IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 24, 2007

# STATE OF TENNESSEE v. WILLIAM TYLER RYAN

**Direct Appeal from the Criminal Court for Loudon County**
**No. 10851B E. Eugene Eblen, Judge**

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**No. E2006-02087-CCA-R3-CD - Filed October 22, 2007**

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The defendant, William Tyler Ryan, pled guilty to one count of reckless endangerment with a deadly weapon, a Class E felony. Following a sentencing hearing, the trial court denied the defendant's request for judicial diversion and ordered the defendant to serve his sentence of one year on supervised probation. On direct appeal, the defendant argues the trial court erred in denying judicial diversion by failing to state its reasoning for denial on the record. After review, we reverse the sentencing decision of the trial court and remand the matter to the trial court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and Remanded**

J.C. McLIN, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and D. KELLY THOMAS, JR., JJ., joined.

Joseph H. Crabtree, Jr., Sweetwater, Tennessee, for the appellant, William Tyler Ryan.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; J. Scott McCluen, District Attorney General; and Frank A. Harvey, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

### FACTUAL BACKGROUND

This case arises out of a fatal automobile collision caused by the defendant on January 10, 2004, in Loudon County. On August 9, 2004, the Loudon County Grand Jury returned an indictment charging the defendant with reckless endangerment with a deadly weapon. The parties agreed to a one year sentence with the manner of service to be determined by the trial court. On May 9, 2006, the defendant pled guilty to the charge and a sentencing hearing was held on August 14, 2006.

At the sentencing hearing, Kimberly Stinnett, mother of the victim, Tabitha Helton,[1] testified that the victim was eighteen years old at the time of her death and lived at home with her and the victim's father. She stated that the victim was a "wonderful, wonderful person, with so much potential." She recalled that the victim would often participate in charitable activities such as feeding the homeless, and human rights events. Mrs. Stinnett also testified regarding the impact the victim's death had on her and other family members. Mrs. Stinnett stated that the victim died for no reason and that the defendant had shown no remorse. On cross examination, Mrs. Stinnett said she was not aware of any death threats being made to the defendant by her family or friends. However, Mrs. Stinnett acknowledged that a civil lawsuit had been filed against the defendant and a financial settlement had been completed.

Jeffrey Helton testified that he was the father of the victim. He stated that the victim's mother had basically covered what he had to say. Mr. Helton further stated that the defendant showed no remorse. In fact, the only emotion he observed from the defendant was his "smug little laugh and smile that he [gave] me every time I passed him." According to Mr. Helton, "friends and strangers questioned my manhood because I didn't do something about it myself." Mr. Helton then told the defendant, "don't you ever question my manhood." When asked if he had ever done anything to cause the defendant to smile or laugh at him, Mr. Helton said, "I never did understand it . . . he needs to understand how deeply that hurt me."

On cross examination, Mr. Helton testified that he did not know the defendant prior to January 10, 2004. When asked whether he had met the defendant prior to the sentencing hearing, he stated he had not. However, Mr. Helton stated that other people who knew the defendant had pointed him out. He also stated he was sure the defendant knew him because the defendant knew his other daughter, Sierra. When asked if he believe the defendant intended to harm Tabitha, the victim, Mr. Helton said no. Mr. Helton also admitted that the defendant had never questioned his manhood.

On cross examination, Mr. Helton denied knowledge of any death threats made against the defendant and said that the first time he heard of death threats being made to the defendant was at the present hearing. Mr. Helton stated he was aware of the publicity surrounding the incident including the presence of billboards. Mr. Helton acknowledged that the billboards were paid for by donations from family and friends. Mr. Helton stated that he was not aware of the city being sued but noted that there was a disagreement over how the city conducted the investigation.

The defendant testified that he was twenty-one years old. He was not married, had no children, and currently lived with his parents. The defendant stated that he had completed high school and had started college but had to drop out because of the pending criminal charges against him. Regarding his employment history, the defendant stated he had been employed at Food City in Farragut as dairy manager for five years. He began working at Food City when he was sixteen as

[1] The indictment list the victim as Tabitha Helton. The spelling of the victim's name throughout the transcript is Tabatha Helton.

a bagger and had been promoted several times. He also worked at Target for three months. The defendant also stated that he had never gone to juvenile court for any problems as a minor or had any other criminal charges prior or subsequent to January 10, 2004. He stated that other than smoking marijuana once in high school, he had never used drugs. Regarding his plans for the future, the defendant said he was planning on pursuing a nursing career at Tennessee Tech.

The defendant testified that he had not seen the victim's family since the car accident and therefore did not have the opportunity to express his remorse to them. He stated:

> I have not meant to laugh at them for their loss. I went to high school with Tabitha. I graduated with Tabitha. They don't know . . . what I think about . . . . It's every day. It's not something that I have forgotten about. As far as the death threats, her dad did not threaten me. Her boyfriend at the time did call my cell phone a few months afterwards, and did have some harsh words to say. I apologized to him for what happened. I am sorry for what happened. I did not mean for any of it to happen.

When asked to explain the circumstances surrounding the car accident that caused the victim's death, the defendant stated:

> I was driving on Broadway, going towards Loudon. I looked in my rear view mirror and saw someone tailgating me. I continued to accelerate to get away from them. You wasn't supposed to do that, I know. And he continued to follow, so I went faster. He stayed behind me the whole time. And she pulled out of a parking spot to the right to go back towards Lenoir City. And when she come in the first lane I swerved to avoid her, and got back in the right lane, and looked in my rear view mirror and saw the car behind me hit her.

When asked if he knew if it was the victim's car when he passed her, he stated, "no sir." When asked if he intended to harm her at all that night, he said, "no sir." The defendant again apologized, stating:

> I want to say I am sorry. I do not know what it is to lose a daughter, or any family member, actually. I do apologize. I did not mean to hurt your daughter. If I could take it back, I would. I graduated with her. I don't really think I'd have been welcome to all the ceremonies you all had. I didn't think you wanted me around. But I am sorry.

On cross examination, the defendant acknowledged that he had filed bankruptcy. He explained:

> I had a brand new car that I got. I had a lot of credit cards that I applied for. It was a bunch of stuff [that] hit me, and I wouldn't necessarily work as much, because I

> was 18. I wasn't really a dairy manager at the time. I wasn't making the money I ma[k]e now. And I was just overwhelmed as far as the bills were concerned. And I didn't want to ask my parents for help. So I figured that was the only alternative.

Sherry Ryan, the defendant's mother, testified that her son was a good person and had a good reputation until the car accident. She noted that the collision with the victim's car "was an accident; not a crime. He didn't mean to hurt . . . anybody that night."

Following the hearing, the trial court announced its ruling:

> Okay. He's already been sentenced to one year. But the court does feel that this should be a split sentence, although disagrees with the State on a heavy split sentence. I'm going to make that a 30 day service, with the balance on probation. The Court does not feel this is a proper case for diversion.

## ANALYSIS

On appeal, the defendant argues that the trial court abused its discretion in denying judicial diversion by failing to state its findings and reasoning for the denial on the record. When there is a challenge to the length, range, or manner of service of a sentence, it is the duty of this Court to conduct a de novo review of the record with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The burden of showing that the sentence is improper is upon the defendant. *Id*. In the event the record fails to demonstrate the required consideration by the trial court, review of the sentence is purely de novo. Id. If appellate review reflects that the trial court properly considered all relevant factors and its findings of fact are adequately supported by the record, this Court must affirm the sentence "even if we would have preferred a different result." *State v. Fletcher*, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

A defendant is eligible for judicial diversion when he or she is found guilty or pleads guilty to a Class C, D, or E felony, has not previously been convicted of a felony or a Class A misdemeanor, and is not seeking deferral for certain sexual offenses. *See* Tenn. Code Ann. § 40-35-313(a)(1)(B). Under the judicial diversion statute, the trial court may, in its discretion, defer further proceedings and place a qualified defendant on probation without entering a judgment of guilty. Tenn. Code Ann. § 40-35-313(a)(1)(A). A defendant who is eligible for judicial diversion; however, is not entitled to such as a matter of right. *See State v. Bonestel*, 871 S.W.2d 163, 168 (Tenn. Crim. App. 1993) (*overruled on other grounds by State v. Hooper*, 29 S.W.3d 1, 9 (Tenn. 2000)). The decision of whether to place a defendant on judicial diversion is within the sound discretion of the trial court. *State v. Harris*, 953 S.W.2d 701, 705 (Tenn. Crim. App. 1996). Therefore, the trial court's denial of judicial diversion is subject to reversal on appeal only if the court abused its discretion. *See State v. Robinson*, 139 S.W.3d 661, 665 (Tenn. Crim. App. 2004).

An abuse of discretion occurs when the trial court's denial of judicial diversion is unsupported by any substantial evidence. *See State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996).

"Tennessee courts have recognized the similarities between judicial diversion and pretrial diversion and, thus, have drawn heavily from the case law governing pretrial diversion to analyze cases involving judicial diversion." *State v. Cutshaw*, 967 S.W.2d 332, 343 (Tenn. Crim. App. 1997). Accordingly, in determining whether to grant or deny judicial diversion, the trial court must consider: (a) the accused's amenability to correction, (b) the circumstances of the offense, (c) the accused's criminal record, (d) the accused's social history, (e) the accused's physical and mental health, (f) the deterrence value to the accused as well as others, and (g) whether judicial diversion will serve the interests of the public as well as the accused. *Parker*, 932 S.W.2d at 958; *Bonestel*, 871 S.W.2d at 168. Additional factors which may be considered include the defendant's "attitude, his behavior since his arrest, his home environment, current drug usage, emotional stability, past employment, general reputation, family responsibilities, and the attitude of law enforcement." *State v. Lewis*, 978 S.W.2d 558, 566 (Tenn. Crim. App. 1997). Moreover, the record must reflect that the court has weighed all of the factors in reaching its determination. *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998). That is, the court must explain on the record why the defendant does not qualify under its analysis, and if the court has based its determination on only some of the factors, it must explain why these factors outweigh the others. *See id.*

Upon review of the record, it is clear that the trial court did not address the relevant criteria set forth by this court in both *Cutshaw* and *Parker* when denying judicial diversion. Given that the trial court failed to address many of the factors it was required to consider, and failed to explain why the factors supporting the denial of diversion outweighed the factors supporting diversion, we are compelled to reverse the judgment of the trial court and remand the case in order for the trial court to explain adequately on the record why the defendant was denied judicial diversion and why the factors relied on outweigh the others.

## CONCLUSION

Based upon the record and the foregoing reasoning, we conclude that the trial court abused its discretion. For this reason, the judgment of the trial court is reversed and the case is remanded for a proper evaluation of the defendant's request for judicial diversion.

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J.C. McLIN, JUDGE