IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

FILED

September 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	No. 02C01-9506-CC-00170
	)	
	)	Henry County
v.	)	
	)	Hon. Julian P. Guinn, Judge
	)	
KEVIN SHAWN CAMPBELL,	)	(Theft of property and
	)	Burglary)
Appellant.	)	

For the Appellant:

Barton F. Robison
104 W. Washington St.
Paris, TN 38242

For the Appellee:

Charles W. Burson
Attorney General of Tennessee
and
Michael J. Fahey, II
Assistant Attorney General of Tennessee
450 James Robertson Parkway
Nashville, TN 37243-0493

G. Robert Radford
District Attorney General
111 S. Paris St.
P.O. Box 686
Huntingdon, TN 38344

OPINION FILED:_____

AFFIRMED

Joseph M. Tipton
Judge

O P I N I O N

The defendant, Kevin Shawn Campbell, was convicted upon pleas of guilty in the Henry County Circuit Court for burglary, a Class D felony, and theft of property valued at under one thousand dollars, a Class E felony. He was sentenced as a Range I, standard offender to two years for the burglary and one year for the theft to be served concurrent with one another. He was also ordered to pay a total of $1,467.00 in restitution. His sentences are to be suspended and supervised probation imposed after the service of ninety days in the county jail. In this appeal as of right, the defendant contends that the trial court erred in denying him either a two-year community corrections sentence or full probation. We disagree.

The defendant entered guilty pleas to the burglary of a local Shoney's Restaurant and the theft of money from the restaurant's safe. The record on appeal consists only of the pleadings, the presentence report, the judgments of conviction and a transcript of the sentencing hearing, at which no testimony was taken. However, some of the statements at the hearing indicated that the defendant was involved in other burglaries and thefts. The trial court stated that total probation would not serve justice and imposed a sentence of split confinement.

Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. §§ 40-35-401(d) and -402(d). As the Sentencing Commission Comments to these sections note, the burden is now on the appealing party to show that the sentencing is improper. This means that if the trial court follows the statutory sentencing procedure, makes findings of fact that are adequately supported by the record and gives due consideration and proper application of the factors and principles that are relevant to sentencing under the

1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

In conducting a de novo review, we must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his own behalf and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-102, -103 and -210; see Ashby, 823 S.W.2d at 168; State v. Moss, 727 S.W.2d 229 (Tenn. 1986).

Unfortunately, the record does not contain a transcript of the guilty plea hearing, at which we assume a more specific description of the defendant's criminal conduct would have been made. Without a full record of the trial court events that are relevant to the issue before us, we are to presume that the trial court is correct in its rulings. See, e.g., State v. Meeks, 779 S.W.2d 394, 397 (Tenn. Crim. App. 1988), app. denied (Tenn. 1989). In any event, we are unable to say that the record on appeal does not support the trial court's order that the defendant is to serve ninety days in confinement.

The defendant has failed to overcome the presumption that the trial court was correct in its sentencing determinations. The judgment of conviction is affirmed.

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Joseph M. Tipton, Judge

CONCUR:

_____
Paul G. Summers, Judge

_____
Jerry L. Smith, Judge