

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 18, 2026

FILED

10/23/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. MICHAEL HOWARD WIGAND

**Appeal from the Criminal Court for Sullivan County
No. S78232 James F. Goodwin, Jr., Judge**

No. E2025-01275-CCA-R3-CD

Defendant, Michael Howard Wigand, pleaded guilty to two counts each of reckless aggravated assault; vehicular assault; and felony reckless endangerment and one count each of driving under the influence (DUI); DUI, per se; possession of a handgun while under the influence; and speeding. Following a sentencing hearing, the trial court imposed a total effective sentence of seven years, eleven months, and twenty-nine days and ordered Defendant to serve his sentence in confinement. On appeal, Defendant contends that the trial court erred in its application of several enhancement factors and by denying alternative sentencing. Upon review, we affirm the judgments of the trial court but remand for entry of amended judgments consistent with this opinion.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed;
Case Remanded**

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN and TOM GREENHOLTZ, JJ., joined.

Andrew J. Gibbons, District Public Defender; and Melissa G. Owens, Assistant District Public Defender, for the appellant, Michael Howard Wigand.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilbur, Senior Assistant Attorney General; Barry Staubus, District Attorney General; and Louis D. Torch, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual and Procedural Background

On February 28, 2024, the Sullivan County Grand Jury indicted Defendant on the following charges relating to a traffic collision that occurred in Bristol on July 8, 2023:

Count	Offense	Offense Classification	Victim
1	Reckless aggravated assault	Class D felony	Nancy Leonard
2	Vehicular assault	Class D felony	Nancy Leonard
3	Reckless aggravated assault	Class D felony	Richard Leonard
4	Vehicular assault	Class D felony	Richard Leonard
5	Reckless endangerment	Class E felony	Nancy Leonard
6	Reckless endangerment	Class E felony	Richard Leonard
7	DUI, 1st offense	Class A misdemeanor	
8	DUI, per se	Class A misdemeanor	
9	Possession of a handgun while under the influence	Class A misdemeanor	
10	Speeding	Class C misdemeanor	

On April 10, 2025, Defendant entered an open guilty plea, as a Range I standard offender, to all counts as charged in the indictment. As the factual basis for the guilty plea, the parties stipulated that,

[o]n July 8th, 2023, [Trooper Joseph Burris] responded to a vehicle crash at 845 Hwy 44, Bristol, TN 37620 involving injuries. One of the parties that was involved in the crash was [Defendant], at that time [Trooper Burris] was unable to speak with the other party because they were in the process of being taken to the medical helicopter. When speaking with [Defendant], [Trooper Burris] could smell an odor of an alcoholic beverage coming from his person. [Defendant's] eyes were red and blood shot. When speaking with [Defendant], [Trooper Burris] asked if he was hurt or needed to see [EMS], [and] he replied no. [Trooper Burris] asked [Defendant] to perform [Standardized Field Sobriety Tests] for [him].

The first test was HGN[;] after a medical check, [Trooper Burris] proceeded with the test. [Defendant] showed lack of smooth pursuit, [and] his eyes were very choppy. [Defendant] also had involuntary jerking in both eyes. [Defendant] show[ed] [six] clues, three for each eye.

[The] [n]ext test he performed was the Walk and Turn. [Defendant] started the test early and lost his balance. He also stepped off [the] line, used his arms for balance[,] . . . [made] an improper turn for the second set of nine steps, and missed heel to toe. [Defendant] showed [six] of [eight] clues.

[The] [l]ast test that he performed was the One [L]eg [S]tand [Defendant] was swaying during the test, also using his arms for balance, and s[e]t his foot down twice. [Defendant] showed [three] of [four] clues.

[Defendant] was advised that he was in custody. [Defendant] was read his Implied [C]onsent rights, where he refused to give blood.

At Defendant's sentencing hearing, Susan Phillips testified that she was the daughter of the victims, Richard and Nancy Leonard. Ms. Phillips identified a video entitled, "A Day in the Life," which documented Mr. Leonard's life following the traffic collision and how his family took care of him. Ms. Phillips explained that, before the collision, her parents were "living life to the fullest." She stated that they had both retired and that they "were finally getting to the point where they could enjoy what they had worked hard for." Ms. Phillips said that Mr. and Mrs. Leonard had been "very involved" with their grandchildren, that Mr. Leonard and her brother had gone fishing together often, and that she, her daughters, and Mrs. Leonard had gone shopping, cooked, and taken "girl trips" together. She said, however, that due to the injuries sustained by her parents in the traffic collision, "all of that was taken from [them]." Ms. Phillips testified that she was now rarely able to do anything with Mrs. Leonard. Moreover, Ms. Phillips' husband was forced to retire early so that he could help take care of Mr. Leonard.

Ms. Phillips stated that, two years after the collision, her family was still dealing with the aftermath of Defendant's actions. She stated that Mrs. Leonard spends fifteen to sixteen hours a day taking care of Mr. Leonard, who became quadriplegic due to the injuries he sustained in the collision. Ms. Phillips explained that Mr. Leonard cannot walk or lift his arms and that he has a colostomy and a catheter because he has no control over his bowels and bladder. She said that, if Mr. Leonard has an accident with his colostomy or catheter, she, her brother, or her sister-in-law must leave work to help Mrs. Leonard transfer him from his chair to the bed and clean up because Mrs. Leonard cannot physically lift him. Ms. Phillips said that her daughters also sacrificed "a lot of time from their own famil[ies] to help take care of [Mr. Leonard]."

Additionally, Ms. Phillips testified that Mrs. Leonard "suffers from her own injuries[.]" She explained that Mrs. Leonard has to visit a chiropractor every week because of the soreness in her chest, back, and shoulders and that her feet and ankles swell considerably. Ms. Phillips stated:

It's hard to sit and watch your parents suffer and see my dad spasm and cry in pain. My dad can't go back to his home that he worked his whole entire life for. They had a beautiful home, and that Saturday morning when he left there, he never realized that he'd never get to go back. And we've realized a lot over the last [two] years that even if something says it's handicap accessible, it's not handicap accessible enough for him, even restaurants. There're certain restaurants we can't go to, it's just not big enough to get his chair into. We can't travel, we can't go to a hotel because we have to use a lift to get him from his chair to the bed and most hotels the bedding won't allow a lift. So, we're very limited on the things that we can do with him. I just miss my parents. I may still have them here, but we've lost our parents. The life they were building, the joy of times together, the time with their grandchildren, now, our lives are just filled with providing medical care, heartache of seeing them suffer, our crazy schedules, all because of a selfish act that could've been prevented.

Richard Leonard testified that he can no longer do anything for himself. He said that he spends twelve hours a day in a wheelchair and twelve hours a day in bed. He explained that he suffers muscle spasms that cause his body to "almost straighten out in [his] chair[.]" He testified that because of the traffic collision, his life was a "struggle" and that his family did not get "any rest at all." He explained that he goes to physical therapy four times a week "for an hour at a time" but that his family provides his nursing care while at home. On cross-examination, Mr. Leonard agreed that he had not been wearing his seatbelt at the time of the traffic collision due to the placement of his pacemaker.

The State introduced a copy of Defendant's presentence report; Defendant's toxicology report showing that his blood alcohol concentration (BAC) was .126 three hours after the traffic collision; a certified copy of Defendant's driving history; certified copies of Defendant's prior DUI convictions from Sullivan County in 2001 and from Unicoi County in 1996; a copy of the victims' medical records; and several exhibits regarding the victims' medical expenses.

Attorney Kenneth Hale testified that he was representing Mr. and Mrs. Leonard in civil proceedings. Mr. Hale said that, as of the date of the sentencing hearing, the total pecuniary loss for Mr. Leonard was \$173,192.56 and that the total pecuniary loss for Mrs. Leonard was \$4,231.53. He testified that they also paid \$70,780 for a specialty van to properly transport Mr. Leonard.

Defendant's friend, Andy Booher, testified that he had worked with Defendant for many years. He said that Defendant was a reliable worker, that Defendant was safety

conscious on job sites, and that Defendant passed routine drug screens given as part of his employment.

Defendant's ex-wife, Julie Goff, testified that she and Defendant divorced in September 2022. She revealed that her fifteen-year-old daughter was killed by a driver high on methamphetamine and that her uncle was paralyzed from a car wreck.

Ms. Goff said that, on the night of the traffic collision, Defendant called her and asked her to come to the scene. When she asked him what happened, Defendant said that he had been distracted by his cell phone and that he had "overcorrected and came back and . . . hit them[.]" Ms. Goff testified that Defendant told her he had been playing pool and had consumed "a few beers" prior to the traffic collision. She said that she was surprised Defendant drove because he would normally call her for a ride after having too much to drink.

Ms. Goff opined that Defendant was a "good man," and she testified that Defendant had expressed remorse over the traffic collision. She said that Defendant had a heart attack caused by the stress of the incident and that he had undergone open-heart surgery. Ms. Goff testified that she thought Defendant should receive probation.

On cross-examination, Ms. Goff stated that she found it "very hard to believe" that Defendant was driving eighty-six miles per hour right before he hit Mr. and Mrs. Leonard. Ms. Goff said that, before their divorce, Defendant typically played pool two weekends out of each month and that he consumed "about [three] beers" while playing pool.

Trooper Joseph Burris, with the Tennessee Highway Patrol, testified that he responded to the traffic collision involving Defendant and Mr. and Mrs. Leonard. He stated that the victims were already loaded into an ambulance and headed to meet a helicopter when he arrived at the scene. Trooper Burris agreed that Defendant had expressed concern for the well-being of Mr. and Mrs. Leonard while at the scene.

Trooper Burris testified that, after Defendant performed several field sobriety tests, he asked Defendant to consent to a blood alcohol test. He stated, however, that Defendant refused consent and that he had to apply for a search warrant to obtain Defendant's blood. Trooper Burris agreed that Defendant told him he was afraid of needles and that he would submit to a breathalyzer test instead; he stated, however, that he did not use a breathalyzer test on Defendant because the Sullivan County District Attorney's Office preferred blood tests.

Trooper Burris said that, while at the hospital, Defendant "whine[d]" about having to get his blood drawn for "quite some time." Trooper Burris said that, for about two hours,

he attempted to convince Defendant to “settle down” so that he did not have to become “physical” with Defendant; his attempts were unsuccessful, however, and several nurses had to assist in obtaining Defendant’s blood.

Defendant’s sister, Jessica Holsclaw, testified that Defendant had come to live with her in Bristol after his divorce two or three years prior. She said that Defendant had complied with his bond condition of having an ignition interlock device installed on his vehicle. Ms. Holsclaw said that she had heard Defendant express remorse for the traffic collision. She testified that Defendant “said many times that he wished he could change it, take it back[,] that it’s a horrible accident[.]” On cross-examination, Ms. Holsclaw said that she had been unaware of Defendant’s prior convictions for DUI.

During an allocution statement, Defendant said:

I had been playing pool, and had a few beers, over a few hours, had left and I did not feel that I was intoxicated, it was dark, and it was a curvy road. Something came in on my phone, which distracted me for just a second, and then I realized I was veering off the road and I overcorrected. I hit the truck coming the opposite way. I checked on the people in the truck and stayed with them until the First Responder[s] came. When Responder[s] got there, I was not concerned for my own health, I was concerned for the [victims]. I am very sorry for the injuries to Mr. Leonard, and Mrs. Leonard. I was surprised that my blood came back showing that I was over the legal limit. When I got in my truck, I thought I was normal and fine to drive but I’ve learned in the hardest possible way that I was wrong.

...

If I could trade places with Mr. Leonard, and be the one in the wheelchair, I would. I had an uncle who is quadriplegic, after an automobile accident, and it was hard on him and our family. So, I do sadly understand part of what they are going through. He lived [thirty-four] years before he passed away in February 2024. We loved him and cared for him. I know how hard it is on everyone.

...

In October 2006, [Ms. Goff’s] daughter, who I considered my stepdaughter even before we were married was killed when a woman using meth wrecked. [She] was [fifteen years old] and was thrown from the vehicle and died at the scene. So, I understand how devastating a wreck caused by another person

who is impaired can be on a family. I understand it affects not just Mr. Leonard and Mrs. Leonard, but their whole family and I am truly sorry. If I am sent to prison, for a long, or a long jail sentence, I will lose my job and I will never be able to help, if I'm granted probation then I'll be able to keep my job, and I will do what I can to pay what the court[s] determine I owe them.

The defense introduced several exhibits, including a copy of the black box report from his truck. The report showed that Defendant was traveling at eighty-six miles per hour, five seconds before the crash. The report indicated that Defendant had braked and that the truck had slowed to thirty-seven miles per hour two seconds before the crash. Defendant also introduced a copy of his medical records relating to his heart attack and a letter from Defendant's work supervisor indicating that Defendant was a good employee.

Following argument of counsel, the trial court stated that, in sentencing Defendant, it considered the evidence presented at the plea submission hearing and at the sentencing hearing, the evidence contained in Defendant's presentence report, including the Strong-R evaluation, the principles and purposes of sentencing, arguments regarding sentencing alternatives, the nature and characteristics of the criminal conduct involved, mitigating and enhancement factors, any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses, Defendant's allocution statement, and Defendant's potential for rehabilitation or treatment.

Regarding enhancement factors, the trial court found that the offense involved more than one victim, noting that Mr. and Mrs. Leonard were both in the vehicle and that both were injured by the actions of Defendant. The court further considered that the victim of the offense was particularly vulnerable because of age or physical or mental disability, finding that Mr. Leonard was seventy-three years old at the time of the crash.

Additionally, the trial court considered the enhancement factor that Defendant had no hesitation about committing a crime when the risk of human life was high. The court commented:

You know, [in] his allocution [Defendant] says, "Well, I had several beers over a couple of hours while I was shooting pool, but I thought I was okay." Well, every defendant charged or convicted of DUI says the same thing. So, I don't put a whole lot of stock in that, but what I do put stock in is that he was a .126 . . . [three] hours after the crash.

The court noted that, after drinking for a period of time and getting behind the wheel, Defendant drove over eighty miles per hour on the wrong side of the road before crashing into the victims. The court continued:

So, normally looking at DUI, if that was a first offense, I would say, you know, that has some weight. But the fact that he's been convicted [two] times before, I can't use them to make this a DUI 3rd, and I understand that. They can't be used to enhance this DUI into a 3rd, for the enhanced punishment. But I can absolutely consider his prior history of convictions when I'm talking about what his sentence in the case should be

The court then reviewed the mitigating factors. The court considered that Defendant had taken responsibility for his actions by entering a guilty plea and that Defendant had expressed remorse. The court noted, however, that Defendant's initial statement provided to the presentence report writer lacked apparent remorse. The court noted that, when asked about the offenses, Defendant told the presentence report writer, "Had few beers early in evening, over corrected, ran into oncoming vehicle." The court also considered that Defendant complied with conditions of pretrial release, that he was a long-time member of the community, that he had the support of his family and friends, and that he was employed.

Regarding the State's request for consecutive sentencing, the trial court found that 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." The court stated:

And [Defendant's] argument was, "well, I hit the brakes, so I slowed down from 86 mph to some slower speed." But I can't get past . . . that this is the third time he's done this. I can't get past the fact that in his personal history he had an uncle whose was in the same position that Mr. Leonard is in now, and he saw the misery that his uncle went through. And yet, after playing those games of pool, [Defendant] got behind the wheel of that truck and . . . took off down the road. I cannot get past . . . the fact that his [fifteen]-year-old stepdaughter was killed by . . . an impaired, intoxicated driver. I can't get past that someone with that in their personal history, I don't care if he only had half of a drink, if that was in someone's personal history, I cannot believe . . . they get behind the wheel. I tell people all the time . . . that the offenders that keep me up at night are the people who commit DUI[.]

. . .

The DUI offender in this court's opinion, is among the most dangerous offenders that we have, because their weapon is typically a four-to-six-thousand-pound hunk of steel barreling down the road at speed.

Additionally, the trial court found that the offenses involved "more than one victim irrespective of whether the multiple offenses were part of a single criminal episode" and that "separate, consecutive sentences for each offense is in the interest of justice." The court noted that Mr. Leonard was "catastrophically injured" and that Mrs. Leonard was seriously injured. The court found that there were two victims with "separate counts of Reckless Aggravated Assault, Vehicular Assault, and Reckless Endangerment as to each of those victims." The court also found that the imposition of consecutive sentencing was in the interest of justice and "necessary to protect the motoring public of this state from [Defendant]."

Regarding the issue of alternative sentencing, the trial court addressed the positive factors supporting an alternative sentence. The court found that Defendant had maintained employment for most of his life, that Defendant had support from his family and friends, that Defendant had taken responsibility for his actions by pleading guilty to the offenses, and that Defendant had expressed remorse.

The trial court then considered negative factors that weighed against granting Defendant an alternative sentence. The court found that Defendant had two prior DUI convictions, that Defendant had been convicted of "twelve separate traffic offenses, most of which were speeding," that Defendant had admitted to drinking while underage and to using marijuana as a teenager, and that, despite Defendant's family history, he had still committed multiple DUIs. The trial court weighed the various factors and determined that the negative factors far outweighed the positive factors, and it denied Defendant's request for alternative sentencing.¹

The trial court then sentenced Defendant, as a Range I offender, to a total effective sentence of seven years, eleven months and twenty-nine days, as follows:

Count	Offense	Sentence Length	Manner of Service
1	Reckless aggravated assault	3 years and 6 months at 30%	To serve in confinement
2	Vehicular assault	2 years at 30%	Merged with Count 1

¹ The trial court also found that the pecuniary loss to Mr. Leonard was \$173,192.56 and that the pecuniary loss to Mrs. Leonard was \$4,231.53, for a total of \$177,424.09. The court noted, however, that because Defendant was ordered to serve his sentence, it could not order Defendant to pay restitution. The court explained, "[Defendant] won't have the present ability to pay . . . during the next [seven] years, [eleven] months and [twenty-nine] days[.]"

3	Reckless aggravated assault	3 years and 6 months at 30%	To serve consecutively to Count 1
4	Vehicular assault	2 years at 30%	Merged with Count 3
5	Felony reckless Endangerment	1 year at 30%	Merged with Count 1
6	Felony reckless endangerment	1 year at 30%	Merged with Count 3
7	DUI, 1st offense	11 months and 29 days at 75%	Merged with Count 8
8	DUI, per se	11 months and 29 days at 75%	To serve consecutively to Counts 1 and 3
9	Possession of a handgun while under the influence	11 months and 29 days at 75%	To serve consecutively to Counts 1 and 3; concurrently with Count 8
10	Speeding	30 days at 75%	To serve consecutively to Counts 1 and 3; concurrently with Count 8

This timely appeal follows.

II. Analysis

A. Sentencing

On appeal, Defendant asserts that the trial court erred in enhancing his sentences based upon three improperly applied enhancement factors and that the court erred in denying his request for an alternative sentence.

In response, the State concedes that the trial court erred in applying two enhancement factors but maintains that the remaining enhancement factors properly considered by the court support the length of Defendant's sentences. The State further responds that the trial court also acted within its discretion when it denied Defendant's request for alternative sentencing.

1. Waiver

We note that in Defendant's brief the heading for his first issue reads, "The trial court erred in ordering consecutive sentences." Additionally, some of the law cited under this heading relates to consecutive sentencing; Defendant's entire argument, however, relates to alleged errors in the trial court's application of enhancement factors. This court has made clear that "[s]imply raising an issue is not sufficient to preserve it for appellate

review.” *State v. Enoch*, No. W2023-01032-CCA-R3-CD, 2024 WL 3261421, at *9 (Tenn. Crim. App. July 1, 2024) (quoting *State v. Gooch*, No. M2022-01395-CCA-R3-CD, 2024 WL 2814624, at *4 n.4 (Tenn. Crim. App. June 3, 2024)), *no perm. app. filed*. Tennessee Rule of Appellate Procedure 27(a)(7) requires that the appellant present an argument for each issue, setting forth the “reasons why the contentions require appellate relief” and containing “citations to the authorities and appropriate references to the record[.]” Additionally, Rule 10(b) of the rules of this court states that “[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived[.]” Tenn. Ct. Crim. App. R. 10(b); *see also State v. Molthan*, No. M2021-01108-CCA-R3-CD, 2022 WL 17245128, at *2 (Tenn. Crim. App. Nov. 28, 2022) (finding waiver when the defendant failed to “make any argument in support of this issue in his brief” and did not cite to appropriate authorities or make proper references to the record), *no perm. app. filed*. Here, to the extent that Defendant intended to raise a challenge to the imposition of consecutive sentences, we must respectfully conclude that he has waived appellate consideration of the issue by failing to provide an argument. *See* Tenn. Ct. Crim. App. R. 10(b); *Molthan*, 2022 WL 17245128, at *2.

2. Enhancement Factors

Tennessee Code Annotated section 40-35-210(b) requires that a trial court consider the following when determining a specific sentence to impose upon a defendant:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in [Tennessee Code Annotated sections] 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;
- (7) Any statement the defendant wishes to make on the defendant’s own behalf about sentencing; and

(8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

Tenn. Code Ann. § 40-35-210(b).

In determining a specific sentence within a range of punishment, the trial court should consider, but is not bound by, the following advisory guidelines:

(1) 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;
and

(2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c).

To facilitate meaningful appellate review, the trial court must state on the record the factors it considered and the reasons for imposing the sentence chosen. Tenn. Code Ann. § 40-35-210(e); *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012). Although the trial court should consider enhancement and mitigating factors, such factors are advisory only. *See* Tenn. Code Ann. § 40-35-114; *see also Bise*, 380 S.W.3d at 698 n.33, 704; *State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). We note that “a trial court’s weighing of various mitigating and enhancement factors [is] left to the trial court’s sound discretion.” *Carter*, 254 S.W.3d at 345. In other words, “the trial court is free to select any sentence within the applicable range so long as the length of the sentence is ‘consistent with the purposes and principles of [the Sentencing Act].’” *Id.* at 343. A trial court’s “misapplication of an enhancement or mitigating factor does not invalidate the sentence imposed unless the trial court wholly departed from the 1989 Act, as amended in 2005.” *Bise*, 380 S.W.3d at 706. “[Appellate courts are] bound by a trial court’s decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles” set out in Tennessee Code Annotated sections 40-35-102 and 103. *Carter*, 254 S.W.3d at 346.

When the record clearly establishes that a trial court imposed a sentence within the appropriate range after a “proper application of the purposes and principles of our Sentencing Act,” this court reviews a trial court’s sentencing decision under an abuse of discretion standard with a presumption of reasonableness. *Bise*, 380 S.W.3d at 707. The

party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.

In sentencing Defendant, the trial court considered the evidence presented at the plea submission and sentencing hearings, the evidence contained in Defendant's presentence report, including the Strong-R evaluation, the principles and purposes of sentencing, arguments regarding sentencing alternatives, the nature and characteristics of the criminal conduct involved, mitigating and enhancement factors, any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses, Defendant's allocution statement, and Defendant's potential for rehabilitation or treatment.

The trial court found that Defendant was a Range I standard offender, and Defendant does not challenge this finding. Reckless aggravated assault resulting in serious bodily injury to another is a Class D felony. Tenn. Code Ann. § 39-13-102(d)(1)(A)(iv). Likewise, vehicular assault is a Class D felony. Tenn. Code Ann. § 39-13-106(b)(1) (2023). A Range I sentence for a Class D felony is between two and four years, and the trial court imposed within-range sentences of three years and six months for reckless aggravated assault and two years for vehicular assault. Tenn. Code Ann. § 40-35-112(a)(4). As charged in Counts 5 and 6, reckless endangerment with a deadly weapon is a Class E felony. Tenn. Code Ann. § 39-13-103(b)(2). A Range I sentence for a Class E felony is between one and two years, and the trial court imposed a within-range sentence of one year for reckless endangerment with a deadly weapon. Tenn. Code Ann. § 40-35-112(a)(5).

In determining specific sentences within the applicable ranges, the trial court considered the advisory enhancement and mitigating factors. On appeal, Defendant asserts that the court improperly applied three enhancement factors—that the offense involved more than one victim; that a victim of the offense was particularly vulnerable because of age or physical or mental disability; and that Defendant had no hesitation about committing a crime when the risk to human life was high. *See* Tenn. Code Ann. § 40-35-114(3)-(4), (10).

The State concedes that the trial court erred when it applied the enhancement factor that the offenses involved more than one victim, noting that this enhancement factor is not appropriate when each count of an indictment names a specific person as a victim of a separate offense and that, in this case, each count of the indictment for reckless aggravated assault, vehicular assault, and felony reckless endangerment referenced either Mr. or Mrs. Leonard. *See State v. Imfeld*, 70 S.W.3d 698, 706 (Tenn. 2002) (holding that “there cannot be multiple victims for any one offense of aggravated assault committed against a specific, named victim”).

The State also concedes that the trial court erred in applying the enhancement factor that a victim of the offense was particularly vulnerable because of age or physical or mental disability. Our supreme court has held that, when considering this enhancement factor, a court should consider “whether evidence in the record with regard to the victim’s age or physical and mental attributes demonstrated an inability to resist the crime, summon help, or testify at a later date.” *State v. Poole*, 945 S.W.2d 93, 96 (Tenn. 1997). In this case, there was no evidence introduced to show that, due to his age, Mr. Leonard could not resist the crime, summon help, or testify at a later date.

The trial court’s misapplication of these two enhancement factors, however, does not entitle Defendant to relief. *See Bise*, 380 S.W.3d at 706. The trial court properly considered the enhancement factor that Defendant had no hesitation about committing a crime when the risk to human life was high. *See* Tenn. Code Ann. § 40-35-114(10). The court reasoned that, after drinking and getting behind the wheel, Defendant drove over eighty miles per hour on the wrong side of the road before crashing into the victims, noting that Defendant’s BAC was .126 three hours after the traffic collision. Although the trial court did not apply factor (1)—that the defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range—as a statutory enhancement factor, it considered Defendant’s prior DUI convictions as part of its reasoning in applying enhancement factor (10). Defendant contends that the trial court erred in applying this enhancement factor because he did not know he was intoxicated and, thus, “was not aware that he was committing a crime.” As noted by the State, the trial court acknowledged Defendant’s allocution statement, in which he claimed he had consumed several beers over a couple of hours but thought he was okay to drive. However, the court then commented, “Well, every defendant charged or convicted of DUI says the same thing. So, I don’t put a whole lot of stock in that, but what I do put stock in is that he was a .126 . . . [three] hours after the crash.”

Here, the trial court properly exercised its discretion in imposing within-range sentences. The court considered the applicable statutory scheme, the proof presented at guilty plea hearing and sentencing, and the presentence report. It addressed each mitigating factor argued by Defendant and applied one factor. The court properly applied one enhancement factor, giving great weight to the factor, and the record overwhelmingly supports the application of that factor. *See* Tenn. Code Ann. § 40-35-114(10). The trial court’s sentencing decision reflects a proper application of the purposes and principles of the Sentencing Act, so the presumption of reasonableness applies. *Bise*, 380 S.W.3d at 707. Because the sentence does not defy logic and reason, no relief is warranted. *See State v. Kirkpatrick*, No. E2011-01091-CCA-R3-CD, 2013 WL 105896, at *11 (Tenn. Crim. App. Jan. 9, 2013) (noting that “micro-management of the trial court’s sentencing decisions . . . is plainly no longer permissible under *Bise* and *Caudle*”), *perm. app. denied* (Tenn. June 12, 2013).

3. *Alternative Sentencing*

Defendant was eligible for probation because the sentence imposed was ten years or less and because the offenses to which he pleaded guilty did not exclude him from eligibility. *See* Tenn. Code Ann. § 40-35-303(a). Under the revised Tennessee sentencing statutes, a defendant is no longer presumed to be a favorable candidate for alternative sentencing. *Carter*, 254 S.W.3d at 347 (citing Tenn. Code Ann. § 40-35-102(6)). Instead, the “advisory” sentencing guidelines provide that a defendant “who is an especially mitigated or standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary[.]” Tenn. Code Ann. § 40-35-102(6)(A).

Although trial courts should automatically consider probation as a sentencing alternative for eligible defendants, defendants bear the burden of “establishing suitability” for probation. Tenn. Code Ann. § 40-35-303(b). “This burden includes demonstrating that probation will ‘subserve the ends of justice and the best interest of both the public and the defendant.’” *Carter*, 254 S.W.3d at 347 (quoting *State v. Housewright*, 982 S.W.2d 354, 357 (Tenn. Crim. App. 1997)). Factors to be considered include the circumstances surrounding the offense, the defendant’s criminal record, the defendant’s social history and present condition, the need for deterrence, and the best interest of the defendant and the public. *State v. Goode*, 956 S.W.2d 521, 527 (Tenn. Crim. App. 1997). A trial court should also consider a defendant’s potential or lack of potential for rehabilitation when determining if an alternative sentence would be appropriate. Tenn. Code Ann. § 40-35-103(5).

Even if an offender satisfies the criteria for favorable consideration for alternative sentencing and eligibility for probation, trial courts retain discretion to deny probation entirely or to impose a sentence of full or partial confinement for other reasons, including if the trial court determines that:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

Tenn. Code Ann. § 40-35-103(1).

Here, the trial court acted within its discretion when it denied Defendant's request for an alternative sentence. In addressing this issue, the trial court first discussed the positive factors supporting an alternative sentence. The court found that Defendant had maintained employment for most of his life, that Defendant had support from his family and friends, that Defendant had taken responsibility for his actions by pleading guilty to the offenses, and that Defendant had expressed remorse. The trial court then considered several negative factors that weighed against granting Defendant an alternative sentence. The court found that Defendant had two prior DUI convictions, that Defendant had been convicted of "twelve separate traffic offenses, most of which were speeding," that Defendant had admitted to drinking while underage and to using marijuana as a teenager, and that, despite Defendant's family history, he had still committed multiple DUIs. The trial court weighed the various factors, determined that the negative factors outweighed the positive factors, and denied Defendant's request for probation.

Defendant contends that the trial court should have given greater weight to his work history and to the results of the Strong-R evaluation. The record reflects that the court specifically considered Defendant's work history and found that it weighed in his favor. The trial court also indicated that it considered Defendant's Strong-R evaluation; however, this evaluation resulted in a risk score of "high" and indicated that Defendant had "high or moderate needs in the domains of attitude/behaviors, aggression, mental health, and partner/education." We fail to see how greater consideration of these factors would have established Defendant's suitability for probation. Defendant is not entitled to relief.

B. Judgments of Conviction for Merged Offenses

Finally, we note that the trial court imposed sentences for Counts 2 and 4-7 but that the judgment forms for those convictions do not reflect the sentences. As set out above, the trial court merged Counts 2 and 5 into Count 1; Counts 4 and 6 into Count 3; and Count 7 into Count 8. Our supreme court has held, however, that when counts are merged, the judgment for the "lesser (or merged) conviction" nevertheless should reflect the sentence imposed by the trial court and that the conviction merges into the "greater (or surviving) conviction[.]" *State v. Berry*, 503 S.W.3d 360, 364 (Tenn. 2015). Accordingly, we remand the case to the trial court for the entry of amended judgments of conviction in Counts 2 and 4-7, each reflecting the sentence imposed and that the conviction merges into the greater conviction. *See id.*

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court but remand for entry of amended judgments consistent with this opinion.

s/Robert L. Holloway, Jr.
ROBERT L. HOLLOWAY, JR., JUDGE