

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JUNE 1999 SESSION

Filed July 1, 1999

STATE OF TENNESSEE,)	
)	NO. 01C01-9810-CR-00388
Appellee,)	
)	SUMNER COUNTY
VS.)	
)	HON. JANE W. WHEATCRAFT,
GREGORY CHARLES YOUNG,)	JUDGE
)	
Appellant.)	(Sentencing)

FOR THE APPELLANT:

DAVID ALLEN DOYLE
District Public Defender

DANA L. SCOTT
Assistant Public Defender
117 East Main Street
Gallatin, TN 37066-2801

FOR THE APPELLEE:

PAUL G. SUMMERS
Attorney General and Reporter

ELIZABETH B. MARNEY
Assistant Attorney General
Cordell Hull Building, 2nd Floor
425 Fifth Avenue North
Nashville, TN 37243-0493

LAWRENCE RAY WHITLEY
District Attorney General

C. WAYNE HYATT
Assistant District Attorney General
113 West Main Street
Gallatin, TN 37066-2803

OPINION FILED: _____

AFFIRMED - RULE 20

JOE G. RILEY,
JUDGE

ORDER

Appellant, GREGORY CHARLES YOUNG, appeals the denial of alternative sentencing by the trial court. On August 27, 1998, appellant pled guilty to robbery, a Class C felony, and received a Range I sentence of four years. Pursuant to the plea agreement, the trial court conducted a sentencing hearing to determine the manner of service at which it denied appellant's request for placement in a community corrections program. We AFFIRM the trial court's decision.

In determining if incarceration is appropriate, a trial court may consider the need to protect society by restraining a defendant having a long history of criminal conduct, the need to avoid depreciating the seriousness of the offense, whether confinement is particularly appropriate to effectively deter others likely to commit similar offenses, and whether less restrictive measures have often or recently been unsuccessfully applied to the defendant. Tenn. Code Ann. § 40-35-103(1); *see also State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991); *State v. Grigsby*, 957 S.W.2d 541, 545 (Tenn. Crim. App. 1997).

Proof at the sentencing hearing¹ showed that appellant has prior convictions in Arkansas for burglary, forgery, and robbery. He was on probation or parole at the time he committed the current offense. And, in spite of his successful completion of a drug and alcohol rehabilitation program while on bond for the current offense, appellant failed a drug and alcohol screen the day of sentencing.

The trial court determined that due to his poor social and criminal histories, the failed drug screen, and the type of offenses he tends to commit, appellant is a threat to society and not a good candidate for community corrections. The trial court also noted that appellant received consideration for his plea in the form of a Range I sentence when he is, in fact, a

¹Appellant complains that the trial court improperly admitted testimony regarding a pending theft charge against him. However, the trial court's findings show it did not rely on that charge in making its sentencing determination.

Range II multiple offender. We note that less restrictive measures have been unsuccessful in deterring defendant's criminal activity.

The record supports the trial court's findings and sentencing decision. The judgment of the trial court is affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals. It appearing that the appellant is indigent, costs shall be taxed to the state.

SO ORDERED. Enter:

JOE G. RILEY, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

ALAN E. GLENN, JUDGE