

**IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS  
DIVISION IX**

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STATE OF TENNESSEE,                     )

v.   )

No. 19-06482

PAMELA MOSES,                     )

Defendant                               )

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**SENTENCING ORDER**

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The Defendant, Pamela Moses, is before this Court having been convicted of the Class D felony of making or consenting to false entries on official registration or election documents in violation of T.C.A. § 2-19-109. The defendant was found guilty by a jury of her peers on November 4, 2021.

The matter was set for sentencing on December 10, 2021, but on that date the Defendant requested a continuance of the sentencing hearing, despite the fact that her attorney indicated to the Court that he was ready to proceed. On December 10, 2021, the State presented its evidence establishing the Defendant's status as a Range II, Multiple Offender, the fact that she was on probation at the time she committed the present offense and that she has 16 prior criminal convictions. After hearing the State's evidence, at the request of the Defendant, the sentencing hearing was then continued until January 21, 2022, but the Defendant's pre-trial Bail was revoked such that Defendant actually began serving her sentence on December 10, 2021.

On January 7, 2022, Defendant's court-appointed trial counsel, Claiborne

Ferguson, filed a Motion for Bail Pending Appeal and it was agreed that the motion would be heard at the time of sentencing on January 21, 2022. Thereafter, on January 10, 2022, attorney Bede Anyanwu was allowed to enroll as attorney of record for the Defendant solely for the purpose of sentencing and to ask for an appellate bond. On that same date, Mr. Anyanwu filed another motion to set bond pending sentencing and on appeal.

Both attorneys appeared on January 12, 2022 in Court and Mr. Anyanwu argued for the immediate release of the Defendant, but this Court believed that the Defendant had a right to be present for a bond hearing and that her presence and testimony might be important to weigh in consideration of the request. Thereafter, the Court agreed to hear both the remainder of the sentencing evidence and the motion for an appeal bond on January 21, 2022.

On January 21, 2022, the sentencing hearing and the hearing on the motion to set an appeal bond was not concluded because the Defendant was in quarantine and could not be moved in the women's jail. The hearing on both motions was actually held on January 26, 2022, the first date that the Defendant was able to be brought to court. After hearing the remainder of the evidence, both matters were taken under advisement and the Court indicated that it would issue written opinions on January 31, 2022.

### **LAW RELATED TO RESTORATION OF THE RIGHT TO VOTE**

Only qualified voters who are lawfully registered to vote may vote at elections in Tennessee. A citizen of the United States eighteen (18) years of age or older who is a resident of this state is a qualified voter unless disqualified under a judgment of infamy. Upon conviction for any felony, it shall be the judgment of the court that the defendant be infamous and be immediately disqualified from exercising the right to vote. Once declared infamous, Tennessee law provides two different methods to restore the right to vote.

#### ***1. Restoration of full rights of citizenship including right to vote***

Any person who has been rendered infamous and deprived of the right to vote may have their full rights of citizenship, including the right to vote, restored by the circuit court. Those convicted of infamous crimes may petition the circuit court for restoration of the full

rights of citizenship upon the expiration of the maximum sentence imposed for the infamous crime. The proceeding for this purpose shall be by petition to the circuit court of the county in which the petitioner resides, or to the circuit court of the county in which the petitioner was convicted of an act depriving the petitioner of citizenship sustained by satisfactory proof that ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability and veracity, and is generally esteemed as such by the petitioner's neighbors.

## **2. Restoration of right to vote only**

Alternatively, any person rendered infamous and deprived of the right to vote by the judgment of a state court is eligible to apply for a voter registration card and have the right to vote restored upon: (1) Receiving a pardon; (2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the infamous crime; or (3) Being granted a certificate of final discharge from supervision by the board of parole or any equivalent discharge from supervision by another state or county correction authority.

A person who is eligible to apply for a voter registration card and have the right to vote restored may request the issuance of a certificate of voting rights restoration upon a form proscribed by the coordinator of elections, by: (1) The pardoning authority; (2) The warden or agent of the incarcerating authority, or (3) A parole officer or another agent or officer of the supervising authority. Any person issued a certificate of voting rights restoration shall submit the certificate to the administrator of elections of the county in which the person is eligible to vote. The administrator of elections of the county shall send the certificate to the state coordinator of elections who shall verify that the certificate complies with law. Upon determining that the certificate complies, the coordinator shall notify the appropriate administrator of elections and, after determining that the person is qualified to vote in that county by using the same verification procedure used for any applicant, the administrator shall grant the application for the voter registration card. The administrator shall issue a voter registration card and the card shall be mailed to the applicant in the same manner as provided for any newly issued card.

Defendant's conviction stems from her attempt to utilize this later method to restore her right to vote and register to vote.

### HISTORY OF THE CASE

On July 31, 2000, the Defendant pled guilty in Knox County Criminal Court to nine criminal offenses including the felony of Aggravated Assault, three misdemeanor assaults, theft, vandalism, perjury and harassment. She agreed to a seven-year sentence and was denied any form of probation. As a result of that felony conviction, the Defendant was declared infamous and was rendered ineligible to vote. Long after completion of her sentence, the Defendant in March of 2014 obtained a "Certificate of Restoration of Voting Rights" form which, among other things, indicated she had completed her sentence and she regained her right to vote. See Ex. 17, Ex. 21.

Shortly after regaining her right to vote, on April 29, 2015, the Defendant pled guilty to Tampering with evidence, Forgery, Perjury, Stalking, Escape and Theft in exchange for a seven-year sentence which was ordered to be served on probation. She received a sentence of one day, time served, for the escape. A transcript of the guilty plea proceeding is Ex. 9. The transcript indicates that as a part of this plea bargain the State agreed to dismiss several counts including aggravated perjury, retaliation for past actions, two counts of harassment, and two counts of impersonating a licensed professional. In addition, the State agreed not to go forward before the Grand Jury on an additional count of aggravated perjury. At the guilty plea proceeding, the Defendant testified under oath acknowledging that she substantially agreed with the State's recitation of the facts and that she knowingly and voluntarily was pleading guilty. As a result of the two felony convictions, once again the Defendant was declared infamous and again lost her right to vote.

The defendant later attempted to withdraw her guilty pleas, claiming that her guilty pleas were not knowingly, voluntarily or intelligently entered, but that request was denied by the trial judge who was affirmed on appeal by the Court of Criminal Appeals. See State v. Pamela Moses, 2016 WL 4706707 (Tenn. Crim. App. 2016). The Tennessee Supreme Court denied Ms. Moses permission to appeal on January 23, 2017.

Despite once again losing her right to vote by virtue of her felony convictions on April 29, 2015, it appears that the Defendant voted in six different elections in Shelby County between October 2015 and November 2018. Counts 1 through 12 of the indictment allege that the Defendant illegally voted during these six elections. Prior to trial, the State agreed to dismiss the counts alleging the actual illegal voting and proceed to trial only on count 13 alleging the current violation and count 14 which alleged another act of perjury.

Not long after beginning her probation, on December 21, 2015, the State filed petitions to revoke the Defendant's probation. The Defendant was taken into custody pending a resolution. After a probation violation hearing, the trial judge found that the Defendant violated the terms of her probation, but essentially gave her "shock incarceration" for approximately 45 days and returned her to complete her probation with credit for the time she served pending the probation violation hearing. The Defendant was not satisfied with the Court's ruling and appealed. The Court of Criminal Appeals affirmed the action of the trial judge. See State v. Pamela Moses, 2018 WL 2292998 (Tenn. Crim. App. 2018). The Tennessee Supreme Court denied permission to appeal on September 14, 2018.

On April 10, 2019, the Defendant, acting as her own attorney, filed a Petition for Restoration of Citizenship in the Circuit Court of Shelby County. In that Petition she alleged that her probation or parole had expired. See Ex. 22. In response, the State, on April 17, 2019, filed an Answer that specifically alleged that the Defendant's sentence had not expired. See Ex. 24.

Not happy with that response, on May 29, 2019, the Defendant returned to the Criminal Court and the trial judge in charge of her probation and filed a document that she entitled "Motion for Expiration of Sentence as of October 30, 2018." That motion was heard by the trial court on July 8, 2019. "At the conclusion of the hearing the trial judge denied the motion, finding that the [Defendant] was sentenced to consecutive sentences for a total of seven years....and that the seven-year period began to run on April 29, 2015, which meant it was not scheduled to expire until April 29, 2022." [Quoting appellate

opinion.] The actual written order provided, among other things that, “[t]he Court has reviewed the record including the judgment forms which clearly order her sentence is for a period of seven (7) years and one (1) day beginning on April 29, 2015, the day she pled guilty to these offenses.” The actual written order also clearly stated that the Defendant’s sentence had not expired. See. Ex. 18. Not satisfied with this judicial determination, Ms. Moses filed notice of appeal on July 9, 2019. See State v. Pamela Moses, 2020 WL 4187317 (Tenn. Crim. App. 2020) (affirming the trial judge’s determination). She likewise returned to Circuit Court and asked that her Petition for Restoration of Citizenship be put on hold pending the results of the appeal of her criminal court matter. As a result of the foregoing, the Defendant is currently still on a seven-year probation, and was so at the time she committed the present offense.

As mentioned, the Defendant was not satisfied with the trial court’s determination that she was still on probation. The present offense occurred on September 3, 2019, approximately two months after obtaining the court order that she was still on probation, while that order was on appeal to the Court of Criminal Appeals, and while her Petition for Restoration of Citizenship was on hold in Circuit Court. On that day, the Defendant went to a probation office and represented that she was no longer on probation and requested that a probation officer supply her with a “Certificate of Restoration of Voting Rights” form. The probation officer believed her and a partial search of her records did not indicate anything to the contrary. Apparently, the probation officer did not have access to the Defendant’s multiple files. The probation officer completed the form certificate for restoration of voter rights which indicated that the Defendant was no longer on probation. The Defendant then took that form, knowing it was not true, and attempted to use it to register to vote.

With regard to count 14 which alleged another act of perjury, at the end of the State’s proof, this Court granted a judgment of acquittal as to this count only. Count 13, for which she was convicted, involved the certificate of voters rights restoration form that the jury found the Defendant knew was inaccurate. Count 14 involved a separate document for which the Defendant gave an oath and submitted at the same time as she submitted

the fraudulent certificate. This Court granted the judgment of acquittal because the Count 14 form did not contain any specific misrepresentations nor did it reference or incorporate by reference the Count 13 certificate of voters rights restoration form.

The only real issue for the jury during the trial was whether the Defendant knew the certificate of voting rights restoration form was not accurate when she obtained it and utilized it to attempt to register to vote. The Defendant did not testify at trial or call any defense witnesses.

During the trial, Defendant's attorney made two arguments on her behalf. First, defense counsel argued that the State could not establish that the Defendant knew the form was not true. The jury rejected this argument as the Defendant had obtained a court order two months prior that informed her she was to be on probation until 2022. Second, Defense counsel argued that the negligence of the probation officer in relying on the Defendant's statements and his incomplete search of her records somehow excused the Defendant from her fraudulent conduct. This argument does not establish a defense under the law. It is tantamount to an argument that a person who obtains money from a bank by posing as another person is not criminally responsible because the bank should have discovered the fraud and not given the money to the thief. The jury rejected this argument as well.

On November 4, 2021, after hearing all the evidence, a jury of the Defendant's peers concluded that she was guilty of violating T.C.A. § 2-19-109, which prohibits the making or consenting to false entries on official registration or election documents.

This Court approved the jury's verdict as "thirteenth juror" and finds the evidence of Defendant's guilt overwhelming. Apparently, the Defendant also recognized the overwhelming evidence of her guilt, because during the trial, she requested the Court to instruct the jury as to "jury nullification." [ that the jury could disregard the law in Tennessee and find her not guilty even if, in fact, they found she was guilty beyond a reasonable doubt].

In this procedural posture, this Defendant is facing a possible fifteen (15) year sentence; seven years for the convictions for Tampering with evidence, Forgery, Perjury,

Stalking and Theft, and as will be discussed below, another possible eight-year sentence for the present conviction which she committed while she was on probation.

### **DEFENDANT'S EVIDENCE PRESENTED AT SENTENCING HEARING**

Four witnesses were called by the defense at the sentencing hearing. The primary witness was the Defendant, **Pamela Moses**. In evaluating the Defendant's testimony, this Court has considered the fact that the Defendant is a college graduate and based on her interactions with this Court throughout this matter and her *pro se* filings, it is readily apparent that the Defendant has knowledge of the law beyond that of most lay persons, and is extremely intelligent and sophisticated. With this in mind, when the Defendant suddenly claims an illogical explanation for her criminal conduct or claims ignorance of any wrongdoing, these claims are inconsistent with the Defendant's level of intelligence and sophistication.

In evaluating the Defendant's testimony, this Court also considered the provisions of Rule 609 of the Tennessee Rules of Evidence. That rule provides that the credibility of a witness may be attacked if they have been convicted of any felony or crime involving dishonesty or false statement. The phrase "dishonesty or false statement" was derived from Rule 609 of the Federal Rules of Evidence. In the federal rule, "dishonesty or false statement" is meant to relate to "crimes such as perjury, subornation of perjury, false statement, criminal fraud, embezzlement, or false pretense, or any other offense in the nature of *crimen falsi*, commission of which involves some element of deceit, untruthfulness, or falsification bearing on the accused's propensity to testify truthfully." State v. Walker, 29 S.W.3d 885, 890 (Tenn. Crim. App. 1999). Tennessee courts have interpreted the phrase much more broadly than the federal courts so as to include a wider range of crimes such as theft-related offenses. Under the rule, while "[t]he commission of any felony is considered to be generally probative of a defendant's criminal nature from which the [trier of fact] could infer a propensity to falsify testimony....[crimes involving] dishonesty and false statement "are more directly related to a defendant's truthfulness." Id., at 890. In this case, the Defendant has three prior felony convictions (two of which were committed in the last ten years) and her record specifically includes crimes of



dishonesty or false statement, including perjury, forgery, tampering with evidence and theft. For this Court, Defendant's most recent conviction for **perjury** weighs most heavily on her credibility as a witness.

The Defendant chose not to testify at the trial of this matter. At the sentencing hearing, she testified for two hours. Among other things, she testified that she had nothing but the utmost respect for the law. At the beginning of her testimony, Defendant intimated that she had done nothing wrong and that the responsibility for her crime was on the probation officer who wrongly and incorrectly signed her certificate of voting rights restoration form indicating that she was no longer on probation. She continued throughout her testimony to shift the blame away from herself in multiple ways including testifying that she thought the probation officer - not the judge - determined whether she was on probation. She also attempted to divert blame from herself by testifying that she thought the felony portion of her probationary period had expired, even though the judge told her that she began her probation on April 29, 2015. [Which if true, would indicate that her five year felony probation would have ended on April 29, 2020, long after the commission of the present crime.] Simply put, without listing every instance, her testimony was replete with efforts to try to make herself look good and shift responsibility for her criminal conduct away from herself. In light of the fact that the Defendant had a court order that she did not begin her probation until April 29, 2015, that it provided for consecutive sentencing resulting in a five-year felony probation, any attempt to now claim that she did not know the form she utilized to attempt to register to vote was false is incredulous. Her explanations are illogical and this Court finds her testimony is not truthful. By the end of her testimony, however, Defendant "about-faced" and "mouthed the words" that she accepted full responsibility for her actions and that she should have relied upon the judge's ruling that she was still on probation rather than the statement of the probation officer on her certificate of voting rights restoration form

Significantly, despite attempting to evade the subject, Defendant admitted that she actually voted in at least six different elections between 2015 and 2018, after she had been convicted of a felony and had not had her right to vote reinstated. These six

elections were reflected in the first 12 counts of the present indictment. Defendant testified further that she voted because she did not know that a convicted felon could not vote as no one sent her a letter to that effect. This Court finds this testimony is not credible as the Defendant actually lost her right to vote in 2000 by virtue of a felony conviction and then went through the legal process in 2014 to regain the right to vote by following the certificate of voting rights restoration form process. Defendant was then convicted of two felonies in 2015 and again lost her right to vote. Considering Defendant's previous actions taken to regain her right to vote in 2014, any attempt to claim that she did not know it was improper for her to vote after her 2015 felony convictions rings hollow. Again, this Court finds Defendant's statements to be disingenuous and not truthful.

On the subject of the Defendant being "the primary caregiver" of her thirteen (13) year old son, Defendant began by filing a pro se Motion in this case in which she indicated, among other things, that "I am the sole and primary caregiver for "Taj" for his father is ill. I have worked to provide for him the best I can financially, and I provide most the care and support for him through our daily life together." Defendant also stated "If I am incarcerated, I do not know who "Taj" will live with." At the sentencing hearing the Defendant again attempted to impress upon the Court that she was the sole "primary care-giver" of her son. Like most of her testimony, when pressed further by additional questions Defendant's testimony lacked candor. Defendant indicated that she had a custody dispute with the child's father that had ended with a court order the details of which she could not remember and a copy of which was not going to be made evidence in the sentencing proceeding. She also indicated that the child was currently in the custody of his father and that neither the father nor her child would be a witness in the sentencing proceeding. At one point in her testimony, Defendant indicated that because she had begun serving her sentence on December 10, 2021, she missed spending Christmas with her son, which would have been the first Christmas she spent with him since 2014. Defendant's failure to spend Christmas with her son since 2014, seriously calls into question her claim to be the sole primary care-giver. When pressed, she finally admitted that the Court Order provided that she shared joint custody with the child's father. She

continued to be evasive as to the provisions of the custody order and claimed she did not remember fully what it provided in the way of parenting time. On this subject she was less than candid.

Defendant further acknowledged that she pled guilty in 2015 to the charges for which she is currently on probation: Tampering with evidence, Forgery, Perjury, Stalking, and Theft, as well as Escape, but she testified in the sentencing hearing that she did not actually commit those crimes. She indicated that she pled guilty to those crimes simply in order to get out of jail and she lied to the judge at the time she entered her guilty plea. In effect, Defendant testified that she lied under oath again in that sentencing hearing to advance her desired objectives. She further indicated that she returned to the trial court and attempted to take back her guilty plea but that effort had been rejected by the trial judge. She could not remember if she appealed that decision. However, she did testify that she plans to challenge those convictions in federal court, whatever that means. Along these lines, the Defendant refused to provide or confirm any of the details of her 2015 conviction for escape. Defendant was not forthcoming on this matter.

Finally, Defendant continued to be evasive with the Court when the Court asked her if she had a member of the Tennessee legislature contact him by email on the third day of the trial to try to stop the trial in progress. The letter was made an exhibit at the hearing. This Court recalls that when it received the email with the attached letter on the third day of the trial and the Court mentioned it to the parties and indicated that it had not opened the attached letter and had no idea of its contents, Defendant did not act surprised that this Court had been contacted by a member of the legislature, and she specifically requested the Court to open the letter and print it out. When questioned further, Defendant acknowledged she had been speaking with members of the legislature and seeking their help on her case. She did specifically deny that she asked the legislature to contact the trial judge, but this Court finds her testimony untrue.

**Lawrence Pivnick** testified as a character witness. He testified that he had known the Defendant for approximately four years through his work with a committee for the local Democratic Party, through seeing the Defendant doing research in the law library, and

from observing her at the gym referred to as "the Kroc." He testified that in his dealings with her she seemed to be diligent, polite and friendly. He also indicated that he had never seen her commit an act of violence and as far as he was concerned, he believed she had the character trait of non-violence, and to be an honest and truthful person. He further testified that he was aware of a custody dispute and order in juvenile court but had no knowledge of the provisions of the order. Finally, he testified that he had no knowledge of any of the Defendant's prior criminal convictions in Knox County. With regard to the Shelby County convictions he indicated he had no knowledge of the details of those offenses, but he was aware of some convictions.

**Dawn Herrington** testified that she is the Executive Director of Free Hearts and she testified at length about a 2019 legislative enactment that required trial judges to consider alternatives to incarceration for primary-caregivers of children. She indicated in her testimony that she had seen the Defendant several times with her son and, in essence, assumed that the Defendant was the child's sole primary caregiver. While her testimony was very compelling and effective as to the rationale for the new legislation, she had no testimony of any real substance as to whether the Defendant actually was the primary caregiver of her minor child.

**Shantell Mathis** testified that she started a program called "Phase Two Adult Reentry Training Camp" last year and that the Defendant had applied for and been accepted into her program should she be given probation.

#### **ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Sentencing for this criminal offense is governed by the Tennessee Criminal Sentencing Reform Act of 1989 and its subsequent amendments by the Tennessee legislature. Under this Act, the legislature determines the seriousness of all offenses and classifies them according to that seriousness. Punishment is then determined not only by the seriousness of the offense *but also by the prior criminal record of each offender*. In this case, the legislature has determined that the offense for which the Defendant has been convicted is a Class D felony and has determined that all sentences for such crimes be set at a determinate length somewhere between two (2) and twelve

(12) years.

However, the legislature has further determined that the length of the sentence that a trial judge may consider must be further limited by the prior criminal record of the offender being sentenced. In general terms, the legislature has determined that a defendant with no more than one prior felony conviction is entitled to a Range I, Standard Offender sentence. In this case, if Defendant entitled to a Range I, Standard Offender sentence this court would be limited to sentencing the defendant to no less than two (2) years nor more than four (4) years. However, the legislature has decided that a criminal defendant with two to four prior felony convictions must be sentenced as a Range II, Multiple Offender. If the defendant is a Range II, Multiple Offender, the legislature has decided that this Court must impose a length of sentence for the crime for which the defendant was convicted between four (4) and eight (8) years.

In this case, the Court finds that the Defendant has the following prior criminal convictions:

|   | <i><b>Date of Offense</b></i> | <i><b>Date of Plea</b></i> |
|---|-------------------------------|----------------------------|
| 1. Harassment (A misdemeanor)                   | January 1, 1997               | July 31, 2000              |
| 2. Perjury (A misdemeanor)                      | March 22, 1997                | “                          |
| 3. Aggravated Assault ( <b>C felony</b> )       | December 19, 1997             | “                          |
| 4. Unlawful Poss. Weapon (A misdemeanor)        | December 19, 1997             | “                          |
| 5. Theft (A misdemeanor)                        | April 9, 1998                 | “                          |
| 6. Vandalism (A misdemeanor)                    | April 29, 1998                | “                          |
| 7. Assault (A misdemeanor)                      | August 6, 1998                | “                          |
| 8. Assault (A misdemeanor )                     | August 6, 1998                | “                          |
| 9. Assault (A misdemeanor )                     | December 19, 1999             | “                          |
| 10. Theft (A misdemeanor)                       | September 28, 2012            | 6/4/14                     |
| (jury verdict)                                  |                               |                            |
| 11. Theft (A misdemeanor )                      | December 23, 2013             | 4/29/15                    |
| 12. Tampering with evidence ( <b>C felony</b> ) | February 1, 2014              | “                          |
| 13. Forgery ( <b>D felony</b> )                 | February 1, 2014              | “                          |

|                               |                  |   |
|-------------------------------|------------------|---|
| 14. Perjury (A misdemeanor)   | February 1, 2014 | “ |
| 15. Stalking (A misdemeanor ) | February 1, 2014 | “ |
| 16. Escape (A misdemeanor )   | February 9, 2015 | “ |

Based on the aforementioned prior convictions, the Court finds that the defendant is a Range II, Multiple Offender as classified by the Tennessee Legislature. Accordingly, this court **must** impose a length of sentence somewhere between four (4) and eight (8) years.

***General Purposes and Principles of Sentencing***

After determining the appropriate range of sentence to be imposed, the trial judge must look to the evidence presented both at the trial and at the sentencing hearing; the presentence report; and the principles of sentencing established by the 1989 Act and arguments relative to possible alternatives to incarceration. Also to be considered are the nature and characteristics of the criminal conduct involved, any enhancement and mitigation factors offered by the parties which apply to the case, any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee, any statement the defendant wishes to make on his or her behalf and the results of a validated risks and need assessment. T.C.A. § 40-35-210(b). A sentence must be based on evidence in the record of the trial, the sentencing hearing, the presentence report, the validated risks and needs assessment, and the record of prior felony convictions filed by the district attorney general. T.C.A. § 40-35-210(f).

As mentioned, both the length of the sentence to be imposed and whether to impose an alternative sentence must be consistent with the purposes and principles set out by the legislature in the Sentencing Reform Act. T.C.A. § 40-35-210(d). In this regard, among other things, the legislature adopted the Act both to curtail the discretion of the sentencing judge and to give guiding principles to the sentencing judge in order “to assure fair and consistent treatment of all defendants by eliminating unjustified disparity in sentencing and [to provide] a fair sense of predictability of the criminal law and its sanctions.” In addition, the legislature has indicated that “[s]entencing should exclude all considerations respecting race, gender, creed, religion, national origin and social status

of the individual.” T.C.A. § 40-35-102, 103. Those purposes and principles include “imposition of a sentence justly deserved in relation to the seriousness of the offense,” and consideration of the defendant’s “potential or lack of potential for ...rehabilitation.” T.C.A. § 40-35-102; 103. Finally, the purposes indicate that punishment “shall be imposed to prevent crime and promote respect for the law by: (A) Providing an effective general deterrent to those likely to violate the criminal laws of this state; (B) Restraining defendants with a lengthy history of criminal conduct; and (C) Encouraging effective rehabilitation of those defendants, where reasonably feasible, by promoting the use of alternative sentencing and correctional programs that elicit voluntary cooperation of defendants.” T.C.A. § 40-35-102; 103.

### **LENGTH OF SENTENCE**

In determining the “specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines: (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; (2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out [by the legislature] T.C.A. § 40-35-210.

In summary, when determining the specific sentence length to impose on an individual defendant, the starting point is the minimum sentence - which in this case is four (4) years - and that sentence is then adjusted up or down by application of the enhancement and mitigating factors applicable to the case.

#### ***Enhancement factors:***

In T.C.A. § 40-35-114, the Tennessee legislature has indicated that “the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant’s sentence.” Thereafter, the legislature sets out 29 enhancement factors for the sentencing Court to consider. In this case, the Court finds the following enhancement factors to be applicable in this case and the court will refer to them by their

statutory designation:

**(1) The defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range.**

This factor specifically refers to “criminal convictions” and “criminal behavior.”

With regard to criminal convictions and criminal behavior, the law specifically provides that there are no time limits and the Court shall consider all such behavior regardless of its age, i.e criminal convictions or behavior do not have to be committed within 10 years etc. State v. Starnes, 2002 WL 127365 (Tenn. Crim. App. 2002). Further criminal behavior must be considered even if it did not result in a conviction as long as the State can establish that a crime was committed by a preponderance of the evidence. State v. Carico, 968 S.W.2d 280 (Tenn. 1998); State v. Jones, 883 S.W.2d 597 (Tenn. 1994) (preponderance of the evidence). Likewise, admissions of criminal behavior made by a defendant may be considered whether or not they were the subject of prosecution. See e.g. State v. Tullos, 2007 WL 2377354 (Tenn. Crim. App. 2007). In this case, this Court places great weight on the sixteen (16) prior criminal convictions set forth above. The Court further places great weight on the six times that Defendant actually voted while being a convicted felon. This Court finds by a preponderance of the evidence that the Defendant willfully and knowingly voted when she knew she was prohibited by law from doing so.

**(8) The defendant, before trial or sentencing, failed to comply with the conditions of a sentence involving release into the community.**

In this case, Defendant was on a seven-year probation (for crimes No 11 through 15 listed above: Tampering with evidence, Forgery, Perjury, Theft and Stalking a Judge) at the time she committed the crime for which she is now being sentenced. In addition she has had a prior violation of probation (for crimes 12 through 15 listed above).

The Court places great weight on this factor.



**(13) At the time the felony was committed...the defendant [was] ...released on probation.**

In this case, Defendant was on seven-year probation (for crimes No 12 through 15 listed above: Tampering with evidence, Forgery, Perjury, and Stalking a Judge) at the time of the commission of the present offense. In fact, Defendant is still on that seven-year probation at the time that this Court is entering this sentencing order.

The Court places great weight on this factor.

***Mitigating factors:***

In T.C.A. § 40-35-113, the Tennessee legislature has indicated that “[i]f appropriate for the offense, mitigating factors may include, but are not limited to...the following.” Thereafter, the legislature sets out twelve (12) statutory mitigating factors for the sentencing court to consider and in factor (13) provides a “catch-all” provision that the court may consider “[a]ny other factor consistent with the purposes of this chapter.

In this case, the Court only finds one of the statutory mitigating factors to be applicable: **(1) The defendant’s criminal conduct neither caused nor threatened serious bodily injury.**

In this case, the defendant was convicted of a non-violent offense. It is difficult to conceive how this offense ever could be committed involving an act of violence. Accordingly, it must be assumed that the legislature assigned the D felony classification for this offense based largely on a recognition that the offense was serious, but also non-violent. Nevertheless, this court places great weight on this factor.

With regard to the “catch-all provision” a wide variety of circumstances have been considered mitigating factors. Among those that have been considered appropriate to consider are the defendant’s genuine and sincere remorse as well as the defendant’s ready admission of guilt and acceptance of responsibility. With regard to remorsefulness the courts have recognized that genuine, sincere remorse is a proper mitigating factor, but “the mere speaking of remorseful words or a genuflection in the direction of remorse will not earn the accused a sentence reduction.” State v. Williamson, 919 S.W.2d 60 (Tenn. Crim. App. 1995). The same can be said about “acceptance of responsibility.” In

this case Defendant was offered a chance to make a statement in the presentence report but declined to do so. Defendant then appeared at the second phase of the sentencing hearing and in two hours of testimony attempted to shift blame away from herself. She ultimately concluded with a mere utterance that she accepts full responsibility. It is up to this Court to determine whether Defendant was sincere in her acceptance of responsibility or was just playing the “sentencing game” with the Court. See e.g. State v. Wilson, 2008 WL 5130609 (Tenn. Crim. App. 2008). This Court finds after observing her demeanor and attitude through the time that this case has been pending, throughout the trial and most importantly at the sentencing hearing, that Defendant’s testimony regarding acceptance of responsibility and/or remorse was not sincere or credible.

In accordance with the Law, weighing the aggravating factors in this case against the mitigating factors and following the sentencing guidelines set forth above, this Court determines that the appropriate length of sentence in this case is Six (6) years and one (1) day, as a Range II, Multiple Offender.

### **CONCURRENT OR CONSECUTIVE SENTENCING**

Defendant is currently on a seven-year probation (for crimes No 12 through 15 listed above: Tampering with evidence, Forgery, Perjury, Stalking a Judge) at the time of the commission of the present offense. The probation violation proceedings are not pending before this Judge. That matter has been assigned to Senior Judge William Acree, who has set a probation violation hearing to be conducted on April 25, 2022. As a result, Defendant is facing the possibility of a seven-year sentence to serve in addition to the sentence imposed by this Court. The question arises as to whether the sentence imposed by this Court should run concurrent (at the same time) or consecutive to the possible probation violation sentence of (7) seven years.

Under Tennessee law a trial court may order sentences to run consecutively if the court finds by a preponderance of the evidence that the defendant is sentenced for an offense committed while on probation. T.C.A. § 40-35-115(b)(6). In this case, Defendant

is clearly eligible for consecutive sentencing as this Court finds by a preponderance of the evidence that Defendant committed this offense while on probation, but this Court retains the discretion to order the sentence to be served concurrent to the violation of probation sentence. See State v. Hayes, 899 S.W.2d 175 (Tenn. Crim. App. 1995). Lengthy consecutive sentences may be imposed when such confinement is necessary to protect society against further criminal conduct, but the aggregate maximum consecutive terms must be reasonably related to the severity of the offenses involved. T.C.A. § 40-35-115, Sentencing Commission Comments. Consecutive sentencing is also justified if the defendant is found to be an offender whose record of criminal activity is extensive. The primary purpose of consecutive sentences for offenders whose record is extensive is to protect society from an individual not likely to be rehabilitated. Furthermore, an extensive history of criminal activity sufficient to justify consecutive sentencing may consist solely of misdemeanor convictions. See State v. Trivette, 2007 WL 1687168 (Tenn. Crim. App. 2007) (six prior misdemeanors) See also State v. Dickson, 413 S.W.3d 735 (Tenn. 2013) (even non-violent offenses show a consistent pattern of operating outside the confines of lawful behavior).

This Court clearly finds Defendant is a suitable candidate for consecutive sentencing. Nevertheless, the Court has decided to exercise its discretion and allow the sentence imposed by this Court to be served “concurrently” with the seven-year sentence for which the Defendant is currently on probation (crimes No 12 through 15 listed above: Tampering with evidence, Forgery, Perjury, Stalking a Judge) and is facing a violation of probation before another judge.

### **WHETHER TO IMPOSE AN ALTERNATIVE SENTENCE**

The Tennessee Criminal Sentencing Reform act requires the Court to determine the *manner* that the sentence is to be served. The first issue a sentencing judge must determine is whether the defendant should receive some type of alternative sentence other than continuous incarceration. This decision is made using the principles and

guidelines provided by the Act. If the judge decides this question negatively, this ends the inquiry and the defendant will be incarcerated for the balance of the sentence. If the judge decides that an alternative sentence is appropriate, the judge must then consider the criteria applicable to the various alternatives to determine which alternative sentence to impose. The burden of establishing suitability for probation or any alternative sentence is on the defendant. State v. Carter, 254 S.W.3d 335, 347 (Tenn. 2008) (citing T.C.A. § 40-35-303(b)).

***Additional principles, considerations and guidelines***

With regard to the issue of alternative sentencing, the principles of sentencing promote the use of alternative sentencing as a means to encourage effective rehabilitation of defendants when reasonably feasible. The principles also give guidance as to the types of defendants who should be required to serve their sentences in confinement by providing that "...convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society, and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration." T.C.A. § 40-35-102(5). A defendant who does not fall within the aforementioned class and who is an especially mitigated offender or a standard Range I offender and is convicted of a Class C, D, or E felony "should be considered" a favorable candidate for an alternative sentence in the "absence of evidence to the contrary." T.C.A. § 40-35-102(6)(A). As far as what constitutes "evidence to the contrary" that would justify a denial of an alternative sentence, the legislature provides further guidance by providing that sentences involving confinement shall be based on at least one of the following: (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). These guidelines are connected with the disjunctive "or" indicating that any of the three would be sufficient

reason to deny an alternative sentence.

In determining whether to impose an alternative sentence, the sentencing judge must also consider any applicable enhancement and mitigating factors and the potential or lack of potential for the rehabilitation or treatment of the defendant. A defendant's truthfulness while testifying, either at trial or in a sentencing hearing, can be considered probative on the issue of the defendant's potential for rehabilitation and is a relevant factor in the sentencing process. Accordingly, untruthfulness and lack of candor can be a basis for denial of an alternative sentence. State v. Souder, 105 S.W.3d 602 (Tenn. Crim. App. 2002). Additionally, the principles of sentencing reflect that the sentence should be no greater than that deserved for the offense and should be the least severe measure necessary to achieve the purposes for which the sentence is imposed.

In addition, if the offense is non-violent and the defendant is the primary caregiver of a dependent child, the Court should consider any community based alternatives to confinement and the benefits that imposing such an alternative may provide the community. [The Court has specifically considered this factor in this case. Defendant had the burden of proving suitability for probation and proving the applicability of this factor. Defendant never presented to this Court an order of a court addressing how she shared the parenting time with the child's father. She finally admitted that they shared some type of joint custody and that the thirteen year-old male child was staying with his father with whom he apparently stays of a regular basis. This Court finds that this factor remains a legitimate sentencing consideration in this case, but under the specific facts of this case the other factors in support of denying an alternative sentence greatly outweigh this factor.]

The likelihood that a defendant will reoffend is also a fundamental consideration in determining whether to grant an alternative sentence. State v. Durick, 2020 WL 6038963 (Tenn. Crim. App. 2020).

According to the legislature, defendants who are classified as Range II, Multiple Offenders are excluded from those that "should be considered" a favorable candidate for an alternative sentence. In this case, Defendant is a Range II, Multiple Offender.

Nevertheless, she is eligible for consideration for an alternative sentence such that this Court will consider all applicable sentencing principles and all relevant facts and circumstances of the case and all forms of alternative sentencing.

In this case, the Court finds that the two of the three statutory guiding principles that justify a sentence of confinement are applicable:

**(A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct.**

Defendant is a Range II, Multiple Offender and her sixteen (16) prior criminal convictions standing alone constitute a long history of criminal conduct and a clear disregard for the laws and morals of society. In this case confinement is necessary to protect society by restraining a Defendant who has a long history of criminal conduct. The additional fact that Defendant voted in six different elections, thus committing six more felonies, as a convicted felon is shocking. As previously mentioned, this Court finds by a preponderance of the evidence that Defendant willfully and knowingly voted when she knew she was prohibited by law from doing so. See State v. Durick, 2020 WL 6038963 (Tenn. Crim. App. 2020) (allowing consideration of uncharged criminal conduct).

**(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.**

Many of Defendant's offenses in the past have been committed while she was in some form of alternative to custody, whether it be on bail or on probation. Crimes 1 through 9 listed above were committed in Knox County. The record is somewhat unclear but based on Defendant's testimony and the actual judgment sheets admitted into evidence, it appears that all of the Knox County offenses, except the first one, were committed while Defendant was out on bond. It should be noted that the presentence report does not reflect accurate information about the dates Defendant's Knox County offenses were committed or the dates she pled guilty to those offenses. The chart contained in this Order was taken from and composed from the actual judgment sheets admitted into evidence in this case. These judgments do not reflect that Defendant was

entitled to jail credit on any of her sentences. For the Knox County crimes Defendant pled guilty with an agreed effective sentence length of eight (8) years. The trial judge in that case denied the Defendant any form of an alternative sentence. Pamela J. Moses v. State, 2003 WL 22258189 (Tenn. Crim. App. 2003).

In this case, crimes 10 through 16 listed above were committed in Shelby County. In reviewing these Shelby County crimes, it is clear that the Defendant was on probation (for crimes No 12 through 15 listed above) at the time she committed the crime for which she is now being sentenced. In addition she has had a prior violation of probation (for crimes 12 through 15 listed above), and she was out of custody on bond for two other criminal offenses (No. 10 and No 11 listed above) when she committed the crimes (No. 12 through 16) for some of which she is currently on probation. See State v. Trivette, 2007 WL 1687168 (Tenn. Crim. App. 2007) (fact that defendant commits crimes while on bond and continues to commit crimes after prior grants of probation demonstrates that measures less restrictive than confinement have been unsuccessfully applied). Finally, as explained above, the Defendant committed six felonious acts of illegal voting while she was on her current probation. Based on the record, measures less restrictive than confinement have frequently and recently been applied unsuccessfully to the Defendant. In conjunction with this factor, the Court finds it extremely likely that the Defendant will reoffend if placed on some form of alternative sentence.

In addition to the statutory factors listed above, this Court specifically finds that the Defendant lacked candor during her testimony in the sentencing hearing and was not truthful in multiple respects, many of which were listed previously in this order.

#### **VALIDATED RISKS AND NEEDS ASSESSMENT**

The validated risk and need assessment in this case indicates: "The Defendant was assessed with Tennessee's Validated Risk Assessment, resulting in a risk score of low, with no high or moderate needs...." This Court notes that the report does not specifically address Defendant's risk to reoffend or her dangerousness to the community in a separate score, but lumps it all into one overall score. If the report can be interpreted as indicating that Defendant has a low risk of reoffending, this Court seriously questions both

the accuracy of that determination as well as the methodology for that determination for several reasons. First, the pre-sentence report "mistakenly" indicates that most of her Knox County crimes occurred on the same day when the judgments filed in this Court by the District Attorney clearly indicate that, although Defendant disposed of all the cases on the same date, the offenses were, in fact, committed on seven different dates. Looking at the record more closely, it is clear Defendant committed her first crime on January 1, 1997 and before that case was disposed of, she committed ten (10) more crimes on at least six different dates. Further, she committed a felony aggravated assault on December 19, 1997, with a weapon and before that crime was disposed of committed seven (7) more crimes including three more Assaults on two different days.

Looking at her Shelby County record, it is clear that the Defendant committed the crimes for which she is currently on probation after she committed two Thefts. Further, the presentence report was completed prior to the sentencing hearing such that the preparer of the report had no way of knowing that Defendant illegally voted in six different elections while she was on probation.

Second, with regard to the Defendant's "criminogenic needs" the report indicates the following:

**"Subject has displayed threatening, aggressive or violent behaviors in the community during his (sic) lifetime."**

**"Subject has committed a physical assault of an adult at some point within his/her lifetime."**

**"Subject's threatening, aggressive or violent behaviors have been motivated by retaliation or vengeance."**

**"Subject's threatening, aggressive or violent behaviors have been motivated by conflict or stress."**

**"Subject has perpetrated domestic violence against a past partner within his/her lifetime."**

**"Subject has committed stalking, harassment, or intimidation at some point within his/her lifetime."**



**“Subject has committed a physical assault of a female at some point within his/her lifetime.**

**“Subject has committed a physical assault of a male within his/her lifetime.”**

**Subject’s threatening, aggressive or violent behaviors have been motivated by impulsivity, acting without thinking and a lack of control or inhibitions.”**

**“Subject has threatened someone with a weapon at some point in his/her lifetime.”**

After reporting the above *shocking and horrendous* findings, the report goes on to say that “Subject has not displayed any threatening, aggressive or violent behavior within the last five years.” It goes without saying that the person making this observation was (1) relying on the self-reporting of Defendant and (2) on the fact that no new violent charges have been lodged against Defendant in the last five years. Whether this type of behavior has been “displayed” in the last five years is only speculation on the part of the person making the report. More importantly, Defendant has been on probation for the last five years and placing such great weight on the absence of formal charges and self-reporting of Defendant seems a flawed methodology. Ignoring the entire criminal record of Defendant and focusing only on the period of time she has been on probation does not render an accurate assessment.

Third, as mentioned above, the person making the report is relying upon the self-reporting of Defendant. The report goes on to say:

**“Subject’s behavior/verbal actions demonstrate understanding of consequences, whether positive or negative.”**

**“Subject uses self-control or thinks before acting.”**

**“Subject uses social skills effectively”**

**“Subject thinks through situations logically.”**

**“Subject generally respects authority and is compliant.”**

**“Subject denies any criminal behavior.”**

“Subject generally respects the property of others.”

First, it is clear that the conclusions of the person making the report are based solely on the self-reporting of Defendant. Second, the record shows that the Defendant's self-reports are simply not accurate. Defendant has sixteen (16) prior criminal convictions, despite her claim that she doesn't. Defendant has multiple theft and vandalism convictions. Her self-assessment that she respects the property of others is not accurate. The Defendant's crimes for which she is currently on probation; Tampering with evidence, Forgery, Perjury and Stalking a judge clearly demonstrate that she has no respect for authority. The crimes Defendant has been convicted of do not indicate that she uses self-control and thinks before acting or that she respects authority and is compliant.

After analyzing the entire record in this case, this Court finds that there is a high risk that this Defendant will re-offend and that the assessment is faulty based on the reasons stated above.

### **CONCLUSION**

In accordance with the Law, based on the foregoing and considering all the statutory criteria stated above and the results of the validated risk assessment, this Court concludes that the Defendant has failed to show that she is a suitable candidate for any form of alternative sentencing-including probation.

Defendant in this case “mouthed the words” that she accepted full responsibility for her crime and had the utmost respect for the law. What is readily apparent to this Court is that neither statement is truthful. This Defendant seems to have nothing but “contempt” for the law and acts as though she believes herself “above the law.” In reality, Defendant believes she did nothing wrong and did not violate the law. Rehabilitation is one of the primary goals of sentencing, but rehabilitation cannot be accomplished if Defendant refuses to recognize that she has committed a crime. Perhaps some time in custody will serve as a period of reflection that will give the Defendant the insight she needs in order to be fully rehabilitated. Accordingly, this Court will deny any form of alternative sentence at this time.

However, Defendant may petition the court to suspend the remainder of her sentence after serving nine months, provided she completes a moral recognition class and maintains a satisfactory record of good behavior while incarcerated, including receiving no formal disciplinary sanctions. At that time, the Court will reconsider placing Defendant on probation with some form of re-entry supervision with appropriate community service. Defense counsel is encouraged to begin investigating community service options [including faith-based options if Defendant so desires] that will best serve both the interest of Defendant and the community.

**IT IS THE ORDER OF THIS** Court that a judgment be entered sentencing Defendant as a Range II, Multiple Offender to a sentence of six (6) years and one (1) day to be served concurrent to her sentences for Forgery, Perjury, Stalking a Judge, and Theft.

**IT IS FURTHER ORDERED** that Defendant is denied any form of alternative sentence at this time.

**IT IS FURTHER ORDERED** that Defendant's probation revocation proceedings be forwarded for consideration by Senior Judge, William Acree, who has scheduled the matter for April 25, 2022.

**IT IS FURTHER ORDERED** that this matter be placed upon the docket of this Court for a status report on May 20, 2022.

ENTERED this 31<sup>st</sup>. day of January, 2022.



JUDGE W. MARK WARD  
CRIMINAL COURT DIVISION IX

Filed 1/31/22  
Heidi Kuhn, Clerk  
BY Gabe Rankin D.C.