

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 12, 2026 Session

**FILED**  
06/23/2026  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. KEITH RICHARDSON**

**Appeal from the Circuit Court for Perry County  
No. 2017-CR-42 Michael E. Spitzer, Judge**

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**No. M2025-00578-CCA-R3-CD**

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The Defendant, Keith Richardson, appeals his Perry County Circuit Court convictions of five counts each of statutory rape by an authority figure and incest, four counts of rape, two counts of sexual battery by an authority figure, and one count each of continuous sexual abuse of a child, aggravated rape, and aggravated assault. On appeal, the Defendant argues that (1) the evidence is insufficient to sustain his conviction of aggravated rape, (2) he did not properly waive his right to a jury trial pursuant to Tennessee Rule of Criminal Procedure 23, and (3) his sentence is excessive. Upon review, we remand the Defendant's judgments of conviction for rape in count 21 and statutory rape in count 22 for the entry of corrected judgments. We otherwise discern no error and affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right;  
Judgments of the Circuit Court Affirmed;  
Remanded for Entry of Corrected Judgments**

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

Michael J. Flanagan, Nashville, Tennessee, for the appellant, Keith Richardson.

Jonathan Skrmetti, Attorney General and Reporter; William C. Lundy, Assistant Attorney General; Hans L. Schwendimann, District Attorney General; and Jennifer M. Mason, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. FACTUAL AND PROCEDURAL HISTORY**

## A. PRETRIAL PROCEEDINGS

On August 28, 2017, a Perry County grand jury returned an eleven-count indictment charging the Defendant with six counts of statutory rape by an authority figure, three counts of sexual battery by an authority figure, and one count each of continuous sexual abuse of a child and aggravated assault. Each charge involved the same minor victim, the Defendant's daughter. Pursuant to a negotiated plea agreement, the Defendant pled guilty as charged on July 28, 2021. The trial court imposed an effective sentence of twenty-one years' incarceration.

On August 30, 2022, the trial court entered an "Order Granting [the] Defendant's Withdraw[al] of Guilty Plea." In its order, the trial court noted that the State had filed a motion to correct the Defendant's judgments of conviction to add the condition that the Defendant be subject to community supervision for life and that the trial court had held a hearing on the motion. The record does not include a copy of the State's motion or a transcript of the hearing. The trial court's order stated that during the hearing, the Defendant stated he wished to withdraw his guilty plea. The trial court questioned the Defendant and determined he understood the terms of community supervision for life, the State's assertion that it would pursue a superseding indictment to charge the Defendant with continuous sexual abuse of a child as a Class A felony, rather than the Class C felony to which he pled guilty, and the potential impact that a conviction for that charge could have on his sentence if convicted. The trial court found that the Defendant had "freely and voluntarily" requested to withdraw his guilty plea and, accordingly, granted the Defendant's motion to withdraw his guilty plea.<sup>1</sup>

On August 30, 2023, a Perry County grand jury returned a twenty-three-count superseding indictment charging the Defendant with six counts each of statutory rape by an authority figure and incest, five counts of rape, three counts of sexual battery by an authority figure, and one count each of continuous sexual abuse of a child, aggravated rape, and aggravated assault. The Defendant's trial was scheduled to commence on July 29, 2024.

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<sup>1</sup> The record does not indicate why the Defendant sought to withdraw his guilty plea, and the trial court stated no legal basis for its granting the Defendant's request. Nevertheless, we note that "an accused must know and understand the mandatory nature of lifetime community supervision" in order to knowingly and voluntarily plead guilty to an offense or offenses carrying such a conviction. *State v. Nagele*, 353 S.W.3d 112, 120 (Tenn. 2011) (citing Tenn. Code Ann. § 39-13-524(a)). When a trial court fails to "ensure that the defendant is aware of a direct consequence of his or her guilty plea, the judgment of conviction must be set aside unless the State proves that the error was harmless beyond a reasonable doubt." *Ward v. State*, 315 S.W.3d 461, 476 (Tenn. 2011); *see also Nagele*, 353 S.W.3d at 120.

During a pretrial hearing on the first day of trial, the trial court stated that it had learned, after speaking with defense counsel, that the Defendant intended to waive his right to a jury trial. The Defendant, after being placed under oath, testified that he indeed wished to waive his right to a jury trial and to instead proceed with a bench trial. The trial court asked the Defendant if he understood he had a constitutional right to a jury trial, and the Defendant testified that he understood. The trial court further advised the Defendant that, if he elected to waive his right to a jury trial, the State would have the same burden of proving his guilt beyond a reasonable doubt; that the trial court would act as the trier of fact instead of the jury; and that the Defendant maintained the same rights to confront the witnesses against him, to a sentencing hearing, and to an appeal. The Defendant testified that he understood. He also testified that he was not under the influence of any medication which would inhibit his ability to understand the proceedings and that he had not felt coerced or otherwise forced to waive his right to a jury trial. The trial court accepted the Defendant's verbal waiver of his right to a jury trial, and the Defendant proceeded to a bench trial.

## B. TRIAL

At the Defendant's July 29, 2024 trial, the victim's stepmother testified that she began dating the Defendant in 2004 while they both lived in Michigan. She recalled that shortly after she began dating the Defendant, she learned that the Defendant had a daughter, the victim, from a previous relationship. The stepmother and the Defendant were married in 2005. She described their relationship as strained and nonsexual following an automobile accident in 2012, which left the Defendant with persistent pain.

The stepmother recalled that in April 2014, she learned that the victim's mother had lost custody of the then-fourteen-year-old victim and that the victim needed to come to live with her and the Defendant. The stepmother stated that at that point, the Defendant had not seen the victim for approximately ten years. The Defendant informed the stepmother that the victim had lived a "wild life" with her mother that included "staying out late" and going to "a lot of parties." The stepmother stated that the Defendant was concerned that he and the stepmother would need to closely "watch" the victim to ensure she did not "maintain that kind of lifestyle."

The stepmother testified that the victim moved in with her and the Defendant in Michigan in April 2014. She described the victim's relationship with the Defendant as difficult during their first few months of living together. She noted that the Defendant worked as a semi-truck driver and frequently traveled for work. The stepmother encouraged the victim and the Defendant to spend time together to bond with one another during this time. She described her own relationship with the victim as "slow-moving"; however, she noted that they quickly bonded over their shared love for animals, and

because the stepmother was the victim's primary caregiver while the Defendant traveled for work. The stepmother described the victim as a "very anxious person." She also recalled that the victim occasionally cut the insides of her arms and thighs with sharp objects, which the victim testified she did "to ease her mind."

The stepmother testified that she, the Defendant, and the victim moved to Lobelville, Tennessee, in July 2015. She described their Tennessee home as a small "rough[ly] finished" cabin without running water. She stated that the cabin was newly built when they moved in and that it initially lacked electricity. The stepmother recalled that the cabin had an open floor plan and that she and the victim slept in single beds positioned on either side of the front door. She stated that the Defendant typically slept in a bunk bed inside his truck while he was home. She also noted that the family occasionally gathered in the Defendant's truck to watch movies together while the Defendant was home.

The stepmother testified that the Defendant's relationship with the victim appeared to improve after they moved to Tennessee. She recalled that the Defendant and the victim occasionally took road trips together; she estimated that they took one or two such trips while they lived in Michigan and four or five such trips while they lived in Tennessee. She noted, however, that the victim was typically "really quiet" when she returned from her trips with the Defendant. The stepmother averred that the Defendant was not typically physically affectionate with the victim in her presence, but she recalled that the Defendant once placed his arm around the victim and referred to her as his girlfriend as they left a restaurant. She also stated that the Defendant did not permit the victim to have a boyfriend and rarely permitted her to spend the night with her friends.

The stepmother recalled that she awoke one morning while the Defendant was home to find that the victim was not in her bed. The stepmother exited the home, walked to the Defendant's truck, and knocked on its door. Shortly thereafter, the Defendant pulled back a curtain in the truck's sleep unit, and the stepmother saw the victim asleep in the Defendant's bed. The Defendant opened the door, and the stepmother asked why the victim was sleeping in his bed. The Defendant responded that they had fallen asleep, and then asked, "[D]o you think I'm [f\*\*\*\*\*] my daughter?" The stepmother stated that she did not and was not trying to start an argument.

The stepmother testified that on March 5, 2017, two days after the victim's seventeenth birthday, she went to a laundromat to do the family's laundry. She averred that the victim typically accompanied her on these trips but did not that day. When the stepmother returned home, she saw the Defendant pulling the victim out of the home by her hair. The Defendant later told the stepmother that the victim had "taken a bunch of pills" and that he was trying to force her to vomit. The stepmother stated that she had not seen the Defendant treat the victim in this manner before.

The stepmother recalled that the victim felt sick and did not go to school on March 8, 2017. She also recalled that the Defendant had recently started a new job around this time and left the home between 7:00 and 7:30 a.m. While the victim slept, the stepmother worked in her front yard. There, she encountered Julie McNamara, her neighbor. The stepmother briefly spoke with Ms. McNamara, who invited her to visit Ms. McNamara's home. The stepmother did so, and the two "talked a lot" there. The stepmother recalled that she left her conversation with Ms. McNamara with "a lot of concerns."

The stepmother testified that when she arrived back home, she saw that the victim was just beginning to awaken. When the victim woke up, the stepmother asked how she was feeling, and the victim responded that she was feeling "a little better." The stepmother then told the victim that she needed to ask her some "really hard questions." The stepmother stated that the victim began crying and was so emotional that she was unable to speak. The victim ultimately responded to her stepmother's questions in writing, and the stepmother thereafter took the victim to Ms. McNamara's home "for her safety." The stepmother then returned to her home and waited for the Defendant to return from work.

The stepmother stated that the Defendant arrived home around 4:30 p.m., immediately entered the home, and asked her where the victim was located. The stepmother told the Defendant not to "worry about" the victim, but the Defendant nevertheless exited the home to look for the victim outside. The stepmother followed the Defendant outside and told him that the victim would be home later. She asked the Defendant how he and the victim had been getting along, and the Defendant responded that their relationship was improving, noting that they did not "seem to have as many arguments." The stepmother then asked the Defendant "what his sexual relationship was like with [the victim]." She described the Defendant as "obviously shocked" by her question and recalled that he responded, "Did she tell you?" The stepmother denied that the victim had told her anything but averred that the Defendant had "just told [her] by [his] reaction." The Defendant responded that he needed to apologize to the victim and asked whether he was going to jail.

The stepmother recalled that Ms. McNamara had called the police and that she attempted to keep the Defendant at home as long as possible while they awaited the police; however, the Defendant entered the home, collected his belongings, and drove away before the police arrived. The stepmother began sending the Defendant text messages after he fled in an attempt to determine his location and to persuade him to admit his guilt. She described their communication as "constant" after the Defendant fled, but she noted that he eventually stopped responding to her text messages on March 9, 2017. The stepmother testified that she later assisted law enforcement in locating the Defendant. She recalled that at the time he fled, the Defendant was driving a vehicle from "Drive Now" which was

equipped with a tracking device; she stated that the device, but not the vehicle, was recovered near their former residence in Grass Lake, Michigan. She testified that the Defendant was ultimately located and arrested in 2019.

On cross-examination, the stepmother agreed that the Defendant did not confess to having inappropriately touched the victim during their text message conversation following their March 8, 2017 confrontation. She noted that the Defendant's primary concern during their text message conversation appeared to be his being arrested; however, she recalled that the Defendant repeatedly stated that he "wanted to say that he was sorry."

Angelo Jordan testified that Ms. McNamara was his mother and that they lived together, along with his wife and three children, in Lobelville between 2015 and 2017. He described their home as a cabin and noted that they did not have running water. He stated that he met the victim and her family approximately one week after moving in. He described his relationship with the Defendant as initially positive and noted that the Defendant helped him obtain his first "side jobs." However, he noted that over time, the Defendant began making him feel uncomfortable by making "sickening" comments about the victim. Mr. Jordan recalled that, on one occasion, the Defendant told him that he was "trying to sell" the victim to a neighbor and that he believed he could "make a lot of money off" her. On another occasion, the Defendant visited Mr. Jordan's home and told him "he finally got his daughter pregnant." Mr. Jordan testified that he did not believe the Defendant "would be sitting there talking about that and really be doing it," but he averred that he and his family avoided the Defendant thereafter.

Federal Bureau of Investigation (FBI) Special Agent Eric McCraw testified that he assisted the Perry County Sheriff's Office (PCSO) with their investigation into the Defendant. Special Agent McCraw recalled that he performed a data extraction of the Defendant's cell phone in October 2019. He testified that, from this extraction, he recovered a video recording which appeared to depict "a white female performing a sex act" on a dog. This recording and reports of the Defendant's text message conversations with both the victim and her stepmother were introduced as exhibits.

The victim testified that in 2014, she moved from her mother's home in New Hampshire to live with the Defendant and her stepmother in Michigan. She described her first meeting with the Defendant as "awkward," noting that she had not previously spoken to him before moving in with him. She recalled that she attempted to bond with the Defendant, but she did not believe he took her seriously. A few months after she moved to the Defendant's home in Michigan, the Defendant began making "weird jokes" about her and calling her offensive names. She stated that these comments made her feel uncomfortable and that she did not tell her stepmother about them because she felt she could not "trust anyone."

The victim testified that the Defendant began inappropriately touching her a few months after she moved to Michigan. She recalled that the Defendant initially only touched her thigh, but that he soon thereafter began touching her breasts and vagina. The victim stated that the Defendant's conduct eventually escalated into rapes; she testified that the Defendant inserted his penis into her vagina, anus, and mouth, performed oral sex on her, and forced her to perform oral sex on him on multiple occasions while they lived in Michigan, and that this conduct continued after the family moved to Tennessee in 2015.

The victim testified that the Defendant forced her to have sex with him numerous times in several locations following their move to Tennessee, including in his truck, a car, their home, the woods surrounding their home, and a motel. She estimated that ten such occasions occurred at the motel and in the woods and "probably more" than fifty such occasions occurred "in the vehicle." She also testified that the Defendant inserted his penis into her anus on March 3, 2017, her seventeenth birthday. She averred that she did not consent to having sex with the Defendant but that the Defendant "wanted to do sexual things" so frequently that she eventually felt "there was no point in saying no." She recalled that the Defendant's verbal abuse continued after their move to Tennessee, as well; she testified that the Defendant told her he was "utilizing his Tennessee father's rights," that she was "supposed to be his girlfriend," and that he had contemplated trying to "sell" her. The victim recalled that the Defendant provided her with cigarettes, pills, alcohol, and marijuana in exchange for "[s]exual favors." The Defendant also occasionally "shoved" and "slapped" her, leaving bruises on her arms. The Defendant also asked the victim to send him explicit text messages, photos, and video recordings; she specifically recalled one occasion in which the Defendant asked her to take a photo or video recording of herself performing oral sex on a dog, and that she imitated doing so.

The victim stated that she began cutting her arms and legs as a means of "control[ling] the pain [she] was feeling" while she lived with the Defendant and her stepmother in Michigan. She averred that she continued to cut herself after the family moved to Tennessee. She also testified that she contemplated suicide and that she once attempted to hang herself from a tree on the family's property.

The victim testified that on March 5, 2017, her stepmother left home to do laundry. Shortly thereafter, while she and the Defendant stood together in the driveway, the Defendant "decided he wanted to go again." The victim and the Defendant entered the home, where they smoked marijuana together. Afterward, the Defendant began to "get handsy," and the victim stepped backward to avoid him. The Defendant tripped over the prongs of the nearby fireplace as he approached the victim; when he recovered his balance, he picked up a hammer, swung it at the victim's head, and threatened to hit her. The victim testified that she knew, at this point, that the Defendant wanted to do "[s]exual things" with

her. The victim and the Defendant went to the victim's bed, whereupon the Defendant dropped the hammer. The Defendant then touched the victim's breasts, kissed her, attempted to force her to perform oral sex on him, inserted his penis into her vagina, and ejaculated onto her stomach. The victim recalled that the Defendant took a photo of himself and the victim lying together in the victim's bed after he ejaculated.

The victim testified that on March 6, 2017, the Defendant forced her to perform oral sex on him in his vehicle. She recalled that they got into an argument the following day and that, afterward, she ingested a handful of her stepmother's heart medication pills because she "wanted to die." The victim awoke the next morning feeling ill; the Defendant, who was supposed to take her to school that morning, told her she looked "dead" and asked if she thought she was pregnant. The victim testified that she did not go to school that day and went back inside her home to take a nap. When the victim awoke, her stepmother asked her whether the Defendant had "ever done anything to her." The victim began crying and told her stepmother about the abuse she had suffered. The stepmother helped the victim collect some of her belongings and took her to her neighbor's home. While there, the victim saw and heard her stepmother and the Defendant arguing and "cars going back and forth" from the home. The victim recalled speaking with the police later that evening and submitting to a medical examination shortly thereafter.

On cross-examination, the victim testified that she had not told anyone that the Defendant had raped her until her stepmother asked her because she was concerned that no one would believe her. She reiterated that the Defendant had told "people" that she was a "bad child." She agreed that she later recounted her abuse to officials from the Department of Children's Services and averred that she did so because she felt she could trust them.

PCSO Chief Deputy Bart Rosson testified that the Defendant was originally indicted in 2017. He recalled that the trial court issued a capias for the Defendant's arrest on September 6, 2017, and that the Defendant was ultimately arrested in Michigan and extradited to Tennessee in 2019.

Denise Alexander testified as an expert in crisis counseling for child victims of sexual abuse. Ms. Alexander testified that she worked as a social worker at the Our Kids Center in Nashville and that she interviewed the victim on March 10, 2017. During the interview, the victim reported that the Defendant had raped her vaginally, orally, anally, and digitally on numerous occasions. The victim noted that, several days previously, the Defendant swung a hammer at her and narrowly missed hitting her; she also noted that the Defendant had held the hammer over her head and pulled her towards her bed. The victim further reported that the Defendant had, on multiple occasions, dropped a knife in front of the victim and instructed her to kill herself. Ms. Alexander recalled that the victim had

several small “linear marks” on her left bicep, which the victim explained were self-inflicted cuts.

Hollye Gallion, a nurse employed at the Our Kids Center in Nashville, testified as an expert in pediatric nursing. Nurse Gallion testified that on March 10, 2017, she performed a medical examination of the victim. Nurse Gallion recalled that the victim was concerned that she may be pregnant or suffering from a sexually transmitted infection. Nurse Gallion testified that the victim appeared “very healthy,” was not pregnant or suffering from a sexually transmitted infection, and showed no physical signs of having suffered sexual abuse. She noted, however, that many older adolescent victims of sexual abuse do not typically present physical signs of having suffered sexual abuse.

The State rested. Following a *Momon* colloquy, the Defendant elected not to testify and presented no additional proof. During its closing argument, the State elected to dismiss via *nolle prosequi* the Defendant’s charges of rape, statutory rape by an authority figure, incest, and sexual battery by an authority figure in counts 5, 6, 7, and 16, relating to offenses occurring on March 3, 2017. The trial court convicted the Defendant as otherwise charged in the superseding indictment.

### C. SENTENCING

On December 9, 2024, the State filed a sentencing memorandum requesting that the trial court impose an effective sentence of 121 years’ incarceration. The State argued that multiple enhancement factors applied, that no mitigating factors applied, and that consecutive sentencing was warranted. The trial court held a sentencing hearing on December 12, 2024. At the outset of the hearing, the Defendant noted that he had not filed a responsive sentencing memorandum because he received the State’s sentencing memorandum late. The trial court agreed to hear proof regarding sentencing and to hold its ruling in abeyance until the Defendant had an opportunity to file a responsive sentencing memorandum.

FBI Special Agent Eric McCraw testified that he performed a data extraction of the Defendant’s cell phone during his investigation into this case. From this extraction, Special Agent McCraw recovered a video recording which appeared to depict the victim performing oral sex on a dog, as well as several photos and video recordings of other women performing acts of bestiality on other animals. Special Agent McCraw testified that he also recovered several photos of a female, who appeared to be a minor, from the Defendant’s phone. He averred that two of these photos depicted the female in her underwear, and one of the photos depicted her bare buttocks.

Special Agent McCraw testified that he also recovered a series of text messages between the Defendant and a contact named “Stormy1.” He opined that this contact was the Defendant’s daughter; he noted that “Stormy1” referred to the Defendant as “Dad” and discussed her mother. Special Agent McCraw testified that in these messages, which were sent between December 21, 2016, and February 4, 2017, the Defendant discussed oral sex with “Stormy1” and suggested, when “Stormy1” complained that she felt cold, that she needed “a nice big dog or something” to “keep [her] warm.” Special Agent McCraw testified that he “flagged” these text messages because of the victim’s statement that the Defendant had asked her to record a video of herself performing oral sex, and based upon the photos and video recordings of other women performing acts of bestiality recovered from the Defendant’s cell phone. The Defendant also discussed drugs and alcohol with “Stormy1” and asked her if she “want[ed] to have fun things to do.” The Defendant explained that “fun things” related to marijuana.

Special Agent McCraw described the Defendant’s offenses as “devastating” and characterized this case as “one of the most severe” he had seen. He agreed that the Defendant had exploited a position of trust in committing the offenses. On cross-examination, he conceded that the photos which appeared to depict a minor female recovered from the Defendant’s cell phone did not qualify as child pornography.

April Morgan testified that she worked as a jail administrator at the Perry County jail. Ms. Morgan testified that since the Defendant’s extradition from Michigan to Tennessee in 2019, he had been “farmed out” to other jails on several occasions. She recalled that the Defendant was initially transferred from the Perry County jail to the Wayne County jail due to his “behavior issues.” Ms. Morgan later received a call from the Wayne County jail stating that the Defendant “was causing problems there,” so she organized his transfer to the Henderson County jail. At some point thereafter, the Defendant was transferred to a Tennessee Department of Correction (TDOC) facility in Whiteville. When the Defendant returned to the Perry County jail from the TDOC facility, he tested positive for methamphetamine. Ms. Morgan also recalled that, while the Defendant was housed at the Perry County jail, she received a report from several inmates alleging that the Defendant was “planning an escape” and that he planned to take Ms. Morgan as a hostage during his escape.

Monique Wells testified that she worked as a TDOC probation and parole officer. Ms. Wells testified that she prepared both the Defendant’s presentence report following the entry of his negotiated guilty plea in 2021 and following his convictions in 2024. Ms. Wells did not report any changes in the Defendant’s criminal history since 2021. She recalled that defense counsel had advised her that the Defendant, who was then housed at the Henderson County jail, would not speak with “anyone” regarding his presentence report following his convictions in this case. Accordingly, Ms. Wells copied the information the

Defendant provided in his 2021 presentence report into his 2024 presentence report. However, the Defendant was transferred to the Perry County jail in the week preceding his sentencing hearing, and he agreed to speak with Ms. Wells. During their conversation, the Defendant maintained his innocence. He also disclosed that he had been diagnosed with congenital heart failure and that he planned on divorcing the victim's stepmother. Ms. Wells documented these facts in the Defendant's 2024 presentence report.

The stepmother testified that she and the victim had maintained their relationship since the offenses. She recalled that the victim appeared "withdrawn" and "scared" while she lived with her and the Defendant, and she noted that the victim had "flourished" and become a "remarkable young woman" since reporting the offenses. She noted, however, that the victim still suffered anxiety, panic attacks, and nightmares as a result of the offenses.

The State introduced a letter written by the victim's fiancé into evidence. In his letter, the victim's fiancé stated that the victim had spent the months leading up to the Defendant's trial "worry, shaking, [and] staring vacantly" and that she had shown a "marked improvement" since the Defendant's conviction.

The victim testified that the offenses had severely impacted her mental health. She recalled that, during the timeframe of the offenses, she frequently contemplated suicide, cut herself, suffered from bulimia, and otherwise attempted to hurt herself "in every possible way." She stated that she had first been sexually abused by a different individual when she was six years old. She averred that when she reported her initial abuse to the Defendant, the Defendant "treated it as a joke." She stated that the Defendant often called her "pathetic" and "worthless," and she noted that the Defendant threw a switchblade at her feet and told her to kill herself when he learned that she had been cutting herself. She also noted that the Defendant referred to her as his girlfriend in private and prohibited her from having a boyfriend. She recalled that, when the Defendant learned that a boy at the victim's school was romantically interested in the victim, he threatened to kill the boy, prohibited the victim from seeing her friends, and told the victim that she had herpes. The victim testified she believed the Defendant provided her with drugs in exchange for sexual favors as a means of controlling her. The victim also testified that the Defendant had molested her sister.

The victim testified that she was removed from her stepmother's custody after she reported the offenses. The victim was thereafter placed into foster care and prescribed birth control and antidepressants. She averred that the combination of her medications caused her to suffer heart palpitations.

The State rested, and the Defendant did not present additional proof. The State introduced the Defendant's 2024 presentence report as an exhibit to the hearing. On January 21, 2025, the Defendant filed a responsive sentencing memorandum. The Defendant argued that the State's request for an effective sentence of 121 years' incarceration was "clearly inconsistent" with the principles of the Sentencing Act. He also argued that the record did not support consecutive sentencing.

On January 21, 2025, the trial court imposed an effective sentence of 108 years' incarceration in a bench ruling. The trial court entered an order memorializing its findings that same day. The trial court found, after considering the evidence presented at trial and at the sentencing hearing, the presentence report, the results of the psychosexual assessment, the sentencing guidelines, the nature of the criminal conduct, and the parties' sentencing memoranda, that the Defendant qualified as a Range III offender for his conviction of continuous sexual abuse of a child and as a Range I offender for each of his other convictions.<sup>2</sup>

The trial court found that ten enhancement factors applied. Specifically, the trial court applied enhancement factor one, finding that the Defendant "has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range." Tenn. Code Ann. § 40-35-114(1). The trial court found that the Defendant's criminal history included "an offense disposed of in New Hampshire on October 1, 1999," for which he received a sentence of three years' incarceration, as well as "possibly one other felony conviction" and misdemeanor offenses. The trial court also applied enhancement factor four, finding that the "victim of the offense was particularly vulnerable because of age or physical or mental disability." *Id.* § 40-35-114(4). The trial court found that the victim was particularly vulnerable because of her age; it further noted that the Defendant was like a stranger to the victim when the victim came to live with him and that the Defendant relocated the victim to a "remote wooded area" in which she knew no one and felt she had no one to trust. The trial court also applied enhancement factors five and six, finding that the Defendant "treated, or allowed a victim to be treated, with exceptional cruelty during the commission of the offense," and that "[t]he personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great." *Id.* § 40-35-114(5), (6). The trial court found that the Defendant had encouraged the victim to kill herself, threatened her with violence if she refused to have sex with him, swung a hammer towards her head, told her he had considered selling her, instructed her to record herself performing acts of bestiality, and trained her to "recognize father-daughter sex as normal"; the trial court found that these actions

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<sup>2</sup> At the time of the offense, Code section 39-13-518 required that a defendant convicted of continuous sexual abuse of a child "be sentenced from within the full range of punishment for the offense, between Ranges I-III." Tenn. Code Ann. § 39-13-518(g) (2014) (subsequently amended).

“devastat[ed]” the victim’s life and inflicted great physical injuries upon her. The trial court also applied enhancement factor seven, finding that “[t]he offense involved a victim and was committed to gratify the [D]efendant’s desire for pleasure or excitement.” *Id.* § 40-35-114(7). The trial court found that the Defendant’s actions in committing the offenses were “centered around [his] desire for excitement for sexual pleasure.” The trial court also applied enhancement factor nine, finding that the Defendant “possessed or employed a firearm, explosive device or other deadly weapon during the commission of the offense.” *Id.* § 40-35-114(9). The trial court found that the Defendant had threatened the victim with a hammer and a knife on multiple occasions, had once thrown a knife at her, and had encouraged her to kill herself. The trial court also applied enhancement factor ten, finding that the Defendant “had no hesitation about committing a crime when the risk to human life was high.” *Id.* § 40-35-114(10). The trial court found that the Defendant knew about the victim’s mental state, her history of self-harm, and her contemplation of suicide, and he nevertheless expressed no remorse or hesitation in committing the offenses. The trial court also applied enhancement factor fourteen, finding that the Defendant “abused a position of public or private trust” in committing the offenses. *Id.* § 40-35-114(14). The trial court found that the Defendant, as the victim’s father, had total control over the victim’s care and abused his position of trust in committing the offenses.<sup>3</sup> The trial court also applied enhancement factors twenty and twenty-three, finding that the Defendant was convicted of rape and “caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance or controlled substance analogue” and that the Defendant “is an adult and sells to or gives or exchanges a controlled substance, controlled substance analogue or other illegal drug with a minor.” *Id.* § 40-35-114(20), (23). The trial court found that the Defendant provided the victim with alcohol and drugs during the commission of the offenses, which left the victim incapacitated. The trial court further found, “after diligent search and consideration,” that no mitigating factors applied.

The trial court also imposed partially consecutive sentences after finding, by a preponderance of the evidence, that the Defendant had committed two or more statutory offenses involving sexual abuse of his daughter over a “long period of time.” *See id.* § 40-35-115(b)(5). It further found that the scope of the offenses was “devastating” and inflicted significant physical, mental, and emotional injuries to the victim. *Id.*

Accordingly, the trial court imposed the following sentences for the Defendant’s convictions, yielding an effective sentence of 108 years’ incarceration:

<b>Count</b>	<b>Conviction</b>	<b>Sentence</b>	<b>Alignment</b>
1	Continuous Sexual Abuse of a Child	Sixty years	None

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<sup>3</sup> The trial court noted that enhancement factor fourteen did not apply to the Defendant’s convictions of statutory rape by an authority figure or sexual battery by an authority figure.

2	Rape	Twelve years	Consecutive to Count 1 <sup>4</sup>
3	Statutory Rape by an Authority Figure	Ten years	Consecutive to Count 2
4	Incest	Six years	Consecutive to Count 3
8	Rape	Twelve years	Concurrent with Count 2
9	Statutory Rape by an Authority Figure	Ten years	Concurrent with Count 3
10	Incest	Six years	Concurrent with Count 4
11	Aggravated Rape	Twenty years	Consecutive to Count 4
12	Statutory Rape by an Authority Figure	Ten years	Concurrent with Count 3
13	Incest	Six years	Concurrent with Count 4
14	Sexual Battery by an Authority Figure	Five years	Concurrent with all counts
15	Sexual Battery by an Authority Figure	Five years	Concurrent with all counts
17	Aggravated Assault	Five years	Concurrent with Count 4
18	Rape	Twelve years	Consecutive to Count 2
19	Statutory Rape by an Authority Figure	Ten years	Consecutive to Count 3
20	Incest	Six years	Consecutive to Count 4
21	Rape	None <sup>5</sup>	Merge with Count 1

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<sup>4</sup> On March 18, 2025, the trial court entered corrected judgments in Counts 2, 8, and 18. Initially, these judgments classified the Defendant as a Range I, standard offender eligible for release after serving thirty percent of his sentence. The corrected judgments identified the Defendant as a multiple rapist offender, sentenced to serve the entire balance of his sentence for those convictions. *See* Tenn. Code Ann. § 39-13-523(a)(4), (b) (2014) (subsequently amended).

<sup>5</sup> The Defendant's convictions in counts 21 and 22 served as predicate offenses for his conviction of continuous sexual abuse of a child. When a defendant is charged and convicted of continuous sexual abuse of a child as well as the predicate offenses for that charge, the predicate offenses merge with the conviction of continuous sexual abuse of a child, and the trial court should not designate a defendant's

22	Statutory Rape by an Authority Figure	None	Merge with Count 1
23	Incest	Six years	Concurrent with Count 4

This timely appeal followed.

## II. ANALYSIS

On appeal, the Defendant argues that (1) the evidence is insufficient to sustain his conviction of aggravated rape, (2) he did not properly waive his right to a jury trial pursuant to Tennessee Rule of Criminal Procedure 23, and (3) his sentence is excessive. The State responds that the Defendant is not entitled to relief. We will address these issues in turn.

### A. SUFFICIENCY

First, the Defendant contends that the evidence adduced at trial is insufficient to sustain his conviction of aggravated rape in count 11. He argues that there was no proof that the victim had sex with him because she was afraid of being struck with the hammer and that the record does not establish that he used violence in perpetrating the offenses. The State responds that the evidence is sufficient. We agree with the State.

“Findings of guilt in criminal actions . . . shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.” Tenn. R. App. P. 13(e). The standard of appellate review on a challenge to the sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original) (citations omitted); *see also State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018). The verdict of a trial judge in a bench trial is entitled to the same weight on appeal as a jury verdict. *See State v. Holder*, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999).

A conviction “removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient.” *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982); *see also State v. Thomas*, 687 S.W.3d 223, 249 (Tenn. 2024). “On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom.” *State v.*

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range classification, release eligibility, or sentence term in the defendant’s judgment forms. Tenn. Code Ann. § 39-13-518(g) (2014) (subsequently amended); *State v. Kimble*, No. M2017-02472-CCA-R3-CD, 2018 WL 5840836, at \*4 (Tenn. Crim. App. Nov. 7, 2018), *perm. app. denied* (Tenn. Feb. 21, 2019).

*Wilson*, 211 S.W.3d 714, 718 (Tenn. 2007) (citing *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999)). “We do not reweigh the evidence, because questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the . . . trier of fact.” *State v. Curry*, 705 S.W.3d 176, 183 (Tenn. 2025) (citations omitted). The same standard of review applies “whether the conviction is predicated on direct or circumstantial evidence, or a combination of both.” *Williams*, 558 S.W.3d at 638 (first citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011), and then citing *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977)).

As relevant here, “[a]ggravated rape is unlawful sexual penetration of a victim by the defendant” where “[f]orce or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon” Tenn. Code Ann. § 39-13-502(a)(1) (2014) (subsequently amended). “‘Sexual penetration’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s . . . body, but emission of semen is not required.” *Id.* § 39-13-501(7). “‘Force’ means compulsion by the use of physical power or violence and shall be broadly construed to accomplish the purposes of this title.” *Id.* § 39-11-106(12) (2014) (subsequently amended). “‘Coercion’ means threat of kidnapping, extortion, force or violence to be performed immediately or in the future[.]” *Id.* § 39-13-501(1).

The August 30, 2023 superseding indictment charged the Defendant with aggravated rape accomplished on May 5, 2017, through the use of “force or coercion and while armed with a hammer utilized as a deadly weapon or fashioned in a manner to lead the victim to believe it to be a weapon.” The Defendant does not contest that the State sufficiently proved that he sexually penetrated the victim or that he used a weapon during the commission of the offense; instead, he generally claims that the record does not reflect that the victim had sex with him because she was afraid of being struck with the hammer and that the record does not establish that he used violence in perpetrating the offenses.

The victim’s fear is not an essential element of the charged offense of aggravated rape, and, as such, the State was not required to prove that the victim had sex with the Defendant because she was afraid of him. Regardless, the record belies the Defendant’s assertion. The victim testified that she felt afraid after the Defendant swung the hammer towards her head, that she knew he wanted to do “[s]exual things” with her, and that the Defendant dropped the hammer after he and the victim went to the victim’s bed. Additionally, the Defendant contends that the record does not establish that he used violence in perpetrating the offenses in this case. This claim, too, is belied by the record. Plainly, the Defendant’s swinging a hammer towards the victim’s head and nearly striking her constituted a violent act, and his subsequent threats to kill the victim, coupled with her

contextual understanding from the myriad previous occasions in which the Defendant had raped her that he wanted to do sexual things with her, was sufficient proof to establish his use of force or coercion in the perpetration of the offense.<sup>6</sup>

Instead, the State was required to prove that the Defendant sexually penetrated the victim, that the Defendant used force or coercion to accomplish the act, and that the Defendant was armed with a weapon. The evidence at trial, viewed in the light most favorable to the State, sufficiently established each of these elements. The victim testified that on March 5, 2017, while she and the Defendant were home alone, the Defendant “decided he wanted to go again.” The victim and the Defendant smoked marijuana together, and the Defendant began to “get handsy.” When the victim stepped backward to avoid the Defendant, he tripped over the prongs of the nearby fireplace. After the Defendant recovered his balance, he picked up a hammer, swung it at the victim’s head, and threatened to hit her. The victim testified that she was afraid and that she knew, at this point, that the Defendant wanted to do “[s]exual things” with her. The victim and the Defendant went to the victim’s bed, whereupon the Defendant dropped the hammer. The Defendant then inserted his penis into the victim’s vagina. This proof is sufficient to establish the Defendant’s guilt of the charged offense of aggravated rape. The Defendant is not entitled to relief.

#### B. WAIVER OF THE RIGHT TO A JURY TRIAL

The Defendant also argues that he is entitled to a new trial because he did not properly waive his right to a jury trial in writing pursuant to Tennessee Rule of Criminal Procedure 23. He further contends that the verbal waiver of his right to a jury trial was not knowing, voluntary, or intelligent. The State responds that the Defendant has waived plenary review of this claim due to inadequate briefing. We agree with the State.

Both the Constitution of the United States and the Constitution of Tennessee protect a criminal defendant’s right to a jury trial. U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]”); Tenn. Const. art. I, § 9 (providing “[t]hat in all criminal prosecutions, the accused hath the right

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<sup>6</sup> In the context of his challenge to the sufficiency of the evidence regarding his conviction of aggravated assault, the Defendant argues that “[d]uring the many times that the Defendant sexually abused the victim, nothing in the record established that violence was used to accomplish the sexual acts.” As noted above, that contention is unsupported by the record as it relates to the Defendant’s charge of aggravated rape. Inasmuch as the Defendant intends to similarly argue that the Defendant did not use violence during the commission of any other offense, such claims are waived, as they are not separately presented as issues or argued in the Defendant’s appellate brief. *See* Tenn. R. App. P. 27(a)(7)(A); Tenn. R. Ct. Crim. P. 10(b).

. . . in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed”). This inviolate right is “fundamental to the American scheme of justice.” *State v. Ellis*, 953 S.W.2d 216, 220 (Tenn. Crim. App. 1997). Although at common law a criminal defendant did not have the right to waive a trial by jury, our General Assembly has since conferred that right. *See* Tenn. R. Crim. P. 23; *see also State v. Durso*, 645 S.W.2d 753, 758 (Tenn. 1983); *Seale v. Luttrell*, 428 S.W.2d 312, 314 (Tenn. 1968). Under our rules of criminal procedure, a defendant “may waive a jury trial at any time before the jury is sworn.” Tenn. R. Crim. P. 23(b)(1). Such a waiver must be written, signed by the district attorney general, and approved by the trial court. Tenn. R. Crim. P. 23(b)(2).

However, “noncompliance with Rule 23’s requirement of a written waiver does not *ipso facto* render a waiver invalid.” *Ellis*, 953 S.W.2d at 221. Where a written waiver of a defendant’s right to a jury trial is not procured, “the record should clearly show a voluntary relinquishment of the rights to be tried by a common law jury.” *State v. Bobo*, 814 S.W.2d 353, 359 (Tenn. 1991). A defendant may validly verbally waive his or her right to a jury trial so long as the record indicates that the defendant “*personally* gave express consent in open court” to proceed to a bench trial. *Ellis*, 953 S.W.2d at 221 (emphasis in original) (citing *United States v. Taylor*, 498 F.2d 390, 392 (6th Cir. 1974)). To ensure that a defendant’s waiver of his or her right to a jury trial is voluntary, knowing, and intelligent, the trial court should “inform the defendant of his right to a trial by jury, the nature of the right, and the consequences of waiving it.” *Ellis*, 953 S.W.2d at 222. Defense counsel may not waive the right to a jury trial on behalf of his or her client, and we cannot presume a valid waiver from a silent record. *Id.* at 221.

As a preliminary matter, we consider the State’s arguments that the Defendant has waived appellate review of his claim that the verbal waiver of his right to a jury trial was not voluntary, knowing, or intelligent. The State contends that the Defendant has waived this claim because he failed to include it in his motion for a new trial, neglected to include it in his statement of the issues, and provided inadequate briefing. We agree with the State’s third basis for waiver.

The State first contends that the Defendant waived his argument that the verbal waiver of his right to a jury trial by failing to include it in his motion for a new trial. *See* Tenn. R. App. P. 3(e) (providing that “no issue presented for review shall be predicated upon . . . [a] ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived.”). In his motion for a new trial, the Defendant argued that he “did not properly waive his right to a jury trial in that it was not done in writing.” In its response in opposition, the State argued that the Defendant’s verbal waiver of his right to a jury trial was voluntary, knowing, and intelligent. Although the record does not include a transcript of the hearing on the

Defendant's motion for a new trial, it includes the trial court's order denying relief, in which the trial court determined that the Defendant's verbal waiver of his right to a jury trial was voluntary, knowing, and intelligent. Although the Defendant's motion for a new trial was skeletal and conclusory, his contention that he did not properly waive his right to a jury trial, coupled with the clear indication that the trial court heard and addressed arguments regarding the verbal waiver's constitutionality, suffices to preserve the issue for appellate review. *See Fahey v. Eldridge*, 46 S.W.3d 138, 143 (Tenn. 2001) (“[W]hen an appellate court reviews a motion for a new trial under Rule 3(e), it should view the motion in the light most favorable to the appellant, and it should resolve any doubt as to whether the issue and its grounds were specifically stated in favor of preserving the issue.”); *see also State v. Harbison*, 539 S.W.3d 149, 166 (Tenn. 2018) (finding that, although a defendant's “constitutional argument was not a model of precision or clarity, . . . his amended motion for new trial was sufficient to direct the trial court's and the State's attention” to the issue and “allowed the trial court to consider the issue and make an appropriate ruling.”).

Moreover, the standard of review for a defendant's claim that he did not validly waive his right to a jury trial because it was not in writing requires consideration of whether the waiver was voluntary, knowing, and intelligent. If a defendant verbally waives his or her right to a jury trial, does not execute a written waiver pursuant to Tennessee Rule of Criminal Procedure 23, and later challenges the validity of his or her waiver of the right to a jury trial, then a reviewing court must, necessarily, consider whether that waiver was voluntary, knowing, and intelligent. *Ellis*, 953 S.W.2d at 222; *Bobo*, 814 S.W.2d at 359. Phrased slightly differently, Rule 23 is designed to provide guardrails for a defendant who seeks to waive his or her right to a jury trial. By requiring that a defendant seeking to relinquish that constitutional right do so in writing, Rule 23 emphasizes the gravity of the waiver. *Ellis*, 953 S.W.2d at 220-21. But a defendant may also satisfy the rule's purposes absent a written waiver, so long as he personally and expressly waives the right in open court and does so voluntarily, knowingly, and intelligently. *Id.* On appeal, this claim is described in the Defendant's statement of the issues as follows: “The trial court erred in denying the Defendant a new trial because he did not waive a jury trial in writing.” Although “an issue may be deemed waived when it is argued in the brief but is not designated as an issue” in the brief's statement of the issues pursuant to Tennessee Rule of Appellate Procedure 27(a)(4), *Trezevant v. Trezevant*, 696 S.W.3d 527, 530 (Tenn. 2024), our rules of appellate procedure discourage the valuation of technicality in form over substance, *see* Tenn. R. App. P. 1, Adv. Comm'n Cmts; *Fahey*, 46 S.W.3d at 143. Because appellate review of the Defendant's claim that the verbal waiver of his right to a jury trial did not satisfy Rule 23's requirements requires consideration of whether his verbal waiver was voluntary, knowing, and intelligent, it is not waived for not having been more specifically pled in his statement of the issues.

However, we agree with the State’s contention that the Defendant’s brief is otherwise inadequate. The basic rules of this court require an appellant to present a brief which sets forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on.” Tenn. R. App. P. 27(a)(7)(A). The Defendant does not specifically cite the record in support of his claim that his verbal waiver was not constitutionally sufficient or specify any portion of the transcript of his verbal waiver that was inadequate. Instead, he generally contends that the “record in this case indicates that the Defendant never executed a written waiver of [a] jury trial” and “the record does not otherwise reflect a knowing, voluntary[,] and intelligent verbal waiver[.]” Additionally, the Defendant does not cite any legal authority in support of his argument, besides a cursory reference to Rule 23’s requirement of a written waiver. He also does not identify the applicable standard of review. Tenn. R. App. P. 27(a)(7)(B) (requiring that the appellant present, “for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)”). Because the Defendant does not present a legal argument that is supported by citations to the record or authorities, his argument is waived. *See* Tenn. R. Ct. Crim. App. 10(b) (“Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.”); *Sneed v. Bd. of Prof’l Responsibility*, 301 S.W.3d 603, 615 (Tenn. 2010) (“It is not the role of the courts, trial or appellate, to research or construct a litigant’s case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.”).

Waiver notwithstanding, the Defendant is not entitled to relief. At the pretrial hearing on July 29, 2024, the Defendant testified that he wished to waive his right to a jury trial. The trial court asked whether the Defendant understood that he had a constitutional right to a jury trial, and the Defendant testified that he understood. The trial court further advised the Defendant that, if he elected to waive his right to a jury trial, the State would have the same burden of proving his guilt beyond a reasonable doubt; that the trial court would act as the trier of fact instead of the jury; and that the Defendant maintained the same rights to confront the witnesses against him, to a sentencing hearing, and to an appeal. The Defendant testified that he understood. He also testified that he was not under the influence of any medication that would inhibit his ability to understand the proceedings and that he had not felt coerced or otherwise forced to waive his right to a jury trial. The trial court’s colloquy and the Defendant’s testimony that he understood his constitutional right to a jury trial and wished to waive it are sufficient to establish his voluntary, knowing, and intelligent waiver of that right. The Defendant is not entitled to relief.

### C. SENTENCING

Finally, the Defendant argues that his sentence is excessive. He contends that his effective sentence of 108 years' incarceration is inconsistent with the purposes and principles of sentencing because it is not "the least severe measure necessary to achieve the purposes for which the sentence is imposed." *See* Tenn. Code Ann. § 40-35-103(4). He also contends that his sentence constitutes cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. The State responds that the trial court did not abuse its discretion in sentencing the Defendant to within-range, partially consecutive sentences, and that his constitutional claim is waived. We agree with the State.

We review a trial court's sentencing determinations for abuse of discretion. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). Additionally, where the trial court imposes a within-range sentence, "and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles" of the Sentencing Act, we afford its sentencing determinations a presumption of reasonableness. *Id.* A trial court abuses its discretion in the context of sentencing determinations by applying an incorrect standard of law or reaching a decision contrary to logic or reasoning which causes prejudice to the complaining party. *State v. Bonds*, 502 S.W.3d 118, 166 (Tenn. Crim. App. 2016) (citing *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)).

Included among the purposes and principles of the Sentencing Act is the balancing consideration that "the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed," while also acting as an effective deterrent to future violations of the law. *See* Tenn. Code Ann. §§ 40-35-102(3)(A), -103(4). The trial court must also consider the following factors:

- (1) The evidence, if any, received 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 mitigating and enhancement factors set out in [Tennessee Code Annotated] sections 40-35-113 and 40-35-114;
- (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 wishes to make on 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). Although the trial court is not required to make particularly lengthy or detailed findings on the record in its consideration of these factors, it must nevertheless “set forth enough to satisfy the appellate court that [it] has considered the parties’ arguments and has a reasoned basis” for imposing the sentence. *Bise*, 380 S.W.3d at 705-06 (citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007)).

The trial court’s misapplication of an enhancement or mitigating factor does not serve to invalidate a defendant’s sentence. *Bise*, 380 S.W.3d at 707. So long as it appears from the record that the trial court imposed a within-range sentence which complies with the purposes and principles of the Sentencing Act, we will afford its decision a presumption of reasonableness and will not invalidate it notwithstanding its erroneous application of an enhancement or mitigating factor. *Id.*; see also *State v. Fusco*, 404 S.W.3d 504, 548 (Tenn. 2012). Additionally, the trial court’s weighing of the applicable enhancement and mitigating factors is discretionary, and a defendant’s disagreement with that discretionary determination is not a valid ground for an appeal. *Bise*, 380 S.W.3d at 706; see also *State v. Earley*, 719 S.W.3d 228, 253 (Tenn. Crim. App. 2025).

If a defendant is convicted of more than one offense, the trial court must also determine whether the sentences should be served concurrently or consecutively. Tenn. Code Ann. § 40-35-115(a). The trial court may, in its discretion, align a defendant’s sentences to be served consecutively upon finding, by a preponderance of the evidence, that a defendant qualifies under at least one of the categories for consecutive sentencing enumerated in Tennessee Code Annotated section 40-35-115(b). “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.” *State v. Pollard*, 432 S.W.3d 851, 860 (Tenn. 2013).

The Defendant’s argument that his sentence is excessive and incongruent with the overall purposes of the Sentencing Act is conclusory. He does not cite the record in support of his argument. He also does not cite the applicable law regarding sentencing, beyond a cursory reference to the principles of sentencing as codified in Code section 40-35-103. Similarly, he does not cite the applicable standard of review; he does not specifically allege that the trial court abused its discretion in imposing his sentence, nor does he identify any point during sentencing in which the trial court diverged from the overall purposes and

principles of sentencing, beyond his general disagreement with the length of his sentence. Accordingly, the Defendant has waived appellate review of this claim due to inadequate briefing. *See* Tenn. R. App. P. 27(a)(7); Tenn. R. Ct. Crim. App. 10(b); *Sneed*, 301 S.W.3d at 615. The Defendant's claim that his sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment is similarly waived; the Defendant did not raise it in his motion for a new trial, and he does not support the claim with citation to the record or authority on appeal. *See* Tenn. R. App. P. 3(e), 27(a)(7); Tenn. R. Ct. Crim. App. 10(b); *Sneed*, 301 S.W.3d at 615.

Waiver notwithstanding, the trial court did not abuse its discretion in imposing the Defendant's sentences. The trial court's findings of fact and conclusions of law regarding the applicable enhancement and mitigating factors, as well as consecutive sentencing, were thorough and supported by the record. The trial court also appropriately classified the Defendant as a Range III offender for his conviction of continuous sexual abuse of a child and as a Range I offender for his remaining convictions. *See* Tenn. Code Ann. § 39-13-518(g) (2014) (subsequently amended). The trial court also appropriately declined to impose sentences for the Defendant's convictions of rape and statutory rape by an authority figure in counts 21 and 22 and merged them as predicate offenses with his convictions of continuous sexual abuse of a child in count 1. *Id.* § 39-13-518(f) (2014) (subsequently amended); *Kimble*, 2018 WL 5840836, at \*4.

Moreover, the trial court imposed within-range sentences for each of the Defendant's convictions. The Defendant was convicted of five counts each of statutory rape by an authority figure and incest, four counts of rape, two counts of sexual battery by an authority figure, and one count each of continuous sexual abuse of a child, aggravated rape, and aggravated assault. As charged in this case, continuous sexual abuse of a child is a Class A felony for which the trial court sentenced the Defendant as a Range III offender; accordingly, the sentencing range for the Defendant's conviction in count 1 was between forty and sixty years, and the trial court imposed a within-range sentence of sixty years' incarceration. Tenn. Code Ann. §§ 39-13-518(b)(1), (c)(1) (2014) (subsequently amended), 40-35-112(c)(1). As charged in this case, aggravated rape is a Class A felony; accordingly, the sentencing range for the Defendant's conviction in count 11 was between fifteen and twenty-five years, and the trial court imposed a within-range sentence of twenty years' incarceration. *Id.* §§ 39-13-502(b), 40-35-112(a)(1). The Defendant was also convicted of rape in counts 2, 8, and 18, and of statutory rape by an authority figure in counts 3, 9, 12, and 19, both of which are Class B felonies; accordingly, the sentencing range for those convictions was between eight and twelve years, and the trial court imposed within-range sentences of twelve years' and ten years' incarceration, respectively. *Id.* §§ 39-13-503(b) (2014) (subsequently amended), -532(b), 40-35-112(a)(2). The Defendant was also convicted of incest in counts 4, 10, 13, 20, and 23; sexual battery by an authority figure in counts 14 and 15; and aggravated assault in count 17. Each of these convictions,

as charged in this case, is a Class C felony; accordingly, the appropriate sentencing range was between three and six years, and the trial court imposed within-range sentences of six years' incarceration for the Defendant's convictions of incest and of five years' incarceration for his convictions of sexual battery by an authority figure and aggravated assault. Therefore, the trial court did not abuse its discretion in imposing an effective sentence of 108 years' incarceration.

We note, however, that the Defendant's judgments of conviction in counts 21 and 22 identify him as a Range I, standard offender eligible for release after serving thirty percent of his sentence. Because these convictions served as predicate offenses for the Defendant's conviction of continuous sexual abuse of a child, the judgments of conviction should not designate the Defendant's sentence, range classification, or release eligibility. *Id.* § 39-13-518(f) (2014) (subsequently amended); *Kimble*, 2018 WL 5840836, at \*4. Although the trial court appropriately declined to impose a sentence in counts 21 and 22 and merged them into count 1, it nevertheless designated the Defendant's range classification and release eligibility on the judgment forms. Accordingly, we remand this case for correction of the Defendant's judgments of conviction in counts 21 and 22 to omit any reference to the Defendant's range classification and release eligibility. *See* Tenn. R. Crim. P. 36.

### III. CONCLUSION

Following our review and based upon the foregoing analysis, we remand for the entry of corrected judgments in counts 21 and 22 consistent with this opinion. We otherwise affirm the judgments of the trial court.

*s/ Steven W. Sword*

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STEVEN W. SWORD, JUDGE