

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

<p><b>FILED</b></p> <p>October 29, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p><b>STATE OF TENNESSEE,</b></p> <p style="padding-left: 40px;">Appellee,</p> <p>V.</p> <p><b>JAMES KELLY ALLEN,</b></p> <p style="padding-left: 40px;">Appellant.</p>	<p>)</p> <p>) C.C.A. No. 01C01-9510-CC-00338</p> <p>)</p> <p>) Rutherford County</p> <p>)</p> <p>) Hon. J. S. Daniel, Judge</p> <p>)</p> <p>) ( Assault and Criminal Trespass)</p> <p>)</p> <p>)</p>
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FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: \_\_\_\_\_

**AFFIRMED**

**PAUL G. SUMMERS,**  
 Judge

## OPINION

The appellant, James Kelly Allen, was convicted by a jury of criminal trespass and assault. He was sentenced to 11 months and 29 days with all but 5 days of the sentence suspended. The appellant was ordered to pay fines and restitution totaling \$3829.00. In his pro se appeal, the appellant contends that he received ineffective assistance of counsel. We affirm the trial court.

It was incumbent upon the appellant to prepare a record that included all materials relevant to his appeal. Tenn. R. App. P. 24(b). Without a complete record it is impossible for us to conduct an appellate review. The appellant must prove his allegations through a preserved record. The record does not contain trial transcripts or a Rule 24(c) statement of evidence.<sup>1</sup> We are, therefore, unable to clearly establish what occurred in the trial court and cannot review for plain error. Tenn. R. App. P. 52(b).<sup>2</sup>

This Court does bend over backwards with pro se litigants to make sure they are treated fairly. However, we cannot bend the rules until they break. Otherwise, our system lacks consistency and honesty.

The appellant has failed to meet his burden. Accordingly, the judgment of the trial court is affirmed.

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<sup>1</sup>The record reflects that the appellant did not have a court reporter present at his trial and no transcript was created. The appellant, however, correctly requested statements of evidence to be submitted to this Court pursuant to Tenn. R. App. P. 24(c). Inexplicably, the record does not contain this statement of evidence.

<sup>2</sup>This Court is not making a determination of the appellant's ineffective assistance claim. Therefore, the issue should not be considered previously determined.

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PAUL G. SUMMERS, Judge

CONCUR:

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GARY R. WADE, Judge

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L. T. LAFFERTY, Special Judge