IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs September 1, 2015

STATE OF TENNESSEE v. ANDRE BERNARD EASLEY

Appeal from the Circuit Court for Benton County
No. 13-CR-56 C. Creed McGinley, Judge

No. W2014-02266-CCA-R3-CD - Filed October 5, 2015

The defendant, Andre Bernard Easley, appeals his Benton County Circuit Court jury conviction of introduction into or possession of drugs in a penal institution, claiming that the sentence imposed by the trial court was excessive. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROGER A. PAGE and TIMOTHY L. EASTER, JJ., joined.

Guy T. Wilkinson, District Public Defender; and Gary J. Swayne, Assistant District Public Defender, for the appellant, Andre Bernard Easley.

Herbert H. Slatery III, Attorney General and Reporter; Ahmed A. Safeeullah, Assistant Attorney General; Hansel J. McCadams, District Attorney General; and James E. Williams, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In October 2013, the Benton County Circuit Court grand jury charged the defendant with one count of introduction into or possession of drugs in a penal institution. The trial court conducted a jury trial in April 2014.

The State's proof at trial showed that officers discovered tobacco, a lighter, and a plastic bag containing what was later determined to be .4 grams of marijuana inside the defendant's jail cell in May 2013. Testimony established that, when confronted, the defendant admitted to law enforcement officers that the tobacco and lighter were his but denied ownership of the marijuana. Following a *Momon* colloquy, the defendant elected not to testify and chose not to present any proof.

Based on this evidence, the jury convicted the defendant as charged of introduction into or possession of drugs in a penal institution, a Class C felony. The trial court conducted a sentencing hearing in August 2014. Noting that the State had failed to file a notice of enhancement, the trial court automatically sentenced the defendant as a Range I offender, which carried an available sentencing range of three to six years. The defendant did not ask that the trial court consider any mitigating factors. The trial court found that the defendant had a criminal history of "[a]ssorted felonies [and] misdemeanors," which spanned 10 pages in the presentence report. In addition, the trial court found that the defendant had "a previous history of having his probation revoked . . . four (4) times, and when he's discharged it's been an expiration of sentence." The court commented as follows:

> The Court finds that, considering this extensive previous history, he could have been possibly classified at a much higher range. He's got the benefit of the doubt on that, but the Court finds that he should be sentenced to the maximum within that range, which would be a six (6) year sentence as a Range I, Standard Offender.
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> In reviewing the record, it is overwhelmingly weighing against any type of alternative sentencing. Therefore he will be remanded to custody for service of sentence.

Following the denial of his timely motion for new trial, the defendant filed a timely notice of appeal. In this appeal, the defendant contends only that the sentence imposed by the trial court was excessive.

Our supreme court has adopted an abuse of discretion standard of review for sentencing and has prescribed "a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012) (stating that "although the statutory language continues to describe appellate review as de novo with a presumption of correctness," the 2005 revisions to the Sentencing Act "effectively abrogated the de novo standard of appellate review"). The application of the purposes and principles of sentencing involves a consideration of "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant . . . in determining the sentence alternative or length of a term to be imposed." T.C.A. § 40-35-103(5). The supreme court cautioned that, despite the wide discretion afforded the trial court under the revised Sentencing Act, trial courts are "still required under the 2005 amendments to 'place on the record, either orally or in writing, what enhancement or mitigating factors

were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.'" *Bise*, 380 S.W.3d at 706 n.41 (citing T.C.A. § 40-35-210(e)). Under the holding in *Bise*, "[a] sentence should be upheld 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." *Id.* at 709.

In our view, the record supports the sentencing decision of the trial court. Although the court imposed a top-of-the-range sentence, the defendant's extensive criminal history, which spanned 30 years and included more than 50 convictions, would most likely have placed him at a higher sentencing range had the State chosen to pursue it. The parties offered no enhancement or mitigating factors for the court to consider, but the court did emphasize the fact that the defendant's probation had been revoked on four prior occasions and found that the record "overwhelmingly" weighed against alternative sentencing. Because the trial court considered all relevant principles associated with sentencing, no error attends the imposition of this within-range sentence.

Accordingly, we affirm the judgment of the trial court.

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JAMES CURWOOD WITT, JR., JUDGE