiary package," which included judgments for the Defendant's prior felony convictions. Relative to the Defendant's first degree murder conviction, the trial court found "beyond a reasonable doubt as reflected in the presentence report . . . and . . . in the

penitentiary package” that the Defendant had a prior attempted first degree murder conviction that qualified as a “violent offense” under the repeat violent offender statute. *See* Tenn. Code Ann. § 40-35-120. The trial court further found that the Defendant was released on parole for the attempted murder conviction in 2017, some thirteen months prior to the current offense. The trial court found that this prior conviction involved a separate period of incarceration. The trial court sentenced the Defendant to life without parole as a repeat violent offender for the first degree murder conviction, noting that it had “no discretion” in the sentence. *See id.* § 40-35-120(g).

Regarding the Defendant’s conviction for possession of a firearm by a convicted felon, the trial court found that the Defendant was a Range III, persistent offender based on five prior felony convictions reflected in the penitentiary package. *See* Tenn. Code Ann. § 40-35-107(a), (c). As relevant here, the exhibit contained judgments for the following convictions: three aggravated assaults, Class C felonies; attempted first degree murder, a Class A felony; facilitation of aggravated robbery, a Class C felony; and theft of property, a Class C felony.

Addressing enhancement factors, the court found that the Defendant had a previous history of criminal convictions and criminal behavior in addition to those necessary to establish the appropriate range, noting that the Defendant had eleven felony convictions including his present convictions. Tenn. Code Ann. § 40-35-114(1). The court found that the Defendant was a leader in the commission of the offense. *Id.* § 40-35-114(2). It found that this offense involved more than one victim, stating that aside from the victim and Ms. Fisher, who were both named in the indictment, the Defendant fired “many” shots when multiple, unnamed people were present who could have been injured. *Id.* § 40-35-114(3). The court found that the Defendant had a previous history of unwillingness to comply with conditions of a sentence involving release into the community, explaining that the Defendant had violated the terms and conditions when placed on probation and parole and had “never done anything that the [c]ourt ha[d] ordered him to do.” *Id.* § 40-35-114(8). It found that the Defendant had no hesitation in committing a crime in which risk to human life was high, stating that the Defendant had fired a gun during the day in a public place, a convenience store that had foot and vehicle traffic. *Id.* § 40-35-114(10). The court found that this felony resulted in death to another person and that the Defendant had previously been convicted of felonies involving the threat of death or serious bodily injury to another. *Id.* § 40-35-114(11). It further found that the Defendant was on parole at the time he committed the present offense. *Id.* § 40-35-114(13)(b). The court gave these enhancement factors “great weight.”

The court found only one applicable mitigating factor, that the Defendant had participated in classes while incarcerated, including domestic violence awareness, life skills, “HIV” awareness, alcohol and drug treatment, anger management, “MRT,” and “thinking for a change.” Tenn. Code Ann. § 40-35-113(13). The trial court gave this factor “very little weight.”

The trial court concluded that the enhancing factors “substantially outweigh[ed]” the mitigating factors. As such, the trial court sentenced the Defendant to thirty years for his possession of a firearm by a convicted felon conviction.

The trial court imposed consecutive sentencing based upon the Defendant’s extensive criminal record and on the Defendant’s being a dangerous offender whose behavior indicated little or no regard to human life and no hesitation in committing a crime in which the risk to human life was high. Tenn. Code Ann. § 40-35-115(b)(2), (4).

The Defendant filed a motion for new trial on September 26, 2022. The trial court denied the Defendant’s motion for new trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Defendant contends that the trial court erred by imposing an excessive sentence. In his brief, the Defendant asks this court to “remand this case to the sentencing court with directions to sentence the [Defendant] to life with a consecutive sentence of three years.” He argues that his sentence was not the least severe measure available to achieve the purpose for which the sentence was imposed and was not necessary to avoid depreciating the seriousness of the offenses. He then contends that enhanced sentences based on facts not submitted to jury and proved beyond a reasonable doubt are prohibited by the Sixth Amendment. From his limited argument, we surmise that the Defendant is challenging his sentences as excessive based on their enhancement due to his prior convictions.

The State responds that the Defendant’s status as a repeat violent offender mandated the court to order life without parole for the first degree murder conviction and that the trial court made sufficient findings supporting the thirty-year sentence as a Range III, persistent offender for the possession of a firearm by a convicted felon conviction. The State further argues that the Defendant’s constitutional challenge regarding enhanced sentences is waived, or in the alternative, that enhanced sentences based on prior convictions are constitutional.

A. Constitutional Challenge

Relative to the Defendant's contention that, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Sixth Amendment prohibits enhanced sentences based on any fact not submitted to a jury and proved beyond a reasonable doubt, the Defendant failed to raise this constitutional challenge to his sentences at the sentencing hearing or in his motion for new trial. As such, we agree with the State that this issue is waived. *State v. Allen*, 593 S.W.3d 145, 154 (Tenn. 2020) (stating that issues raised on appeal for the first time are generally waived); Tenn. R. App. 36(a); see *United States v. Cotton*, 535 U.S. 625, 631-34 (2002) (holding, after its decision in *Apprendi*, that a defendant's claim of finding by a jury on a fact used to enhance a defendant's sentence was waived because it was not raised at trial). Notwithstanding waiver, prior convictions fall squarely into the exception recognized in *Apprendi*, a fact acknowledged by the Defendant in his brief. 530 U.S. at 490. Therefore, the Defendant's enhanced sentences based on prior convictions do not violate the Sixth Amendment under this theory.

B. Excessive Sentences

When an accused challenges the length of a sentence or manner of service, this court reviews the trial court's sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012); see also *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012) (applying the *Bise* standard to "questions related to probation or any other alternative sentence"). The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.; see also *State v. Arnett*, 49 S.W.3d 250, 257 (Tenn. 2001).

This court will uphold the trial court's sentencing decision "so long as it is within the appropriate range and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles listed by statute." *Bise*, 380 S.W.3d at 709-10. Moreover, under such circumstances, appellate courts may not disturb the sentence even if we had preferred a different result. See *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). Those purposes and principles include "the imposition of a sentence justly deserved in relation to the seriousness of the offense," Tennessee Code Annotated section 40-35-102(1), a punishment sufficient "to prevent crime and promote respect for the law," Tennessee Code Annotated section 40-35-102(3), and consideration of a defendant's "potential or lack of potential for . . . rehabilitation," Tennessee Code Annotated section 40-35-103(5). See *Carter*, 254 S.W.3d at 344. Ultimately, in sentencing a defendant, a trial court should impose a sentence that is "no greater than that deserved for the offense

committed” and is “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” Tenn. Code Ann. § 40-35-103(2), (4).

The Sentencing Reform Act was enacted in order “to promote justice” and “assure fair and consistent treatment of all defendants by eliminating unjustified disparity in sentencing and providing a fair sense of predictability of the criminal law and its sanctions.” Tenn. Code Ann. § 40-35-102. In determining the proper sentence, the trial court must consider: (1) the evidence adduced at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the enhancement and mitigating factors set forth in Tennessee Code Annotated sections 40-35-113 and 40-35-114; (6) any statistical information provided by the Administrative Office of the Courts (“AOC”) as to Tennessee sentencing practices for similar offenses; (7) any statement the defendant wishes to make in the defendant’s own behalf about sentencing; and (8) the result of the validated risk and needs assessment conducted by the department and contained in the presentence report. *Id.* § 40-35-210(b).

1. First Degree Murder

As pertinent here, a “repeat violent offender” is a defendant who “[i]s convicted in this state on or after July 1, 1994, of any offense classified in subdivision (c)(1) as a violent offense; and [h]as at least one conviction for an offense classified in subdivision (c)(1) or (c)(2) as a violent offense.” Tenn. Code Ann. § 40-35-120(a)(3)-(4). Code section (c)(1) classifies “[f]irst degree murder including any attempt . . . to commit first degree murder” as a violent offense. To qualify under subdivision (a)(3) and (a)(4), the defendant must have served at least one separate period of incarceration for the predicate offense. *Id.* § 40-35-120(e)(1)(B). A violent offense committed while the defendant is on supervised release into the community shall be considered a separate period of incarceration. *Id.* § 40-35-120(e)(2). “The court shall sentence a defendant who has been convicted of any offense listed in subdivision . . . (c)(1) . . . to imprisonment for life without possibility of parole if the court finds beyond a reasonable doubt that the defendant is a repeat violent offender[.]” *Id.* § 40-35-120(g).

Here, the Defendant was convicted in the present case of first degree murder, a qualifying violent offense under Code section 40-35-120(c)(1). Further, the Defendant had been previously convicted of attempted first degree murder, another qualifying violent offense under section 40-35-120(c)(1) and was on parole for that offense when he committed the present offense. The State listed the Defendant’s attempted first degree

murder conviction in its notice to seek enhanced punishment and entered as an exhibit at the sentencing hearing a certified copy of the judgment for this conviction. Based on these convictions, the trial court determined that the State had proven beyond a reasonable doubt that the Defendant was a repeat violent offender. As such, the Defendant's sentence of life without parole for his first degree murder conviction was mandatory. Tenn. Code Ann. § 40-35-120(g). A trial court cannot abuse its discretion by imposing a statutorily mandated sentence. *State v. Mitchell*, No. W2020-01488-CCA-R3-CD, 2021 WL 5811245, at *14 (Tenn. Crim. App. Dec. 7, 2021), *perm. app. denied* (Tenn. Feb. 5, 2022). Therefore, the Defendant is not entitled to relief on this issue.

2. Unlawful Possession of a Weapon

Relative to the Defendant's possession of a firearm by a convicted felon conviction, we first note that the Defendant has requested that his sentence be reduced to three years, the minimum sentence for a Range I offender convicted of a Class C felony. *See* Tenn. Code Ann. § 40-35-112(a)(3). However, the Defendant's possession of a firearm by a convicted felon conviction is a Class B felony and, even as a Range I offender, he would only be eligible for a minimum eight-year sentence. *Id.* §§ 39-17-1307(b)(2), 40-35-112(a)(2). Notwithstanding, the record reflects that the Defendant had the requisite five prior felony convictions to support the trial court's determination he was a Range III, persistent offender. *See id.* § 40-35-107(a), (c). Therefore, the applicable sentencing range was twenty to thirty years. *Id.* § 40-35-112(c)(2). While the Defendant contends that his sentence was not the least severe measure available and was not necessary to avoid depreciating the seriousness of offense, trial courts have the discretion "to select any sentence within the applicable range so long as the length of the sentence is 'consistent with the purposes and principles of [the Sentencing Act].'" *Carter*, 254 S.W.3d at 343 (quoting Tenn. Code Ann. § 40-35-210(d)). The record reflects that the trial court considered the evidence, presentence report, and the Defendant's prior convictions and made adequate findings regarding the enhancement and mitigating factors. As such, the thirty-year sentence is presumed reasonable by this court. *Bise*, 380 S.W.3d at 709-10; *Caudle*, 388 S.W.3d at 278-79. The Defendant, therefore, is not entitled to relief on this issue.

III. CONCLUSION

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

KYLE A. HIXSON, JUDGE