

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
September 15, 2026 Session

FILED

09/25/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JUAN ANDRES RODRIGUEZ TORRES

**Appeal from the Circuit Court for Coffee County
No. 24-CR-49719 William A. Lockhart, Judge**

No. M2025-01687-CCA-R3-CD

Defendant, Juan Andres Rodriguez Torres, appeals the trial court's denial of judicial diversion and alternative sentencing following his guilty plea to two counts of aggravated statutory rape, a Class D felony, and one count of contributing to the delinquency of a minor, a Class A misdemeanor. Upon review of the entire record, the briefs and arguments of the parties, and the applicable law, we affirm the judgments of the trial court.

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

JILL BARTEE AYERS, J., delivered the opinion of the court, in which CAMILLE R. McMULLEN, and STACY L. STREET, JJ., joined.

W. Alan Rose, Tullahoma, Tennessee, for the appellant, Juan Andres Rodriguez Torres.

Jonathan Skrmetti, Attorney General and Reporter; Lacy E. Wilbur, Senior Assistant Attorney General; Craig Northcott, District Attorney General; and Jennifer Craighead and Joshua C. Powell, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

The facts of this case as set forth by the State at the guilty plea submission hearing are as follows:

On June 7, 2024, Coffee County Sheriff's Department became involved in an investigation regarding a 14-year-old runaway from Dekalb County. Attempts were made to find this juvenile in Coffee County and Warren

County, and later she was eventually located in Mountain City, which is around Knoxville, Tennessee. Once she was taken into custody by law enforcement there in Knoxville, she had informed police officers that she had met two adult males at a gas station in Dekalb County. She identified one of the males as the defendant and the other as Mr. Toby Pack. She told law enforcement that Mr. Pack was driven to his home in Warren County and left there, and the defendant and a juvenile went to the defendant's home at 406 Spring Meadows Lane. That is located here in Coffee County. The juvenile had also told law enforcement that she and the defendant had intercourse at his residence, and he later drove her back to Mountain City. She also told investigators later that she and defendant had discussed the fact that she was 14 years old before and after they had had sexual intercourse. The defendant at the time that he had sex with the 14-year-old he was 33. She was 14, and they - - this happened in Coffee County.

At the sentencing hearing, Officer Jonathan Williams of the Tennessee Board of Probation and Parole testified that he completed the presentence report in this case. He said that both the standard STRONG-R Risk Needs Assessment and the VASOR Assessment showed Defendant scored a low risk for reoffending. Officer Williams testified that in the six months preceding the assessments, Defendant had not been in any trouble, he was meeting his bond conditions, his finances were in order, and he had no prior criminal history. He agreed that much of the information came from Defendant, and there were no questions in the assessments about prior uncharged sexual or criminal conduct. Officer Williams did not speak with law enforcement about Defendant, and he received and reviewed the victim impact statement.

Investigator Brandon Gullett of the Coffee County Sheriff's Office ("CCSO") testified that he first became involved in this case when a detective in Smithville, Brandon Donnell, who had extensive dealings with the victim, contacted him on July 27, 2024, because the victim had runaway between 2:00 to 3:00 a.m. after an argument with her mother. Investigator Gullett testified:

[Detective Donnell] started pinging her phone, located the phone had left from Smithville, went to Warren County, and then ultimately ended up in Coffee County, stating Coffee County, it cut off, wasn't pinging anymore. It kept continuously pinging at the same location, and then it ended up pinging in Mountain City, Tennessee, the other side of Knoxville. At that point, he got Mountain City involved. Mountain City Police ended up locating [the victim], and ultimately, met him in Knoxville where he brought her back to Smithville, and that's where this case started. She ultimately stated that she had r[u]n away, she was picked up by two men at Mapco in Smithville.

Investigator Gullett testified that Defendant and Toby Pack picked the victim up “[a]round two-ish or three in the morning.” He noted that the victim was a “self-cutter” and had cut her arms and legs just before she ran away and that she was not wearing any shoes. Defendant drove her to his house after picking her up at Mapco. Mr. Pack was interviewed and said the victim told both him and Defendant that she was fourteen years old. Investigator Gullett said she had turned fourteen on June 10, 2010.

Investigator Gullett interviewed the victim and learned where Defendant’s residence was located. He then drove there and photographed the cars the victim had described. He also verified that Defendant was a security officer with the Transportation Security Agency (“TSA”) as reported by the victim. Investigator Gullett executed a search warrant at the residence and “ended up locating everything that she stated inside the residence would be there, to include the flag behind the bed, the large bed, black sheets, black comforter, everything just as she had told [him] in the interview.” The victim said she and Defendant had sex in the bed at the residence multiple times and that they “joked” about her being fourteen years old. Investigator Gullett spoke with Defendant, who was out of the country in Columbia with his fiancée, by phone.

On cross-examination, Investigator Gullett clarified the victim said that Defendant talked about him being an adult who was having sex with a child. He said that at the time of the interview the victim was “emotional and not emotional at the same time, if that makes sense.”

N.B.,¹ the victim’s mother, testified that on the night the victim ran away, N.B. had attempted to convince the victim that “cutting herself and suicide was not the answer” to her past trauma and abuse. She said that the victim became emotionally distraught and ran out of the house barefoot. N.B. testified that the victim had been home for twenty-two months at the time after being in foster care and that she had “been to therapy and hospitalizations a few times for suicide attempts” which stemmed from a lifetime of abuse by the victim’s alcoholic father. Additionally, the victim had been molested by a friend’s older brother when she was nine years old.

N.B. testified that the night before the victim ran away, she had cuts that “covered” her arms. She noted that the victim “still [has] multiple scars, her arms, her legs. She would cut her breasts, her thighs. Most cuts were superficial. There were a few at times

¹ Because it is the policy of this court to protect the identity of minor victims, we will identify the victim’s mother by her initials.

that required staples, stitches[.]” N.B. testified that the victim was “covered in blood” and “obviously a child in distress” when she ran away.

N.B. attempted to call the victim’s cell phone the night the victim ran away, but it was turned off, and she immediately notified police that the victim was gone. N.B. said she spent all night searching for the victim because the victim had told a friend in Mountain City that she was on her way there and that she was going to find a bridge to jump from. N.B. was then notified that the victim’s phone was pinging in the opposite direction in Coffee County. N.B. testified that the victim called her at one point and said she was with a woman who was going to drive her to Mountain City. When N.B. told the victim she knew her phone had pinged in the opposite direction in Coffee County, the victim again said she was going to Mountain City and hung up. Law enforcement later found the victim walking in Mountain City. She had been dropped off in a remote area approximately two miles from her friend’s house.

Concerning the effect of Defendant’s actions on the victim, N.B. testified:

It took [Defendant] 42 minutes to convince my daughter that he loved her and that he wanted to marry her and keep her safe from people that were harming her. The only person that harmed her was herself other than - - physically harmed her was herself and her father. Prior to that, she had mental health issues. (Addressing the defendant) You picked up a distressed, barely 14-year-old with blood all over her. Why didn’t you take her to the cops or to the hospital? That’s what normal people would have done, you know. You took advantage of her, like you hurt her more than anybody had ever hurt her before. You took her innocence. Man, I’m so angry. I am angry and I’m hurt, and I am trying to help her. Twenty-two months, we had rebuilt what people before you had tor[n] down, and then when you done what you did, we have been to hospitals. We have been to therapy.

N.B. testified that the victim had been hospitalized for attempted suicide three times since Defendant raped her, the longest of which was fourteen days. She said the victim was “broken” and continued to self-harm up until three months before the sentencing hearing. The victim also took daily medication. N.B, again addressed Defendant and said it took her two weeks to convince the victim that Defendant was lying about wanting to marry her, noting that the victim “walked around my house with a Pikachu stuffed animal that he gave her and [saying] ‘he loves me. He is going to take me out of here.’”

N.B. testified that although the victim had been sexually abused, she was not “sexually active” prior to the rape. She said the victim had been “sexualized very young” by abusive men, and she “just wanted male attention.” N.B. felt that Defendant took

advantage of the victim's vulnerability and wondered how he could see a distressed girl in a parking lot at 3:00 a.m. and have sex with her. It was her belief that this was not just a "whoops" moment by Defendant and that it was either something he had previously done or would do again. N.B. wanted Defendant to be held accountable for his actions.

The victim² testified she told Defendant she was fourteen years old "about halfway through the drive" to his house when he asked her age. Defendant said, "Oh well, I'll keep you safe. We can just go back to my house." The victim said that after arriving at his house, Defendant said he had guns in the house, showed her a badge, and said he was a security guard and part of the FBI. He also cleaned her wounds, gave her a shower, and "said that it was all going to be okay[.]" The victim testified that Defendant "laid next to [her] with their bodies touching, and he told [her] that he was going to marry [her] and that he was going to love [her] forever and that [they] were going to have kids."

The victim testified that Defendant later drove her five or six hours to Mountain City and that they again discussed her age during the drive. She testified: "Well, we had been kind of joking around, and I was like, 'Don't you think it's funny that you are having sex with a 14-year-old?' and we both kind of brushed it off and started laughing about it." The victim testified that Defendant dropped her off approximately two miles from her friend's house "back behind some trees at a little rest stop area where you pull off[.]" Defendant drove away, and she began walking to her friend's house. The victim said she carried around the stuffed "Pikachu doll" Defendant gave her for two weeks until she turned it over to law enforcement. She then read the following statement:

My name is [redacted]. I am 15 years old, and I am a victim. I was lost mentally and physically, and that night, you took advantage of me. That night I was bloody, I was helpless, I didn't know where I was going. I was just looking for something or someone to help me. I didn't know what to do, and instead of saving me, you took away my innocence as a little girl. I was 14 years old. [Defendant], I carried around your stuffed animal for two weeks, and even on months [sic], I was missing you. You coerced me, and you told me that you loved me, and you were going to marry me. You had me so convinced when you were laying [sic] next to me in that bed that you loved me and you were going to save me, but (Crying) all the trouble you've caused me, I have all together [sic] become a better person today, and all I ever did was try to seek validation from men and get that male attention because that's what I never had. You cleaned me up, and you took me in. You ruined me. In that time frame, you ruined me. I felt disgusting in my own skin. I hated myself, and I thought you were going to make it better. I

² The victim was fifteen at the time of the sentencing hearing.

thought I was in love with you. As a 14-year-old girl, I thought I was in love with a 30-year-old man. Is that what you think is okay? Do you think it is okay to do that to a 14-year-old child? Because I am looking at everybody, and I don't really think, you know, any normal person would do that, but I carried around your stuffed animal and thought about you, and you lied to me. You lied, and I forgive you. I forgive you, [Defendant]. I forgive you for that piece of innocence you took from me. I forgive you for it. That's just one of the many things that have shaped me into the better person that I am today. I go to church. I have good friends. I am thriving as a person today, as you once seen me [sic] as that vulnerable little girl that you took advantage of. I am not the same person anymore, and I am a better person, but I just want to let you know that I forgive you.

Upon questioning by the trial court, the victim testified that the Pikachu doll came from Defendant's house and that he gave it to her to remember him. Concerning her initial encounter with Defendant, she said:

I was outside of the gas station. He was pulled behind the dumpster area with his friend, Mr. Pack. As I said, he approached me first and asked me if I would like a ride, and I walked up to him, and he seen all of my self-harm and all the blood all over me, and I told them, "Please, please take me anywhere other than home. Take me somewhere safe."

Defendant testified that after graduating from Middle Tennessee State University, he began working for the TSA and had worked there five and a half years before resigning due to the charges in this case. He said he resigned because he did not want his co-workers to be affected. He was recognized as an exemplary employee while working for the TSA. Defendant had no prior criminal history and had worked alongside law enforcement in his role with the TSA. Defendant testified that since his resignation, he had worked as a translator and transported people to and from medical visits and court proceedings, sometimes not charging for his services if someone was having a hard time. He had also begun attending church and was helping open a church in the Hispanic community.

Defendant agreed that he was guilty of the charges against him and that he chose not to pursue a trial because his mother always told him to "confront and face" anything that he did. He agreed that his actions in this case reflected a "very poor decision" on his part and that he "didn't think." Defendant then said that he was not aware of the victim's age at the time, and he did not recall any conversations about her age. He testified that he did not seek out underage children online and had never been in trouble for stalking. Defendant said he grew up in a household with four women and had always been respectful to women. He said he was truthful in the presentence report, would not do anything like

this in the future, and was remorseful for his actions. Defendant then addressed the victim and N.B.:

I want to apologize to the mother as well, and I want to apologize to the victim from the bottom of my heart that I am very, very sorry. I know that my words, whatever I say, is not going to be enough, but I am truly sorry, and I am sorry for the people that believed me, and I'm sorry for everybody here. I have fallen short, and I should have done better because I knew that no matter what, I knew better, but I've fallen short from the glory of God, and every time I think about it, I haven't been able to sleep. I lost a lot of my health (Crying), and I'm sorry. I'm sorry for everything I done. I never hurt anybody in my life, and I'm not going to hurt nobody. I have never in my life hurt anybody. I am sorry to the mom and daughter. I am sorry. I know my words can't do anything, but my actions will, and one thing I can promise everybody that no matter what, I am always going to be at the service of God from now on. I am in debt to my Father in heaven, and I will dedicate myself from now on to do anything but good, and I know my words don't mean anything, but actions do, and I want to prove to this Court and show them that I can by actions.

On cross-examination, Defendant testified that he did not recall any conversations about the victim's age on the way to his house, and he did not tell her that he loved and wanted to marry her. He also denied saying that he would get the victim's mother to sign for them to get married. Defendant admitted that he and the victim discussed her age on the way to Mountain City because she threatened him. He said:

She said if I don't do what she says that she would involve the police now, and she threatened me and said from now on, I was going to be on a call, and if I didn't answer that I would be in trouble is what she said, and I told her no. Then she said that she was going to [bring] this up on me because I didn't cooperate with her[.].

. . . .

I had proof where she threatened me, but I deleted it because I was scared. She somehow managed to find my location through Toby Pack. I don't know how she got hold of him, and then she sent me a message on Messenger that I deleted because I did not want to have any contact with her, and then she threatened me in the messages, and my friend took - - he is a computer expert - - asked me, maybe I can retrieve that, but she did threaten me, and I was scared, and that is nothing but the truth.

Defendant testified that he thought the victim was a woman when he picked her up at the Mapco and that he had sex with her once.

Tim Mansfield, Linda Driver, and Theron Seymour testified that they knew Defendant through The Well Church in Tullahoma. They each submitted affidavits and testified on Defendant's behalf.

Clint Clarneau, chaplain for the Coffee County Jail, testified that he had worked as a jail chaplain in several other correctional facilities and that Defendant was different than many of the inmates he had encountered. Mr. Clarneau had never previously testified as a character witness for an inmate. He also submitted an affidavit to the court on Defendant's behalf. Mr. Clarneau noted that Defendant showed a lot of remorse. Defendant had traveled with him to another church for an "evangelistic presentation" and handled the "offering that day, and last Saturday night, he was my first choice for the cash register to run for the Fellowship Night," even though Defendant was unable to attend. Mr. Clarneau testified that Defendant had never given him any cause for doubt.

Ana Torres-Martinez, Defendant's sister, testified that she was employed by the Rutherford County Probation and Recovery Services in Murfreesboro. She said that Defendant had never previously been in trouble and that he was remorseful and had "cried immensely" about what happened. Ms. Torres-Martinez noted that Defendant had lost everything, and she and her mother had been supportive of him and would continue to support him. She felt that his involvement with the community groups through church had helped him and that he would comply with whatever the court ordered. Defendant's mother, Silvestra Torres-Martinez, also made a statement on Defendant's behalf indicating that Defendant was not a "horrible person" and that "it will never happen again."

In considering whether to grant Defendant's request for judicial diversion, the trial court found:

He is eligible for full probation, he is eligible for split confinement for [a] TDOC sentence, so all the tools are in the toolbox there; and so I guess . . . what I wanted to focus more on is . . . I have heard the proof. I rely on the proof . . . at the plea, the proof here today, the pre-sentence report, the principles of sentencing, the nature and characteristics of the criminal conduct, evidence and information for mitigation and enhancement, which we are going to get into all of that, and the AOC data about other crimes and the range of punishment for this, and then what the defendant himself has testified to and obviously what the victim and her family have testified to. I am going to start, I guess, I am comfortable ruling on a couple of issues, not on the full thing. [Defendant], I am not going to grant diversion in this case.

It is too serious of a case to do that, too large of an age gap in the victim. This was, while I tend to agree with the State it doesn't go to the level of being an enhancement factor - - vulnerability, the case law is a little squirrely on that - - she was in a vulnerable state, and I think for purposes of diversion, I would say you could look at that and just overall, the seriousness of the offense as to that. I find it would be probably amenable to correction; circumstances of the offense would go against diversion. The criminal record would go for diversion. The social history would go for diversion. His mental and physical health would go for diversion, but (f) especially, the deterrence value of others, the possibility of this not being on record whatsoever at all, it is too serious of an offense for that, so I find he is not a good candidate for diversion. Again, that still leaves a lot of other tools which I haven't made up my mind on yet as to the sentence, but I wanted to get that out of the way.

As for alternative sentencing, the trial court noted that the only factor that could apply in Defendant's case was "that 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[.]" The court considered that the circumstances of the offense, as committed, must be must be "especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree and that the nature of the offense must outweigh all other factors favoring an alternative sentence." The trial court then asked for argument by each side as to that factor.

After arguments, the trial court found that one enhancement factor applied, that the offense was committed to gratify Defendant's desire for pleasure or excitement. T.C.A. § 40-35-114 (7). The trial court also applied the catchall mitigating factor referencing that Defendant entered a guilty plea, which spared the victim from testifying in front of a jury, and showed "contrition." *See id.* § -113(13). The trial court also pointed out that the State had not requested consecutive sentencing and that there was "nothing there to show that consecutive sentencing should be granted." As for alternative sentencing, the trial court noted that "[t]his is a hard case. This is a very serious case, and I have given this a lot of thought prior to the hearing today, and then the hearing itself because it is unique in a couple different ways." The court found:

"[T]he probation pre-sentence report, facts and circumstances surrounding this offense, previous actions, prior criminal history, whether or not the defendant can be rehabilitated, all of those factors, the interests of society being protected from possible future criminal conduct, whether or not a sentence of full probation would unduly depreciate the seriousness of the offense, whether or not confinement is particularly suited to provide a[n]

effective deterrent to others. To be fully transparent which I try to be in my decision-making, that is where it goes back and forth is whether this crime is so egregious, horrifying, shocking, reprehensible, that he should be not even considered for alternative probation, or - - he definitely shouldn't get full probation; I know that, so the wrestle I've gone through is between a split confinement and a TDOC sentence, and I know there are big differences in the consequences to both, but based upon all of the evidence here, specifically looking very closely at the facts of the case, the fact that this was a juvenile that had ran away in the middle of the night, barefoot, bleeding, obviously in distress, I think I do have to put weight on the fact that he pled guilty to knowing she was 14. I understand he wavered and said, "I don't recall exactly when I found out." I find that kind of hard to believe. There was a third party witness that was there that indicated that they knew that she was underage, and she testified that she did as well - - that she had mentioned that she was underage before and after the incident, and then the fact further that he drove her so far away to a friend's house, all those things indicate, I guess an adult would ask for some of that stuff, but all of that would indicate she is running away from, quote, unquote, home, that she is a kid, whether it be 14, 15, 16, 17, or whatever age, that she was not an adult, so I think that circumstantially, it would point that she was a child - - the fact that she had a stuffed animal or wanted a stuffed animal, all of that stuff, so I do think that this is - - and I get [trial counsel's] point. We deal with these types of cases, that there are predatory grooming, things of that nature, and this was not that, but - - in the sense over a long period of time with a position of power and all of that stuff. This is different, but it is more of a difference without a distinction, I guess would be the best way to put it. This happened in less than an hour, so in some ways, it could be seen worse because they are taking advantage of somebody when they are at their most vulnerable, rather than building up the trust. Neither are good is what I am trying to say. With all that being said, and wavering back and forth, I do think that under Prong (2) that the confinement is necessary to avoid depreciating the seriousness of the offense for the reasons I just enumerated, that this offense was especially shocking, reprehensible, and that we need to provide a deterrent.

The trial court subsequently memorialized its findings in a "Sentencing Findings of Facts" entered October 9, 2025. As to judicial diversion, the court said:

In this case the Defendant was eligible for and requested diversion. In considering [what] the trial court must consider in deciding whether a qualified accused should be granted judicial diversion includes: (a) the accused's amenability to correction; (b) the circumstances of the offense (c)

the accused's criminal record, (d) the accused's social history, (e) the accused's physical and mental health, and (f) the deterrence value to the accused as well as others. The trial court should also consider whether judicial diversion will serve the ends of justice – the interests of the public as well as the accused. *State v. Sheets*, No. M2022[-]00538[-]CCA[-]R3[-]CD, 2023 WL 2908652, at *8 (Tenn. Crim. App. Apr. 12, 2023).

Specifically factors (f) and (b) weigh against diversion. Awarding diversion to this defendant would allow him to possibly come off his record [like] it never happened. That would not serve the ends of justice based on the severity of the specific facts of this offense.

Further the court would specifically find that this was especially horrifying, shocking, and reprehensible. The defendant found a minor in clear distress barefoot with cuts and blood on her. He then took her in and took advantage of her within an hour or so of meeting her. He gave her a stuffed animal and then drove her across the state to keep her from her parents. To probate this sentence would depreciate the seriousness of the offense.

The trial court imposed an effective two-year sentence as a Range I offender to be served in confinement. It is from this sentence that Defendant now appeals.

Analysis

Defendant challenges his sentence by arguing that the trial court erred by denying his request for judicial diversion and that the court erred in denying alternative sentencing. The State asserts that the trial court acted within its discretion by denying judicial diversion and ordering Defendant to serve his sentence in confinement.

I. Judicial Diversion

Defendant claims the trial court erred by denying his request for judicial diversion. Following a determination of guilt by plea or by trial, a trial court may, in its discretion, defer further proceedings and place a qualified defendant on probation without entering a judgment of guilt. *See* T.C.A. § 40-35-313(a)(1)(A); *State v. Dycus*, 456 S.W.3d 918, 925 (Tenn. 2015). A qualified defendant is one who is found or pleads guilty to the offense, is not seeking deferral for certain sexual offenses or an offense committed by an elected or appointed person, has not been previously convicted of a felony or Class A misdemeanor, and has not previously been granted judicial or pretrial diversion. *See* T.C.A. § 40-35-313(a)(1)(B)(i)(a)-(e). If the defendant successfully completes the period of probation, the

trial court is required to dismiss the proceedings against him, and the defendant may have the records of the proceedings expunged. *Id.* § 40-35-313(a)(2), (b); *Dycus*, 456 S.W.3d at 925. Thus, “judicial diversion is not a sentence; rather, the grant or denial of judicial diversion is simply a decision to defer a sentence or to impose one.” *Sheets*, 2023 WL 2908652, at *6 (citing *State v. King*, 432 S.W. 3d 316, 324-25 (Tenn. 2014)). Our supreme court has described judicial diversion as a “legislative largess” available to a qualified defendant. *King*, 432 S.W.3d at 323; *see also State v. Hodge*, No. E2024-01455-CCA-R3-CD, 2025 WL 2828436, at *3 (Tenn. Crim. App. Oct. 6, 2025), *no perm. app. filed*.

With a guilty plea to the Class D felony of aggravated statutory rape and the Class A misdemeanor of contributing to the delinquency of a minor and no prior criminal record, Defendant was eligible for judicial diversion. *See* T.C.A. § 40-35-313(a)(1)(B). Mere eligibility for judicial diversion, however, does not entitle a defendant to judicial diversion. *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996). In determining whether to grant diversion, the trial court must consider the following factors: (a) the accused’s amenability to correction, (b) the circumstances of the offense, (c) the accused’s criminal record, (d) the accused’s social history, (e) the accused’s physical and mental health, (f) the deterrence value to the accused as well as others, and (g) whether judicial diversion will serve the interests of the public as well as the accused. *State v. Electroplating, Inc.*, 990 S.W.2d 211, 229 (Tenn. Crim. App. 1998).

The decision to grant or deny a qualified defendant judicial diversion “is entrusted to the discretion of the trial court.” *King*, 432 S.W.3d at 323 (citation omitted). This court will apply a presumption of reasonableness to a trial court’s decision regarding judicial diversion so long as the trial court considers the *Electroplating* factors, identifies the relevant factors, and explains on the record the reasoning for its decision. *Id.* at 326 (citing *State v. Bise*, 380 S.W.3d 682, 706 (Tenn. 2012)). In doing so, this court will uphold a trial court’s decision denying or granting judicial diversion so long as there is “any substantial evidence to support the trial court’s decision.” *Id.* (citation omitted). “‘Substantial evidence’ is ‘[e]vidence that a reasonable mind could accept as adequate to support a conclusion; evidence beyond a scintilla.’” *State v. Clark*, 452 S.W.3d 268, 280 (Tenn. 2014) (quoting Black’s Law Dictionary 640 (9th ed. 2009)). A trial court is “not required to utilize any ‘magic words’ or specifically reference the case names . . . when discussing the relevant factors in order to receive the presumption of reasonableness.” *King*, 432 S.W.3d at 327 n.8.

Here, although the trial court’s findings were minimal, the record shows it considered and weighed the *Electroplating* factors in denying Defendant’s request for judicial diversion. Thus, we will apply the presumption of reasonableness to the court’s decision. The trial court found that four of the factors weighed in favor of diversion: Defendant’s amenability to correction, Defendant’s lack of criminal record, his social

history, and his mental and physical health. However, the trial court found that the deterrence value to others, the possibility that the offense would not be on Defendant's record because "it is too serious of an offense for that," the large age gap, and the fact that the victim was "in a vulnerable state" weighed against diversion. The court then implicitly weighed those factors and ultimately concluded that the interest of justice would not be served by granting Defendant's request for judicial diversion. While the trial court did not analyze each of the factors in detail, it explained its reasoning for denying judicial diversion. *See State v. Bradley*, No. M2023-01542-CCA-R3-CD, 2024 WL 4579222, at *6 (Tenn. Crim. App. Sept. 12, 2024), *no perm. app. filed*; *State v. Moore*, No. E2014-01790-CCA-R3-CD, 2015 WL 4314107, at *4 (Tenn. Crim. App. July 15, 2015); *State v. Adinolfi*, No. E2013-01286-CCA-R3-CD, 2014 WL 2532335, at *4 (Tenn. Crim. App. June 2, 2014). We also note that the trial court found Defendant's testimony that he did not "recall exactly when he found out" the victim's age not credible, especially in light of Defendant's pleading guilty to knowing she was fourteen at the time of the offenses. A defendant's lack of candor can be an adequate reason for denying judicial diversion. *See State v. Nunley*, 22 S.W.3d 282, 289 (Tenn. Crim. App. 1999); *State v. Dowdy*, 894 S.W.2d 301, 306 (Tenn. Crim. App. 1994).

Defendant argues that under *Hooper*, the trial court erred by relying on deterrence to support the denial of judicial diversion because there was no deterrence information presented at the sentencing hearing. In *State v. Hooper*, our supreme court held that alternative sentencing may be denied based solely on the need for deterrence if the record contains evidence that "would enable a reasonable person to conclude that (1) deterrence is needed in the community, jurisdiction, or state; and (2) the defendant's incarceration may rationally serve as a deterrent to others similarly situated and likely to commit similar crimes." 29 S.W.3d 1, 13 (Tenn. 2000). Although we agree that there was no evidence presented on deterrence, the trial court did not rely solely on deterrence when it denied diversion. This court has "recognized that a trial court is not required to consider the *Hooper* factors where other factors also support denying judicial diversion." *Sheets*, 2023 WL 2908652, at *11 (Tenn. Crim. App. Apr. 12, 2023) (citing *State v. Myers*, No. E2021-00841-CCA-R3-CD, at *10 (Tenn. Crim. App. July 22, 2022)); *State v. Ward*, No. E2018-01781-CCA-R3-CD, 2019 WL 3244991, at *7 (Tenn. Crim. App. July 19, 2019). Thus, the trial court was not required to consider the *Hooper* factors.

The trial court was especially concerned about the facts and circumstances of the offense, finding them to be "especially violent, horrifying, shocking, and reprehensible." *State v. Hatfield*, No. E2018-00041-CCA-R3-CD, 2019 WL 91542, at *3 (Tenn. Crim. App. Jan. 3, 2019) (quoting *State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006) (finding that "the circumstances of the offense as committed must be especially violent, horrifying, shocking, reprehensible, offensive or otherwise of an excessive or exaggerated degree, and the nature of the offense must outweigh all factors favoring a sentence other than

confinement.”)). The facts of this case went beyond the offenses of aggravated statutory rape and contributing to the delinquency of a minor. The thirty-three-year-old Defendant picked up the fourteen-year-old victim behind a Mapco at 3:00 a.m. She had run away from home and was in obvious distress as she was barefoot and bloody. Despite Defendant’s claim that he did not initially know the victim’s age, both the victim and Defendant’s friend, Mr. Pack, said the victim told Defendant her age near the beginning of their encounter. Rather than taking the victim to the police or seeking help, Defendant drove her to his house where he, within a short period of time, had sexual intercourse with her multiple times. Defendant then made promises to the victim about marrying her and keeping her safe. Instead of keeping her safe, he drove her five to six hours to Mountain City and dropped her off in the woods near a rest area where she had to walk two miles to her friend’s house. The denial of diversion may be based solely on the nature and circumstances of the offense, so long as all of the other relevant factors have been considered, and this factor outweighs all others that might favorably reflect on the defendant’s eligibility. *See State v. Curry*, 988 S.W.2d 153, 158 (Tenn. 1999). Accordingly, we conclude the trial court did not err by denying judicial diversion based on the circumstances of this offense.

Even if we were to conduct a de novo review, based on these facts, Defendant is not entitled to relief.

II. Alternative Sentencing

The trial court has broad discretion to impose a sentence anywhere within the applicable range, regardless of the presence or absence of enhancement or mitigating factors, and “sentences should be upheld so long as the statutory purposes and principles, along with any applicable enhancement and mitigating factors, have been properly addressed.” *Bise*, 380 S.W.3d at 706. Accordingly, we review a trial court’s sentencing determinations under an abuse of discretion standard, “granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act.” *Id.* at 707. In *State v. Caudle*, our Supreme Court clarified that the “abuse of discretion standard, accompanied by a presumption of reasonableness, applies to within-range sentences that reflect a decision based upon the purposes and principles of sentencing, including the questions related to probation or any other alternative sentence.” 388 S.W.3d 273, 278-79 (Tenn. 2012). Under the Sentencing Act, trial courts are to consider the following factors when determining a defendant’s sentence and the appropriate combination of sentencing alternatives:

- (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 §§ 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; and
- (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.
- (8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

T.C.A. § 40-35-210(b).

The trial court must state on the record the factors it considered and the reasons for the ordered sentence. *Id.* § 40-35-210(e); *Bise*, 380 S.W.3d at 706. “Mere inadequacy in the articulation of the reasons for imposing a particular sentence . . . should not negate the presumption [of reasonableness].” *Bise*, 380 S.W.3d at 705-06. The party challenging the sentence on appeal bears the burden of establishing that the sentence was improper. T.C.A. § 40-35-401, Sentencing Comm’n Cmts.

Under the revised Tennessee sentencing statutes, a defendant is no longer presumed to be a favorable candidate for probation or any other alternative sentence, including community corrections. *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008) (citing T.C.A. § 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.” T.C.A. § 40-35-102(6).³ However, no criminal defendant is automatically entitled to probation as a matter of law. *State v. Davis*, 940 S.W.2d 558, 559 (Tenn. 1997). Instead, the defendant bears the burden of proving his or her suitability for alternative sentencing options. *Carter*, 254 S.W.3d at 347 (citing T.C.A. § 40-35-303(b)). The defendant must show that the alternative sentencing option imposed “will subserve the ends of justice and the best interests of both the public and the defendant.” *Hooper v. State*, 297 S.W.2d 78, 81 (Tenn. 1956), *overruled on other grounds*, *Hooper*, 29 S.W.3d at 9-10.

When imposing a sentence of full confinement, the trial court should consider whether:

³ A defendant convicted of a misdemeanor is not presumed eligible for alternative sentencing. *State v. Williams*, 914 S.W.2d 940, 949 (Tenn. Crim. App. 1995).

- (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 [.]

T.C.A. § 40-35-103(1)(A)-(C). In addition, the sentence imposed should be (1) “no greater than that deserved for the offense committed” and (2) “the least severe measure necessary to achieve the purposes for which the sentence is imposed.” *Id.* § 40-35-103(2), (4).

In this case, Defendant was eligible for probation because the imposed sentence was ten years or less. *Id.* § 40-35-303(a); *See State v. Langston*, 708 S.W.2d 830, 832-33 (Tenn. 1986). Additionally, the offense for which Defendant was convicted was not specifically excluded from probation under Tennessee Code Annotated section 40-35-303(a). Defendant was also considered as a favorable candidate for probation because he was convicted of a Class D felony and a Class A misdemeanor. T.C.A. § 40-35-102(6).

In denying alternative sentencing based solely on the seriousness of the offense, “the circumstances of the offense as committed must be especially violent, horrifying, shocking, reprehensible, offensive or otherwise of an excessive or exaggerated degree, and the nature of the offense must outweigh all factors favoring a sentence other than confinement.” *Trotter*, 201 S.W.3d at 654. However, this standard does not apply when the trial court considers another basis for denying probation. *See State v. Trent*, 533 S.W.3d 282, 293-94 (Tenn. 2017). Likewise, when the trial court considers another factor along with deterrence, it is not required to set forth the factors considered under *Hooper*. *Hooper*, 29 S.W.3d at 6; *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014)).

In this case, the trial court considered the seriousness of the offense, deterrence, the purposes and principles of sentencing, and the applicable enhancement and mitigating factors. The court found that confinement was necessary to avoid depreciating the seriousness of the offenses. The court also found that confinement was particularly suited to provide an effective deterrence to others likely to commit similar offenses after finding that the offense was “especially shocking, reprehensible, and that we need to provide a deterrent.” *See* T.C.A. § 40-35-103(1)(B). Because the trial court relied on more than one confinement factor in denying alternative sentencing, the heightened standards of *Hooper* and *Trotter* for imposing confinement do not apply. Even though it was not required to do so under *Trent*, the trial court found that the circumstances of the offense in this case were “especially shocking, reprehensible” and the record supports this finding. Defendant argues that the trial court’s admission that it wrestled between a sentence of split

confinement and full incarceration somehow invalidated the sentence. However, this is exactly what a sentencing court should do. Our supreme court has noted that “the imposition of a sentence on a criminal defendant is one of the most important decisions that trial courts are called upon to make because they invariably reduce a person’s liberty, often eliminating it entirely.” *Trent*, 533 S.W.3d at 292.⁴ The record supports the trial court’s denial of alternative sentencing. Defendant is not entitled to relief.

CONCLUSION

We conclude that the record supports the trial court’s denial of judicial diversion and alternative sentencing. The judgments of the trial court are affirmed.

s/ *Jill Bartee Ayers*
JILL BARTEE AYERS, JUDGE

⁴ Defendant also asserts that the trial court’s imposition of the minimum sentence somehow conflicts with the denial of alternative sentencing based on the egregiousness of the offenses. However, Defendant has not cited any authority, and we are not aware of any authority which supports such a proposition as these require two different analyses.