

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 7, 2025

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. KERION DAWSON

Appeal from the Criminal Court for Shelby County
No. C2102857 Paula L. Skahan, Judge

No. W2025-00034-CCA-R3-CD

The Defendant, Kerion Dawson, pled guilty in the Shelby County Criminal Court to mitigated statutory rape, a Class E felony, and received a two-year sentence to be served as sixty days in confinement and the remainder on supervised probation. On appeal, the Defendant claims that the trial court erred by denying his request for judicial diversion. After review, we affirm the sentence imposed by the trial court.

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

JOHN W. CAMPBELL, SR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J., and TIMOTHY L. EASTER, J., joined.

Tony N. Brayton, Assistant Shelby County Public Defender (on appeal), and Courtney Evans, Assistant Shelby County Public Defender (at trial), Memphis, Tennessee, for the appellant, Kerion Dawson.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Steven J. Mulroy, District Attorney General; and Robert Steele, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

In July 2021, the Shelby County Grand Jury returned a three-count indictment, charging the Defendant with rape without consent; rape when the defendant knew or had reason to know that the victim was mentally defective; and mitigated statutory rape. The victim of the alleged crimes was the Defendant's seventeen-year-old first cousin.

On December 13, 2024, the Defendant pled guilty to mitigated statutory rape in exchange for a two-year sentence as a Range I, standard offender.¹ Pursuant to the plea agreement, the trial court was to determine the manner of service of the sentence, and the State dismissed the two rape charges.

At the guilty plea hearing, the State gave the following factual basis for the plea: On the evening of December 19, 2020, officers from the Memphis Police Department responded to a home on Mickey Drive regarding an assault that occurred at a home on Porter Street. When they arrived, the victim's foster mother told them that she had received a telephone call from the victim's aunt, advising her that the twenty-one-year-old Defendant had the victim perform "penile oral sex" on him while the victim was visiting the Defendant's family that morning. The victim's foster mother told the officers that she spoke with the victim and that the victim told her, "[Defendant] made me lick him." The victim's foster mother said that she asked the victim "where" the Defendant made the victim lick him and that the victim responded, "You know." The victim's foster mother advised the officers that the victim had "mental, and learning, intellectual disabilities."

A detective spoke with the victim that same day. The victim told the detective that while she was at her aunt's house, the Defendant asked her to come to his bedroom, which was upstairs. The victim went into the bedroom with him, and he asked her to "[s]uck him." The detective asked the victim to explain what the Defendant wanted her to suck, and the victim motioned to the genital area and replied, "His private." The victim told the detective that "she did not want to, but she complied with Defendant's request, because she felt like he was going to keep asking her to do it, like he's done in the past, when she was fifteen, or sixteen years old." The victim said that the duration of the incident was one or two minutes, that the Defendant did not use a condom, and that he did not ejaculate in her mouth. The victim was shown a six-photograph array and positively identified the Defendant as the person who made her perform penile oral sex on him.

On January 27, 2021, the Defendant waived his rights and voluntarily spoke with investigators. He told them that the victim walked into his bedroom on December 19, 2020, while he was talking on the telephone with his girlfriend. The Defendant said that the victim overheard him asking his girlfriend for oral sex, that the victim approached him, and that the victim asked to see his penis. The Defendant said that he pulled his penis out of his pants and that the victim grabbed his penis. The Defendant said that the victim put his penis in her mouth and performed oral sex for one to two minutes. The Defendant

¹ Mitigated statutory rape is defined as unlawful sexual penetration of the victim by the defendant or of the defendant by the victim when the victim is at least fifteen years old but less than eighteen years old and the defendant is at least four but not more than five years older than the victim. Tenn. Code Ann. § 39-13-506(a).

stated that he stopped the victim “because it was wrong.” He denied that the victim performed oral sex on him any other time.

On January 29, 2021, the victim’s foster mother provided documentation of the victim’s “intellectual disability.” The documentation, which was based on tests administered to the victim on September 10 and 11, 2019, showed that she suffered from “a functional delay” and that her basic reading skills were on a third-grade level and her comprehension and math skills were on a fourth-grade level. The State advised the trial court that the age difference between the victim and the Defendant was four years, six months.

After the State’s recitation of the facts, the Defendant stipulated that those would have been the facts if the case had gone to trial. The trial court accepted the Defendant’s guilty plea and immediately held a sentencing hearing.

The Defendant testified that he was in court due to his “actions” and that he was embarrassed and “very disappointed” in himself. He stated that if the trial court granted judicial diversion, he would do everything required so that he did not end up back in court. The Defendant said that he was “sorry for all the pain” he caused the victim and their families and that “I wish I could rewind time and go back and avoid everything. I am truly sorry.”

The Defendant testified that he was born in Memphis and that he graduated from high school. He participated in basketball, track, cross-country, and football and received a track scholarship to Lane College in 2018. However, the track coach left Lane, so the track team was discontinued, and the Defendant lost his scholarship. The Defendant attended one semester at Lane but could not afford to stay and dropped out of college. After leaving Lane, the Defendant worked for one and one-half years at Federal Express and lived with his family. In 2024, he had his own apartment and was working for Allied Universal, a security company. In April 2024, his ex-girlfriend’s family “jumped” him. The Defendant ended up going to the hospital instead of work, so his employer “fired” him. The Defendant was evicted from his apartment and moved back with his parents. At the time of the sentencing hearing, he was still living with his parents and was unemployed.

The Defendant testified that he had a five-year-old son but that he did not know he was the child’s father until after the child was born. The Defendant and his son’s mother were still friends, and the Defendant’s son spent every other weekend with him. The Defendant stated that he had a good relationship with his family and that “ever[y]body loves each other.” The Defendant’s family was very supportive, and his mother attended every court date, including the sentencing hearing. The Defendant said he did not want a criminal record because “I have been stuck in a stand-still with this going on and I still

regret it to this day.” At that point, the trial court asked, “How do you think [the victim] feels? Is she stuck in a stand-still?” The Defendant answered, “Yes, she probably feels bad.” The trial court responded, “She probably feels a lot worse than you do, how about that? You talk about stuck in a stand-still. I hate that for you.”

The Defendant testified that he wanted to be a truck driver and that he was enrolled in truck-driving school until the school found out about this case. The Defendant said that he had matured in his decision-making; that he wanted to provide for his son; and that he was receiving unemployment benefits, which he was using to pay for his son’s daycare, clothes, and food. The Defendant said that he had applied for jobs but that no one would hire him due to this case. He said he might be able to go back to work for a former employer after the case was resolved.

On cross-examination, the Defendant testified that he had known the victim since he was six or seven years old because they visited each other’s houses. Nevertheless, the victim was not a talkative person, so the Defendant did not know she had an intellectual disability until after the crime. The Defendant acknowledged that he knew oral sex with the victim was wrong and that it was “a breach of trust.” He denied that he took advantage of the victim and said that he never forced her to engage in oral sex. He stated that he never meant to hurt her and that he wanted the trial court to grant judicial diversion so he could “just start over, like, from scratch.”

The Defendant acknowledged that according to his presentence report, he smoked marijuana every day. He clarified, “I really meant to say, every often, but not every day.” The Defendant last smoked marijuana in October 2024, the same month he spoke with the investigator for his presentence report. At the conclusion of his cross-examination testimony, the Defendant stated, “I’ll do whatever I got to do, to prove my trust, I’ll do whatever, whatever.”

Upon being questioned by the trial court, the Defendant continued to claim that the victim asked if she could perform oral sex on him. He denied asking her to engage in oral sex on prior occasions, and the trial court responded, “I don’t really believe you.” The Defendant said that the victim came to his home by herself on December 19, 2020. He maintained that he did not ask her to come to his bedroom and said that she came to his room on her own accord. He said that the victim overheard his conversation with his girlfriend and acknowledged that the victim was “turned on” by the conversation. At the conclusion of the Defendant’s testimony, the trial court stated, “Well, none of this really makes sense, but we are going to hear from her.”

The victim did not testify, but the State introduced her victim impact statement into evidence. At the victim's request, the State read her statement aloud to the trial court as follows:

At the time of the incident I was only sixteen years old. I think it is important for the Court to know that I do not act my age emotionally and mentally, I am like a ten year old child.

I often look for approval, safety and protection from others. [The Defendant] continued to ask for sexual favors. He knew I was a minor and I feel that he took advantage of me, because he sent me a text message and said, 'You can keep a secret.'

....

This case has affected both families and others. I have blamed myself a lot for what happened. I am always thinking about the outcome of the case and if it will affect how my family will feel about me and if they are going to be mad at me.

I feel it affects my new family, because they are doing a lot to help me get better.

Since what happened I have nightmares, bad thoughts about what happened, trouble sleeping, feelings of guilt and shame.

[The Defendant] told me that if I did the sexual act I would be his favorite cousin. So now I struggle with saying no at times, because I don't want people to be mad at me.

I am currently in counseling to work through the trauma. Sometimes I cry and feel sad when I think about what happened and blame myself.

I was asked to keep secrets and asked multiple times to perform sexual acts. I know that I should not blame myself and he's to blame. [The Defendant] was the adult and I was a child.

Being someone's favorite cousin shouldn't come with sexual acts. This is something I must deal with every day. How could he do that to me? Especially your cousin.

The State also introduced the Defendant's presentence report into evidence. The report showed that the Defendant graduated from high school in 2017 and attended Lane College from August 2017 to January 2018 and Roadmaster CDL School for two weeks in September 2023. In the report, the Defendant described his physical and mental health as "excellent." He said he began consuming alcohol when he was twenty-two years old and marijuana when he was fifteen years old. According to the report, the Defendant used marijuana daily and last used marijuana in October 2024; he denied using any other substances. The Defendant said he had a "close" relationship with his parents. The report showed that the Defendant worked as a security officer for Allied Universal from March 2021 to April 2024; as a packer for Walmart from September to December 2020; and as a package handler for Federal Express from March 2018 to July 2019. The report did not show any criminal history for the Defendant. The Defendant's Strong-R assessment classified his overall risk to reoffend as low with moderate needs in residential, family, and alcohol/drug use and low needs in employment, mental health, education, aggression, attitudes/behaviors, and friends.

At the conclusion of the hearing, the Defendant requested that the trial court place him on probation and grant his request for judicial diversion. Defense counsel argued that the judicial diversion factors weighed in favor of diversion because the Defendant had not been charged with any crimes while released on bond in this case, demonstrating his amenability to correction; because the Defendant did not have a criminal record; because the Defendant did not have any problems with his social history or his physical or mental health; because the Defendant's inability to obtain employment and attend truck driving school were sufficient deterrents to reoffend; and because judicial diversion would serve the interests of justice. The State opposed granting full probation and judicial diversion.

The trial court noted that the victim was in the courtroom. The trial court stated that it did not think the Defendant had been truthful about the offense "at all" and that

I think that he had been pestering her to give him oral sex for a while. I think that he certainly knew that she was different, that she was slow, . . . and that she finally yielded [and] that he did whatever he could to get her to perform oral sex on him, including asking [her] to keep secrets and that she could be his favorite cousin.

The trial court described the Defendant's actions in convincing the victim to acquiesce as "just awful." The trial court then turned to the seven factors it was required to consider for judicial diversion.

Regarding the Defendant's amenability to correction, the trial court found that the factor weighed against judicial diversion, stating,

[H]e doesn't have any prior record, but his amenability certainly I don't appreciate his unwillingness to get up here and tell the truth, that would have been very helpful to actually own up to what he did to get his cousin, who has an intellectual disability to perform oral sex on him, rather than acting like he is just so irresistible and she couldn't help herself.

I think that that certainly did not help in this Court's opinion. The fact that he continues to smoke marijuana, every day, even knowing he was going to have a hearing in front of this Court, does not help.

Addressing the circumstances of the offense, the trial court stated that although most mitigated statutory rape cases involved a "boyfriend, girlfriend, a Romeo, Juliet type of situation," this was a case "where a first cousin took advantage of an, in this Court's opinion, a position of trust, where the family trusted him with this young girl who could go back in his bedroom and he took full advantage of that." The trial court then stated that the Defendant "did everything in his book to get her to perform oral sex on him, knowing how intellectually slow she was. So I think that the circumstances of the offense are pretty outrageous."

Regarding the next three factors, the trial court stated that the Defendant did not have a criminal record, that his social history "appears to be pretty good," and that his physical and mental health "appears to be pretty good." As to the sixth factor, deterrence, the trial court stated that the Defendant and others needed to be deterred from this type of behavior. Finally, the trial court stated, "I don't think diversion will serve the interest of the public. It will certainly serve his interest." The trial court said that "weighing all of this, diversion is denied." The trial court found that the Defendant's refusal to "own up" to his actions was a "slap in the face" to the victim and warranted some time in confinement. The court ordered that he serve sixty days in jail with the remainder of his two-year sentence on supervised probation. The trial court concluded that the Defendant should not be placed on the sex offender registry. *See* Tenn. Code Ann. § 39-13-506(d)(2)(B).

ANALYSIS

The Defendant claims that the trial court abused its discretion by denying his request for judicial diversion. The State argues that the trial court properly acted within its discretion. We agree with the State.

Pursuant to Tennessee Code Annotated section 40-35-313(a)(1)(B)(i), a defendant is eligible for judicial diversion when he or she is found guilty of or pleads guilty or nolo

contendere to an offense for which deferral of further proceedings is sought; is not seeking deferral for any of the various offenses, none of which is applicable to this case, for which deferral is not allowed; has not been convicted of a felony or a Class A misdemeanor previously and served a sentence of confinement; and has not been granted judicial diversion or pretrial diversion previously. In determining whether to grant diversion, the trial court must consider the following factors: (a) the accused's amenability to correction, (b) the circumstances of the offense, (c) the accused's criminal record, (d) the accused's social history, (e) the accused's physical and mental health, (f) the deterrence value to the accused as well as others, and (g) whether judicial diversion will serve the interests of the public as well as the accused. *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998); *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996).

A trial court should not deny judicial diversion to an eligible defendant without explaining the factors in support of its denial and how those factors outweigh other factors in favor of diversion. *State v. King*, 432 S.W.3d 316, 326 (Tenn. 2014); *Electroplating*, 990 S.W.2d at 229. If the trial court explains the factors for and against judicial diversion, "the appellate court must apply a presumption of reasonableness and uphold the grant or denial so long as there is any substantial evidence to support the trial court's decision." *King*, 432 S.W.3d at 327 (footnote omitted). A trial court's failure to consider the factors results in a loss of the presumption of reasonableness, and this court will either conduct a de novo review or remand the case to the trial court for reconsideration. *Id.* at 327-28.

Initially, we note that the record did not contain the Defendant's application for judicial diversion or the certificate of eligibility for judicial diversion issued by the Tennessee Bureau of Investigation ("TBI"). This court ordered that the technical record be supplemented by the trial court clerk to include a certificate of eligibility from the TBI showing that the Defendant was eligible for judicial diversion, if a certificate was filed in this case. As a result of this Order, the record was supplemented with a copy of the TBI certificate of eligibility that shows that the Defendant had no disqualifying factors that would prevent the trial court from considering diversion.

The trial court found that the Defendant's lack of a criminal record, his social history, his physical and mental health, and whether judicial diversion will serve the interests of the Defendant weighed in favor of granting judicial diversion but that his amenability to correction, the circumstances of the offense, the deterrence value of judicial diversion to the accused as well as others, and whether judicial diversion will serve the interests of the public weighed against granting judicial diversion. Therefore, the trial court addressed all of the required factors. Although the trial court did not assign a specific weight to each factor, we discern from the trial court's comments about the Defendant's amenability to correction and from the trial court's describing the circumstances of the offense as "pretty outrageous" that the trial court gave those factors great weight.

The Defendant contends that the trial court abused its discretion in denying judicial diversion because the trial court improperly accredited the victim's version of events when the victim did not testify so that the trial court could assess her demeanor. While the victim did not testify, the Defendant did testify, so the trial court was able to observe his demeanor and assess his credibility. The trial court found him not credible. It is the function of the trial court to make such determinations, and a defendant's lack of candor can be an adequate reason for denying judicial diversion. *State v. Curry*, No. 02C01-9705-CR-00195, 1998 WL 217900, at *3 (Tenn. Crim. App. May 5, 1998).

The Defendant also contends that the State failed to produce proof of the victim's intellectual disability. However, according to the State's recitation of the facts, to which the Defendant stipulated during the plea hearing, the victim presented documentation that she suffered from a functional delay in that her basic reading skills were on a third-grade level, and her comprehension and math skills were on a fourth-grade level. Therefore, we find no merit to this claim.

Next, the Defendant contends that it was improper for the trial court to use his candid admission about smoking marijuana to deny judicial diversion. In support of his argument, he quotes *State v. Johnson*, No. M2002-1054-CCA-R3-CD, 2002 WL 31757505, at *2 (Tenn. Crim. App. Dec. 10, 2002), *no perm. app. filed*, a judicial diversion case in which this court stated:

Although a relevant factor, we remain mindful of the fact that the pre-sentence report was never intended to serve the purpose of gathering incriminating evidence to punish the offender. The offender is encouraged to be truthful and participate in the preparation of the pre-sentence report in order that information provided may be utilized by the sentencing court in arriving at an individualized sentence. To use the offender's statements within the report against the offender is counter-productive in that it discourages truthfulness and is inconsistent with the purposes of the pre-sentence report.

Unlike the present case, though, the defendant's self-reported drug use in *Johnson* was the trial court's only basis for denying judicial diversion. *See State v. Heflin*, No. M2004-02680-CCA-R3-CD, 2005 WL 2454041, at *4 (Tenn. Crim. App. Sept. 28, 2005) (distinguishing *Johnson*), *no perm. app. filed*. Moreover, this court still recognized in *Johnson* that the defendant's self-reported drug use in his presentence report was a "relevant factor" for a trial court to consider in his request for judicial diversion. 2002 WL 31757505, at *2. Therefore, the trial court properly considered the Defendant's drug use.

The Defendant also claims that the trial court erred in finding that he violated a position of trust because there was no proof that the victim's family placed any level of trust in him or that his relationship with the victim "promoted confidence, reliability or faith that would make [the victim] unusually vulnerable." The Defendant is referring to language used to assess the applicability of Tennessee Code Annotated section 40-35-114(14), the sentencing enhancement factor for a defendant's abusing a position of public or private trust. In *State v. Kissinger*, 922 S.W.2d 482, 488 (Tenn. 1996), our supreme court explained that

application of the factor requires a finding, first, that defendant occupied a position of trust, either public or private. The position of parent, step-parent, babysitter, teacher, coach are but a few obvious examples. The determination of the existence of a position of trust does not depend on the length or formality of the relationship, but upon the nature of the relationship. Thus, the court should look to see whether the offender formally or informally stood in a relationship to the victim that promoted confidence, reliability, or faith.

Subsequently, our supreme court stated in *State v. Gutierrez*, 5 S.W.3d 641, 646 (Tenn. 1999), that "[a] relationship which promotes confidence, reliability, or faith, usually includes a degree of vulnerability."

While we agree that the proof does not show the Defendant occupied a position of private trust with the victim, the proof does show some level of trust. The Defendant was an adult. He testified that he had known the victim since he was six or seven years old because they visited each other's houses, and the crime occurred during one of those visits. The Defendant acknowledged that his actions were a breach of trust, and he testified that he wanted to prove he could be trusted again. Therefore, we cannot say that the trial court erred by considering some breach of trust as part of the circumstances of the offense. In any event, the Defendant's breach of trust was not the only reason the trial court found that the circumstances of the offense weighed heavily against judicial diversion. The trial court distinguished this case from the typical mitigated statutory rape case, which the trial court described as "a Romeo, Juliet type of situation." The trial court found that this case was unusual in that the Defendant was the victim's first cousin and "did everything in his book to get her to perform oral sex on him, knowing how intellectually slow she was." Therefore, we conclude that any error was harmless. *See* Tenn. R. App. P. 36(a).

Finally, the Defendant claims that the trial court improperly denied judicial diversion based on the need for deterrence because the trial court simply made the following conclusory statements: "I think this defendant needs to be deterred. I think others need to be deterred from this type of behavior." The Defendant asserts that in order

to deny judicial diversion based on the deterrence value to the accused as well as others, the trial court is required to consider the factors in *State v. Hooper*, 29 S.W.3d 1, 6 (Tenn. 2000). However, this court has “recognized that a trial court is not required to consider the *Hooper* factors where other factors also support denying judicial diversion.” *State v. Sheets*, No. M2022-00538-CCA-R3-CD, 2023 WL 2908652, at *11 (Tenn. Crim. App. Apr. 12, 2023) (citing, see, e.g., *State v. Myers*, No. E2021-00841-CCA-R3-CD, at *10 (Tenn. Crim. App. July 22, 2022), *no perm. app. filed*), *no perm. app. filed*. Thus, trial court was not required to consider the *Hooper* factors, and we conclude that the trial court did not abuse its discretion in denying the Defendant’s request for judicial diversion.

CONCLUSION

Based on our review, we affirm the judgment of the trial court.

s/ John W. Campbell
JOHN W. CAMPBELL, SR., JUDGE