IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

SEPTEMBER 1996 SESSION

FILED

October 29, 1996

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 01C01-9509-CC-00286
Appellee,	)
	) Coffee County
V.	)
	) Hon. Gerald L. Ewell, Sr., Judge
	)
TONY D. BURTON,	) (Sentencing: DUI - Third Offense)
	)
Appellant.	)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, Tony D. Burton, was convicted by a jury of driving under the influence of an intoxicant, third offense, and violation of the implied consent law. He was sentenced to 11 months and 29 days in the county jail. His sole contention on appeal is that his sentence is excessive.

The appellant was responsible for filing trial transcripts with this Court by August 21, 1995. The appellant missed this filing date. On September 1, 1995, he requested additional time to file. Our Court denied this request but advised him to file a motion to late-file pursuant to Tenn. R. App. P. 2. The appellant, however, lodged a summary statement of facts pursuant to Tenn. R. App. P. 24(e) (sic).

The record fails to establish that filing a Rule 24(e), or 24(c), statement of evidence was proper. Statements of evidence may be submitted in lieu of trial transcripts upon a showing that transcripts are unavailable. Tenn. R. App. P. 24(c). Because appellant did not ask to late-file a transcript or a 24(c) statement as directed by Presiding Judge Scott's order, we have no evidence to consider.

It was incumbent upon the appellant to prepare a record that included all materials necessary for proper disposition of his appeal.[1] Tenn. R. App. P. 24(b). Without a complete record, it is impossible for us to conduct a de novo review[2] of the sentence as provided by Tenn. Code Ann. 40-35-401(d) (1990).[3] Tenn. R. App. P., Rule 13(c); See State v. Beech, 744 S.W.2d 585, 588 (Tenn. Crim. App. 1987).

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[1]The filing of a statement of facts presented for review was technically incorrect. However, even had this procedure been proper and if we considered the statement, our review reveals that the trial judge followed the principles of sentencing. We see nothing that would overcome the presumption that the sentence was appropriate.

[2]Due to the lack of trial and sentencing transcripts or evidence, the record fails to clearly establish what occurred in the trial court. We are, therefore, unable to invoke a Rule 52(b) review.

[3]We note counsel's difficulty in communicating with the appellant. This may have contributed to there being no transcript and possibly counsel's delay in meeting filing deadlines.

The trial court prepared an excellent and thorough sentencing order which is a part of this record. The appellant has not overcome the presumption of correctness. Accordingly, the judgment of the trial court is affirmed.

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PAUL G. SUMMERS, Judge

CONCUR:

_____
GARY R. WADE, Judge

_____
L. T. LAFFERTY, Special Judge