

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
OCTOBER 1996 SESSION

FILED
February 13, 1997
Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
) No. 01-C-01-9601-CC-00047
)
 v.) Montgomery County
)
) Robert W. Wedemeyer, Judge
)
) (Driving While Intoxicated)
 NEFF JOSEPH LOUPE,)
)
 APPELLANT.)

FOR THE APPELLANT:

N. Reese Bagwell
Attorney at Law
116 South Second Street
Clarksville, TN 37040

FOR THE APPELLEE:

Charles W. Burson
Attorney General & Reporter
500 Charlotte Avenue
Nashville, TN 37243-0497

Michael J. Fahey, II
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

John W. Carney, Jr.
District Attorney General
204 Franklin Street, Suite 200
Clarksville, TN 37040

Steven L. Garrett
Assistant District Attorney General
204 Franklin Street, Suite 200
Clarksville, TN 37040

OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

Joe B. Jones, Presiding Judge

OPINION

The appellant, Neff Joseph Loupe, was convicted of driving while under the influence after a bench trial. He presents three issues for this Court to resolve. He contends the trial court erred in considering the testimony of a police officer regarding (a) the horizontal gaze nystagmus test and (b) the effect of certain over-the-counter medication, and (c) the trial court imposed an excessive sentence. Unfortunately, this Court is precluded from considering these issues¹ because the appellant failed to file either a verbatim transcript or statement of the evidence of the proceedings in the trial court.² Instead, this Court must conclusively presume the rulings of the trial court and the sentence imposed by the trial court were correct.³ Thus, the judgment of the trial court is affirmed pursuant to Rule 20, Tenn. Ct. Crim. App.

JOE B. JONES, PRESIDING JUDGE

¹When there is no record of the proceedings in the trial court, the appellate court is precluded from considering the issues presented for review. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993); State v. Roberts, 755 S.W.2d 833, 836 (Tenn. Crim. App.), per. app. denied (Tenn. 1988); State v. Miller, 737 S.W.2d 556, 558 (Tenn. Crim. App.), per. app. denied (Tenn. 1987); State v. Morton, 639 S.W.2d 666, 668 (Tenn. Crim. App.), per. app. denied (Tenn. 1982)(failure to file either a verbatim transcript or statement of the evidence); see McDonald v. Onoh, 772 S.W.2d 913, 914 (Tenn. Ct. App.)(failure to file either a verbatim transcript or statement of the evidence), cert. denied, 493 U.S. 859, 110 S.Ct. 168, 107 L.Ed.2d 125 (1989), rehg. denied, 493 U.S. 960, 110 S.Ct. 379, 107 L.Ed.2d 364 (1989).

²The appellant has the duty to prepare a record which conveys a fair, accurate and complete account of what transpired in the trial court with respect to the issues that form the basis of the appeal. Tenn. R. App. P. 24(b); State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983); State v. Oody, 823 S.W.2d 554, 558-59 (Tenn. Crim. App.), per. app. denied (Tenn. 1991); Roberts, 755 S.W.2d at 836; Miller, 737 S.W.2d at 558.

³See State v. Aucoin, 756 S.W.2d 705, 716 (Tenn. Crim. App. 1988), cert. denied, 489 U.S. 1084, 109 S.Ct. 1541, 103 L.Ed.2d 845 (1989); Miller, 737 S.W.2d at 558.

CONCUR:

WILLIAM M. BARKER, JUDGE

J. STEVEN STAFFORD, SPECIAL JUDGE