

STATE OF TENNESSEE

VS.

_____,
DEFENDANT

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Indictment No. _____
Count No. _____

**SENTENCING FINDINGS OF FACT FOR OFFENSES COMMITTED
ON OR AFTER JUNE 7, 2005**

This cause came on to be heard on the sentencing of the defendant on a conviction for the offense of _____. In determining the appropriate sentence for this offense, this Court has considered the evidence presented at the trial and the sentencing hearing, the presentence report, the principles of sentencing and arguments made as to sentencing alternatives, the nature and characteristics of the criminal conduct involved, the evidence and information offered by the parties on the mitigating and enhancement factors, any statistical information provided by the administrative office of the court as to sentencing practices for similar offenses in Tennessee located at <http://www.tncourts.gov/administration/judicial-resources/criminal-sentencing-statistics>, any statement the defendant made, if any, on his own behalf about sentencing, and the defendant's potential for rehabilitation or treatment.

FROM ALL OF WHICH THE COURT FINDS AS FOLLOWS:

RANGE OF SENTENCE

The defendant is found to be:

_____ **AN ESPECIALLY MITIGATED OFFENDER** (Tenn. Code Ann. § 40-35-109)

- (1) The defendant has no prior felony convictions; AND
(2) The court finds mitigating, but no enhancement factors.

_____ **A RANGE ONE STANDARD OFFENDER** (Tenn. Code Ann. § 40-35-105)

_____ **A RANGE TWO MULTIPLE OFFENDER** (Tenn. Code Ann. § 40-35-106)

- (1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; OR
(2) One (1) Class A prior felony conviction if the defendant's conviction offense is a Class A or B felony.

[updated 1/1/24]

_____ **A RANGE THREE PERSISTENT OFFENDER** (Tenn. Code Ann. § 40-35-107)

- (1) Any combination of five (5) or more prior felony convictions within the conviction class or higher, or within the next two (2) lower felony classes, where applicable; OR
- (2) At least two (2) Class A or any combination of three (3) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony.

_____ **A CAREER OFFENDER** (Tenn. Code Ann. § 40-35-108)

- (1) Any combination of six (6) or more Class A, B or C prior felony convictions, and the defendant's conviction offense is a Class A, B or C felony; OR
- (2) At least three (3) Class A or any combination of four (4) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony; OR
- (3) At least six (6) prior felony convictions of any classification if the defendant's conviction offense is a Class D or E felony.

ENHANCEMENT FACTORS (Tenn. Code Ann. § 40-35-114)

The Court finds the following enhancement factors which are not themselves essential elements of this offense :

- _____ (1) The defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range;
- _____ (2) The defendant was a leader in the commission of an offense involving two or more criminal actors;
- _____ (3) The offense involved more than one victim;
- _____ (4) A victim of the offense was particularly vulnerable because of age or physical or mental disability;
- _____ (5) The defendant treated, or allowed a victim to be treated, with exceptional cruelty during the commission of the offense;
- _____ (6) The personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great;
- _____ (7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement;
- _____ (8) The defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community;
- _____ (9) The defendant possessed or employed a firearm, explosive device or other deadly weapon during the commission of the offense;
- _____ (10) The defendant had no hesitation about committing a crime when the risk to human life was high;
- _____ (11) The felony resulted in death or serious bodily injury, or involved the threat of death or serious bodily injury, to another person, and the defendant has previously been convicted of a felony that resulted in death or serious bodily injury;
- _____ (12) During the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of, or serious bodily injury to, a victim or a person other than the intended victim;

_____ (13) At the time the felony was committed, one (1) of the following classifications was applicable to the defendant:

- (A) Released on bail or pretrial release, if the defendant is ultimately convicted of the prior misdemeanor or felony;
- (B) Released on parole;
- (C) Released on probation;
- (D) On work release;
- (E) On community corrections;
- (F) On some form of judicially ordered release;
- (G) On any other type of release into the community under the direct or indirect supervision of any state or local governmental authority or a private entity contracting with the state or a local government;
- (H) On escape status; or
- (I) Incarcerated in any penal institution on a misdemeanor or felony charge or a misdemeanor or felony conviction;

_____ (14) The defendant abused a position of public or private trust, or used a professional license in a manner that significantly facilitated the commission or the fulfillment of the offense;

_____ (15) The defendant committed the offense on the grounds or facilities of a pre-kindergarten through grade twelve (pre-K-12) public or private institution of learning when minors were present;

_____ (16) The defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult;

_____ (17) The defendant intentionally selected the person against whom the crime was committed or selected the property that was damaged or otherwise affected by the crime, in whole or in part, because of the defendant's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, ancestry or gender of that person or of the owner or occupant of that property; however, this enhancement factor should not be construed to permit the enhancement of a sexual offense on the basis of gender selection alone;

_____ (18) The offense was an act of terrorism or was related to an act of terrorism;

_____ (19) If the defendant is convicted of the offense of aggravated assault pursuant to §39-13-102, the victim of the aggravated assault was a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, a state registered security guard/officer, an employee of the department of correction or the department of children's services, an emergency medical or rescue worker, emergency medical technician or paramedic, whether compensated or acting as a volunteer; provided, that the victim was performing an official duty and the defendant knew or should have known that the victim was such an officer or employee;

_____ (20) If the defendant is convicted of the offenses of rape pursuant to §39-13-503, sexual battery pursuant to §39-13-505, or rape of a child pursuant to §39-13-522, the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance [**only for offenses committed on or after 5/15/12:** or controlled substance analogue];

- _____ (21) If the defendant is convicted of the offenses of aggravated rape pursuant to §39-13-502, rape pursuant to §39-13-503, rape of a child pursuant to §39-13-522 or statutory rape pursuant to §39-13-506, the defendant knew or should have known that, at the time of the offense, the defendant was HIV positive;
- _____ (22) If the defendant is convicted of the offenses of aggravated arson pursuant to §39-14-302 or vandalism pursuant to §39-14-408, the damage or destruction was caused to a structure, whether temporary or permanent in nature, used as a place of worship and the defendant knew or should have known that it was a place of worship [see §40-35-114(22)(B) for the definition of “place of worship.”]
- _____ (23) **[For offenses committed on or after 7/1/07]** The defendant is an adult and sells to or gives or exchanges a controlled substance **[only for offenses committed on or after 5/15/12: or controlled substance analogue]** or other illegal drug with a minor.
- _____ (24) **[For offenses committed on or after 7/1/08]** The offense involved the theft of property and, as a result of the manner in which the offense was committed, the victim suffered significant damage to other property belonging to the victim or for which the victim was responsible.
- _____ (25) **[For offenses committed on or after 7/1/15, and vandalism committed on or after 7/1/16]** The defendant committed an offense [see §40-35-114(25)(B) for the list of applicable offenses] during the time period between the first occurrence of events or conduct that later results in a declaration of a state of emergency by a county, the governor, or the president of the United States and the time the county, governor, or the president of the United States terminates the state of emergency, as provided in §58-2-107, within the area or areas threatened by the emergency, as established by the county's, governor's, or president's declaration of a state of emergency, knowing of the existence of the emergency [see §40-35-114(25)(B) for the definition of “emergency”].
- _____ (26) **[For offenses committed on or after 1/1/17]** The defendant committed the offense of robbery pursuant to 39-13-401, aggravated robbery pursuant to 39-13-402, or especially aggravated robbery pursuant to 39-13-403, on the premises of a licensed pharmacy in an effort to unlawfully obtain, sell, give, or exchange a controlled substance, controlled substance analogue, or other illegal drug;
- _____ (27) **[For offenses committed on or after 7/1/17]** The defendant commits a violent offense, as classified in 40-35-120(b), against a uniformed law enforcement officer or uniformed member of the armed forces or national guard; and the defendant intentionally selected the person against whom the crime was committed, in whole or in part, because of the person's status as a law enforcement officer or member of the armed forces or national guard;
- _____ 28) **[For offenses committed on or after 7/1/17]** At the time the instant offense was omitted, the defendant was illegally or unlawfully in the United States, and
- _____ (29) **[For offenses committed on or after 7/1/21]** The offense involved the theft of a firearm from a motor vehicle, as defined in 55-1-103.
- _____ (30) **[For offenses committed or after 7/1/23]** The defendant committed the offense of aggravated assault, as defined in § 39-13-102(a), or attempted first degree murder, as defined in § 39-13-202, on the grounds or premises of a healthcare facility, which means a hospital licensed under title 33 or 68.

_____ (31) [For offenses committed on or after 7/1/23] The defendant committed an offense under title 39, chapter 13, part 1, 2, 3, 4, or 5 while engaged in the performance of official duties as a law enforcement officer.

MITIGATING FACTORS (Tenn. Code Ann. § 40-35-113)

The Court finds the following mitigating factors:

- _____ (1) The defendant's criminal conduct neither caused nor threatened serious bodily injury;
- _____ (2) The defendant acted under strong provocation;
- _____ (3) Substantial grounds exist tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- _____ (4) The defendant played a minor role in the commission of the offense;
- _____ (5) Before detection, the defendant compensated or made a good faith attempt to compensate the victim of criminal conduct for the damage or injury the victim sustained;
- _____ (6) The defendant, because of youth or old age, lacked substantial judgment in committing the offense;
- _____ (7) The defendant was motivated by a desire to provide necessities for the defendant's family or the defendant's self;
- _____ (8) The defendant was suffering from a mental or physical condition that significantly reduced the defendant's culpability for the offense; however, the voluntary use of intoxicants does not fall within the purview of this factor;
- _____ (9) The defendant assisted the authorities in uncovering offenses committed by other persons or in detecting or apprehending other persons who had committed the offenses;
- _____ (10) The defendant assisted the authorities in locating or recovering any property or person involved in the crime;
- _____ (11) The defendant, although guilty of the crime, committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated the criminal conduct;
- _____ (12) The defendant acted under duress or under the domination of another person, even though the duress or the domination of another person is not sufficient to constitute a defense to the crime; or
- _____ (13) Any other factor consistent with the purposes of Title 40, Chapter 35 (the Tennessee Criminal Sentencing Reform Act of 1989).

FINDINGS ON CONSECUTIVE SENTENCING

DISCRETIONARY CONSECUTIVE SENTENCING (Tenn. Code Ann. § 40-35-115)

This Court finds in ordering consecutive sentencing that:

- _____ The defendant is a professional criminal who has knowingly devoted such defendant's life to criminal acts as a major source of livelihood;
- _____ The defendant is an offender whose record of criminal activity is extensive;
- _____ The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or

compulsive behavior with heedless indifference to consequences;

_____ The 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; and all three of the following factors apply: (*State v. Wilkerson*, 905 S.W.2d 933 (Tenn. 1995))

_____ (a) the circumstances surrounding the commission of the offense are aggravated,

_____ (b) confinement for an extended period of time is necessary to protect society from the defendant's unwillingness to lead a productive life and the defendant=s resort to criminal activity in furtherance of an anti-societal lifestyle, and

_____ (c) the aggregate length of the sentences reasonably relates to the offense of which the defendant stands convicted.

_____ The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;

_____ The defendant is sentenced for an offense committed while on probation; or

_____ The defendant is sentenced for criminal contempt.

_____ The defendant is convicted of two (2) or more offenses involving sexual exploitation of an elderly or vulnerable adult with consideration of the aggravating circumstances arising from the relationship between the defendant and victim, the nature and scope of the sexual acts, and the extent of the physical and mental damage to the victim. **[Only for offenses committed on or after 10/1/21.]**

_____ The defendant was incarcerated at the time of the offense and is convicted of an offense enumerated in § 39-16-202(a)(2). **[Only for offenses committed on or after 7/1/23.]**

_____ The defendant is convicted of two (2) or more offenses involving more than one (1) victim, irrespective of whether the multiple offenses were part of a single criminal episode, and the court finds that a separate consecutive sentence for each offense is in the interest of justice. **[Only for offenses committed on or after 7/1/23.]**

_____ The defendant has additional sentences not yet fully served (*see* Tenn. R. Crim. P. 32).

MANDATORY CONSECUTIVE SENTENCING

This Court finds that:

_____ The defendant committed a felony while on parole or other release program.

_____ The defendant committed a felony while on bail for a felony for which the defendant was ultimately convicted.

_____ The defendant committed an escape or a felony committed while on escape.

PROBATION CONSIDERATIONS

This Court has also considered the following if deciding to grant or deny an alternative sentence to incarceration:

_____ The presentence report, if not waived.

_____ The defendant's physical/mental condition and social history.

_____ The facts and circumstances surrounding the offense, and the nature and circumstances of the criminal conduct involved.

_____ The prior criminal history of the defendant, or lack thereof.

- _____ The previous actions and character of the defendant.
- _____ Whether or not the defendant might reasonably be expected to be rehabilitated, and the
- _____ defendant's potential or lack of potential for rehabilitation, including the risk that during
- _____ the period of probation the defendant will commit another crime
- _____ Whether or not it reasonably appears that the defendant will abide by the terms of
- _____ probation.
- _____ Whether or not the interests of society in being protected from possible future criminal
- _____ conduct of the defendant are great.
- _____ Whether or not measures less restrictive than confinement have frequently or recently
- _____ been applied unsuccessfully to the defendant.
- _____ Whether or not a sentence of full probation would unduly depreciate the seriousness of
- _____ the offense.
- _____ Whether or not confinement is particularly suited to provide an effective deterrent to
- _____ others likely to commit similar offenses.
- _____ Whether or not the offense was particularly enormous, gross or heinous.

_____ THE DEFENDANT IS HEREBY SENTENCED TO a term of _____ in the
_____ County jail
_____ Local workhouse
_____ Department of Correction
concurrent with _____
consecutive to _____
and a fine of \$ _____ .
Alternative sentence, if any:

The above findings are hereby ordered to be made a part of the record in this cause.

IT IS SO ORDERED this _____ day of _____, 20____.

JUDGE