

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 29, 2026

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. EARL LEE SHAFFER

Appeal from the Circuit Court for Sevier County
No. 24-CR-407-II James L. Gass, Judge

No. E2025-01068-CCA-R3-CD

A Sevier County jury convicted the Defendant, Earl Lee Shaffer, of rape. At sentencing, the trial court relied on two of the Defendant's prior New Hampshire convictions to enhance him to a Range II offender, and then it imposed a sentence of sixteen years. The Defendant appeals his sentence, arguing the trial court erred in classifying one of his prior New Hampshire convictions as a felony to support a Range II offender status. After review, we reverse the trial court's judgment and remand for resentencing.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

ROBERT W. WEDEMEYER, P.J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and MATTHEW J. WILSON, J.J., joined.

James R. Hickman, Jr., Sevierville, Tennessee, for the appellant, Earl Lee Shaffer.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilber, Senior Assistant Attorney General; James B. (Jimmy) Dunn, District Attorney General; and Barry Arthur Williams and Charles L. Murphy, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Facts

Because the issue on appeal concerns the trial court's sentencing of the Defendant, we will not delve into the facts giving rise to the Defendant's rape conviction and instead focus primarily on the sentencing portion of the proceedings.

A Sevier County jury convicted the Defendant of rape on May 27, 2025. The Defendant's sentencing hearing took place that same day.

As it relates to the Defendant's sentencing, the State had, in March 2025, filed a notice of intent to seek Range II punishment based on two of the Defendant's prior New Hampshire convictions. The Defendant had been convicted in New Hampshire of "Assault by Prisoners," under case number 212-2020-CR-218 ("218"), and "Second Degree Assault," under case number 212-2018-CR-078 ("078"). Both crimes are felonies in New Hampshire. The indictment for 218 listed the elements of assault by prisoners as:

1. Earl Lee Shaffer;
2. Knowingly;
3. Caused unprivileged physical contact to another;
4. To wit, Earl Lee Shaffer struck [the victim] while incarcerated as an inmate in the Carroll County House of Corrections.

The indictment for 078 listed the elements of second degree assault as:

1. The defendant, Earl Lee Shaffer;
2. Knowingly;
3. Engaged in the strangulation of another;
- ...
5. To wit, the defendant placed his hands around the neck of [the victim] and applied pressure, causing her to experience impeded breathing, blood circulation, or change in voice.

At sentencing for the Defendant's rape conviction, a Class B felony, the State argued that the Defendant's two prior New Hampshire felony convictions enhanced his classification from a Range I offender to a Range II offender for sentencing purposes. The applicable sentencing range for rape as a Range I offender is eight to twelve years and as a Range II offender is twelve to twenty years. The State contended that both of the New Hampshire felony convictions would be, at a minimum, Class D felonies in Tennessee. The defense conceded that, based on the description of the offense, the second degree assault conviction under 078 would amount to aggravated assault in Tennessee, a class C felony. The defense, however, argued that the assault by prisoners conviction under 218 would not amount to a felony in Tennessee. First, the defense asserted that, although the documentation for that conviction listed two to four years as the sentence for the crime, the documentation further provided that the sentence was suspended. Therefore, counsel and the court could not determine what the sentence would translate to in Tennessee. Second, defense counsel contended that the elements of assault by prisoners, as set out in the indictment for that crime, included "unprivileged contact," which appeared to be more closely aligned with Tennessee's elements of misdemeanor simple assault.

After considering the arguments from counsel for both parties on the issue of whether to enhance the Defendant to a Range II offender, and reviewing the Defendant's prior New Hampshire felony convictions, the trial court concluded that, although the names of the offenses were not identical to names of felonies in Tennessee, both convictions involved forms of personal assault more serious than simple misdemeanor assault. The trial court recognized that the punishment ranges for the two New Hampshire crimes aligned with the punishment range for Class D felonies in Tennessee—two to four years. For these reasons, and because the State notified the Defendant about its intent to use his two prior New Hampshire convictions to enhance him to a Range II offender and presented proof of both of those convictions, the trial court determined that the Defendant qualified as a Range II offender for sentencing on his rape conviction. Relying on its classification of the Defendant as a Range II offender, the trial court sentenced the Defendant to sixteen years of incarceration.

The Defendant now appeals his sixteen-year sentence.

II. Analysis

The Defendant argues that the trial court erred in classifying him as a Range II offender because, although his prior New Hampshire conviction for second degree assault amounts to a felony in Tennessee, his New Hampshire conviction for assault by prisoners does not. According to the Defendant, the crime of assault by prisoners in New Hampshire amounts at best to misdemeanor simple assault in Tennessee. The State concedes that the Defendant is correct. The State agrees with the Defendant that the trial court erred in classifying the Defendant as a Range II offender based on his two prior New Hampshire felony convictions because the conviction for assault by prisoners in New Hampshire equates to misdemeanor simple assault in Tennessee. The State contends that, because two prior felony convictions are required to enhance a defendant from a Range I offender to a Range II offender, the Defendant's sentence should be reversed and remanded for resentencing. We agree with the parties.

A. Standard of Review

We review a trial court's sentencing decisions for an abuse of discretion, with a presumption of reasonableness. *State v. Earley*, 719 S.W.3d 228, 253 (Tenn. Crim. App. 2025); *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). "If a trial court misapplies an enhancing or mitigating factor in passing sentence, said error will not remove the presumption of reasonableness from its sentencing determination." *State v. Looper*, No. M2012-02523-CCA-R3-CD, 2013 WL 4647629, at *3 (Tenn. Crim. App. Aug. 26, 2013) *no perm. app. filed*. "This court will uphold the trial court's sentencing decision 'so long as it is within the appropriate range and the record demonstrates that the sentence is

otherwise in compliance with the purposes and principles listed by statute.” *Id.* (quoting *Bise*, 380 S.W.3d at 709-10).

B. Range II Enhancement

The Defendant and the State agree that the Defendant’s prior New Hampshire conviction for second degree assault under 078 would classify as aggravated assault in Tennessee because the elements of the two crimes are similar. On appeal, the Defendant challenges only the trial court’s reliance on his prior conviction for assault by prisoners under 218. According to the Defendant, because the elements of assault by prisoners under 218 included causing unprivileged contact to another, that conviction amounts at best to simple assault in Tennessee. Given that simple assault in Tennessee is a misdemeanor, the court erred in classifying assault by prisoners under 218 as a felony in Tennessee and subsequently relying on that classification to sentence the Defendant as a Range II offender. The State concedes the trial court erred in enhancing the Defendant to a Range II offender because there is no equivalent felony in this state to New Hampshire’s assault by prisoners felony.

“Our statutes provide for sentencing by range, and a defendant’s appropriate sentencing range is determined by his or her offender classification and by the classification of the offense for which he or she is convicted.” *State v. Green*, No. E2025-00289-CCA-R3-CD, 2026 WL 496987, at *5 (Tenn. Crim. App. Feb. 23, 2026) (citing T.C.A. § 40-35-112; *State v. Menke*, 590 S.W.3d 455, 464 (Tenn. 2019)). “Offender classification determinations are made, in large part, by reference to a defendant’s prior felony convictions, if any exist.” *Id.* (citing T.C.A. §§ 40-35-105(a), -106, -107, -108, -109, -120). Relevant to the instant appeal is the Range II offender classification. Our statutes define a Range II multiple offender as a defendant who has received:

- (1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; or
- (2) One (1) Class A prior felony conviction if the defendant’s conviction offense is a Class A or B felony.

T.C.A. § 40-35-106(a)(1), (2). A “[p]rior conviction” is “a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced[.]” T.C.A. § 40-35-106(b)(1). Importantly,

Prior convictions include convictions under the laws of any other state, government or country that, if committed in this state, would have constituted an offense cognizable by the laws of this state. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used by the Tennessee court to determine what classification the offense is given.

T.C.A. § 40-35-106(b)(5).

To enhance a defendant to a Range II offender, the trial court is required to “analyze the elements of the out-of-state offense in order to determine whether the offense was analogous to a felony offense under Tennessee’s law as it existed at the time the offense was committed.” *State v. Little*, No. M2022-00738-CCA-R3-CD, 2023 WL 4930073, at *4 (Tenn. Crim. App. Aug. 2, 2023), *no perm. app. filed*. The length of the sentence the defendant received for the out-of-state conviction “is not determinative of what grade of felony the out-of-state offense might be assigned under Tennessee laws.” *State v. Vick*, No. W2005-00467-CCA-R3CD, 2006 WL 722173, at *10 (Tenn. Crim. App. Mar. 22, 2006).

At the Defendant’s sentencing hearing, after considering the arguments set forth by counsel for each party on the issue of whether to enhance the Defendant to a Range II offender, the trial court announced:

The Court has examined [the two prior New Hampshire felony convictions]. The Court finds that sometimes names of charges can be deceiving. Some states use names that might not have an identical name to a felony conviction in Tennessee, but the Court must rely upon the name for what it’s deemed to be, and that would be a personal assault of some nature, however it’s described, one being within a penal institution on a prisoner, and the other, I believe, is called a second-degree assault which indicates it has—each would have an enhanced position in the mind of this Court over a standard, simple assault misdemeanor. The Court believes its assessment of that is accurate by the range of punishment for each, being in the range of punishment for each of these that a D felony in Tennessee would also have of two to four years as a Range I offender.

Therefore, the Court does believe and finds that the defendant in this case, based upon that range notice and the production of those convictions by the State during this sentencing hearing, would be a Range II offender for purposes of sentencing for his conviction by a jury to the rape charge.

The court did not compare the elements of the New Hampshire felonies to the elements of any comparable felonies in this state when it enhanced the Defendant to a Range II offender. Instead, it relied on the names of the New Hampshire offenses and the sentences the Defendant received for each offense to enhance him to a Range II offender. However, a consideration and comparison of the elements of the crimes was necessary in this case.

The elements of assault by prisoners, as charged in the Defendant's New Hampshire indictment for 218, include causing "unprivileged contact to another." As both the State and the Defendant point out in their appellate briefs, this element of assault by prisoners most closely aligns with the elements for misdemeanor simple assault in Tennessee, which include causing "bodily injury to another" and "physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative." T.C.A. § 39-13-101(a)(1), (3).

Because the trial court did not compare the elements of assault by prisoners to the elements of a comparable crime in this state, and because the most comparable crime in Tennessee is misdemeanor simple assault, we agree with the parties herein and conclude the trial court erred when it enhanced the Defendant to a Range II offender.

III. Conclusion

After a thorough review of the record and relevant authorities, we reverse the trial court's judgment and remand for resentencing consistent with our opinion.

S/ ROBERT W. WEDEMEYER
ROBERT W. WEDEMEYER, PRESIDING JUDGE