

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER 1996 SESSION

<p><b>FILED</b></p> <p>January 30, 1997</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
---

STATE OF TENNESSEE,	)	NO. 01C01-9512-CR-00428
	)	
Appellee	)	DAVIDSON COUNTY
	)	
V.	)	HON. THOMAS H. SHRIVER, JUDGE
	)	
TERRY L. BURTON	)	(Sentencing)
	)	
Appellant	)	
	)	

FOR THE APPELLANT

FOR THE APPELLEE

Carlton M. Lewis  
208 Third Avenue, 5th Floor  
Nashville, Tennessee 37201

Charles W. Burson  
Attorney General and Reporter  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0493

Lisa A. Naylor  
Assistant Attorney General  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0493

Victor S. Johnson, III  
District Attorney General  
Washington Square  
222 2nd Avenue North, Ste 500  
Nashville, Tennessee 37201-1649

Jon P. Seaborg  
Assistant District Attorney General  
Washington Square  
222 2nd Avenue North, Ste 500  
Nashville, Tennessee 37201-1649

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

AFFIRMED

William M. Barker, Judge

Opinion

The Appellant, Terry L. Burton, appeals as of right his sentence for one count of reckless endangerment. He contends that the trial court erred when it ordered split confinement instead of suspending his sentence and placing him on probation. For the reasons stated below, we affirm the trial court's sentences.

On January 10, 1994, the Appellant picked his girlfriend up at a friend's house. They got into the Appellant's car and were soon involved in a heated argument. The Appellant eventually pulled over in a parking lot where the quarrel continued. An off-duty police officer witnessed the altercation from a service station across the street. The off-duty officer crossed the street hoping that he could settle the dispute. When the Appellant realized that somebody was approaching, he got into his car and drove away. The officer, in his private car, followed the Appellant and tried to stop him. The record is unclear as to what happened next, but it appears that the officer stopped the Appellant on the interstate, that the Appellant escaped this stop, and that he was later chased by other police officers down the interstate at speeds up to 100 miles per hour.

After being indicted, the Appellant pled guilty to one count of reckless endangerment. The trial judge sentenced him to one year in the regional workhouse and one year on supervised probation. The trial judge then ordered the time in the workhouse to be reduced to probation after the Appellant served forty-two days.

The Appellant argues that the trial judge erred by not ordering that he serve his full sentence on probation. The Appellant has waived this issue.

"When an accused seeks appellate review of an issue in this court, it is the duty of the accused to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues which form the basis of the appeal." State v. Bennet, 798 S.W.2d 783, 789 (Tenn. Crim. App. 1990). When an appellant contends that his sentence is excessive, but fails to include a transcript from the sentencing hearing, the issue of excessive sentences will be considered waived. State v. Ivy, 868 S.W.2d 724, 728 (Tenn. Crim. App. 1993); see also Tenn. R. App. P. 24(b). Moreover, if the appellate record is inadequate, the reviewing court must

presume that the trial judge ruled correctly. Ivy, 868 S.W.2d at 728; Herron v. State, 456 S.W.2d 873, 876 (Tenn. Crim. App. 1970).

In the case sub judice, the Appellant, in preparing the record on appeal, failed to include a transcript of the sentencing hearing. This issue is, therefore, waived on appeal. Moreover, without the sentencing hearing transcript, which would have provided the trial judge's reasons for imposing the sentence on appeal, we must presume that the trial judge ruled correctly. For the reasons stated above, we affirm the trial court's judgment.

---

WILLIAM M. BARKER, JUDGE

CONCUR:

---

JOE B. JONES, PRESIDING JUDGE

---

J. STEVEN STAFFORD, SPECIAL JUDGE