

- (2) Conviction Offense Class B felony, and either
 - (a) No prior Class A felony conviction; OR
 - (b) 0-1 prior Class B, C, or D felony conviction
- (3) Conviction Offense Class C, D, or E felony and 0-1 prior felony conviction.

A Range II Multiple Offender (T.C.A. § 40-35-106)

- (1) Conviction Offense Class A felony, and either
 - (a) 1 prior Class A felony conviction; OR
 - (b) 2-4 prior Class B or C felony convictions
- (2) Conviction Offense Class B felony, and either
 - (a) 1 prior Class A felony conviction; OR
 - (b) 2-4 prior Class B, C, or D felony convictions
- (3) Conviction Offense Class C, D, or E felony and 2-4 prior felony convictions.

A Range III Persistent Offender (T.C.A. § 40-35-107)

- (1) Conviction Offense Class A felony, and either
 - (a) 2 prior Class A felony convictions; OR
 - (b) 3 prior Class B felony convictions; OR
 - (c) 1 prior Class A felony conviction and 2 prior Class B felony convictions; OR
 - (d) 5 prior Class B or Class C felony convictions
- (2) Conviction Offense Class B felony, and either
 - (a) 2 prior Class A felony convictions; OR
 - (b) 3 prior Class B felony convictions; OR
 - (c) 1 prior Class A felony conviction and 2 prior Class B felony convictions; OR
 - (d) 5 prior of any combination of Class A, B, C, or D felony convictions
(1A + others = 5) (2Bs + others = 5) (1A + 1B + others = 5)
- (3) Conviction Offense Class C, D, or E felony and 5 prior felony convictions.

A Range IV Career Offender (T.C.A. § 40-35-108)

- (1) Conviction Offense Class A felony, and either
 - (a) 3 prior Class A felony conviction; OR
 - (b) 4 prior Class B felony convictions; OR
 - (c) 1 prior Class A and 3 prior Class B felony convictions; OR
 - (d) 2 prior Class A and 2 prior Class B felony convictions; OR
 - (e) 6 prior Class A, B, or C felony convictions.
- (2) Conviction Offense Class B felony, and either
 - (a) 3 prior Class A felony convictions; OR
 - (b) 4 prior Class B felony convictions; OR
 - (c) 1 prior Class A felony conviction and 3 prior Class B felony convictions; OR

- (d) 2 prior Class A felony convictions and 2 prior Class B felony convictions; OR
- (e) 6 prior Class A, B, or C felony convictions.

(3) Conviction Offense Class C felony and 6 prior Class A, B, or C felony convictions.

(4) Conviction Offense Class D or E felony and at least 6 prior felony convictions.

A Repeat Violent Offender (T.C.A. § 40-35-120)

II. ENHANCEMENT FACTORS (T.C.A. § 40-35-114)

The Court finds the following enhancement factors that are not themselves essential elements of this offense:

(1) Defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range;

(2) Defendant was a leader in the commission of an offense involving two or more criminal actors;

(3) The offense involved more than one victim;

(4) A victim of the offense was particularly vulnerable because of age or physical or mental disability;

(5) Defendant treated, or allowed a victim to be treated, with exceptional cruelty during the commission of the offense;

(6) The personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great;

(7) The offense involved a victim and was committed to gratify the defendant's desire for pleasure or excitement: **The Court finds that the case cited by the Defendant, State v. Arnett, 49 S.W.3d 250 (Tenn. 2001), is distinguishable from Mr. Looney's case, because there was no proof that Mr. Looney raped his victim as an expression of aggression or anger, or to "seek revenge [or to] control, intimidate, or...to just abuse another human being." See *Id.* at 262. Rather, this Court finds that the proof at trial supports no finding except that Mr. Looney's offenses were committed to gratify his desire for pleasure or excitement.**

(8) Defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community;

(9) Defendant possessed or employed a firearm, explosive device, or other deadly weapon during the commission of the offense;

(10) Defendant had no hesitation about committing a crime when the risk to human life was high;

(11) The felony resulted in death or serious bodily injury, or involved the threat of death or serious bodily injury, to another person, and the defendant has previously been convicted of a felony that resulted in death or serious bodily injury;

(12) During the commission of the felony, the defendant intentionally inflicted serious bodily injury upon another person, or the actions of the defendant resulted in the death of, or serious bodily injury to, a victim or a person other than the intended victim;

(13) At the time the felony was committed, one of the following classifications was applicable to the defendant:

- A) Released on bail or pretrial release, if the defendant is ultimately convicted of such prior misdemeanor or felony;
- B) Released on parole;
- C) Released on probation;
- D) On work release;
- E) On community corrections;
- F) On some form of judicially-ordered release;
- G) On any other type of release into the community under the direct or indirect supervision of any state or local government authority or private entity contracting with a state or local government;
- H) On escape status;
- G) Incarcerated in any penal institution on a misdemeanor or felony charge or a misdemeanor or felony conviction;

(14) 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 Court finds that Mr. Looney, as the stepfather of the victim, abused a position of private trust in this case. This assertion was not disputed by the defense at the sentencing hearing.**

(15) Defendant committed the offense on the grounds or facilities of a pre-kindergarten through grade twelve public or private institution of learning when minors were present;

(16) Defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult;

(17) Defendant intentionally selected the person against whom the crime was committed or selected the property that was damaged or otherwise affected by the crime, in whole or in part because of the defendant's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, ancestry, or gender of that person or the owner or occupant of said property; however, this subdivision (17) should not be construed to permit the enhancement of a sexual offense on the basis of gender selection alone;

(18) The offense was an act of terrorism, or was related to an act of terrorism;

(19) If the defendant is convicted of the offense of aggravated assault pursuant to T.C.A. § 39-13-102, the victim of the aggravated assault was a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, a state-registered security officer/guard, an employee of the Department of Correction or the Department of Children’s Services, an emergency medical or rescue worker, emergency medical technician or paramedic, whether compensated or acting as a volunteer; provided, that the victim was performing an official duty and the defendant knew or should have known that the victim was such an officer or employee;

(20) If the defendant is convicted of the offense of rape pursuant to T.C.A. § 39-13-503, sexual battery pursuant to T.C.A. § 39-13-505, or rape of a child pursuant to T.C.A. § 39-13-522, the defendant caused the victim to be mentally incapacitated or physically helpless by the use of a controlled substance;

(21) If the defendant is convicted of the offense of aggravated rape pursuant to T.C.A. § 39-13-502, rape pursuant to T.C.A. § 39-13-503, rape of a child pursuant to T.C.A. § 39-13-522, or statutory rape pursuant to T.C.A. § 39-13-506, the defendant knew or should have known that, at the time of the offense, such defendant was HIV positive; or

(22) (A) If the defendant is convicted of the offense of aggravated arson pursuant to T.C.A. § 39-14-302 or vandalism pursuant to T.C.A. § 39-14-408, the damage or destruction was caused to a structure, whether temporary or permanent in nature, used as a place of worship and the defendant knew or should have known that it was a place of worship;

(B) As used in this subdivision (22), “place of worship” means any structure that is:

(i) approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to T.C.A. § 67-5-212, based on ownership and use of the structure by a religious institution; and

(ii) utilized on a regular basis by such religious institution as the site of congregational services, rites, or activities communally undertaken for the purpose of worship.

III. MITIGATING FACTORS (T.C.A. § 40-35-113)

The Court finds that the Defendant’s lack of criminal record and his age (50) constitute mitigating factors in this case; the fact that Mr. Looney reached the age of 50 without being convicted of any crimes weighs in his favor.

IV. FINDINGS REGARDING CONSECUTIVE SENTENCING

Pursuant to T.C.A. § 40-35-115, the Court finds, by a preponderance of the evidence, that:

Defendant is a professional criminal who has knowingly devoted his or her life to criminal acts as a major source of livelihood;

Defendant is an offender whose record of criminal activity is extensive;

Defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant’s criminal conduct

has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;

Defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high, and all three of the following factors apply:

(a) the circumstances surrounding the commission of the offense are aggravated, and

(b) confinement for an extended period of time is necessary to protect society from the defendant's unwillingness to lead a productive life and the defendant's resort to criminal activity in furtherance of an anti-societal lifestyle, and

(c) the aggregate length of the sentences reasonably relates to the offense of which the defendant stands convicted.

Defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of the defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical, and mental damage to the victim or victim: **The Court has considered the fact that Mr. Looney has been convicted of four (4) statutory offenses involving sexual abuse of a minor, and has further considered that the victim was his five year-old step-daughter. The nature and scope of the sexual acts included oral and vaginal penetration. The Court has further considered the testimony of the victim's father regarding the severe, residual mental damage that these offenses have caused to the victim.**

Defendant is sentenced for an offense committed while on probation; or

Defendant is sentenced for criminal contempt.

Defendant has additional sentences not yet fully served (Tenn. R. Crim. P. 32(c)(2)).

V. PROBATION CONSIDERATIONS

The Defendant is not eligible for probation.

VI. SENTENCE

Pursuant to T.C.A. § 39-13-522, a person convicted of Rape of a Child must be sentenced, at a minimum, as a Range II offender; accordingly, the possible range for each count is 25-40 years. *See* T.C.A. § 40-35-112(b)(1). With regard to Felonious Child Abuse, the possible range for a Range I offender is 2-4 years. *See* T.C.A. § 40-35-112(a)(4). The maximum sentence for Misdemeanor Child Abuse is 11 months and 29 days. *See* T.C.A. § 40-35-111(e)(1). Additionally, pursuant to T.C.A. § 40-35-210(c), the Court notes that "the minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony

classifications.” In the case at bar, the Court finds that the enhancement factors and mitigating factors essentially offset each other, and that the minimum sentence within the range is appropriate. Considering the findings contained in Section IV, *supra*, the Court finds that partial consecutive sentencing is appropriate pursuant to T.C.A. § 40-35-115.

Therefore, the Defendant is hereby sentenced to a term of twenty (25) years in the Department of Correction for each conviction of Rape of a Child (Counts 1-4). Additionally, the Defendant is sentenced to a term of two (2) years in the Department of Correction for the conviction of Felonious Child Abuse (Count 7). Additionally, the Defendant is sentenced to a term of eleven (11) months and twenty-nine (29) days for the conviction of Misdemeanor Child Abuse (Count 8). Counts 1 and 2 shall be served consecutively to each other; all other counts will be served concurrently therewith.

VII. FINE

The Defendant has retained counsel in this case, but the presentence report reflects that he “claimed that he is physically disabled due to suffering a stroke on 5-24-09.” Defendant reported his home as an asset, and reported “bills and loans” as debts. A defendant’s ability to pay a fine is not, however, the controlling factor, and a fine may be used for punitive effect. *See State v. Marshall*, 870 S.W.2d 532, 542 (Tenn. Crim. App. 1993). In the case at bar, considering the foregoing factors, the Defendant is hereby fined \$1,000.00 per count for Counts 1-4, for a total fine of \$4,000.00.

IT IS SO ORDERED.



M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been delivered via U.S. Mail (to last address on file), postage prepaid, to the following:

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Laural A. Hemenway, Esq.
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On this the _____ day of _____, 20____.

Deputy Clerk