

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 9, 2013

STATE OF TENNESSEE v. TERRANCE LEWIS

**Appeal from the Criminal Court for Shelby County
No. 0806536 Chris Craft, Judge**

No. W2012-00723-CCA-MR3-CD - Filed August 9, 2013

D. KELLY THOMAS, JR., J., concurring.

I write separately to address the current split of authority on the standard to be applied to appellate review of consecutive sentencing. The majority determines that the abuse of discretion standard with a presumption of reasonableness is the applicable standard. However, as noted by the majority, the standard of review on the issue of consecutive sentencing is not clear under our state's current jurisprudence. In the arena of consecutive sentencing, our supreme court has not issued a definitive ruling on the standard of review to be applied by this court. In response, some panels of this court are applying an abuse of discretion standard based upon the recent decisions of Bise and Caudle, while others are continuing to apply a de novo standard of review until instructed otherwise by our supreme court, and yet others are avoiding the standard of review altogether in deciding the issue. See generally State v. Robert Fusco, No. M2012-01068-CCA-RM-CD, 2012 WL 6062856, at *38-39 (Tenn. Crim. App. Dec. 06, 2012) (silent on standard of review to be applied), perm. app. denied, (Tenn. Apr. 11, 2013); State v. Eric Demond McCathern, No. M2011-01612-CCA-R3-CD, 2012 WL 5949096, at *4-5 (Tenn. Crim. App. Nov. 16, 2012) (majority applying abuse of discretion standard of review and concurring opinion advocating de novo standard of review), perm. app. denied, (Tenn. Feb. 25, 2013). I am hesitant to apply the abuse of discretion standard wholesale to sentencing determinations until directed by our supreme court to do so. Nonetheless, in my opinion, the imposition of consecutive sentences in this case is appropriate under either standard of review, de novo or abuse of discretion. For these reasons, I concur in the result reached by the majority.

D. KELLY THOMAS, JR., JUDGE