

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
January 10, 2023 Session

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Appellate Courts

STATE OF TENNESSEE v. KAYLA NICOLE PAUZE

**Appeal from the Criminal Court for Sumner County
No. 2018-CR-378 Dee David Gay, Judge**

No. M2022-00284-CCA-R3-CD

Defendant, Kayla Nicole Pauze was convicted by a jury of reckless homicide and aggravated assault. The trial court sentenced Defendant to an effective ten-year sentence in the Tennessee Department of Correction. On appeal, Defendant challenges the length, range, and manner of her sentences. Following a thorough review of the record, the briefs and oral arguments of the parties, we affirm the judgments of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

John D. Pellegrin, Gallatin, Tennessee, for the appellant, Kayla Nicole Pauze.

Jonathan Skrmetti Attorney General and Reporter; T. Austin Watkins, Senior Assistant Attorney General; Ray Whitley, District Attorney General; C. Ronald Blanton, Assistant District Attorney General; and Tara Wylie, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

In this case, Defendant pushed the victim, A.H., a two-year-old child into a door frame while Defendant was babysitting him in her home. The victim died three days later. An autopsy showed that the victim died of severe head trauma. Defendant was charged with first-degree felony murder and aggravated child abuse. On September 22, 2021, the

jury convicted Defendant of the lesser-included offenses of reckless homicide, a Class D felony, T.C.A. § 39-13-215, and aggravated assault, a Class C felony, T.C.A. § 39-13-102.

At sentencing, the trial court admitted into evidence Defendant's pre-sentence report, including the victim impact statements, Defendant's sentencing memorandum with character letters, the State's notice of enhancement factors, a separate character letter for Defendant, and certified copies of Defendant's prior convictions. The trial transcripts are not part of the record. We glean the facts of the case from Defendant's pre-sentence report which was admitted without objection.

The pre-sentence report includes the agency investigative report of the case conducted by the Tennessee Bureau of Investigation ("TBI"). As part of the investigation, TBI Special Agent Tiffany Gooch and another special agent interviewed social worker Lisa Jackson; the victim's father, Asa Tucker; and Defendant. Defendant gave two different statements: one before the victim's death, March 28, 2018, and a second statement, after the victim's death, April 5, 2018.

The TBI agency statement provides that according to Defendant's first statement, on March 26, 2018, at 6:30 a.m., the victim's mother dropped off the two-year-old victim at Defendant's house. Defendant was the victim's regular babysitter. The victim awoke from a nap around 8:00 a.m., and began playing. About thirty minutes later, Defendant noticed the victim "babbling extremely loudly," and his eyes rolled to the back of his head. He appeared to be having a seizure. Defendant called the victim's mother. When she did not answer, Defendant called the victim's father, Asa Tucker. The victim began to vomit as Defendant was talking to Mr. Tucker. Mr. Tucker, a former EMT, advised Defendant to turn the victim on his left side and said he was on his way. Mr. Tucker arrived at Defendant's house and took the victim to Sumner Station Hospital.

The medical professionals at Sumner Station advised that the victim may have suffered an overdose and administered Narcan. The victim did not respond to Narcan and was thereafter airlifted to Vanderbilt University Medical Center ("Vanderbilt"). At Vanderbilt, the victim underwent examination via a CT scan and an x-ray. The right side of the victim's brain was extremely swollen and filled with blood. The victim had suffered a subdural hematoma and was rushed into surgery to remove the blood in his brain. After the surgery, the victim was intubated and placed on a ventilator. The medical professionals at Vanderbilt advised that the victim had endured severe trauma to his head and that a large amount of force was necessary to create the injury the victim had sustained.

On March 29, 2018, the day after Defendant's first interview, Agent Gooch learned that the victim's condition had worsened, and the decision was made to take him off life support. Agent Gooch attended the victim's autopsy the next day. The autopsy was

conducted by the assistant medical examiner for Davidson County. The assistant medical examiner observed no sign of hemorrhage to the victim's body. The preliminary cause of death was unknown.

On April 5, 2018, Defendant gave a second written statement. Defendant had been caring for the victim seven to nine months before his death. Defendant was a friend of the victim's mother and looked after the victim during the day in the home she shared with her fiancé and their daughter. The victim was the same age as Defendant's daughter. According to Defendant, the victim was not diagnosed with "any kind of emotional or mental issues," but was considered a "difficult child" and "has been kicked out of daycare[]" for being "aggressive" to children and adults.

On the day of the offense, the victim was dropped off at Defendant's home at 6:30 a.m. Defendant served her daughter and the victim pancakes for breakfast. While cleaning up the kitchen, Defendant heard a "loud bang" from her daughter's bedroom. She went to her daughter's bedroom and saw the victim on the floor and "assumed" he had fallen off the changing table. Defendant observed that the victim appeared to be "fine" when she picked him up off the floor and walked him to the living room where the toys were located. Her daughter joined the victim in the living room, and the two children began playing with the toys. Defendant returned to the kitchen to finish cleaning up but shortly thereafter heard her daughter yelling, "no, no, no!" Defendant returned to the living room and saw the victim throwing toys at her daughter's head. Defendant ordered the victim to stop but, he refused to do so. She took the toys out of the victim's hands and spanked him. Defendant stated that the victim continued to throw toys at her daughter, and one actually hit her daughter in the head. Defendant went over to the victim and described what occurred next:

[The victim] was standing up and I shoved him into the closed front door. The right side of his head hit against the door. Kind of the back and side of the right side of his head hit the door. I freaked out because I pushed him, because I let myself do that. I was crying like what have I done. I picked him up off the floor and I held him and apologized to him. He was crying, but he seemed ok. I walked into the kitchen to try to figure out what had happened. After a few minutes I asked [the victim] and [Defendant's daughter] if they wanted to play with some play dough. I went and got some play dough and set it out on the kitchen floor. They started to play with play dough in the kitchen floor, but then [the victim] went into a seizure. Five or maybe ten minutes had passed since I shoved him into the door.

When the victim failed to respond to her, Defendant called the victim's mother. She called her twice, but the victim's mother did not answer her calls. She then called the victim's father who came to Defendant's house and took the victim to the hospital.

The victim's parents submitted victim impact statements. The victim's mother, Flor Hale, reported that her "mental health [was] completely destroyed in the wake of [her] son[']s death." She had been "entirely overwhelm[ed]" by her son's death and had been "unable to return to living life the same as before." The death of her son included the "loss" of "all future plans" for her son including birthdays, holidays, family trips, and school events. She reported that the incident had affected her ability to earn a living. Specifically, she missed ten days of work following the death of her son, and she had to take additional days off to attend court hearings in the case. She expressed her dismay with the jury's verdict: "I feel the justice system is entirely flawed and has let my son and myself completely down. I'm disappointed and enraged by the outcome." In terms of sentencing, she asked for a sentence to serve "due to the jury failing to find reasonable justice for my son." She added in parentheses, "He was worth more than 6-10 years."

The victim's father, Asa Tucker, reported that he and the victim's mother had suffered "bouts of depression" because of the victim's death. He revealed that he and the victim's mother had also experienced anxiety "about ever having kids again" and being able to trust anyone to care for their loved ones. Mr. Tucker stated that the suffering had become "so bad" that he and the victim's mother have had to miss work. He believes that the jury "caused more harm with their bad judgment." He asked that Defendant receive "the absolute maximum punishment."

Defendant received character letters from a number of individuals. Kristi Ford, Defendant's cousin, stated that Defendant would be living with her in Hendersonville if Defendant received a suspended sentence. Elliot J. Goad complimented Defendant's care in looking after his elderly mother. Sandra Stinson stated that she had the occasion to observe Defendant interact with her daughter and her grandmother and described Defendant as a "phenomenal mother" and "amazing granddaughter." Joyce Rambo described Defendant as a loving and caring person who relied "strongly on her Christian values." Amanda Rambo stated that Defendant took good care of her son. Reverend Chris Jensen remarked that Defendant was "always excellent with children" and opined that the charges against Defendant were "completely out of character." Jackie Jensen, the former pastor's wife described Defendant's involvement in the church. Jana Neal, a childhood friend, stated her belief that Defendant was "an honorable person."

When interviewed for the pre-sentence report, Defendant stated that she first drank alcohol at a New Year's Eve party when she was either nineteen or twenty. She also admitted to first trying marijuana in 2011, the summer she graduated from high school.

Defendant reported that she used marijuana approximately once a month for about three (3) years. During those years she spent \$5 to \$10 per month on marijuana. She stopped using marijuana because it was getting expensive and got her in trouble.

“Trouble” included three prior convictions for drug and alcohol related offenses. According to the affidavit of complaint, on December 24, 2011, Defendant was a passenger in a vehicle that was pulled over for “suspicious activity.” The officer who conducted the stop noted the strong smell of marijuana emanating from the car. The officer observed as Defendant exited the vehicle, she “put her hand behind her back and into her seat where a small [ten-gram] bag of marijuana was found.” Defendant was also in possession of nine Lortab pills without a prescription. She also reeked of alcohol and admitted to drinking at a party that evening. Consequently, Defendant was charged with possession of a Schedule III controlled substance without a prescription, simple possession of marijuana, and underage consumption of alcohol. Defendant was nineteen years old at the time of these offenses. On March 28, 2012, Defendant pled guilty to all three charges and received a concurrent sentence of eleven months, twenty-nine days on supervised probation.

Four months later, on July 22, 2012, Defendant was the passenger in a vehicle that was pulled over after Defendant was seen purchasing drugs behind a pizza place. When she was pulled over, Defendant told the officer that she had purchased marijuana from a high school friend so that she and her boyfriend could get high. Defendant admitted that she was on probation and knew that she should not be buying or using drugs. She was found in possession of 7.4 grams of marijuana and arrested for possession of a Schedule VI substance. Nine days later, a violation of probation warrant was issued as a result of Defendant’s new arrest for marijuana possession. Defendant pled guilty to the charge on November 19, 2012. She received a sentence of eleven months, twenty-nine days on supervised probation. The new sentence was ordered to run consecutively to the earlier probated sentence. While on probation, Defendant reportedly completed moral recognition therapy (“MRT”). She denied using any other illegal substance.

At the sentencing hearing, the State called three witnesses and advised the court that Flor Hale, the victim’s mother, was overcome emotionally by her son’s death and unable to attend the hearing.

Ms. Johnson, the victim’s maternal aunt, read from a prepared statement. She described the victim as “a bright, warming soul” whose death inflicted “pain and agony” on his family. Ms. Johnson revealed that she witnessed the victim’s last moments:

[The victim] fought so strong battling for his life. His injuries were too much for his little body, and he eventually succumbed to them. Watching him cling

to life and take his last breath will be a moment that I [will] never forget. It's gut wrenching.

Ms. Johnson asked the trial court for "some semblance of justice for [the victim] by giving the max sentencing allowed." Her prepared statement was admitted as an exhibit without objection.

Leslie Lewis Tucker, the victim's grandfather, testified that he had watched over the victim "multiple times" and understood the victim "had problems." Mr. Tucker maintained that the victim "didn't deserve to be slammed against a door." He believed that Defendant "is a danger" and asked that her sentences run consecutively "so that she will have time to learn that she can't just do this and walk away from it."

Jennifer Hunt, the victim's grandmother, revealed that she has been under the care of "mental health services and physicians for three years" because of the victim's death. She noted that Defendant had a child the same age as the victim. Ms. Hunt stated that Defendant "stole" the "joy" of parenting from the victim's mother and that the victim's mother "will never be the same again." Ms. Hunt asked the trial court to sentence Defendant "to the maximum allowed so that [she] cannot be a danger to society[.]"

Defendant called her mother, Robin Elizabeth Haley, as her sole witness. Ms. Haley summarized Defendant's upbringing in Cottontown, Tennessee, where she was "a wonderful student." Ms. Haley conceded that Defendant got in "a little trouble" when Defendant was nineteen years old but maintained that she has since remained trouble-free. Ms. Haley testified that she and her husband had been taking care of Defendant's daughter since Defendant's incarceration. Before the incidents, Defendant lived next door to Ms. Haley and her husband. Ms. Haley described Defendant as a "wonderful mother" who "disciplined when she had to[.]"

Ms. Haley testified that she knew the victim and saw him "almost on a daily basis" because Defendant lived next door to her. She stated that she loved the victim. She acknowledged that the victim's death was "a terrible, terrible, horrific event for both families."

Ms. Haley testified that she suffers from several health issues. She revealed that she was almost sixty years old and "by the grace of God" had been able to raise Defendant's daughter. Ms. Haley had spent "hundreds of dollars on video visits" so that Defendant and her daughter could see each other. She reiterated that Defendant was a "wonderful mother," and she had no concerns about Defendant complying with a sentence of probation because Defendant "respects the law." She stated that if placed on probation, Defendant

and her daughter would be living with Ms. Haley's aunt, Joyce Rambo, in Hendersonville.¹ Ms. Haley described Ms. Rambo as a "second mother" to Defendant. Ms. Rambo had recently been diagnosed with cancer. Ms. Haley asked the trial court to be "lenient" and permit Defendant to "come home to raise her daughter."

Defendant read her allocution. She recognized the "gravity" of the victim's death and how his death had affected "[e]very single person . . . in this courtroom." She refrained from mentioning the circumstances of the victim's death:

We're all confused. We all have questions that we don't have the answers to. And you're right. This is something that we will all be impacted with for the rest of our lives.

Since May 15 of 2018, behind these walls I've been reflecting, processing, understanding. I don't know why things happen the way that they do, but this experience has proved to be edifying on whichever way you try to flip the coin, and it's costing all of us something, every single person here. We won't be the same. There's no way. There's nothing anybody – there's nothing that anyone could ever say to help these wounds or make these scars heal. It's always going to show.

And you're right. He was a beautiful young man and his life was taken from him.

Defendant's allocution was also made an exhibit. Following Defendant's allocution, the trial court took a recess to review the exhibits including the letters in support of Defendant.

The State argued for the maximum sentence for each conviction, and consecutive alignment of the two sentences on the grounds that Defendant was a dangerous offender, distinguishing this case from the facts in *State v. Wilkerson*, 905 S.W.2d 933 (Tenn. 1995). The State argued that Defendant, unlike *Wilkerson*, had three prior convictions. She was placed on probation in 2012 and violated her probation by picking up a new charge. The State pointed out that Defendant took no responsibility for the victim's death in her allocution. The trial court agreed and added, "Not much emotion." The State also argued that incarceration was proper because Defendant had previously violated a sentence of probation and a sentence of confinement would serve as an effective deterrence.

¹ In the letters submitted to the trial court, it is Defendant's cousin, Kristi Ford, not, Joyce Rambo, who had offered Defendant a place to live should Defendant receive a suspended sentence.

In its notice of enhancement factors, the State asserted that the following factors applied: the victim was particularly vulnerable because of age or physical or mental disability; the personal injuries inflicted upon, or sustained by the victim were particularly great; Defendant had no hesitation about committing a crime when the risk to human life was high; and Defendant abused a position of private trust in a manner that significantly facilitated the commission or the fulfillment of the offense. *See* T.C.A § 40-35-114(4), (6), (10), (14).

Defense counsel argued that Defendant was not a dangerous offender and that none of the remaining discretionary factors for consecutive sentencing were applicable to her. The trial court agreed that should consecutive sentencing apply, it would only be applicable under the dangerous offender factor. Defense counsel also argued that consecutive sentencing would violate double jeopardy. The defense acknowledged Defendant's prior convictions but argued that her prior convictions occurred when she was nineteen years old and were not crimes of violence or a risk to public safety such as driving under influence like the defendant in *Wilkerson*. Defense counsel further argued that since Defendant had committed the offenses, she had remained "a law-abiding citizen" and, should be released to time served. Defendant also argued that she had a good social history since her prior convictions, in that she had maintained employment and stayed out of trouble. The defense argued that contrary to the State's assertion, Defendant "certainly is remorseful" and advocated for a sentence of probation.

In its ruling, the trial court carefully stated the purposes and principles of sentencing it was to consider in determining Defendant's sentence. First, in determining the length of Defendant's sentences, the trial court stated that there was no dispute that Defendant was a Range I Standard Offender and was subject to a range of two to four years for reckless homicide, and three to six years for aggravated assault. The trial court considered the enhancement and mitigating factors and found applicable four enhancements factors for the aggravated assault conviction: the victim was particularly vulnerable because of age or physical or mental disability; Defendant treated or allowed the victim to be treated with exceptional cruelty during the commission of the offense; Defendant had no hesitation about committing a crime when the risk to human life was high; and Defendant abused a position of private trust. The trial court found no mitigating factors "other than . . . everybody agrees that she has been a good mother." The trial court recognized that Defendant had in general, conducted herself well since her prior convictions. In considering the principles of sentencing outlined in *State v. Carter*, 254 S.W.3d 355 (Tenn. 2008), the trial court sentenced Defendant to a Range I sentence of four years for reckless homicide and six years for aggravated assault.

Next, the trial court considered the principles in determining confinement. Although Defendant did not possess a long history of criminal conduct, the trial court noted

Defendant's statement to her probation officer that she "smoked marijuana for three years and did it at least once a month." The trial court found the remaining two principles for confinement to be "major." Specifically, the trial court was concerned about depreciating the seriousness of the offense and the need for deterrence. The trial court recalled the facts of the case:

We have a two-year-old baby boy pushed into the door of the house with such a tremendous force to a two-year-old and he hit his head on the door. Within five to ten minutes the two-year-old was having seizures. The force must have been so significant on that two-year-old that it didn't take much time for the damage to be manifested. He required emergency . . . surgery on his brain from swelling. That didn't save his life. It resulted in brain death and ultimately death to a two-year-old boy. Homicide. You don't get any more serious than that.

The trial court acknowledged the victim impact statements of the victim's parents and how their lives had been upended by the victim's death. In terms of the need for deterrence, the trial court understood that the victim may have had "some issues," but expressed astonishment at the facts of the case and remarked that if Defendant cannot deal with a two-year-old child, she should not have been "involved" in the caring of children.

The trial court re-examined Defendant's prior record in determining whether measures less restrictive than confinement had been applied successfully to Defendant:

I look at your arrest for underage alcohol and possession and then your arrest while you were on probation. Now, you were allowed to be on probation after you violated your probation and I don't know if that's accountability or not, but it gives me the appearance that it's not. There's no showing anywhere that you finished the requirements of what you were supposed to do. The only benefit that's mentioned . . . is that you went through the MRT program.

Based on these factors, the trial court ordered Defendant to serve her sentences in the Department of Correction.

Lastly, the trial court aligned the two sentences consecutively on the grounds that Defendant was a dangerous offender. In reaching this conclusion, the trial court found Defendant's behavior demonstrated little or no regard for human life and she showed no hesitation in committing a crime in which the risk to human life was high. The trial court further found that a consecutive sentence was reasonably related to the severity of the offenses and necessary to protect the public from further criminal conduct by Defendant.

Defendant filed a timely motion for new trial which was denied. She filed a premature, but timely, notice of appeal.

Analysis

On appeal, Defendant asserts that the trial court abused its discretion by imposing the maximum sentence in the range for each conviction and by running the two sentences consecutively. Her “primary” complaint is that the trial court failed to make requisite findings to warrant consecutive sentencing as a dangerous offender. The State contends that these issues are “fact-intensive” and require review of the proof presented at trial. Without the trial transcript, the State argues that we must presume the trial court’s ruling to be correct. Alternatively, the State argues Defendant’s claims are waived because without the trial transcript, the record is inadequate for this court to conduct a meaningful review. Defendant replies that the record is adequate for this court to review her sentence because the trial court “made plain” its reasons for her sentences.

While the State is correct that Defendant failed to include transcripts from the jury trial in the appellate record, we agree with Defendant that the record is sufficient to review her sentence. “[T]he Court of Criminal Appeals should determine on a case-by-case basis whether the record is sufficient for a meaningful review under the standard adopted in [*State v. Bise*, 380 S.W.3d 682 (Tenn. 2012)].” *See State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012). “If . . . the record is adequate for a meaningful review, the appellate court may review the merits of the sentencing decision with a presumption that the missing transcript would support the ruling of the trial court.” *See also State v. Dalvin Smith*, No. W2017-01915-CCA-R3-CD, 2018 WL 4579693, at *3 (Tenn. Crim. App. Sept. 21, 2018) (Witt, J., concurring) (evidence introduced at sentencing provided an adequate record to review the length, range, and manner of defendant’s sentence in the absence of the trial transcript). Moreover, it is the appellant’s duty to prepare a record only as necessary to convey the issues on appeal. *See* Tenn. R. App. P. 24(b). Applying these principles to this case, our assessment is that the pre-sentence report, the transcript of the sentencing hearing, and the exhibits in the record are adequate to conduct a meaningful appellate review.

When a defendant challenges the length or range of a sentence, this court reviews the trial court’s sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *Bise*, 380 S.W.3d at 708. This presumption applies to “within-range sentencing decisions that reflect a proper application of the purposes and principles of the Sentencing Act.” *Id.* at 707. Because the record is adequate, we will review the trial court’s decision for an abuse of discretion with a presumption of reasonableness.

In determining the proper sentence, the trial court must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the pre-sentence 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 mitigating and enhancement factors set out in Tennessee Code Annotated sections 40-35-113 and -114; (6) any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee; (7) any statement the defendant made 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 pre-sentence report. *See* T.C.A. §§ 40-35-102, -103, - 210(b); *see also* *Bise* 380 S.W.3d at 697-98. The trial court must also consider a defendant's potential or lack of potential for rehabilitation or treatment. *See* T.C.A. § 40-35-103(5).

To facilitate meaningful appellate review, the trial court must state on the record the factors it considered and the reasons for imposing the sentence chosen. *Id.* § 40-35-210(e); *Bise*, 380 S.W.3d at 706. However, “[m]ere inadequacy in the articulation of the reasons for imposing a particular sentence . . . should not negate the presumption [of reasonableness].” *Bise*, 380 S.W.3d at 705-06. The party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. T.C.A. § 40-35-401, Sentencing Comm’n Cmts. The weighing of various enhancement and mitigating factors is within the sound discretion of the trial court. *State v. Carter*, 254 S.W.3d 335, 345 (Tenn. 2008). This court will uphold the sentence “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.

Defendant argues that the trial court imposed the maximum sentence in the range for each conviction because the court disagreed with the jury's verdict of guilt to lesser-included offenses. In count one, Defendant was convicted of aggravated assault, a Class C felony. T.C.A. § 39-13-102(e)(1)(A)(ii). The range of punishment for a Range I offender is three to six years. *Id.* § 40-35-112(a)(3). In count two, Defendant was convicted of reckless homicide, a Class D felony. *Id.* § 39-13-215(b). A Range I sentence for a Class D felony is two to four years. *Id.* § 40-35-112(a)(4). The trial court sentenced Defendant to six years for aggravated assault and four years for reckless homicide. Thus, Defendant received within-range sentences for each conviction. In arriving at this decision, the trial court, within its discretion, chose to apply four enhancement factors and one catch-all mitigating factor to the aggravated assault conviction and none to the reckless homicide conviction. *See Carter*, 254 S.W.3d at 345-46 (trial court's consideration of “merely advisory” factors broadened trial court's discretion). Defendant does not challenge the trial court's application of the enhancement factors, and we find no error in the trial court's judgment. The sentences are within the appropriate range and comply with the purposes and principles of sentencing. When imposing the sentences, the trial court gave due

consideration to the proof at trial and sentencing, and expressed particular concern regarding the seriousness of the offenses, Defendant's prior record, and the need to deter similar crimes in the community. *Bise*, 380 S.W.3d at 708-09 (trial court's misapplication of single enhancement factor to within-range sentence presumptively reasonable where sentence was supported by reasons articulated in the record). The presumption of reasonableness has not been overcome; the trial court properly exercised its discretion by imposing these within-range sentences.

Without citing any supporting authority, Defendant contends that probation would have been appropriate "especially considering the fact that she had served close to three years in confinement" at the time she was sentenced. She maintains that she does not have a lengthy criminal history or that measures less restrictive than confinement has been applied to her. The trial court was clear that confinement was necessary to avoid depreciating the seriousness of the offense and to serve as a deterrence to others. T.C.A. § 40-35-103(1)(B), (C). Defendant pushed a two-year-old toddler into a door frame with such force that he began exhibiting seizure-like symptoms almost immediately. The victim suffered a brain hemorrhage which required immediate surgery. He was thereafter intubated and placed on a ventilator. It was determined at the time of the surgery that he had sustained severe head trauma from which he later died. The trial court did not abuse its discretion in ordering confinement consistent with the principles of sentencing of Tennessee Code Annotated section 40-35-103.

Moreover, contrary to Defendant's assertion, measures less restrictive than confinement had been applied unsuccessfully to her. *Id.* § 40-35-103(1)(C). In 2011, she pled guilty to possession of a Schedule III controlled substance without a prescription, simple possession of marijuana, and underage consumption of alcohol and received supervised probation. Four months into her probation, she was arrested for marijuana possession. Defendant has failed to demonstrate her suitability for probation. Accordingly, the trial court's judgment in ordering confinement for Defendant's within-range sentences, was presumptively reasonable and not an abuse of discretion. *Caudle*, 388 S.W.3d at 278-79.

The standard of review adopted in *Bise* applies to decisions by trial courts regarding consecutive sentencing. *State v. Pollard*, 432 S.W.3d 851, 859 (Tenn. 2013). This means that the reviewing court will give "deference to the trial court's exercise of its discretionary authority to impose consecutive sentences if it has provided reasons on the record establishing at least one of the seven grounds listed in Tennessee Code Annotated section 40-35-115(b)." *Id.* at 861. As relevant to this case, the trial court may order sentences to run consecutively if it finds by a preponderance of the evidence that a defendant is "a dangerous offender whose behavior indicates little or no regard for human life and no

hesitation about committing a crime in which the risk to human life is high[.]” T.C.A. § 40-35-115(b)(4).

Before a trial court may impose consecutive sentences on the basis that a defendant is a dangerous offender, the trial court must find that consecutive sentences are reasonably related to the severity of the offenses committed and are necessary to protect the public from further criminal conduct. *State v. Wilkerson*, 905 S.W.2d 933, 937-39 (Tenn. 1995). “The adoption of the abuse of discretion standard with the presumption of reasonableness has not eliminated this requirement.” *Pollard*, 432 S.W.3d at 863. In order to limit the use of the “dangerous offender” category to cases where it is warranted, the trial court must make specific findings about “particular facts” which show that the *Wilkerson* factors apply to the defendant. *State v. Lane*, 3 S.W.3d 456, 461 (Tenn. 1999).

When imposing consecutive sentences, the trial court must still consider the general sentencing principles that each sentence imposed shall be “justly deserved in relation to the seriousness of the offense,” “no greater than that deserved for the offense committed,” and “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” T.C.A. §§ 40-35-102(1), -103(2), -103(4); *State v. Imfield*, 70 S.W.3d 698, 708 (Tenn. 2002). “So long as a trial court properly articulates reasons for ordering consecutive sentences, thereby providing a basis for meaningful appellate review, the sentences will be presumed reasonable and, absent an abuse of discretion, upheld on appeal.” *Pollard*, 432 S.W.3d at 862 (citing Tenn. R. Crim. P. 32(c)(1); *Bise*, 380 S.W.3d at 705).

The trial court made the findings required under *Wilkerson* and cited specific facts from the case to support the imposition of consecutive sentences. We note that the trial court’s findings occupy twenty pages of the sentencing transcript, and of those twenty pages, almost half are directly related to the trial court’s consideration of whether Defendant should receive consecutive sentencing as a dangerous offender.

The trial court began its analysis by reading directly from the relevant passage from *Wilkerson*, 905 S.W.2d at 938:

Every offender convicted of two or more dangerous crimes is not a dangerous offender subject to the consecutive sentences; consequently, the provisions of [§] 40-35-115, the consecutive sentencing act, cannot be read in isolation from other provisions of the Act, and the proof must also establish that the terms imposed are reasonably related to the severity of the offenses committed and they are necessary to protect the public from further criminal acts by the offender.

The trial court next drew upon the facts of the case in determining whether Defendant's behavior fit the definition of a dangerous offender and whether the severity of the offenses justified consecutive sentencing:

Again, we're dealing with homicide and a two-year-old child, a child that's innocent as the driven snow, being killed because the parent or the guardian couldn't handle the situation. We're all human. We all have anger issues, but my goodness, we don't kill two-year-old children. When they misbehave, you don't throw them into a door so that they go into seizures within five to ten minutes. I can't imagine how hard that was on the head of that two-year-old little boy.

The trial court then reflected on whether it was necessary to protect the public against further criminal conduct of Defendant. *See, e.g., Gray v. State*, 538 S.W.2d 391, 393-94 (Tenn. 1976). With this factor, the trial court examined, at considerable length, Defendant's criminal history:

In looking at the protection of the public, I'm looking here at your prior crimes. And [defense counsel] correctly argued that, you know, youth are going to get in trouble or can get in trouble, and I think any of us who have grown up have or understand that, especially in growing up and especially in having teenage children, but the standard doesn't change. The standard is being changed by people with no accountability and by people who do what they think is right in their own eyes.

And let me just tell you how this plays out here as presented by the proof today. [Defendant], when you were 19, you pled guilty to underage consumption and got a sentence of 11 months and 29 days, and you were to have an alcohol and drug assessment and comply.

The trial court expressed its outrage that four months into her probation, Defendant committed another offense in violation of her probation:

Now, you take what [defense counsel] said, say, okay, you've got a youth here that's gone wrong. She's given probation. She's given the opportunity to get things straight. This is where this standard fails again because she goes out and does it again and she goes out and violates the law.

According to the trial court, Defendant demonstrated a callous indifference to the probability of injury or death given the victim's age; the severity of her actions led to the victim's death; and her criminal record evinced a need to protect the public from further

criminal conduct from Defendant, and therefore justified consecutive sentencing under the dangerous offender category. Because the trial court stated its reasons for running the sentences consecutively as required under *Wilkerson* and *Pollard*, and those reasons are not inconsistent with the principles and purposes of sentencing, we defer to the trial court's sentencing decision. The trial court did not abuse its discretion, and Defendant has not overcome the presumption that her sentence is reasonable. She is not entitled to relief.

Conclusion

Based on the foregoing, the judgments of the trial court are affirmed.

JILL BARTEE AYERS, JUDGE