

This summary of Tennessee appellate case law addresses four topics: the availability of and general standards for appellate review; standards and allowable grounds for departure; constitutional requirements for proof of facts that permit upward departure or raise the minimum sentence; and other important appellate sentencing decisions.

1. Availability of and General Standards for Appellate Review.

Tennessee law permits both the defendant and district attorney to appeal from the length, range, or manner of the service of the sentence; additionally, the defendant may appeal the imposition of consecutive sentences while the district attorney may appeal the imposition of concurrent sentences.¹ But though the law specifies that such review shall be *de novo*, the Tennessee Supreme Court, attempting to bring the law into compliance with decisions of the United States Supreme Court in this area, determined that the appropriate standard of review for in-range sentences is abuse of discretion with a presumption of reasonableness.² Under this standard, the sentence is presumed reasonable and will be upheld as long as it is within statutory range and the record, “reflect[s] a proper application of the purposes and principles of [the] Sentencing Act.”³ The Tennessee Supreme Court noted when establishing this standard that it would be critically important for the trial court to articulate in the record its reasons for imposing sentence.⁴

2. Standards and Allowable Grounds for Departure.

Though the Tennessee guidelines allow for the consideration of enhancement and mitigating factors, a sentence based upon these factors is not considered a departure as it might be in other systems.⁵ Instead, the guidelines are advisory. A judge is required by statute to consider the guidelines but may select any sentence within the appropriate statutory range, as long as the sentence is “consistent with the purposes and principles of the Sentencing Act.”⁶ A judge’s failure to properly weigh enhancement and mitigating factors does not provide grounds for appeal.⁷ Nor will a judge’s improper *consideration* of an enhancement factor necessarily invalidate a sentence.⁸

3. Constitutional Requirements for Proof of Facts that Permit Upward Departure or Raise the Minimum Sentence

Prior to 2005 amendments, the Tennessee guidelines created two sentencing presumptions favorable to defendants. First, judges were instructed to begin at the minimum sentence within the applicable statutory range and then adjust the sentence length based on the presence of enhancement or mitigating factors.⁹ Second, some defendants benefitted from a presumption that they were favorable candidates for alternative (non-prison) sentencing options.¹⁰ Following *Blakely* and related cases, Tennessee’s General Assembly in 2005 amended the sentencing statute to address potential constitutional concerns raised by the United States Supreme Court’s rulings.¹¹ The amendments eliminated the legally binding force of the two sentence presumptions described above, by adding language stating that the sentencing court “shall consider, but is not bound by,” these presumptions.¹² A judge may now sentence anywhere within the appropriate sentencing range.¹³ While a judge must still place on the record any enhancement or mitigating factors considered in reaching a sentence, the factors were rendered advisory by the 2005 amendments and a judge need not adjust a sentence based on them.¹⁴

4. Other Important Sentencing Decisions

A plea-bargained sentence may legally exceed the maximum sentence available in the relevant sentencing range as long as the sentence does not exceed the maximum punishment authorized for the felony class of the plea offense.¹⁵ For example, a defendant who accepts a plea bargain and is sentenced as a Range I offender for a Class A felony (a sentence which would normally carry a maximum sentence of 25 years) may be sentenced to any sentence within the overall punishment range authorized for Class A felonies (a maximum sentence of 60 years).¹⁶

Case Law Summary: Tennessee

¹ Tenn. Code Ann. §§ 40-35-401,402 (2018).

² *State v. Bise*, 380 S.W.3d 682, 690–91 (Tenn. 2012). See also *State v. Claudie*, 388 S.W.3d 273 (Tenn. 2012) (extending the standard of review to concurrent sentences); *State v. Pollard*, 432 S.W.3d 851 (Tenn. 2013) (extending the standard of review to consecutive sentences).

³ *Bise*, 380 S.W.3d at 707, 709–10.

⁴ *Bise*, 380 S.W.3d at 705 & n. 41. In *Pollard*, when the trial court did not provide adequate reasons for imposing consecutive sentences, the Supreme Court stated that the appellate court could either conduct a de novo review or remand to the trial court to consider the requisite factors for imposing consecutive sentences. 432 S.W.3d at 864. In contrast, in *Claudia*, when the appellate record did not include a transcript of the guilty plea, the Court noted that supplementation of the record may be appropriate on a case by case basis. 388 S.W.3d. at 279.

⁵ *Bise*, 380 S.W.3d at 699; *State v. Carter*, 254 S.W.3d 335, 344–45 (Tenn. 2008).

⁶ *Pollard*, 432 S.W.3d at 861.

⁷ *Bise*, 380 S.W.3d at 699; *State v. Cross*, 362 S.W.3d 512, 529–30 (Tenn. 2012).

⁸ *Bise*, 380 S.W.3d at 702; *Cross*, 362 S.W.3d at 529.

⁹ Tenn. Code Ann. § 40-35-210(c) (2017).

¹⁰ *Id.* § 40-35-102(6)(A).

¹¹ *Bise*, 380 S.W.3d at 696–99.

¹² Tenn. Code Ann. §§ 40-35-102(6)(D), 40-35-210(c).

¹³ *Carter*, 254 S.W.3d at 343.

¹⁴ *Id.* at 345–46; *Bise*, 380 S.W.3d at 698–701.

¹⁵ *Hoover v. State*, 215 S.W.3d 776, 779 (Tenn. 2007).

¹⁶ The sentencing ranges provided for each combination of felony class and criminal history category, under Tenn. Code Ann. §§ 40-35-105 to -109 and §40-35-112 are narrower than the authorized prison sentence ranges provided for each felony class in Tenn. Code Ann. § 40-35-111.