

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 11, 2026

FILED

09/16/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. NICHOLAS PETER MERRILL

**Appeal from the Criminal Court for Hamilton County
No. 315933 Boyd M. Patterson, Judge**

No. E2025-01561-CCA-R3-CD

The defendant, Nicholas Peter Merrill, pled guilty to one count of aggravated child neglect of a child under eight years of age, a Class A felony, and following a sentencing hearing, the trial court imposed a sentence of twenty-three years to be served at 100%. On appeal, the defendant argues that the sentence imposed by the trial court does not comport with the purposes and principles of sentencing. After a thorough review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

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

Kendall Stivers Jones, Assistant Public Defender – Appellate Division, Tennessee Public Defenders Conference, Franklin, Tennessee (on appeal); Steve Smith, District Public Defender, and Chad D. Wilson, Assistant Public Defender, Chattanooga, Tennessee (at guilty plea), for the appellant, Nicholas Peter Merrill.

Jonathan Skrmetti, Attorney General and Reporter; Elizabeth Evan, Assistant Attorney General; Coty G. Wamp, District Attorney General; and Paul O. Moyle, IV, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

The defendant was charged in a two-count indictment with first-degree murder during the perpetration of aggravated child neglect (Count 1) and aggravated child neglect

of a child under eight years of age (Count 2), the victim being the defendant's eleven-month-old daughter, M.M..¹ On May 5, 2025, the defendant entered an open plea of guilty to the aggravated child neglect charge, and the State dismissed the felony murder count. The facts giving rise to the defendant's charges were recited by the State at the guilty plea hearing as follows:

[H]ad this matter gone to trial, the State would have proven that on July the 23rd at approximately 4 o'clock a.m., the defendant, Nicholas Merrill, arrived at his quasi girlfriend's residence, Ms. Holly Gamarra . . . in Chattanooga, in Hamilton County, Tennessee.

When he arrived at that location, he had for the preceding several hours been attempting to negotiate a meet-up with an escort service. Ultimately, he decided to go to Ms. Holly Gamarra's residence.

Once there, he exited his car, used the key that Ms. Gamarra had given him on July the 18th which would allow him access to the apartment for the purposes of having trysts, whatever was the meeting for the two of them.

He let himself in, and as he let himself in, he knew that his daughter, [the victim], was asleep in the back seat of his Buick . . . Encore.

He entered the residence. [The victim] was asleep in the car. He ascended the stairs to Ms. Gamarra's bedroom without saying a word. The two of them engaged in sexual conduct. After that, he went to sleep.

He slept and he slept. Ms. Gamarra woke up at about 7 o'clock in the morning, began taking a series of selfies and videos of herself next to the sleeping [defendant].

Ms. Gamarra would testify that at approximately 12 o'clock a.m. [sic], she got out of bed and began getting ready. As she got ready, she was brushing her teeth and had been communicating with her – Ms. Gamarra's baby daddy to arrange the return of her daughter to her custody.

It was during that time that [the defendant] woke up. Apparently from the sound of Ms. Gamarra brushing her teeth. At that time, he said, "My baby, go get her."

¹ It is the policy of this Court to refer to minor victims by their initials.

The State's proof would show, based upon [the defendant]'s testimony, that [the victim] was . . . still in the Buick. The neighbor across the street, Mr. Jacob Harden, would have testified that about 2 o'clock p.m., he was on the front porch of his residence and he noticed a commotion coming from the parking area . . . in relation to apartment A's door and two cars that were parked in front of apartment A. He described the back-and-forth between the apartment and the vehicle, ultimately a small passenger car taking off in the direction of T.C. Thompson Hospital.

Dr. Shelley Murphy of T.C. Thompson would have testified that [the defendant] showed up with Ms. Holly Gamarra at approximately 2:29 p.m., infant in hand, in rigor mortis, deceased; that she told the defendant to stay and Ms. Gamarra to stay. Ms. Gamarra left. The defendant indicated that he wanted to leave and come back, that he had things he needed to get.

Ultimately, . . . the infant was examined by Dr. Steven Cogswell who would opine that the cause of death was hyperthermia. The high temperatures on that day were 88 degrees.

Detective Stephen Bulkley of the Chattanooga Police Department conducted an experiment on a day where there was a similar level of cloud cover as well as a similar daytime high temperature. The proof from that experiment would have shown that after 10 o'clock a.m. in the morning, temperatures inside the defendant's vehicle, which was parked in the same spot that it was on the date of the 23rd, would have been in excess of 100 degrees

The medical proof would also show that the [victim]'s . . . being 11 months old at the time she died, has an undeveloped, not fully developed, thermal regulation system, and, therefore, as an infant, is more susceptible to high and low temperatures.

In the car seat in the back of the defendant's vehicle, that Buick, was also a black sweatshirt. It would be the State's position that that helped contribute to the hyperthermia experienced by [the victim].

At the September 15, 2025 sentencing hearing, the State first entered the defendant's presentence report, certified copies of four prior convictions, and a life-in-being photograph of the victim. The presentence report included the defendant's admission to daily use of marijuana as an adult and use of methamphetamines from the ages of twenty to thirty-one. The report also included the defendant's admission to using "marijuana,

including edibles . . . at a party just prior to the offense.” The defendant’s Strong-R, Risk and Needs Assessment, was contained in the presentence report and showed the defendant at a moderate overall risk.

Taylor Johnson, the victim’s aunt, then made a victim impact statement. Ms. Johnson stated that the victim was a “big part of our lives” and “didn’t deserve this at all.” She “hate[d]” that “they dropped the murder charge” and would always consider the defendant a “murderer . . . because [he] left [the victim in the car].” She expressed that “[j]ustice will never be served because [the defendant] will never feel how it feels to . . . [be] helpless in a car by himself.” She hoped the court would “give him the max.” Mrs. Johnson’s statement closed the State’s proof.

Debra Merrill, the defendant’s mother and victim’s grandmother, testified that the defendant loved the victim, had no motive to hurt her, and was trying to be responsible in raising her. When Ms. Merrill learned the victim had died, she went to the police station where she found the defendant “curled up on the floor, just curled up on the floor. Wasn’t even saying nothing, really.” She hoped the defendant would not have to spend the rest of his life in jail because “[i]t was not intentional.”

Brandon Merrill, the defendant’s brother and victim’s uncle, testified that he “was hurt and couldn’t believe it happened, and . . . had so much hate at the beginning.” Speaking to the defendant, he said, “But knowing you from the times that I saw you with the baby, I don’t care what anybody said, I know you didn’t do it on purpose.” Mr. Merrill told the trial court, “He didn’t kill this baby. . . . He made a mistake. . . . [H]e’s not what everybody’s making him out to be.”

The defendant gave an allocution in which he expressed he was “very sorry for what happened and how much it has hurt so many people.” He “wish[ed] this never happened and . . . [he] could die right now and all this be over with. That’s the only way [he] c[ould] be with [his] daughter again[.]” He recalled that he was “out-of-my-body scared” and “totally confused” when he found the victim and “rush[ed] her to the hospital.” He reiterated that “[t]his was a complete accident[.]” and he never would have “hurt [his] baby on purpose.” He apologized to the victim’s mother for causing the victim’s death and for not attending the funeral, explaining he “was so scared because of what people thought.” He reiterated that he should not have left the victim unattended and did not know that he was going to fall asleep. The defendant acknowledged that he “messed up” the lives of everyone who loved the victim, including his own life, and “hope[d] that everyone who loved her [could] find some peace.”

Makayla Caslin, the victim’s mother, expressed that she did not think the defendant’s actions were “intentional” or “purposeful at all.” She described her

relationship with the defendant as “pretty all right” but noted “it was the [defendant’s use of] drugs that took a downfall to [their] relationship.” Regardless, she still considered the defendant to be “a good person” and commented that they still spoke occasionally.

On the day of the victim’s death, Ms. Caslin and the defendant were going back and forth about the defendant “doing stuff out of spite” so she would have to call him. Ms. Caslin did not let the defendant’s behavior bother her and let him keep the victim longer because she “didn’t want to be deemed as the mother that takes her child away from another man.” Ms. Caslin thought the defendant was a better father when she was not around and “thought he was way better than what it turned out to be.”

Ms. Caslin expressed that she did not “hate” the defendant or “want him to rot[.]” She remained confused by what happened because she “thought [the defendant] was way better than that” and “didn’t think he was that bad outside of home without [her] around[.]” She did not think the defendant’s actions were “intentional or out of spite” and that he basically made “a stupid mistake[.]”

The State asked the trial court to impose a sentence of twenty-five years and argued that five enhancement factors were applicable: (1) the defendant had a prior history of criminal conduct beyond that necessary to establish the range based on his prior convictions—“almost daily” use of methamphetamines from age twenty to thirty-one and use of an “edible” at a party just prior to the offense; (2) the victim was particularly vulnerable because she was only eleven months old and strapped in a car seat; (3) the injury to the victim was great in that it resulted in her death; (4) the defendant previously failed to comply with the conditions of a sentence involving release in the community; and (5) the defendant was released on probation at the time of the present offense. *See* Tenn. Code Ann. § 40-35-114(1), (4), (6), (8) and (13).

The defendant challenged the applicability of two of the enhancement factors raised by the State and also asserted that three mitigating factors were applicable: (1) the defendant immediately sought care for the victim upon discovering her; (2) the circumstances indicate it was unlikely that a sustained intent to violate the law motivated the criminal conduct; and (3) the defendant’s regret, remorse, and acceptance of responsibility under the catchall factor. *See* Tenn. Code Ann. § 40-35-113(5), (11) and (13). In response to an observation by the court regarding the defendant’s initial dishonesty in claiming the victim was inside the house, defense counsel explained that the defendant was in a “state of shock and confusion” and also that he waited until the victim’s mother was present before telling law enforcement what actually happened.

The trial court noted that the presentence report indicated the defendant had used drugs daily for years and that “if he is driving [the victim], if he is hanging out with her,

supposedly trying to keep her safe, then . . . it would seem that this is just one more of the neglectful acts that he's done that has risked his child[.]” Defense counsel responded that while the presentence report indicated the defendant used marijuana daily, there was no indication that the defendant drove “high” with the victim in the car or that another person, such as the defendant’s mother, was not actually taking care of the victim when the defendant was under the influence. As to the defendant’s “taking some gummies earlier in the evening,” defense counsel explained “that depending on what was taken, the effect may have well have been worn off and may not have been in effect at all at that point[.]”

The trial court began its sentencing findings by observing that the case “truly is a tragedy” and committed with a lack of intent. The court stated, “[I]f it was done on purpose, it would be a different crime. We’re here on an aggravated child neglect, so [the defendant] has gotten the benefit of this not being on purpose by the fact he’s charged with a crime that is not necessarily on purpose, but neglectful.”

The court noted that the defendant was on probation at the time of the offense and had prior convictions “beyond that necessary to be a Range I offender.” The court stated that “[s]ome of the principles of sentencing are not necessary to address because incarceration is a necessary aspect of this particular crime.” In considering the nature and characteristics of the criminal conduct involved, the court stated that the defendant’s desire to “have a liaison . . . [and] use drugs” took priority over the safety of his daughter. The court observed that the defendant’s presentence report showed a history of falling asleep at work, so the defendant “knows, according to what I’ve read, that he has a problem falling asleep and not waking up[.]” The court deduced that while the defendant might not have had a sustained intent to violate the law, he knew about his past drug use and admitted difficulties with waking up when he left the victim in the car.

Turning to enhancement factors, the trial court found that all the factors argued by the State applied, *see* Tenn. Code Ann. § 40-35-114(1), (4), (6), (8) and (13), and placed “substantial weight” on the factors. The court placed the “greatest weight” on factor (6) because the victim’s injuries were “particularly great” and the “death-related aspect of this case was dismissed.” With regard to mitigating factors, the trial court found that the defendant’s actions did not indicate a sustained intent to violate the law, and the defendant’s expressions of remorse “seem sincere.” *See* Tenn. Code Ann. § 40-35-113(11) and (13). The court placed “slight weight” on the mitigating factors.

The trial court noted there was no statistical evidence presented by the Administrative Officer of the Courts “on this particular type of sentencing.” The court also observed that the Risk and Needs Assessment placed the defendant at a moderate risk overall with “a high risk as far as his friends and associates.”

The trial court commented that it usually began its sentencing determination “in the middle of the range” and adjusted up or down from there based on the presence and weight of enhancement or mitigating factors. “[T]aking in the great weight placed on factor 6, the substantial weight placed on the other enhancement factors, and the slight weight provided on the mitigating factors,” the court imposed a sentence of twenty-three years to be served at 100%.

This timely appeal followed.

Analysis

On appeal, the defendant argues that the twenty-three-year sentence imposed by the trial court does not comport with the purposes and principles of sentencing because such sentence does not reasonably relate to the seriousness of the offense and is not the least severe measure necessary to achieve the purpose for which the sentence was imposed. The State responds that the trial court acted within its discretion in sentencing the defendant. We agree with the State.

In determining an appropriate sentence, a trial court must consider the following factors: (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 mitigating and enhancement factors; (6) any statistical information provided by the administrative office of the courts as to the sentencing practices for similar offenses in Tennessee; (7) any statement the defendant makes on his own behalf as to 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. §§ 40-35-113, -114, -210(b). In addition, the court must consider the defendant’s potential for rehabilitation, and that “[t]he sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed.” *Id.* § 40-35-103(4), (5)

Pursuant to the 2005 amendments, the Sentencing Act abandoned the statutory presumptive minimum sentence and rendered enhancement factors advisory only. *See* Tenn. Code Ann. §§ 40-35-114, -210(c). Although the application of the factors is advisory, a court shall consider “[e]vidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.” *Id.* § 40-35-210(b)(5). The trial court must place on the record “what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.” *Id.* § 40-35-210(e).

When an accused challenges the length and manner of service of a sentence, this Court reviews the trial court's sentencing determination under an abuse of discretion standard accompanied by a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). If a trial court misapplies an enhancement or mitigating factor in passing sentence, said error will not remove the presumption of reasonableness from its sentencing determination. *Id.* at 709. 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.* at 709-10. Moreover, under such circumstances, appellate courts may not disturb the sentence even if we had preferred a different result. *See State v. Carter*, 254 S.W.3d 335, 346 (Tenn. 2008). The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Comm'n Cmts.; *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

The defendant asserts that the trial court abused its discretion in imposing a twenty-three-year sentence because it "fail[ed] to consider the purposes and principles of sentencing" and "based the sentence length on an erroneous assessment of the proof[.]" However, as detailed above, the trial court thoroughly considered the enhancement and mitigating factors asserted by the parties, the reasons for and against their applicability, and its ruling evidenced its consideration of the purposes and principles of sentencing. The defendant essentially disagrees with the trial court's weighing of the enhancement and mitigating factors in reaching its decision, but such is not grounds for relief. *See Bise*, 380 S.W.3d at 706 ("[M]ere disagreement with the trial court's weighing of the properly assigned enhancement and mitigating factors is no longer a ground for appeal."). In sum, the trial court applied five enhancement and two mitigating factors, made detailed findings on the record, and imposed a sentence within the applicable range. The trial court's decision is entitled to a presumption of correctness, and the defendant is not entitled to relief.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

s/ **J. ROSS DYER**

J. ROSS DYER, JUDGE