IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE 1995 SESSION

STATE OF TENNESSEE	)	
	)	C.C.A. NO. 02C01-9501-CC-00013
Appellee,	)	
	)	Madison County No. 92-342
V.	)	
	)	Hon. F. Lloyd Tatum, Judge
THOMAS REED	)	(Aggravated Burglary)
	)	
Appellant.	)	

FOR THE APPELLANT:

Jesse H. Ford, III
Attorney at Law
111 West Main, Lower Level
Jackson, Tennessee 38302

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter

Clinton J. Morgan
Counsel for the State
450 James Robertson Parkway
Nashville, Tennessee 37243-0493

James W. Thompson
Assistant Attorney General
Lowell Thomas State Office Building
Jackson, Tennessee 38301

OPINION FILED: _____

AFFIRMED

MARY BETH LEIBOWITZ
Special Judge

O P I N I O N

This is an appeal as of right by the Defendant, Thomas Reed, of his conviction in the Criminal Court for Madison County following a jury trial. The Defendant was convicted of aggravated burglary and was sentenced to a period of confinement of nine (9) years as a Range II Offender and fined one thousand dollars ($1,000.00). He presents two issues for review:

First, whether or not the evidence was sufficient to support the findings of the jury beyond a reasonable doubt within the meaning of Rule 13(e) of the Tennessee Rules Of Appellate Procedure. And, second, whether or not the sentence received was excessive under the sentencing consideration set out in Tennessee Code Annotated, Section 40-35-103. As to both issues we affirm the judgment of the trial court.

The Defendant was found in a home belonging to Mrs. Lillian Parker, who was then a resident of a nursing home (and at the time of trial had deceased), after an alarm connected to a police radio went off on February 8, 1992. The alarm had been installed after the house was broken into on several occasions.

When the alarm went off the police went to the home and saw that it had been broken into, searched the home and found the Defendant in a closet. They pulled him out of the closet and arrested him. The Defendant appeared to be under the influence, and had a strong smell of alcohol about him. The Defendant had no personal property on him belonging either to him or to the victim. The Defendant argues in the first issue that based upon the State's proof he may have committed the offense of aggravated criminal trespass, but because he was under the influence at the time he was found, he could not form the intent necessary to commit the offense of aggravated burglary. Although there was testimony that the Defendant was intoxicated, there was no testimony that would show that the Defendant, who was uncooperative and resistant, was mentally incapable of forming an intent to steal. He had kicked in the back door, and knew enough to hide in the closet to avoid detection. Intent may be inferred from the circumstances in the proof. Hall v. State 490 S.W.2nd 495 (Tenn. 1973) and State v. Holland 860 S.W.2nd 53 (Tenn. Crim. App. 1993). Also citing Hall, supra, the proof of breaking and entering a dwelling creates a presumption that the burglary was committed with the intent to steal. Thus the Appellant's first issue is without merit.

The second issue is whether or not an excessive sentence was imposed as result of the

obvious need for treatment of the Defendant's alcohol problem. The Defendant admits that his criminal record was extensive, and that many of the offenses and convictions on his record related from alcohol abuse. The Court, however, found that the Defendant had been previously placed on probation or partial suspension sentences and had been unable to conform his conduct to the standards required by supervised release. The pre-sentence report indicated that the Defendant was convicted of public intoxication, disorderly conduct, public drunkenness, and driving under the influence. He also has a prior criminal history dating from 1982 consisting of three (3) burglaries, one of which was committed while he was on probation and from which his probation was revoked. Further, there is proof that the Defendant, after having been paroled on that revocation twice, had been revoked twice from parole. The Defendant's second issue is therefore without merit.

Accordingly the judgment of the trial court is affirmed.

MARY BETH LEIBOWITZ, SPECIAL JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

WILLIAM M. BARKER, JUDGE