

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

<b>STATE OF TENNESSEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>NO. F-67825B</b>
<b>v.</b>	)	
	)	
<b>DARRIUS J. CANE,</b>	)	
	)	
<b>Defendant.</b>	)	

**SENTENCING ORDER AND FINDINGS OF FACT**

This cause came on to be heard on March 27, 2013, for the sentencing of the Defendant, DARRIUS J. CANE. On January 11, 2013, in Case Number F-67825B, a jury found the Defendant guilty of the following offenses: Count I - Aggravated Burglary (Class C Felony); Count II - Theft of Property over \$1,000.00 (Class D Felony); Count III [lesser-included] - Facilitation of Vandalism (Class A Misdemeanor); Count IV - Simple Possession of a Schedule VI Controlled Substance (Class A Misdemeanor); and Count V - Possession of Burglary Tools (Class A Misdemeanor).

The Court hereby denies judicial diversion and sentences the Defendant to three (3) years as a Range I, Standard Offender for the Aggravated Burglary conviction, with the manner of service to be Split Confinement: One (1) year of incarceration, followed by two (2) years of probation. The Court further sentences the Defendant to two (2) years of probation as a Range I, Standard Offender for the Theft of Property conviction, to run concurrent with the aforementioned Aggravated Burglary sentence. The Court further sentences the Defendant to eleven (11) months, twenty-nine (29) days of probation for the Facilitation of Vandalism conviction, to run concurrent with the aforementioned Aggravated Burglary sentence. The Court further sentences the Defendant to eleven (11) months, twenty-nine (29) days of probation for

the Simple Possession of a Schedule VI Controlled Substance conviction, to run concurrent with the aforementioned Aggravated Burglary sentence. The Court further sentences the Defendant to eleven (11) months, twenty-nine (29) days of probation for the Possession of Burglary Tools conviction, to run concurrent with the aforementioned Aggravated Burglary sentence.

### **JUDICIAL DIVERSION**

In denying judicial diversion, the Court recognizes that the Defendant is a “qualified defendant” pursuant to T.C.A. § 40-35-313; however, considering the factors enumerated in State v. Cutshaw, 967 S.W.2d 332, 344 (Tenn. Crim. App. 1997), the Court finds that the negative factors outweigh the positive factors with regard to the Defendant. The specific factors that appear to apply with particularity to this Defendant are: criminal record; general reputation; behavior since arrest; amenability to correction; current drug usage; and deterrent effect of punishment on other criminal activity. *See Id.* Although the Defendant has no criminal record, and had two character witnesses vouch for his general reputation, his behavior since arrest, amenability to correction, and current drug usage all weigh against him. Following his trial in this case, the Defendant was arrested for, and convicted of, Simple Possession of Marijuana. This Defendant does not appear to be amenable to correction. Furthermore, based upon the testimony of the detective and the data<sup>1</sup> he produced at the sentencing hearing (See Hearing Exhibit 3), burglaries to residences and business have been a significant problem in the City of LaVergne during the last two years, and there is a need for deterrence of other would-be burglars in that area. *See State v. Marshall*, No. W2012-01011-CCA-R3-CD (Tenn. Crim. App. 2013), *citing State v. Hooper*, 29 S.W.3d 1, 11 (Tenn. 2001) (holding that sufficient evidence establishing need for deterrence includes statistics and testimony by someone with general

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<sup>1</sup> Although the statistics show that the number of burglaries in LaVergne actually decreased from 2011 to 2012, the detective testified that this trend is due to the LaVergne Police Department’s allocation of additional resources to target that specific area of criminal activity.

knowledge of level of a particular crime). Accordingly, the interests of the public preponderate against judicial diversion in this case.

In determining the appropriate sentence in this case, 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, any 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:

#### **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.

o 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.

o A Range III 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.

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

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

The Court finds the following enhancement factors that are not themselves essential elements of this offense: **NONE.**

- o (1) Defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range;
- o (2) Defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range;
- o (3) The offense involved more than one victim;
- o (4) A victim of the offense was particularly vulnerable because of age or physical or mental disability;
- o (5) Defendant treated, or allowed a victim to be treated, with exceptional cruelty during the commission of the offense;
- o (6) The personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great;
- o (7) The offense involved a victim and was committed to gratify the Defendant's desire for pleasure or excitement;
- o (8) Defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community;
- o (9) Defendant possessed or employed a firearm, explosive device, or other deadly weapon during the commission of the offense;
- o (10) Defendant had no hesitation about committing a crime when the risk to human life was high;
- o (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;
- o (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;
- o (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;
- o (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;
- o (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;
- o (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;
- o (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;
- o (18) The offense was an act of terrorism, or was related to an act of terrorism;
- o (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;
- o (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;
- o (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

o (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.

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

The Court finds the following mitigating factors: **NONE.**

- o (1) Defendant’s criminal conduct neither caused nor threatened serious bodily injury;
- o (2) Defendant acted under strong provocation;
- o (3) Substantial grounds exist tending to excuse or justify the Defendant’s criminal conduct, though failing to establish a defense;
- o (4) Defendant played a minor role in the commission of the offense;
- o (5) Before detection, the Defendant compensated or made a good faith attempt to compensate the victim of criminal conduct for the damage or injury the victim sustained;
- o (6) Defendant, because of youth or old age, lacked substantial judgment in committing the offense;
- o (7) Defendant was motivated by a desire to provide necessities for the Defendant’s family or the Defendant’s self;
- o (8) Defendant was suffering from a mental or physical condition that significantly reduced the Defendant’s culpability for the offense; however, the voluntary use of intoxicants does not fall within the purview of this factor;
- o (9) Defendant assisted the authorities in uncovering offenses committed by other persons or in detecting or apprehending other persons who had committed the offenses;
- o (10) Defendant assisted the authorities in locating or recovering any property or person involved in the crime;

o (11) Defendant, although guilty of the crime, committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated the criminal conduct;

o (12) Defendant acted under duress or under the domination of another person, even though the duress or the domination of another person is not sufficient to constitute a defense to the crime; or

o (13) Any other factor consistent with the purposes of this chapter: \_\_\_\_\_

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### FINDINGS ON CONSECUTIVE SENTENCING

#### *DISCRETIONARY CONSECUTIVE SENTENCING:*

The Court finds, in ordering consecutive sentencing, that: **NOT APPLICABLE.**

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

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

o 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;

o 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:

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

o (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

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

o 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;

- o Defendant is sentenced for an offense committed while on probation; or
- o Defendant is sentenced for criminal contempt.
- o Defendant has additional sentences not yet fully served.

*MANDATORY CONSECUTIVE SENTENCING:*

The Court finds that:

- o Defendant committed a felony while on parole or other release program.
  - New felony sentences must be run consecutive to paroled offense
- o Defendant committed a felony while released on bail for a felony and the Defendant is convicted of both offenses.
  - New felony conviction must be consecutive to felony conviction for which Defendant was on bail.
- o Defendant committed an escape or a felony committed while on escape.
  - New felony conviction committed on escape must run consecutive to the prior conviction from which the Defendant escaped; or if convicted of the felony of escape or attempted escape, the new conviction must run consecutively to the sentence the Defendant was serving when he escaped.

**PROBATION CONSIDERATIONS**

A defendant shall be eligible for probation under the provisions of this chapter, if the sentence actually imposed upon such defendant is ten (10) years or less. However, no defendant shall be eligible for probation under the provisions of this chapter if convicted of a violation of T.C.A. §§ 39-13-304, 39-13-402, 39-13-504, 39-15-402, or 39-17-417(b) or (i).

The Court has also considered the following if deciding to grant or deny an alternative sentence to incarceration:

- The presentence report if not waived.
- Defendant's physical/mental condition and social history.
- The facts and circumstances surrounding the offense, and the nature and circumstances of the criminal conduct involved. **This offense involved the forcible entry into the victim's home, in broad daylight, presenting a clear disregard for the safety of both the victim and the Defendant. Although the victim and his wife were fortunately not at home at the time**

of the invasion, the victim testified that this crime caused him to feel violated and constantly on edge; the victim stopped going out with friends, because his wife was afraid to be home alone. Ultimately, the victim and his wife moved to Georgia because they no longer felt safe in Tennessee.

The prior criminal history of the Defendant, or lack thereof. **The Defendant had no prior criminal record.**

The previous actions and character of the Defendant. **Two character witnesses testified in support of the Defendant at the sentencing hearing. However, neither of these witnesses appeared to believe that the jury rendered a correct verdict in this cause, instead choosing to believe the Defendant's version of the facts. Accordingly, the Court placed less weight on the testimony of these witnesses due to their apparent unwillingness to accept the possibility of the Defendant's guilt.**

Whether or not the Defendant might reasonably be expected to be rehabilitated, and the Defendant's potential or lack of potential for rehabilitation, including the risk that during the period of probation the Defendant will commit another crime. **After the trial of this case, while on bond awaiting sentencing, the Defendant committed another criminal offense, pleading guilty to Simple Possession of Marijuana in the General Sessions Court of Rutherford County. This Court finds that the Defendant has demonstrated a lack of respect for the laws of the State of Tennessee, and this is a factor in the Court's denial of full probation. It further appears, however, that service of one year in jail would have the same deterrent effect on the Defendant as service of three years, so split confinement will be ordered as the least severe measure necessary to achieve the purposes of sentencing.**

Whether or not the interests of society in being protected from possible future criminal conduct of the Defendant are great.

Whether or not measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the Defendant.

Whether or not a sentence of full probation would unduly depreciate the seriousness of the offense. **A sentence of full probation would unduly depreciate the seriousness of this offense. As set forth above, this offense had a tremendous adverse impact on the victim, and the Court finds that a period of split confinement would serve the interests of justice in this case.**

Whether or not confinement is particularly suited to provide an effective deterrent to others likely to commit similar offenses. **A period of confinement is particularly suited to provide an effective deterrent to others likely to commit similar offenses. The detective in this case testified that home invasions are a serious problem in the City of LaVergne, and statistical data were admitted into evidence supporting this testimony. It is important for potential offenders to understand that such crimes will be punished in a serious manner consistent with the protection of the community.**

Whether or not the offense was particularly enormous, gross, or heinous.

**THE DEFENDANT IS HEREBY SENTENCED TO A TERM OF ONE YEAR IN THE:**

- County Jail
- Local Workhouse
- Department of Correction

**Concurrent with** \_\_\_\_\_

**Consecutive to** \_\_\_\_\_

**Fine of \$** \_\_\_\_\_.

**Alternative sentence, if any:** FOLLOWING THE SERVICE OF THE ABOVE-NOTED ONE-YEAR SENTENCE AT THE RUTHERFORD COUNTY ADULT DETENTION CENTER, DEFENDANT SHALL SERVE THE REMAINING TWO YEARS OF HIS SENTENCE ON PROBATION.

The above findings are hereby ordered to be made part of the record in this case.

**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:

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

Vakesha Hood-Schneider, Esq.  
Attorney for Defendant  
325 Plus Park Blvd., Suite 200-A  
Nashville, TN 37217

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

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