

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs August 4, 2026

FILED

08/17/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. FRANK WILBOURN, JR.

Appeal from the Circuit Court for Madison County
No. 24-402 Donald H. Allen, Judge

No. W2025-01104-CCA-R3-CD

The Defendant, Frank Wilbourn, Jr., was convicted by a Madison County jury of simple possession of cocaine, unlawful possession of a firearm by a felon previously convicted of a crime of violence, unlawful possession of a firearm by a felon previously convicted of a drug offense, and unlawful possession of a handgun by a convicted felon. Following a sentencing hearing, the trial court merged the Defendant's weapons convictions and imposed an effective sentence of twenty years' incarceration. On appeal, the Defendant argues that the trial court erred by denying his request for a jury instruction on the defense of necessity and that his sentence is excessive. Discerning no error, we affirm.

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

STEVEN W. SWORD, J., delivered the opinion of the court, in which JOHN W. CAMPBELL, SR., and STACY L. STREET, JJ., joined.

Jessica F. Butler, Assistant Public Defender – Appellate Division, Tennessee Public Defenders Conference (on appeal); Jeremy Epperson, District Public Defender; and Austin Bethany, Assistant District Public Defender (at trial), for the appellant, Frank Wilbourn, Jr.

Jonathan Skrmetti, Attorney General and Reporter; William Lundy, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Matthew A. Floyd, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

A. TRIAL

On June 3, 2024, a Madison County grand jury returned a five-count indictment charging the Defendant with simple possession of cocaine, simple possession of marijuana, unlawful possession of a firearm by a felon previously convicted of a crime of violence, unlawful possession of a firearm by a felon previously convicted of a drug offense, and unlawful possession of a handgun by a convicted felon. The Defendant proceeded to trial on February 12, 2025.

Jackson Police Department (JPD) Sergeant Jerrod Cobb testified that he led the JPD's vice unit. Sergeant Cobb stated that he, along with several other officers and a SWAT team, executed a search warrant for the Defendant's home on June 22, 2023. Upon approaching the Defendant's home, Sergeant Cobb saw the Defendant standing on his porch and another man standing in front of the Defendant's home. The SWAT team proceeded towards the Defendant's home and asked him to step away from his property so the team could secure the scene. The Defendant complied, and a member of the SWAT team escorted him to Sergeant Cobb.

Sergeant Cobb testified that he identified the Defendant, placed him in handcuffs, and then asked whether he had "anything on him." The Defendant responded that he had a firearm in his back pocket. Sergeant Cobb lifted the Defendant's shirt and saw the firearm in the Defendant's back pocket. Sergeant Cobb described the firearm as a .32 caliber revolver of an unknown brand loaded with six .32 caliber rounds. Sergeant Cobb removed the firearm from the Defendant's back pocket and placed it on the porch of a nearby home; he later collected the firearm into evidence.

Sergeant Cobb recalled that he thereafter performed a search of the Defendant's person and recovered "[s]ome marijuana and some money," as well as a set of keys. Sergeant Cobb asked the Defendant about the marijuana he recovered, and the Defendant responded that "he s[old] a little bit of weed." Sergeant Cobb testified that the marijuana was contained in a baggie and that it weighed approximately 6.1 grams. Sergeant Cobb collected the marijuana into evidence and later sent it to the Tennessee Bureau of Investigation (TBI) for examination.

Sergeant Cobb testified that he and the other officers then conducted a search of the Defendant's home. During the search of the Defendant's front porch, Sergeant Cobb noticed items that he described as "some crack [cocaine], some sort of pill, a little piece of a plastic baggie corner, and some other residue" on a table. He noted that coins and a cigarette were also present on the table. Sergeant Cobb testified that the cocaine weighed

approximately 1.4 grams. Sergeant Cobb collected the cocaine into evidence and later sent it to the TBI for examination.

Sergeant Cobb recalled that there was a lot of “trash and debris” both inside and outside the Defendant’s home. He also noted that the home had an odor which he associated with “sewage and death.” After an officer equipped with a respirator entered the Defendant’s home and performed “somewhat of a search,” Sergeant Cobb advised the officers to conclude the search out of concern for their safety.

Sergeant Cobb testified that he was familiar with the Defendant’s criminal history, and he described the Defendant as a convicted felon. Through Sergeant Cobb’s testimony, the State introduced certified copies of the Defendant’s convictions of theft of property valued more than \$10,000 in Madison County case number 97-307, dated February 11, 1999; aggravated assault in Madison County case number 98-502, dated February 11, 1999; and manufacturing marijuana in Madison County case number 14-64, dated June 19, 2014.

On cross-examination, Sergeant Cobb described the Defendant as cooperative throughout his arrest and the search of his property. He stated that the other man present during the search was arrested and separately charged. He was unsure whether the firearm he recovered from the Defendant’s person was operable.

JPD Lieutenant Rodney Anderson testified that he assisted in the execution of the search warrant for the Defendant’s home on June 22, 2023. He stated that he primarily assisted Sergeant Cobb and that he observed most of the interaction between Sergeant Cobb and the Defendant. He described the Defendant as cooperative throughout his arrest and the search of his property. He testified that Sergeant Cobb recovered a firearm and marijuana following a search of the Defendant’s person. Lieutenant Anderson was unsure whether the firearm was operable.

TBI Special Agent Carter Depew testified as an expert in forensic chemistry. Special Agent Depew testified that she worked for the TBI’s Forensic Chemistry Unit and that she tested a “plant material” and a substance sealed in an envelope in this case. She identified the plant material as 5.09 grams of cannabis and presumptively identified it as marijuana. She identified the other substance as 1.49 grams of cocaine. Agent Depew testified that marijuana was classified as a Schedule VI controlled substance and that cocaine was classified as a Schedule II controlled substance.

On cross-examination, Special Agent Depew agreed that she was unable to identify the plant material she tested as marijuana with complete certainty. However, she averred

that marijuana is a subset of the cannabis plant and that her analysis presumptively identified the plant material she tested as marijuana.

After the State rested, the Defendant testified that he and a friend were “getting high” together by smoking cocaine and marijuana when officers approached his home on June 22, 2023. The Defendant described his drug use as an “ongoing struggle” and stated that he had used drugs regularly for ten to fifteen years. The Defendant testified that he carried a “little pistol” in his pocket at the time of his arrest. He stated that he purchased this firearm approximately one week before his arrest and that he began carrying it for his personal safety; however, he noted that he had never fired it and was unsure whether it was operable. He opined that he sometimes felt unsafe in his neighborhood and described it as “rough.” The Defendant testified that he had previously been the victim of an attempted robbery in which an assailant cut his throat.

On cross-examination, the Defendant agreed that marijuana was recovered from his person following his arrest and that officers recovered cocaine from his property. The Defendant stated that he was under the influence of drugs and was not “thinking right” when he purchased the firearm. He stated that he purchased the firearm from “some guy” in his neighborhood and that he had not checked whether it was operable since purchasing it because he was “busy getting high.” He opined that he “always fe[lt] threatened in [his] neighborhood” and that he never knew when he might be threatened. However, the Defendant conceded that he did not feel as though he was in any danger “at that time” and that he did not feel threatened by the friend with whom he was using drugs at the time of his arrest.

On redirect examination, the Defendant testified that he had lived in his neighborhood for approximately five years. He described his neighborhood as unpredictable and reiterated that he purchased the firearm for his personal safety and did not intend to harm anyone with it. On recross-examination, the Defendant stated that it “never crossed [his] mind” to check whether the firearm was loaded and that he would “throw” it at an assailant if he felt threatened.

At the close of proof, and outside the jury’s presence, the Defendant requested that the trial court instruct the jury on the defense of necessity regarding his possession of the firearm. The Defendant argued that the defense was fairly raised by his testimony that his neighborhood was “very dangerous” and that he had been previously assaulted. He contended that his possession of the firearm was immediately necessary to avoid imminent harm from “the unpredictability of the people in the neighborhood.” The trial court denied the Defendant’s request and found that the Defendant presented no proof that he was in danger of imminent harm at the time of his arrest.

Upon this proof, the jury acquitted the Defendant of simple possession of marijuana and otherwise convicted him as charged. The trial court scheduled a sentencing hearing.

B. SENTENCING

The trial court held a sentencing hearing on April 10, 2025. At the outset of the sentencing hearing, the State introduced a copy of the Defendant's presentence report and certified copies of his convictions of sale and delivery of cocaine and assault with the intent to commit first degree murder with a firearm in Madison County case number 87-410, dated October 5, 1987; theft of property valued at more than \$10,000 in Madison County case number 97-307, dated February 11, 1999; aggravated assault in Madison County case number 98-502, dated February 11, 1999; and manufacturing marijuana in Madison County case number 14-64, dated June 19, 2014.

The Defendant testified that his criminal record spanned more than thirty years and began in 1987 with a conviction relating to his use of cocaine. He stated that most of his subsequent offenses related to his drug use, and he opined that he was not "out in the community committing [any] crimes" and "was just on drugs." He testified that he was capable of rehabilitation.

The State argued that the Defendant qualified as a Range II, multiple offender and that his criminal record, his past failure to comply with the conditions of his probation, and his commission of the offenses in the instant case while released on bond in a separate case justified an enhanced sentence. Accordingly, the State requested that the trial court impose an effective sentence of twenty years, eleven months, and twenty-nine days' incarceration.

The Defendant conceded that he qualified as a Range II, multiple offender. As mitigating proof, the Defendant noted that he was cooperative with law enforcement and was not engaged in any violent behavior at the time of his arrest. Although the Defendant conceded that he had a lengthy criminal record, he noted that it included "a substantial amount of time" during which he did not commit any offenses. The Defendant also asked that the trial court consider his request for assistance in seeking treatment for his drug addiction and his positive employment record. He noted that the results of his validated risk and needs assessment indicated that he presented a low risk for recidivism. Accordingly, the Defendant requested that the trial court impose an effective sentence of twelve years' incarceration.

After considering the purposes and principles of sentencing, the presentence report, the arguments of counsel, the evidence presented at the hearing, the nature and characteristics of the criminal conduct involved, the applicable enhancement and mitigating factors, the relevant statistical information provided by the Administrative

Office of the Courts, the Defendant's testimony, and the Defendant's potential for rehabilitation, the trial court concluded that the Defendant qualified as a Range II, multiple offender. The trial court also merged the Defendant's firearms convictions.

The trial court applied enhancement factors (1) and (8), finding that the Defendant had "a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range" and that the Defendant, "before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community." Tenn. Code Ann. § 40-35-114(1), (8). The trial court found that the Defendant had an "extensive history of criminal convictions," beginning with his convictions of both sale and delivery of cocaine and assault with the intent to commit first degree murder with a firearm in 1987. The Defendant was placed on parole for those offenses and was convicted of driving on a suspended license in 1993. In 1994, the Defendant absconded from his parole and was returned to the Tennessee Department of Correction; his parole was later revoked, and the Defendant remained in prison until 1995. On February 9, 1999, the Defendant was convicted of theft of property valued at more than \$10,000 and aggravated assault, for which he received sentences of six years' incarceration suspended to six months' probation. A probation revocation warrant was issued on July 21, 1999, and the Defendant's probation was revoked on November 9, 1999. On October 14, 1999, the Defendant was convicted of criminal impersonation and possession of drugs. The Defendant was convicted of possession of less than one-half ounce of marijuana, possession of drug paraphernalia, and manufacturing marijuana in 2014, for which he received an effective sentence of two years' incarceration. The Defendant was placed on determinate release for those convictions. The Defendant's probation was revoked on February 19, 2015, and he was convicted of two counts each of driving on a suspended license and violating the financial responsibility law on April 15, 2014. On August 28, 2018, the Defendant was again convicted of driving on a suspended license and violating the financial responsibility law. The trial court further found that on September 14, 2022, the Defendant was arrested and charged with simple possession of cocaine in Madison County case number 23-770. The Defendant was released on bond in that case and was arrested in the instant case on June 23, 2023. While released on bond, the Defendant was arrested and charged with possession of drugs in Jackson City Court case number 24-CR-2091. The trial court found that the Defendant was ultimately convicted in both Madison County case number 23-770 and Jackson City Court case number 24-CR-2091. The trial court noted that it accorded enhancement factors (1) and (8) "great weight."

The trial court found that no mitigating factors applied. The trial court noted that the Defendant's employment history, as summarized by his presentence report, was "not good at all." The trial court stated that it had a "hard time understanding" how the Defendant's validated risk and needs assessment concluded that he presented a low risk of recidivism because the Defendant "keeps getting arrested on various charges. He keeps

posting bond, and then he keeps getting arrested on new charges.” The trial court further found that the Defendant’s testimony that he was amenable to rehabilitation and would submit to drug treatment was not credible because the Defendant had been given multiple previous “opportunities for rehabilitation” and had “simply fail[ed] to take advantage of any type of treatment options.” Accordingly, the trial court imposed an effective sentence of twenty years’ incarceration, aligned consecutively to the Defendant’s sentences in Madison County case number 23-770 and Jackson City Court case number 24-CR-2091. The Defendant filed a timely, but unsuccessful, motion for a new trial. This timely appeal followed.

II. ANALYSIS

On appeal, the Defendant argues that the trial court erred by denying his request for a jury instruction on the defense of necessity and that his sentence is excessive. The State responds that the trial court did not err. We will consider these issues in turn.

A. JURY INSTRUCTION

The Defendant first contends that the trial court erred by denying his request for a jury instruction on the defense of necessity. He argues that his testimony that he lived in a dangerous neighborhood in which he had been previously assaulted fairly raised the general defense of necessity and warranted a jury instruction on the defense. The State responds, and we agree, that the trial court appropriately denied the Defendant’s request because there was insufficient proof that his illegal conduct was immediately necessary to avoid any imminent harm.

A criminal defendant has a constitutional right to a trial by jury. *See* U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]”); Tenn. Const. art. I, § 9 (providing “[t]hat in all criminal prosecutions, the accused hath the right . . . in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed[.]”). Encompassed within a criminal defendant’s right to a jury trial is the right to have the jury charged fully and accurately regarding the applicable law. *Cauthern v. State*, 145 S.W.3d 571, 600 (Tenn. Crim. App. 2004). Trial courts have an affirmative duty to safeguard this right by providing, without request, “proper jury instructions as to the law governing the issues raised by the nature of the proceeding and the evidence introduced at trial.” *State v. Hawkins*, 406 S.W.3d 121, 129 (Tenn. 2013). This duty extends to general defenses when they are fairly raised by the proof at trial. Tenn. Code Ann. § 39-11-203(c). In other words, the trial court must only charge the jury regarding a general defense when the admissible evidence fairly raises it. *Hawkins*, 406 S.W.3d at 129. In determining whether a general

defense has been fairly raised by the admissible evidence, the trial court “must consider the evidence in the light most favorable to the defendant and draw all reasonable inferences in the defendant’s favor.” *State v. Perrier*, 536 S.W.3d 388, 403 (Tenn. 2017). Because this inquiry presents mixed questions of fact and law, we review an appellant’s challenge to the propriety of the jury instructions at his or her trial de novo. *State v. Cole-Pugh*, 588 S.W.3d 254, 259-60 (Tenn. 2019).

Necessity is a general defense that provides that a person’s otherwise unlawful “conduct is justified, if (1) [t]he person reasonably believes the conduct is immediately necessary to avoid imminent harm; and (2) [t]he desirability and urgency of avoiding the harm clearly outweigh the harm sought to be prevented by the law proscribing the conduct, according to ordinary standards of reasonableness.” Tenn. Code Ann. § 39-11-609; *see also State v. Green*, 995 S.W.2d 591, 605 (Tenn. Crim. App. 1998) (noting that necessity is a general defense and comparing it to affirmative defenses). At the heart of a necessity defense is the balancing test “between the harm caused by the conduct constituting an offense[] and the harm the defendant sought to avoid by the conduct.” Tenn. Code Ann. § 39-11-609, Sentencing Comm’n Cmts. Where the criminal conduct is equivalent to or greater than the harm the accused sought to avoid, necessity’s balancing test will not be satisfied, and the defense will not be available. *See State v. Craft*, No. W2023-00152-CCA-R3-CD, 2024 WL 225363, at *8 (Tenn. Crim. App. Jan. 22, 2024), *perm. app. denied* (Tenn. June 21, 2024). As our supreme court has previously noted, the defense of necessity will only lie in those “extremely rare situations in which criminal activity is an objectively reasonable response to an extreme situation.” *Cole-Pugh*, 588 S.W.3d at 261 (quoting W. Mark Ward, *Tenn. Crim. Trial Practice* § 23:16 (Oct. 2018 update)) (internal quotation marks omitted).

Necessity also contemplates whether the criminal conduct was an “immediately necessary action, justifiable because of an imminent threat, where the action is the only means to avoid the harm.” *State v. Davenport*, 978 S.W.2d 283, 287 (Tenn. Crim. App. 1998). In other words, the defense recognizes situations in which a defendant is faced with “a choice of evils.” *Green*, 995 S.W.2d at 606 (quoting *United States v. Bailey*, 444 U.S. 409-10 (1980)) (internal quotation marks omitted). A defendant’s “need to choose the lesser evil must be both imminent and necessary in the sense that the defendant must have a reasonable belief that there is going to be immediate harm and the only way to avoid the harm is by committing the lesser evil.” *Cole-Pugh*, 588 S.W.3d at 261 (quoting W. Mark Ward, *Tenn. Crim. Trial Practice* § 23:16 (Oct. 2018 update)) (internal quotation marks omitted). This consideration is the crux of the instant case. The Defendant concedes that, as a convicted felon, his possession of a firearm was a criminal act; however, he asserts that this act was justifiable because of the imminent threat of the dangerous character of his neighborhood. He contends that his testimony established that he felt both a “general and specific fear of violence” as a resident of his neighborhood, noting that he testified that

he was the victim of an attempted robbery in which an assailant cut his throat. He contends that this proof warranted an instruction on the defense of necessity.

The evidence adduced at trial, viewed in the light most favorable to the Defendant, did not fairly raise the general defense of necessity. The Defendant testified that he purchased a firearm to protect his personal safety approximately one week prior to his arrest. He explained that he “always” felt threatened in his neighborhood and that he had previously been the victim of violence in the neighborhood. Although we do not intend to disparage the sincerity of the Defendant’s concerns for his personal safety, his testimony regarding his “general and specific fear of violence” does not constitute proof that his criminal possession of a firearm was immediately necessary to avoid imminent harm to warrant a necessity instruction. In the context of a necessity defense, the Tennessee Pattern Jury Instructions define “imminent” as “near at hand; on the point of happening.” T.P.I.—Crim 40.05 (26th ed. 2022). Additionally, in the context of “a danger or calamity,” Black’s Law Dictionary defines “imminent” as “threatening to occur immediately; dangerously impending.” *Imminent*, Black’s Law Dictionary (12th ed. 2024). The Defendant’s testimony satisfied neither definition. His testimony that he generally “always” felt threatened in his neighborhood does not pertain to any specific looming threat to which his criminal conduct was immediately necessary. Further, although he testified that he had previously been the victim of an attempted robbery in which his throat was cut, that previous condition was not present at the time of his arrest. In fact, the Defendant testified that he did not feel in danger at the time of his arrest. Because necessity requires proof that a defendant’s criminal conduct is immediately necessary to avoid an imminent harm, the Defendant’s concerns regarding a past threat not present at the time of his arrest cannot serve as the basis for a necessity defense. *See, e.g., State v. Armstrong*, No. W2022-01397-CCA-R3-CD, 2023 WL 5344386, at *6 (Tenn. Crim. App. Aug. 21, 2023) (concluding that a necessity defense was not fairly raised by the proof at trial where the defendant, a convicted felon, testified that he stored a shotgun in his vehicle out of concern for the safety of a housemate who “expressed suicidal ideation at some point in the past” because the housemate “did not mention any intent to harm herself or others” and “had previously searched [the vehicle] and saw the shotgun”), *no perm. app. filed*; *State v. Brown*, No. E2019-02222-CCA-R3-CD, 2021 WL 1625414, at *13 (Tenn. Crim. App. Apr. 27, 2021) (concluding that a necessity defense was not fairly raised by the proof at trial where the defendant, a convicted felon, testified regarding “prior threats from gang members and a prior instance where someone fired a gun in his direction” because “when [the d]efendant was arrested, no one was in the vicinity threatening [him] or anyone else”), *no perm. app. filed*. Accordingly, the trial court did not err by denying the Defendant’s request for a jury instruction on the defense of necessity.

B. SENTENCING

The Defendant also argues that his effective sentence of twenty years' incarceration is excessive. He contends that the trial court abused its discretion by heavily weighing his criminal history in determining his sentence and by finding that no mitigating factors applied. The State responds, and we agree, that the trial court did not abuse its discretion.

We review a trial court's sentencing determinations for abuse of discretion. *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). Additionally, where the trial court imposes a within-range sentence, "and the record demonstrates that the sentence is otherwise in compliance with the purposes and principles" of the Sentencing Act, we afford its sentencing determinations a presumption of reasonableness. *Id.* A trial court abuses its discretion in the context of sentencing determinations by applying an incorrect standard of law or reaching a decision contrary to logic or reasoning which causes prejudice to the complaining party. *State v. Bonds*, 502 S.W.3d 118, 166 (Tenn. Crim. App. 2016) (citing *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)).

Included among the purposes and principles of the Sentencing Act is the balancing consideration that "the sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed" while also acting as an effective deterrent to future violations of the law. *See* Tenn. Code Ann. §§ 40-35-102(3)(A), -103(4). The trial court must also 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 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.

Id. § -210(b). Although the trial court is not required to make particularly lengthy or detailed findings on the record in its consideration of these factors, it must nevertheless "set forth enough to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis" for imposing the sentence. *Bise*, 380 S.W.3d at 706 (citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007)).

The trial court's misapplication of an enhancement or mitigating factor does not serve to invalidate a defendant's sentence. *Bise*, 380 S.W.3d at 707. So long as it appears from the record that the trial court imposed a within-range sentence which complies with the purposes and principles of the Sentencing Act, we will afford its decision a presumption of reasonableness and will not invalidate it notwithstanding its erroneous application of an enhancement or mitigating factor. *Id.*; see also *State v. Fusco*, 404 S.W.3d 504, 548 (Tenn. Crim. App. 2012). Additionally, the trial court's weighing of the applicable enhancement and mitigating factors is discretionary, and a defendant's disagreement with that discretionary determination is not a valid ground for appeal. *Bise*, 380 S.W.3d at 706; see also *State v. Earley*, 719 S.W.3d 228, 253 (Tenn. Crim. App. 2025).

The Defendant specifically challenges his sentence for his conviction of unlawful possession of a firearm by a felon previously convicted of a crime of violence, a Class B felony. Tenn. Code Ann. § 39-17-1307(b)(1)(A), (2). The State argued, and the Defendant conceded, that the Defendant qualified as a Range II, multiple offender. The trial court accepted this concession, and the record supports that range classification. See *id.* § 40-35-106(a)(1). Thus, the appropriate sentencing range for the Defendant's conviction was between twelve and twenty years' incarceration, and his sentence of twenty years' incarceration was within that range. *Id.* § -112(b)(2).

The Defendant contends that the trial court departed from the purposes and principles of sentencing by placing undue weight on his criminal history and that the record does not otherwise support the imposition of a twenty-year sentence. The Defendant notes that he is sixty years old and that his sentence is, "in essence, a life sentence." He also notes that he presented proof in mitigation of his willingness to cooperate with drug treatment, his employment history, and his low risk of recidivism, and he contends that the trial court abused its discretion by concluding that no mitigating factors applied by finding that the Defendant was unwilling to submit to drug treatment, his employment history was "not good," and he presented a high risk of reoffending.

The Defendant's arguments are, at their core, disagreements with the weight the trial court placed upon the enhancement and mitigating factors. As our appellate courts have repeatedly reaffirmed, such arguments are no longer valid grounds for appeal. *Bise*, 380 S.W.3d at 706; see also, e.g., *State v. Hinton*, No. W2024-01279-CCA-R3-CD, 2025 WL 1752531, at *10 (Tenn. Crim. App. June 25, 2025), *perm. app. denied* (Tenn. Oct. 9, 2025); *State v. Gaines*, No. M2023-01389-CCA-R3-CD, 2025 WL 1514049, at *10 (Tenn. Crim. App. May 28, 2025), *perm. app. denied* (Tenn. Oct. 8, 2025); *State v. Treadway*, No. E2024-00608-CCA-R3-CD, 2025 WL 252671, at *5 (Tenn. Crim. App. Jan. 21, 2025), *no perm. app. filed*. Regardless, the record supports the trial court's heavy consideration of the Defendant's criminal record. The trial court thoroughly detailed the Defendant's

lengthy history of criminal convictions, and its findings are corroborated by the Defendant's presentence report.

Additionally, we note that inasmuch as the Defendant contends that nothing else in the record supports the imposition of a maximum within-range sentence in this case, he is, respectfully, incorrect. The trial court also applied enhancement factor eight, finding that the Defendant, "before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community." Tenn. Code Ann. § 40-35-114(8). The trial court found that the Defendant had repeatedly failed to comply with the terms of his probation, that he had committed the offenses in the instant case while released on bond in Madison County case number 23-770, and that he had committed the offenses in Jackson City Court case number 24-CR- 2091 while released on bond in the instant case. The record supports this finding.

The Defendant also contends that the trial court erred by concluding that no mitigating factors applied, citing the results of his validated risk and needs assessment and his testimony. Although the trial court must consider the results of the validated risk and needs assessment in fashioning a defendant's sentence, "the statute does not mandate that any particular weight be given to [the assessment], and the weight to be assigned to the assessment falls within the trial court's broad discretionary authority." *State v. Pace*, No. W2022-01092-CCA-R3-CD, 2023 WL 6626457, at *2 (Tenn. Crim. App. Sept. 1, 2023), *perm. app. denied* (Tenn. Apr. 11, 2024). The trial court considered the results of the Defendant's validated risk and needs assessment and found that they did not support the application of any mitigating factors. Similarly, the trial court, as the trier of fact during a sentencing proceeding, is in the best position to determine witness credibility; accordingly, we will not disturb its "findings of fact in this regard unless the evidence contained in the record clearly preponderates against" them. *State v. Raines*, 882 S.W.2d 376, 383 (Tenn. Crim. App. 1994). In determining that no mitigating factors applied, the trial court found that the Defendant's testimony regarding his amenability for rehabilitation and his desire to seek drug treatment was not credible in light of the previous "opportunities for rehabilitation" in which the Defendant "simply fail[ed] to take advantage of any type of treatment options." The record corroborates the trial court's findings regarding the Defendant's extensive criminal history and does not preponderate against its credibility determination. Nevertheless, we note that "the application of a single enhancement factor is sufficient to justify the imposition of the maximum sentence in the range, even when mitigating factors are also applied." *State v. Moore*, No. W2015-01483-CCA-R3-CD, 2016 WL 7654955, at *5 (Tenn. Crim. App. Aug. 23, 2016), *perm. app. denied* (Tenn. Dec. 15, 2016). Because the trial court did not abuse its discretion in imposing the Defendant's within-range sentence, he is not entitled to relief.

III. CONCLUSION

Following our review of the record and based upon the foregoing analysis, we affirm the judgments of the trial court.

s/ *Steven W. Sword*

STEVEN W. SWORD, JUDGE