

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs July 10, 2007

STATE OF TENNESSEE v. RHONDA WILKINS

**Direct Appeal from the Criminal Court for Shelby County
No. 06-05286 Paula Skahan, Judge**

No. W2006-02763-CCA-R3-CD - Filed September 4, 2007

The appellant, Rhonda Wilkins, pled guilty in the Shelby County Criminal Court to one count of aggravated assault and received a sentence of three years. The appellant requested that the trial court grant her judicial diversion, and the trial court denied the request. However, the appellant's sentence was suspended, and she was placed on probation. On appeal, the appellant challenges the denial of judicial diversion. Upon our review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID G. HAYES and THOMAS T. WOODALL, JJ., joined.

Robert Wilson Jones (on appeal) and Donna J. Armstard (at trial and on appeal), Memphis, Tennessee, for the appellant, Rhonda Wilkins.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; William L. Gibbons, District Attorney General; and Steve Jones, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

At the appellant's guilty plea hearing, the State recited the following factual basis for the plea:

[O]n March 2nd, 2006 Terry Dickerson was visiting his girlfriend, Tamila [Wilkins], at an apartment when her brother, Eric Taylor, and sister, the [appellant], came over. Taylor and Dickerson became involved in an argument that turned into a physical

confrontation. Tamila Wilkins managed to get them separated. Dickerson observed Rhonda Wilkins, the [appellant], retrieve a knife from the kitchen. Dickerson fled from the apartment but the [appellant] followed Taylor, chased him down and the fight resumed.

The [appellant] came up to the victim and stated I owe you anyway and stabbed him once in the stomach area just below the sternum. Dickerson fled to his grandmother's house and called police. Dickerson was transported to the Med by fire department ambulance, was treated and released.

Based upon the foregoing facts, the appellant pled guilty to aggravated assault and received a sentence of three years.

The appellant asked the court to grant judicial diversion. In support of her request, the appellant testified that she was twenty-two years old and had three children. The appellant stated that she had attended high school through tenth grade, but she quit school when her first child was born in order to care for the baby. Initially, the appellant said that she had earned a general equivalency diploma (GED), but later, upon pointed questioning by the trial court, she admitted that she had only passed the practice test. She said that she was working at Wellington Health Loop as part of an externship for a medical assistant program at Remington College. The appellant also said that she had been working at McDonald's restaurant for eight months, and, prior to that, she had worked through a temporary service.

The appellant acknowledged that she had a history of juvenile offenses. She recalled that when she was sixteen, she was involved in an altercation at a Burger King restaurant where she worked. An individual named Carlos scratched her, and she hit him with a battery that was attached to a microphone she used in her job. A witness broke up the fight, and the appellant grabbed a knife. When the appellant went to court on that incident, her mother informed the court that the appellant had a tendency to act aggressively and "run her mouth" when she was confronted by others. Accordingly, the court ordered the appellant to complete an anger management program, which she did. When the appellant was seventeen, she was stopped by police for having a broken taillight. The appellant told police that she was eighteen years old and gave a false social security number.

The appellant stated that her sister, Tamila Wilkins, and the victim, Dickerson, had children together. The appellant maintained that her family had a history of trouble with Dickerson. As an example, the appellant stated that four years prior to the current incident, she saw Dickerson beating Wilkins. The appellant tried to help, and Dickerson began fighting with her. During the fight, Dickerson blackened the appellant's eye. The appellant recalled that two years prior to the current incident, Dickerson and the appellant's mother were arguing because Dickerson had been "disrespecting" her. The fight did not become physical, but Dickerson "was acting like he wanted to touch [the appellant's mother]." In 2005, the appellant and Dickerson physically fought again. At that time, the appellant was pregnant with her youngest child. She

said that Dickerson beat her, and she could have lost her baby. She went to the hospital after the fight, but she left because her baby was “okay.”

The appellant recalled that at the time of the instant offense, both she and Wilkins had restraining orders against Dickerson. On the night of the offense, the appellant was working late at a restaurant, and Wilkins was keeping the appellant’s children. When the appellant got off of work, she went with her brother, Taylor, to Wilkins’ residence to pick up her children. After the appellant and Taylor arrived, the appellant and Wilkins began talking. While they were talking, they heard a noise in the front room of the residence. They went to the front room and saw Taylor and Dickerson fighting. The appellant and Wilkins attempted to separate the men. The appellant pushed Dickerson to get him off of Taylor. Dickerson “mugged” the appellant, pushing her face. The appellant retrieved a knife from the kitchen. The appellant saw her get the knife, and he left. The appellant said that she chased Dickerson, and “I stuck him.”

The appellant said that she knew that her actions were wrong. The appellant said that she did not have “anger issues,” citing her completion of an anger management program. She stated, “I just wished I wouldn’t done this so I wouldn’t have to be going through all this. But I know I can’t change it, but I’m not a bad person though.” The appellant said that she did not want to go to jail, noting that “don’t nobody take care of my kids like I do. . . . [T]hey don’t have good dads.” The appellant said that she does not speak with Dickerson or her sister as Wilkins and Dickerson had reunited after the offense. The appellant stated:

I would like to apologize to [Dickerson]. You know, I have apologized to [Dickerson]. And apologize to my children for, you know, having them to wait and see if anything going to happen to me. And I’d like to apologize to the Court. . . . I just didn’t know that he was going – you know, he have done a lot of different things to me and my family. And for him to try to call the police and try to get me to go through all this stuff right here so I can get locked up and can be away from my kids, you know, he – well, I’m not going to sit up here and just try to criticize him and say bad things about him. But, you know, I just feel like, you know, I know I shouldn’t of did it. But the reason why he tries to just really call the police on me to try to just hurt is to see me hurt. You know, because like I say, we called the police on him once before for him fighting my sister and for him fighting me. So, really to me, he probably just trying to get me back.

The trial court noted that the appellant “basically . . . think[s] the victim had a lot of nerve for calling the police.” The court asked the appellant if she realized that she could have killed Dickerson. The appellant acknowledged that she was aware that if she had struck a vital organ Dickerson could have died. The court stated:

This is just ridiculous. You went through Anger Management but you don’t retain anything. You had a chance to walk away, but you wanted to get him. And I understand being angry at him, but stabbing him, stabbing him. Having a history of pulling a knife on

other people. And you're saying that was six years ago so why hold it against you. That's basically the way you see things.

The court found that the appellant did not learn from her mistakes. The court pointed out that the appellant lied to the court about having her GED, noting "[Y]ou're awfully interesting the way you communicate. You don't have your GED. . . . You may be working on it, but you don't have it." The court stated, "I'm disturbed by [the appellant's] attitude. I'm concerned about her amenability for correction. . . . I'm concerned about the circumstances of this offense, about her background, the way she sees things." Ultimately, the court stated to the appellant:

[W]e want you to do well in the future. We don't want to see you back down here. We want you to do well with your job. We want you to not get in any further trouble. And the question is how to accomplish that. But this behavior of yours and the attitude about it is just frightening. It really is. That you think he deserved it. And he deserved to be stopped, but he didn't deserve to be stabbed as he's running away.

And what I'm going to do, based on your history, based on your attitude today, based on your background which I think has made it tough for you, I'm not going to lock you up, but I'm not going to grant you Judicial Diversion either. I think at some point you need to understand that these actions of yours do have consequences. And I think people need to be warned about you in the future.

On appeal, the appellant challenges the trial court's denial of judicial diversion.

II. Analysis

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 and has not previously been convicted of a felony or a Class A misdemeanor. See Tenn. Code Ann. § 40-35-313(a)(1)(B) (2006). It is within the trial court's discretion to grant or deny judicial diversion. See State v. Parker, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996). As such, the trial court's decision will be overturned only if the court abused its discretion. Id. In other words, we will not interfere with the denial of judicial diversion if the record contains any substantial evidence to support the trial court's refusal to grant diversion. Id. Moreover, we observe that "judicial diversion is similar in purpose to pretrial diversion and is to be imposed within the discretion of the trial court subject only to the same constraints applicable to prosecutors in applying pretrial diversion under [Tennessee Code Annotated section] 40-15-105." State v. Anderson, 857 S.W.2d 571, 572 (Tenn. Crim. App. 1992).

In determining whether to grant a defendant judicial diversion, the trial court must consider all of the following factors: (1) the defendant's amenability to correction, (2) the circumstances of the offense, (3) the defendant's criminal record, (4) the defendant's social history, (5) the status of the defendant's physical and mental health, and (6) the deterrence value

to the defendant and others. State v. Lewis, 978 S.W.2d 558, 566 (Tenn. Crim. App. 1997). “The trial court should also consider whether judicial diversion will serve the ends of justice--the interests of the public as well as the accused.” Id. The record must reflect that the trial court has taken all of the factors into consideration. State v. Electroplating, Inc., 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998). As a consequence, “we may not revisit the issue if the record contains any substantial evidence supporting the trial court’s decision.” Id. Furthermore, “[t]he 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.” Id.

Upon our review of the record, we believe the trial court properly denied diversion in this case. The appellant’s employment and care of her minor children weigh in favor of granting diversion. However, the appellant not only refused to accept responsibility for her crimes but tried to shift blame to the victim for abusing her family in the past and for reporting the crime to police. In Anderson, 857 S.W.2d at 574, this court stated,

the record reflects that the trial court did not consider the defendant sincere in accepting responsibility for the offense and it was duly concerned with the defendant’s attempt to divert the blame to another. These circumstances are relevant to assessing the degree of rehabilitation potential shown by the defendant. Since the trial court was in the best position to determine [the defendant’s] attitude and demeanor, we are not in a position to view the defendant differently upon the record before us.

In the instant case, the appellant’s failure to accept responsibility for her crimes greatly disturbed the trial court. The appellant’s failure to accept responsibility and her attempt to shift blame to the victim reflects poorly on her rehabilitation potential, and the trial court obviously gave great weight to this factor. Nevertheless, we recognize that a defendant’s “continued denial of guilt should not, in and of itself, preclude judicial diversion.” Lewis, 978 S.W.2d at 567. However, the trial court’s finding that the appellant lied to the trial court about having her GED and the comment that the appellant was “awfully interesting in the way [she] communicate[s]” demonstrates that the trial court also believed the appellant lacked credibility. Moreover, the trial court stated that it wanted the appellant to understand that there were consequences for her actions, indicating that the trial court believed the deterrence value to the appellant and others was an important sentencing factor in this case. From the record before us, we cannot conclude that the trial court abused its discretion by denying diversion.

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE