

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON**

STATE OF TENNESSEE,)	
)	
Appellee,)	
)	SHELBY COUNTY
v.)	W2025-01345-CCA-R3-CD
)	
NAKEAVIOUS MILAN,)	
)	
Appellant.)	

**ON APPEAL AS OF RIGHT FROM THE JUDGMENT
OF THE SHELBY COUNTY CRIMINAL COURT**

BRIEF OF THE STATE OF TENNESSEE

**JONATHAN SKRMETTI
Attorney General and Reporter**

**G. KIRBY MAY
Assistant Attorney General
Criminal Appeals Division
40 South Main Street, Suite 1014
Memphis, TN 38103-1877
(901) 348-3957
Kirby.May@ag.tn.gov
B.P.R. No. 021587**

TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	5
STATEMENT OF THE CASE	6
STATEMENT OF THE FACTS	7
ARGUMENT	15
I. The Trial Court Acted Within Its Broad Discretion When It Denied the Defendant’s Request for Probation.....	15
A. Standard of review	15
B. Manner of Sentence	16
C. Seriousness of Offense	19
D. Need for Deterrence	21
E. Defendant’s Record of Juvenile Adjudications.....	22
F. Mitigation.....	23
II. The Trial Court Properly Considered the Defendant’s Grandmother’s Testimony in Denying Defendant’s Request for Probation.	25
III. The Trial Court Acted Within Its Discretion in Judging the Defendant’s Credibility.....	27
CONCLUSION	29
CERTIFICATE OF COMPLIANCE.....	30

TABLE OF AUTHORITIES

CASES

<i>State v. Ashby</i> , 823 S.W.2d 166 (Tenn. 1991)	18
<i>State v. Bise</i> , 380 S.W.3d 682 (Tenn. 2012)	15, 16, 23, 24
<i>State v. Boggs</i> , 932 S.W.2d 467 (Tenn. Crim. App. 1996)	18
<i>State v. Brooks</i> , No. W2015-00833-CCA-R3-CD, 2017 WL 758519 (Tenn. Crim. App. Feb. 27, 2017).....	24
<i>State v. Carter</i> , 254 S.W.3d 335 (Tenn. 2008)	16, 17
<i>State v. Caudle</i> , 388 S.W.3d 273 (Tenn. 2012)	16
<i>State v. Davis</i> , 940 S.W.2d 558 (Tenn. 1997)	16
<i>State v. Francis</i> , No. M2022-01777-CCA-R3-CD, 2024 WL 4182870 (Tenn. Crim. App. Sept. 13, 2024)	27
<i>State v. Freeman</i> , 943 S.W.2d 25 (Tenn. Crim. App. 1996)	16
<i>State v. Fusco</i> , 404 S.W.3d 504 (Tenn. Crim. App. 2013)	16
<i>State v. Hooper</i> , 29 S.W.3d 1 (Tenn. 2000)	21
<i>State v. King</i> , 432 S.W.3d 316 (Tenn. 2014)	24
<i>State v. Mangrum</i> , 403 S.W.3d 152 (Tenn. 2013)	16

<i>State v. Pierce</i> , 138 S.W.3d 820 (Tenn. 2004)	20
<i>State v. Pollard</i> , 432 S.W.3d 851 (Tenn. 2013)	18
<i>State v. Sihapanya</i> , 516 S.W.3d 473 (Tenn. 2014)	24
<i>State v. Souder</i> , 105 S.W.3d 602 (Tenn. Crim. App. 2002)	27
<i>State v. Trotter</i> , 201 S.W.3d 651 (Tenn. 2006)	16, 19

STATUTES

Tenn. Code Ann. § 40-35-102(6)(A)	17
Tenn. Code Ann. § 40-35-102(6)(D).....	17
Tenn. Code Ann. § 40-35-103	17
Tenn. Code Ann. § 40-35-103(1)(A)-(C).....	18
Tenn. Code Ann. § 40-35-103(2).....	18
Tenn. Code Ann. § 40-35-103(4).....	18
Tenn. Code Ann. § 40-35-210	17
Tenn. Code Ann. § 40-35-210(d).....	16
Tenn. Code Ann. § 40-35-303(a).....	16
Tenn. Code Ann. § 40-35-401	16

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

Whether the trial court acted within its broad discretion by denying probation, when it properly considered the evidence presented at the sentencing hearing, the presentence report, and the arguments of counsel as to the mitigating factors and determined the circumstances of the offense, the need for deterrence, and the defendant's prior record weighed against granting probation. (Def.'s Issues II-IV, VI.)¹

II.

Whether the court properly considered the defendant's grandmother's testimony about the effect of the defendant's actions on their family and the potential of his incarceration in denying the defendant's request for probation. (Def.'s Issue I.)

III.

Whether the trial court properly determined the defendant's testimony at the sentencing hearing lacked credibility. (Def.'s Issue V.)

¹ The defendant's number of his issues is not consistent between the Issues Presented for Review (Def.'s Br. at 7) and the order of issues addressed in his Argument (Def.'s Br. at 23-34). The State's number of issues will follow and combine the issues listed in the Issues Presented for Review.

STATEMENT OF THE CASE

On October 24, 2023, the Shelby County Grand Jury returned an indictment against the defendant, Nakeavious Milan, for the premeditated first-degree murder of Adrain Milan. (I, 1-2.) As part of a negotiated plea agreement, the defendant pled guilty to the lesser-included offense of voluntary manslaughter with an agreed sentence of eight years out of Range as a Range II offender to be served at 100% service of sentence. (I, 12-13; II, 4-6.) Per the negotiated plea, the trial court would determine the manner of service of his sentence. (I, 12-13; II, 5-6.)

The defendant filed a sentencing memorandum requesting he be placed on probation for the full term of his sentence and outlining his arguments for alternative sentencing, including a request for the court to consider certain statutory mitigating factors. (III, Ex. 2.) He also filed a notice of mitigating factors requesting the court apply specific statutory factors. (I, 14-15.)

On the same day as the guilty plea, the trial court conducted a sentencing hearing. (II, 12-85.) Later, the trial court filed its written findings of fact and conclusions of law in which the court determined the defendant's request for probation should be denied, and it entered the judgment. (I, 16-27.) Thereafter, the defendant filed a timely notice of appeal. (I, 28.)

STATEMENT OF THE FACTS

Underlying Facts

During the plea colloquy the State placed on the record the following factual allegations supporting the defendant's conviction for voluntary manslaughter:

[O]n or about Saturday, February 4, 2023, officers responded to a shooting in the 3500 block of Kruger Road. Upon their arrival, they located the victim . . . laying in the middle of the street suffering from what appeared to be gunshot wounds. Fire department made the scene and pronounced the victim deceased. There was a witness, Ms. C. Booker[,] who advised that she was in the vehicle with [the victim] when the victim drove down Kruger Road and saw [the defendant's] vehicle backed into the driveway. The victim stopped and exited the vehicle, approached the defendant's vehicle, and the witness advised soon after she observed fire sparks coming from inside the defendant's vehicle and she heard several gunshots. She then saw the victim run to the front of the defendant's vehicle and fall in front of the headlights. She observed [the defendant] stand over the victim and continue to shoot him. The witness stated that that's when she jumped in the driver's seat and sped off. She did identify [the defendant] in a photo lineup as the person she saw shoot and kill [the victim]. . . . [T]he relationship between the victim and the defendant is . . . is uncle and nephew.

(II, 6-7.) At the conclusion of this recitation of facts, the defense counsel stipulated to the factual basis for the plea. (II, 7.) During the plea colloquy, the court stated, "you've heard all the facts as they were stated on the record" and asked the defendant, "are those facts true," and the defendant responded, "Yes, ma'am." (II, 8.) After the plea colloquy, the trial court accepted the plea. (II, 7-11.)

Sentencing Hearing

Captain Michelle Hunt, a corrections officer at the Shelby County jail, testified that she had been a corrections officer for twenty-three years and had worked in the Shelby County jail on and off for approximately ten years. (II, 12.) She stated that she met the defendant during her work at the Shelby County jail. (II, 12.) Captain Hunt testified that the defendant was engaged in various programs offered by the jail, including book clubs, religious services, Memphis Allies program, and the First Time Felonies program. (II, 12-14.) She testified the defendant was allowed to work in an administrative position cleaning the facility. (II, 15.) Captain Hunt stated she had spoken “briefly” with the defendant about the factual allegations of the offense and indicated the defendant had “taken ownership of what happened,” and “knows that what he did was wrong.” (II, 16.) Captain Hunt stated that she believed the defendant could be successful if placed on probation. (II, 17.)

The defendant testified on his own behalf. (II, 19-56.) He stated that at the time of the offense he was nineteen years old. (II, 19, 25.) The defendant stated that he finished high school and after high school he began working and taking classes in welding. (II, 23-25.) He discussed plans to continue his education if released on probation. (II, 43-44.) The defendant discussed the various programs he had participated in while incarcerated at the Shelby County jail. (II, 39-41.) The defendant indicated he was close with his immediate family; but, stated that within his extended family there were “arguments and aggression” and “a lot of drama” and testified there were at times physical violence between family members. (II, 21-22.)

The defendant testified that the victim in this case was his uncle and revealed that they did not have a relationship when he was growing up because his uncle was incarcerated. (II, 22.) He stated the victim had a reputation for violence. (II, 22.) The defendant testified that during the month leading up to the shooting the victim and his mother had been arguing, but he asserted that he did not know the reason for the argument and did not personally witness an incident in which the victim allegedly robbed his mother and her boyfriend. (II, 26-27.) But he alleged he did witness another incident where the victim pulled up in his car and pointed a gun at his mother. (II, 28.) The defendant contended the victim told his mother that, if she did not “pay him seven thousand dollars he was going to kill her.” (II, 28.) He alleged that he told his grandmother and his grandmother stated she would call his uncle’s “PO” and “put an ending to it.” (II, 28.) However, the defendant acknowledged he did not know what happened after that. (II, 30.) He stated he did not report the incident to police. (II, 28.)

The defendant testified that on February 4, 2023, he was on Kruger Street in North Memphis in the driver seat of his godfather’s truck. (II, 29-31, 45.) The defendant stated he was backed into the driveway of a house when the victim pulled up in his car and blocked the defendant’s truck in the driveway. (II, 30-33, 45.) At one point, the defendant asserted the victim, “hopped out the car with a gun and ran up to the passenger seat, like to the driver’s seat.” (II, 33.) Later, he stated, “when he hopped out the car and walked to my driver’s side[,] he was raising his hand.” (II, 33.) The defendant claimed the victim had his “finger on the trigger.” (II, 33.) The defendant asserted that he grabbed his gun and

fired out the window about eight times “all at once.” (II, 34-35, 46.) The defendant denied getting out his truck and standing over the victim and shooting the victim while the victim was on the ground. (II, 36, 46.) He stated he did not call 911 after the shooting because he knew he’d have to go to jail. (II, 38.) Despite earlier testifying his truck had been blocked by the victim’s vehicle, he later stated that, after the shooting, he drove away. (II, 36.) During cross-examination, the defendant acknowledged that the autopsy indicated the victim may have been run over and agreed he may have been the person who ran over the victim’s body. (II, 39.)

On cross-examination, the defendant also acknowledged that the autopsy report indicated the victim had been shot both in the front and in the back and that the wounds indicated the victim was likely lying on the ground when some of the shots were fired. (II, 46-47, 57.) Upon further questioning, the defendant admitted the victim was on the ground and he continued to shoot him. (II, 48-49, 57.) The defendant conceded that once the victim was on the ground, he was no longer a threat to the defendant. (II, 49.)

The defendant was asked about his juvenile record, and he acknowledged that he was fourteen or fifteen when he was adjudicated of illegally possessing a weapon and evading arrest. (II, 49.) He further admitted that he was given diversion but continued to possess a weapon. (II, 54, 58.) He confirmed that he was subsequently adjudicated in juvenile court for obstructing a highway passageway and again unlawfully possessing a weapon and was placed on probation. (II, 59.) The defendant was also questioned about a case that the State dismissed and acknowledged in that case he had been involved in an incident in

which he was driving a car that crashed, killing the passenger, he was in possession of a weapon, and the accident was the result of a shootout between the defendant and another vehicle. (II, 50-51.) The defendant admitted that he had been caught with guns multiple times, but he blamed the environment that he was living in. (II, 51-53, 58-60.) He acknowledged that he had been placed under supervision for gun related offenses more than once before this offense. (II, 53-55.)

Qunisha Milan, the defendant's aunt, testified. (II, 63.) She stated that, if the defendant were placed on probation, he would be staying with her and stated she could provide a safe environment for the defendant. (II, 63.)

Cosandra Milan, who was the victim's mother and the defendant's grandmother, testified to the impact the loss of her son had on her and her family. (II, 75-84.) When asked whether she thought the defendant should get probation, Mrs. Milan stated, "I think he should, because anything we do here today is not going to bring my child back. . . . [a]t the end of the day, this my children and my grandchildren, and I don't know how to feel." (II, 77.) She then spoke directly to the court, stating, "I don't know how to feel. I don't know - - you know, I love my family and my baby gone." (II, 77.) The court then responded to the witness stating:

You don't know how difficult that decision would be for somebody outside of the family, much less inside of the family, and if I were to ask you for some guidance in terms of what to do, because you said – you've expressed how much you love both of them, okay, and even if I decided not to grant probation for your grandson, in a matter of a couple years he's going to be out any way, okay? . . . [W]e can't keep him forever. . . . So he's going to back into that family whether it's

dysfunctional or not, whether you and your sister's get along or not, but the sad part is you will always remember . . . your son. . . . And that's never going away, and there is absolutely nothing that I can do to bring back your son. . . . So it's a very difficult situation not only for you, but also for the Court, because the Court is - - it's only a temporary Band-Aid situation. You know, I can give you a couple of years to kind of deal with it and know that he's incarcerated, and you don't have to deal with it, but eventually, you're going to have to deal with that loss of you're a son and having your grandson around and choosing whether or not to pull the family together.

(II, 78-79.)

Sentencing Determination

On August 6, 2025, the trial court filed its written findings of fact and conclusions of law denying defendant's request for probation. (I, 16-24.) The trial court discussed the circumstances of the offense and concluded that, although the reduction in the original charge appeared to stem from negotiations and was in fact a lawful plea, the reduction did not "negate the factual record established at the sentencing hearing" and did not diminish the seriousness of the offense. (I, 22.) The Court relied on the facts as presented by the State and stipulated to by defense counsel and by the defendant—both at the time of his colloquy and during his testimony. (I, 17-20.)

The court found the facts established that "[d]uring a confrontation with his uncle, the defendant discharged multiple rounds, including shots that were fired after the [victim] had begun to turn away." (I, 22.) The court also found an eyewitness testified that "the defendant stood over the victim and continued to fire rounds while he was on the ground."

(I, 22.) Finally, the court added that the defendant acknowledged at the sentencing hearing “that it was possible some shots struck the victim in the back and that he [defendant] may have run over the victim while fleeing the scene.” (I, 23)

Next the trial court considered the defendant’s record. (I, 23.) The court stated, “although the defendant had no adult felony convictions at the time of sentencing, the court considered his prior juvenile adjudication for unlawful possession of a weapon and evading arrest, for which he received judicial diversion.” (I, 23.) The court concluded, “this history, coupled with the facts surrounding the current offense, suggest the defendant poses a high risk of future criminal conduct.” (I, 23.)

The trial court noted that defendant had presented favorable testimony regarding his “institutional conduct, educational accomplishments, and future aspirations.” (I, 23.) The court considered the fact the defendant had “graduated from high school, maintained employment . . . , enrolled in vocational training at Tennessee Tech in 2022, and participated in rehabilitative programs . . . while incarcerated.” (I, 17, 19, 23.) Yet the court found “these positive efforts must be weighed against the seriousness of the offense and the Defendant’s credibility.” (I, 23.) While the court found the defendant had expressed remorse, it also determined that “his account of events was contradicted by physical evidence and eyewitness testimony.” (I, 23.) The court noted that it was not “obligated to credit expressions of remorse when they lack candor or appear self-serving.” (I, 23.)

Finally, the court discussed the need for deterrence and held denial of probation was necessary both to prevent the offense from being

perceived as less serious and to deter others. (I, 24.) The court determined, “granting probation would minimize the significance of using lethal force against a retreating [victim] and could erode public trust in the judicial system.” (I, 24.)

After considering the testimony, arguments of counsel, and all applicable sentencing considerations, the court denied the defendant’s request for probation. (I, 19, 24.) The court found that the gravity of the offense, the defendant’s lack of candor, the defendant’s prior juvenile record, and the need for deterrence outweighed the defendant’s potential for rehabilitation. (I, 25.) It determined probation was not appropriate. (I, 25.)

ARGUMENT

I. The Trial Court Acted Within Its Broad Discretion When It Denied the Defendant's Request for Probation.

The defendant claims that the trial court erred by denying probation. (Def.'s Br. at 23-34.) Specifically, the defendant submits that the trial court improperly concluded the seriousness of the offense, the need for deterrence, and the defendant's record warranted denying probation and failed to consider mitigating factors filed on his behalf. (Def's Br. at 27-31, 33-34). He further claims that the trial court improperly considered evidence outside the record from the defendant's grandmother and improperly concluded that the defendant was not credible. (Def.'s Br. at 23-27, 31-33.) The defendant, however, is not entitled to relief because the trial court's sentencing determination was reasonable and supported by substantial evidence showing the circumstances of the offense, the need for deterrence, and the defendant's prior record weighed against factors in favor of granting probation and warranted the denial of alternative sentencing. The defendant also failed to show the court improperly considered evidence outside the record in making its sentencing determination and failed to establish the court improperly determined the defendant was not a credible witness.

A. Standard of review

This Court reviews the range, length, and manner of service of sentence imposed by the trial court under an abuse of discretion standard with a presumption of reasonableness. *State v. Bise*, 380 S.W.3d 682, 708 (Tenn. 2012). A trial court is granted broad discretion to impose a sentence anywhere within the applicable range, regardless of the

presence or absence of enhancement or mitigating factors, and the resulting sentence will be upheld “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; *State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008); *State v. Fusco*, 404 S.W.3d 504, 548 (Tenn. Crim. App. 2013); [Tenn. Code Ann. § 40-35-210\(d\)](#). The abuse of discretion standard also applies to “questions related to probation or any other alternative sentence.” *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012). “An abuse of discretion occurs when the trial court (1) applies an incorrect legal standard, (2) reaches an illogical or unreasonable decision, or (3) bases its decision on a clearly erroneous assessment of the evidence.” *State v. Mangrum*, 403 S.W.3d 152, 166 (Tenn. 2013). On appeal, the party challenging the sentence has the burden of showing that the sentence was improper. *State v. Freeman*, 943 S.W.2d 25, 30 (Tenn. Crim. App. 1996); [Tenn. Code Ann. § 40-35-401](#) (Sent. Comm’n Cmts).

B. Manner of Sentence

No criminal defendant is automatically entitled to probation as a matter of law. *State v. Trotter*, 201 S.W.3d 651, 654 (Tenn. 2006); *State v. Davis*, 940 S.W.2d 558, 559 (Tenn. 1997). The sentencing statute provides certain guidelines on whether a defendant is eligible for alternative sentencing. For instance, Tennessee Code Annotated section 40-35-303 states that “[a] defendant shall be eligible for probation under this chapter if the sentence actually imposed upon the defendant is ten (10) years or less[.]” [Tenn. Code Ann. § 40-35-303\(a\)](#). In addition, a

standard offender convicted of a Class C, D or E Felony, is considered a favorable candidate for alternative sentencing in the absence of evidence to the contrary. [Tenn. Code Ann. § 40-35-102\(6\)\(A\)](#). That said, “a defendant’s prior convictions shall be considered evidence to the contrary.” *Id.* In addition, a trial court “shall consider, but is not bound by, the advisory sentencing guideline” in section 40-35-102(6)(A). [Tenn. Code Ann. § 40-35-102\(6\)\(D\)](#). A defendant has the burden of establishing that he is suitable for probation by “demonstrating that probation will ‘subserve the ends of justice and the best interest of both the public and the defendant.’” [State v. Carter](#), 254 S.W.3d 335, 347 (Tenn. 2008) (quoting [State v. Housewright](#), 982 S.W.2d 354, 357 (Tenn. Crim. App. 1997)).

In determining a sentence, a trial court must consider any evidence received at the trial and sentencing hearing, the presentence report, the principles of sentencing, counsel’s arguments as to sentencing alternatives, any mitigation or statutory enhancement factors, statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee, any statement that the defendant made on his own behalf, the potential for rehabilitation or treatment, and the results of the validated risk and needs assessment. [Tenn. Code Ann. §§ 40-35-103, -210](#). When considering whether to order full probation, the trial court may consider “the circumstances of the offense, the defendant’s potential or lack of potential for rehabilitation, whether full probation will unduly depreciate the seriousness of the offense, and whether a sentence other than full probation would provide an effective deterrent to others likely to commit

similar crimes.” *State v. Boggs*, 932 S.W.2d 467, 477 (Tenn. Crim. App. 1996) (citing Tenn. Code Ann. §§ 40-35-210(b)(4), -103(5), -103(1)(B)). In determining whether to deny alternative sentencing and impose a sentence of confinement, the trial court should consider whether:

(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[.]

Id. § 40-35-103(1)(A)-(C); see *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). In addition, “[t]he sentence imposed should be no greater than that deserved for the offense committed” and “should be the least severe measure necessary to achieve the purposes for which the sentence is imposed[.]” Tenn. Code Ann. § 40-35-103(2), (4). Trial courts are required to articulate the reasons for the sentence in accordance with the purposes and principles of sentencing for the abuse of discretion standard with a presumption of reasonableness to apply on appeal. *State v. Pollard*, 432 S.W.3d 851, 861 (Tenn. 2013).

Here, the trial court properly exercised its discretion in denying probation and in sentencing the defendant to confinement. The court considered the plea, the presentence report, the circumstances of the offense, the defendant’s criminal history, the need for deterrence, and the defendant’s mitigating evidence and arguments. (I, 14-25; II, 4-84; III,

Exs. 1-2.) Moreover, in reaching its conclusion, the trial court properly considered the sentencing factors and denied probation. (I, 21-25.)

C. Seriousness of the Offense

The defendant asserts the trial court improperly determined that the seriousness of the offense warranted denial of probation. (Def.'s Br. at 27-29.) He argues, citing *State v. Butler*, 880 S.W.2d 395 (Tenn. Crim. App. 1994), that the fact that a death resulted from defendant's actions, alone does not make the offense sufficiently violent to justify denying probation. (Def. Br. 27.) Rather he contends that, relying on *State v. Trotter*, 201 S.W.3d 651 (Tenn. 2006), the court was required to also find the circumstances of the offense were "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." (Def. Br. at 27.) Defendant seems to assert that, because he pled to the lesser-included offense of voluntary manslaughter, the court could not reach a determination that the circumstances of the offense met the *Trotter* standard. (Def. Br. at 27-28.) The defendant acknowledges the *Trotter* standard is inapplicable when the trial court does not base confinement solely on the seriousness of the offense; however, he asserts that because the trial court's "remaining reasons for denying probation . . . were either erroneous or not supported by evidence in the record, this court should apply the heightened standard of review established in *Trotter*. (Def's. Br. 28.)

Defendant's argument fails for multiple reasons. First, the court did not deny probation solely based on the circumstances of the offense.

(I, 16-24.) The court also relied on the fact the defendant had been previously placed on diversion and probation for gun related offenses and the need for deterrence. (I, 16-24.) Because, in addition to determining the circumstances of the offense warranted the denial of probation, the court also properly determined that the defendant's criminal record and the need for deterrence outweighed any mitigation offered by the defendant, the heightened review requested by the defendant is not warranted.

Even if this court were to determine the trial court improperly concluded that the defendant's prior record and the need for deterrence supported denying probation, the State submits the court's reliance on the circumstances of the offense, alone, would not be insufficient to support a denial of probation. In determining the suitability for an alternative sentence, the trial judge may look behind any plea bargain and consider the nature of the offense as it was actually committed. *State v. Pierce*, 138 S.W.3d 820, 828 (Tenn. 2004).

Here, the court relied on the recitation of facts by the State which the defendant stipulated to both through counsel during the colloquy and during his own testimony. (II, 5-8.) The defendant acknowledged shooting the victim approximately eight times and acknowledged some of those shots were to the back of a fleeing victim. (II, 35-36, 46.) He did not dispute that the autopsy revealed that some of the shots were likely fired while the victim was on the ground. (II, 39, 47-49.) He acknowledged that once the victim was on the ground he was no longer in fear of the victim, and he agreed he did not call 911 or attempt to summon help for the victim; but, rather, likely ran over him with his

vehicle in an attempt to flee the scene so that he would, in his own words, not have to go to jail. (II, 39.) Even if this factor were the sole factor relied upon by the trial court, the court would have been justified in finding that the circumstances of the offense were particularly violent, shocking and reprehensible to warrant the denial of probation.

D. Need for Deterrence

Next, the defendant again argues for a heightened standard of review as to the trial court's determination that the need for deterrence justified a denial of probation. (Def's. Br. at 29-30.) The defendant contends, relying on *State v. Hooper*, 29 S.W.3d 1, 13 (Tenn. 2000), that a trial court may only sentence a defendant to a term of incarceration based solely on the need for deterrence "when the record contains evidence which 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." (Def.'s Br. at 29-30.) However, the defendant again acknowledges that this standard applies only when the trial court bases its decision solely on the issue of deterrence and acknowledges that deterrence was not the sole basis of the trial court's denial of probation. (Def.'s Br. at 29-30.) Once again, the defendant contends because the trial court abused its discretion in the application of the other basis on which the court relied for denying probation, then, he should be entitled to the enhanced standard outlined in *Hooper*. (Def's Br. at 29-30.)

Because the trial court properly considered the defendant's record and the circumstances of the offense in addition to considering the need

for deterrence, the defendant's argument fails. Even if the court were to determine the trial court had improperly concluded the defendant's record and the circumstances of the offense warranted denial of probation, the trial court would have been justified in denying the defendant probation solely based on the need for deterrence because the court properly concluded incarceration was needed to deter others in the community and to prevent future conduct like that committed by the defendant. (I, 20-24.) The court specifically determined, "granting probation would minimize the significance of using lethal force against a retreating family member and could erode public trust in the justice system." (I, 24.) The court's reliance in part on deterrence to deny probation was justified.

E. Defendant's Record of Juvenile Adjudications

Third, defendant asserts the trial court abused its discretion in determining the defendant's juvenile record was sufficient to demonstrate he posed a high risk for future criminal conduct. (Def.'s Br. at 30-31.) The record supports the trial court's finding that the defendant's juvenile history involved multiple weapons offenses, a fact pertinent to the facts and circumstances of the offense for which defendant was being sentenced. The defendant was adjudicated twice for incidents involving guns. (II, 49, 51-54, 58-60; III, Ex. 1.) The defendant also conceded to another incident involving guns that led to a car crash and to the death of another individual. (II, 50-51.) The proof at the hearing further demonstrated less restrictive measures had been recently applied to the defendant. (II, 49-52, 54-56, 58-59; III, Ex. 1.) While a juvenile, the defendant had been placed on judicial diversion for

a weapons offense and shortly thereafter was adjudicated for yet another weapons offense and placed on probation in that matter. (II, 49-50, 53-55, 58-59; III, Ex. 1.) Soon after his second adjudication for a weapon offense, the defendant committed the current offense which led to the death of the victim by the defendant who was again armed with a handgun. (II, 49-55; III, Ex. 1.) Based upon its review of the defendant's record, the court properly concluded incarceration was necessary to protect the public from the defendant who the court determined posed a "high risk of future criminal conduct." (I, 22, 24.) The court's reliance in part on the defendant's juvenile history to deny probation was justified.

F. Mitigation

The defendant argues the trial court did not consider the mitigating factors filed on his behalf. (Def.'s Br. at 33-34.) Thus, he asserts the trial court's findings should not be accorded with a presumption of correctness. (Def.' Br. at 34.) He is wrong. The court considered the evidence and testimony presented at the hearing, including the defendant's mitigation evidence. (I, 19-20, 23.) It simply determined the evidence presented supported incarceration. (I, 22-24.)

While "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision-making authority," there is no requirement that such reasoning be particularly lengthy or detailed. *Bise*, 380 S.W.3d at 706. A trial court is "not required to utilize any 'magic words' . . . when discussing the relevant factors in order to receive the presumption of reasonableness." *State v. King*, 432 S.W.3d

316, 327 n.8 (Tenn. 2014). “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 application and weighing of the relevant factors can be inferred from the trial court’s discussion in the record. *See State v. Brooks*, No. W2015-00833-CCA-R3-CD, 2017 WL 758519, at *8 (Tenn. Crim. App. Feb. 27, 2017) (no perm. app. filed). A trial court’s denial of probation “will not be invalidated unless the trial court wholly departed from the relevant statutory considerations in reaching its determination.” *State v. Sihapanya*, 516 S.W.3d 473, 476 (Tenn. 2014).

Here, while not specifically delineating the mitigation factors it considered, the court detailed the “favorable” evidence presented by the defendant at sentencing, including his family background, educational background, work history, and his efforts at rehabilitation and conduct while incarcerated. (I, 17-20.) The court also discussed the circumstances of the offense, including aspects of the victim’s character and actions at the time of the offense. (I, 25.) Thus, it is clear from the record the court considered the arguments offered by the defendant in his sentencing memorandum and the testimony presented at the hearing and concluded that, although favorable, any mitigation did not outweigh the court’s determination that the circumstances of the offense, the need for deterrence, and the defendant’s record warranted a denial of probation. (I, 23-24.) The defendant has failed to demonstrate the court’s findings are inadequate. The defendant is not entitled to relief for this claim.

II. The Trial Court Properly Considered the Defendant's Grandmother's Testimony in Denying Defendant's Request for Probation.

The defendant asserts the trial court incorrectly interpreted the statements of the defendant's grandmother at sentencing and improperly implied the court's own impressions as part of the court's sentencing determination. (Def.'s Br. at 23-27.) The trial court did not impermissibly rely on facts outside the record in denying defendant's request for probation.

The defendant's grandmother, who is also the victim's mother, testified about the effect of the murder on her and being conflicted with the proper sentencing for the defendant. (II, 76-77.) The trial court simply noted that the victim's mother was still processing her son's death and "did not appear ready for her grandson's release." (I, 24.) This statement came at the end of the order, after full consideration of the proof presented at the hearing and the sentencing factors relevant to the court's decision. (I, 24-25.) The statement did not conflict with testimony presented at the hearing where the victim's mother testified that she was unsure what the court should do with regard to sentencing and told the court she was still grieving the loss of her son. (II, 75-77.) Nothing about this brief statement by the court negates the court's full consideration of the applicable sentencing factors and the record before it. The court's order was clear that its determination was based on consideration of the entire record before the court, the circumstances of the offense, the defendant's record, the need for deterrence, and other relevant and proper sentencing considerations. (I, 22-25.) Part of that discussion took

into consideration the unique circumstances of the offense, including the fact that the victim and defendant were related. An expression by the court of the difficult reality for the victim's mother, who is also the defendant's grandmother, was not improper under the circumstances. The defendant is not entitled to relief for this claim.

III. The Trial Court Acted Within Its Discretion in Judging the Defendant's Credibility.

The trial court acted within its discretion when it questioned the credibility of the defendant's testimony at the sentencing hearing. (I, 23-24.) This Court will not interfere with the trial court's credibility determination as the finder of fact in sentencing "unless the evidence contained in the record clearly preponderates against these findings." *State v. Francis*, No. M2022-01777-CCA-R3-CD, 2024 WL 4182870, at *6 (Tenn. Crim. App. Sept. 13, 2024) (quoting *State v. Melvin*, 913 S.W.2d 195, 202 (Tenn. Crim. App. 1995)) (no perm. app. filed). A defendant's truthfulness while testifying either at a trial or in a sentencing hearing can be considered probative of a defendant's potential for rehabilitation and is a relevant factor in the sentencing process. *State v. Souder*, 105 S.W.3d 602, 608 (Tenn. Crim. App. 2002) ("Candor remains a relevant factor in assessing potential for rehabilitation and the lack of candor mitigates against the grant of probation."). Accordingly, untruthfulness and lack of candor can be a basis for denial of probation.

Here, the trial court properly considered the defendant's testimony and determined that portions of the defendant's testimony were contradicted by the evidence. (I, 23-24.) Claims by the defendant that he did not exit the vehicle and stand over the victim and did not continue to shoot at the victim after he was on the ground were contradicted by an eyewitness and by the autopsy report showing some of the shots were fired into the victim's back and while victim was on the ground. (II, 6-7.) The defendant admitted to these facts both in a stipulation during the plea colloquy and in his testimony at sentencing. (II, 7-8; II, 45-47.)

Moreover, he contradicted himself multiple times at sentencing. He initially stated the victim came to the passenger side of defendant's vehicle, then later stated the victim approached on the driver side. (II, 33.) The defendant also stated he was blocked in by the victim's vehicle and could not leave; however, he acknowledged after the shooting he was able to flee the scene before the victim's vehicle left the scene. (II, 36.) Based upon the stipulation of facts and other admissions by the defendant as to the circumstances of the offense, the trial court properly determined that portions of the defendant's testimony were not credible. The defendant is not entitled to relief for this claim.

CONCLUSION

For the reasons stated, the judgment of the trial court should be affirmed.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ G. Kirby May
G. KIRBY MAY
Assistant Attorney General
Criminal Appeals Division
40 South Main Street, Suite 1014
Memphis, TN 38103-1877
(901) 348-3957
Kirby.May@ag.tn.gov
B.P.R. No. 021587

CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46, Rule 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, the attorney's signature block, and this Certificate of Compliance, is 6,044. This word count is based upon the word processing system used to prepare this brief.

/s/ G. Kirby May _____
G. KIRBY MAY
Assistant Attorney General