

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

March 13, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

AT KNOXVILLE

APRIL SESSION, 1999

STATE OF TENNESSEE,)	C.C.A. NO. 03C01-9803-CR-00118
)	
Appellee,)	
)	
)	HAMILTON COUNTY
VS.)	
)	HON. DOUGLAS A. MEYER
PAUL RAYMOND OSBORN,)	JUDGE
)	
Appellant.)	(Direct Appeal - D.U.I. Third Offense)

FOR THE APPELLANT:

FOR THE APPELLEE:

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ORDER FILED _____

AFFIRMED PURSUANT TO RULE 20

JERRY L. SMITH, JUDGE

ORDER

Paul Raymond Osborn, the defendant and appellant, was convicted by a Hamilton County jury for driving under the influence of an intoxicant, third offense. Following the verdict, the jury imposed a fine of ten-thousand dollars. The trial court then held a sentencing hearing, after which the trial court sentenced the defendant to eleven (11) months and twenty-nine (29) days in jail, revoked his driving privileges for three (3) years, ordered his participation in an alcohol rehabilitation program, and approved the ten-thousand dollar fine imposed by the jury. On appeal, the defendant argues that the trial court's imposition of a ten-thousand dollar fine, the maximum fine for a D.U.I., third offense, was excessive. Due to the insufficiency of the record on appeal, we are unable to determine whether the trial court erred. Therefore, we affirm the judgment of the trial court pursuant to Rule 20 of the Court of Criminal Appeals.

On appeal, the burden is on the appealing party to show that the sentencing is improper. Tenn. Code Ann. §§ 40-35-401(d), -402(d), Sentencing Commission Comments. In order to satisfy that burden, the defendant has a duty to prepare a record that conveys a fair, accurate and complete account of what transpired with respect to the issue presented for review. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993). When the record is incomplete and does not contain a transcript of the proceedings relevant to the issue presented for review, the appellate court is precluded from considering the issue. Id. Instead, the appellate court must conclusively presume the ruling of the trial court was correct. State v. Griffis, 964 S.W.2d 577, 593 (Tenn. Crim. App. 1997). In this case, we are unable to review the trial court's sentencing procedure, because

the appellant has failed to provide a transcript of the sentencing hearing on appeal. Thus, we must assume that the trial court complied with the purposes of the Criminal Sentencing Reform Act of 1989 when it imposed the maximum fine on the defendant. Finally, we note that although the fine imposed was the maximum allowed, it was authorized by the statute. Tenn. Code Ann. § 55-10-403. Accordingly, we affirm the trial court's judgment pursuant to Rule 20, Tennessee Court of Criminal Appeals. Appellant may remain on bond, with a twenty-five percent increase, pending appeal to the Supreme Court. Costs of this appeal will be paid by the Appellant.

JERRY L. SMITH, JUDGE

CONCUR:

JOE G. RILEY, JUDGE

NORMA MCGEE OGLE, JUDGE