

**IN THE CIRCUIT COURT OF TENNESSEE  
SIXTEENTH JUDICIAL DISTRICT AT MURFREESBORO**

<b>STATE OF TENNESSEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>NO. F-68012</b>
<b>v.</b>	)	
	)	
<b>NICHOLAS PHILLIPS,</b>	)	
	)	
<b>Defendant.</b>	)	

**SENTENCING ORDER AND FINDINGS OF FACT**

This cause came on to be heard on September 19, 2013, for the sentencing of the Defendant, NICHOLAS PHILLIPS. On February 19, 2013, in Case Number F-68012, the Defendant was found guilty of the following: two counts of Rape of a Child (Class A Felony); and two counts of Aggravated Sexual Battery (Class B Felony). The Court has the duty to determine the sentence to be imposed in this case.

In determining the appropriate sentence, the Court has considered the evidence presented at the trial and sentencing hearing, the presentence report, the principles of sentencing and arguments made as to sentencing alternatives, the nature and characteristics of the criminal conduct involved, any evidence and information offered by the parties regarding mitigating and enhancing factors, any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee, the statement the Defendant made on his own behalf regarding sentencing, and the Defendant's potential for rehabilitation or treatment. Based upon these considerations, the Court finds as follows:

**I. RANGE OF SENTENCE**

The defendant is found to be:

A Range I Standard Offender (T.C.A. § 40-35-105)

- (1) Conviction Offense Class A felony, and either
  - (a) No prior Class A felony conviction; OR

(b) 0-1 prior Class B or C felony conviction

- (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;

(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;

(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 no mitigating factors in this case.

### **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;

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**

Pursuant to T.C.A. §§ 40-35-303(a) & 39-13-504, the Defendant is not eligible for probation.

#### **VI. SENTENCE**

Due to the existence of the enhancement factors set forth in Section II, *supra*, but also noting the Defendant's lack of any prior felony record, the Court finds that the Defendant's sentence should fall in the middle of the statutory range. Although the State argued that the Defendant is a Range II, Multiple Offender pursuant to T.C.A. § 40-35-106, the Court finds that the Defendant has no prior felony record, and that he is therefore a Range I, Standard Offender pursuant to T.C.A. § 40-35-105. *See State v. Campbell*, 2009 WL 1409978 at \*8 (Tenn. Crim. App. 2009), *perm. app. denied* 8/17/09. Additionally, 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 (20) years in the Department of Correction for each conviction of Rape of a Child (Counts 1 & 2). Additionally, the Defendant is sentenced to a term of ten (10) years in the Department of Correction for each conviction of Aggravated Sexual Battery (Counts 5 & 6). Counts 1 & 2 shall be served concurrently with each other, but consecutively to Count 5, which shall itself be served consecutively to count 6.

#### **VII. FINE**

The Defendant has been declared indigent by this Court. The presentence report reflects that the Defendant reported no assets or debts, and that his employment history consisted of fast-food

restaurants and golf courses. Nonetheless, due to the nature of the offenses, presence of enhancement factors, and lack of mitigating factors, the Defendant is hereby fined \$1,500.00 for each count, for a total fine of \$6,000.00.

**IT IS SO ORDERED.**

/s/ [Original Signature on File at Clerk's Office]  
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 mailed (to last address on file), postage prepaid, to the following:

Laural Hemenway, Esq.  
Assistant District Attorney General  
320 West Main Street, Suite 100  
Murfreesboro, TN 37130

Chris Coats, Esq.  
Attorney for Defendant  
313 Enon Springs Road East  
Smyrna, TN 37167

This the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Deputy Clerk