

IN THE 12TH JUDICIAL DISTRICT OF TENNESSEE
CIRCUIT COURT OF GRUNDY COUNTY

STATE OF TENNESSEE,

vs.

THOMAS CHRISTOPHER ANDREWS,

Defendant.

NO. 8498

Filed in my office at 11:00 AM
31st day of Oct., 2016
Melissa R. [Signature]
Clerk
D.C.

SENTENCING MEMORANDUM

This cause came on to be heard September 9, 2016, on the sentencing of the plea of guilty to two (2) counts of aggravated rape, each a Class D felony with a sentence range of two (2) to four (4) years each. The negotiated pleas allow the two (2) counts to run concurrently. This court must determine the propriety of sentencing alternatives and must consider: (1) the evidence received at the sentencing hearing, (2) the pre-sentence report, (3) the principles of sentencing and arguments as to sentencing alternative, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information offered by the parties on the enhancing and mitigating factors, (6) any statistical information provided by the administrative office of the court as to sentencing practices for similar offenses in Tennessee, (7) any statements the defendant wishes to make in the defendant's behalf after sentencing, (T.C.A. § 40-35-210(b) and (8) the potential for rehabilitation or treatment.

A. Enhancement Factors

The proof established the following enhancement factors:

(1) The defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range. Facts recited at Defendant's plea of guilty on June 13, 2016, reveal the proof supporting Defendant's plea of

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guilty to two (2) counts of aggravated statutory rape. That recitation of facts reveals that in the fall of 2015, [REDACTED] or "the victim") was 14 years old and a freshman at Grundy County High School. Defendant was a teacher at Swiss Memorial Elementary School ("Swiss Memorial") and was 40 years old. [REDACTED] had attended Swiss Memorial at least her 6th, 7th, and 8th grade years. The victim would go over to a friend's house and Defendant would pick her up in his pickup truck. She described that pickup truck and that it had a back seat to it. On the first occasion they went for a ride in the Daus Mountain area and Defendant gave her alcohol. She stated that she sort of fell asleep and woke up with Defendant fondling her vaginal area. She told him to stop and Defendant did stop, although that fondling did lead to sexual contact. Afterwards on a number of occasions Defendant would pick her up at this same friend's house. Sometimes the friend would ride with them and they would drop the friend off at another person's residence. Defendant continued to give the victim alcohol during these occasions. The Defendant would fondle her breasts and on one occasion he used his penis to rub on her breasts until he ejaculated. She testified that she performed oral sex on Defendant. These events occurred in the back seat of Defendant's pickup truck. The Defendant and [REDACTED] had actual sexual intercourse on one occasion.

The Court finds credible the testimony at the sentencing hearing on June 9, 2016, of [REDACTED] age 21, who attended Swiss Memorial during her 6th, 7th, and 8th grade years and graduated from Grundy County High School. [REDACTED] lived in Marlon County at the time she testified [REDACTED] had heard about the charges against Defendant on facebook and volunteered to offer testimony. Defendant was a history teacher at Swiss Memorial during the years [REDACTED] attended there. As an 8th grader [REDACTED] delivered papers in the morning to teachers, including Defendant. One morning when she was delivering papers to Defendant

in his classroom, Defendant suddenly forced her against the wall in his classroom and touched her "behind" and breast and "french kissed" her. She testified that at other times that year Defendant got behind her in line and touched her "behind." During her 9th grade at Grundy County High School [REDACTED] eventually told her stepmother about the incident which was then reported. A Grundy County deputy and a representative of the Department of Children's Services ("DCS") interviewed [REDACTED] however no action was taken against Defendant. Based on [REDACTED] age at the time of her testimony the Court finds the incident happened in 2009 or 2010.

The facts recited during Defendant's June 13, 2016, pleas of guilty reveal other instances of criminal behavior in addition to two events supporting Defendant's pleas of guilty. The proof established that Defendant fondled the victim's vaginal area on one occasion, fondled her breast on one occasion, and used his penis to rub on her breast on one occasion. The Defendant's assaults against [REDACTED] in 2009 or 2010 constitute at least two incidents of criminal behavior, one being the time he kissed her and the other being at least one instance of touching [REDACTED] on her "behind" when she was in line. Defendant's counsel acknowledged Defendant's statement in the Pre-Sentence Report that Defendant "was caught up in a crazy fantasy that she and I had fallen in love." The Court places heavy weight on this factor against Defendant in the sentencing analysis.

(7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement. The facts previously recited under factor (1) from the June 13, 2016 pleas establish that the offenses for which Defendant stands convicted were sexually motivated and committed for the purpose of pleasure or excitement. Defendant's statement that he and [REDACTED] were in love is circumstantial evidence that his relationship with [REDACTED]

██████████ was a sexual one. The Court places heavy weight on this factor against Defendant in the sentencing analysis.

(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. The facts recited under factor (1) establish Defendant was ██████████ ██████████ history teacher at Swiss Memorial. Casey Woodlee testified at the sentencing hearing that she was the principal at Swiss Memorial for six (6) years until the end of the 2015-16 school year. She testified that ██████████ was a student at Swiss Memorial during ██████████ ██████████ 6th, 7th, and 8th grade years and that Defendant had been her teacher during that time. Defendant had coached ██████████ in volleyball.

When ██████████ was in the 7th grade Ms. Woodlee received an anonymous phone call regarding Defendant and ██████████. The call was reported to Dr. Willie Childers, Director of Schools for Grundy County. A call was made to the DCS hotline but Ms. Woodlee received no inquiry from DCS. Neither Mr. Woodlee or Dr. Childers spoke with Defendant about that phone call.

During ██████████ 8th grade year complaints were made by other teachers at Swiss Memorial about Defendant's conduct with ██████████. An anonymous letter was received by Ms. Woodlee and Mr. Childers. After Ms. Woodlee and Dr. Childers met, Mr. Childers decided they should both meet with the Defendant. In May of 2015, Ms. Woodlee and Mr. Childers met with the Defendant and confronted him about the allegations being made against him regarding ██████████. Defendant became visibly upset and cried and "... stated he just wanted this to go away, that this wasn't true." As a result of the allegations made against Defendant during ██████████ 8th grade year Ms. Woodlee called the DCS hotline six (6) times to report her

concerns. DCS never inquired of her about the reports she made about the Defendant and [REDACTED]

Both the State in the Pre-Sentence Report and Defendant in his Sentencing Memorandum offered Dr. Glennon's psychosexual evaluation which the Court has read and considered. Defendant told Dr. Glennon that he had taken a special interest in [REDACTED] during the time he coached her in volleyball at Swiss Memorial. He stated [REDACTED] sought his and his wife's advice "when school situations become too difficult."

The Court finds that while Defendant was not [REDACTED] teacher when the rapes occurred for which he pled guilty, he had developed a relationship with [REDACTED] over a period of time when he was her teacher during which he became her confidant and mentor. There is no proof that any of the allegations discussed in the May 2015 meeting with Ms. Woodlee and Dr. Childers were true. However, even in light of that meeting in which he was informed of allegations against him and that phone calls and letters alleging a relationship had been received and that teachers at Swiss Memorial had made reports, Defendant pursued a relationship that only a few months later resulting in the offenses occurring between August 1 and December 13, 2015. Defendant abused the teacher-student relationship he developed with the victim at Swiss Memorial in order to have sexual encounters with the victim mere months after she graduated the 8th grade. The Court places heavy weight on this factor against the Defendant in the sentencing analysis.

B. Mitigating Factors

The proof established the following mitigating factor:

(13) Any other factor consistent with the purposes of this chapter. The Court has considered Defendant's social history as detailed in Defendant's Sentencing Memorandum and

other proof offered at the sentencing hearing. Numerous letters written on Defendant's behalf were included in the Sentencing Memorandum. [REDACTED] [REDACTED] [REDACTED] and [REDACTED] wrote letters and also testified at the sentencing hearing. Defendant's wife, [REDACTED] [REDACTED] and [REDACTED] testified on Defendant's behalf as did Defendant's half-brother, [REDACTED] a fourteen and one-half year employee of the DCS. Defendant's witnesses recounted Defendant's good social history including examples of helping others, but acknowledged the wrongfulness of his crimes against [REDACTED]. Defendant did not take the stand but offered a verbal allocution in which he expressed remorse for his actions.

The Court has considered Defendant's proof, including Defendant's allocution, but places little weight on the letters and allocution because there were not made under oath or subject to cross examination. The Court places no weight in Defendant's favor on his plea of guilty. The Court places moderate weight on this factor in Defendant's favor in the sentencing analysis.

At the end of Defendant's proof, his counsel offered the "testimony" of individuals in the courtroom by requesting that all those present in support of Mr. Andrews to stand, at which time 20 to 30 individuals then stood. The Court announced at the time that it could not consider such as proof on Defendant's behalf. In this Court's opinion counsel should refrain from eliciting such displays as non-lawyers may mistakenly believe a Court could be influenced by merely attending a court proceeding and standing in unison.

C. Sentence

Based on the foregoing analysis, Defendant's sentence in each count is three and one-half (3-1/2) years.

D. Manner of Service of Sentence

Defendant is considered a favorable candidate for alternative sentencing options in the absence of evidence to the contrary. T.C.A. § 40-35-102(6)(A). Under the 1989 Sentencing Act, sentences which involve confinement are to be based on the following considerations:

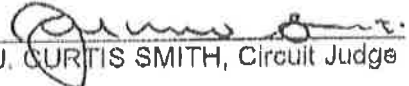
- (A) [c]onfinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) [c]onfinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) [m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103(1); *State v. Boston*, 938 S.W.2d 435, 438 (Tenn.Crim.App. 1996). A trial court may consider the enhancement and mitigating factors set forth in T.C.A. §§ 40-35-113, 40-35-114 as they are relevant to the § 40-35-103(1) considerations. *Boston, Id.*; *State v. Zeolia*, 928 S.W.2d 457, 461 (Tenn.Crim.App. 1996). The trial court should also consider the defendant's potential for rehabilitation when determining whether an alternative sentence would be appropriate. *Zeolia, Id.* Further, in determining whether to grant or deny probation, a trial court should consider the provisions of T.C.A. § 40-35-210.

The Court weighs heavily the facts underlying the enhancing factors. The proof establishes Defendant devised a plan to seduce the victim and have an intimate relationship with her and used alcohol to achieve his purposes. This seduction extended in excess of four (4) months and involved multiple instances. Even though he was put on notice of suspicions regarding his relationship with the victim before the offenses for which he plead occurred, he was not deterred from pursuing [REDACTED]. Defendant has a long history of sexual offenses as established by his sexually motivated assaults on [REDACTED] years prior to his crimes against [REDACTED].

In summary, the Court finds that the State has presented evidence "to the contrary" in that Defendant has a long history of criminal conduct and that confinement is necessary to avoid depreciating the seriousness of the offenses for which he stands convicted. The Defendant is undeserving of an alternative sentence and shall serve his three and one-half (3-1/2) year sentence in the Tennessee Department of Correction. Had there been no long history of criminal conduct, the facts of this case and the seriousness of these offenses would still warrant Defendant serving his sentence.

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

ENTER: 
J. CURTIS SMITH, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing SENTENCING MEMORANDUM was served on:


David L. Shinn, Jr.
Assistant District Attorney
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by delivering the same to office of said counsel or by placing same in the United States Mail, sufficient postage prepaid, addressed to said counsel at the above address.

This 31st day of October, 2016.

MELODY OLIVER, CLERK

By: 
CLERK or DEPUTY CLERK

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