

STATE OF TENNESSEE

OFFICE OF THE
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April 27, 2004

Opinion No. 04-077

Tenn. R. Crim. Pro. 32(c)(3) and Consecutive Sentencing

QUESTION

Does Tennessee Rule of Criminal Procedure 32(c)(3) create new circumstances, in addition to those already required by law, where consecutive sentencing is mandatory?

OPINION

No, Tennessee Rule of Criminal Procedure 32(c)(3) does not create new instances where consecutive sentencing is mandatory in addition to those already outlined in the Tennessee Code.

ANALYSIS

Rule 32(c)(3) provides:

Where a defendant is convicted of multiple offenses from one trial or where the defendant has additional sentences not yet fully served as the result of the convictions in the same or other court and the law requires consecutive sentences, the sentence shall be consecutive whether the judgment explicitly so orders or not. This rule shall apply:

- (A) to a sentence for a felony committed while on parole for a felony;
- (B) to a sentence for escape or for a felony committed while on escape;
- (C) to a sentence for a felony where the defendant was released on bail and the defendant is convicted of both offenses; and
- (D) any other ground provided by law.

This rule does not create new circumstances where consecutive sentencing must be imposed because the enumerated areas simply reiterate those instances where consecutive sentencing is mandated by the Code. Specifically, subpart (A) is akin to Tenn. Code Ann. § 40-28-123(a), and subpart (B) is nearly identical to the language of Tenn. Code Ann. § 39-16-605(c). Similarly, subpart (C) mirrors Tenn. Code Ann. § 40-20-111(b). Subpart (D) simply operates as a catch-all provision for those statutes that require consecutive sentencing but are not specifically enumerated in the rule. It is the opinion of this office, therefore, that the enumerated provisions set forth in Rule

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32(c)(3) do not create new circumstances where consecutive sentencing is required; they merely outline those situations in which consecutive sentencing is mandated by the Tennessee Code.

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