

IN THE COURT OF CRIMINAL APPEALS

AT NASHVILLE

JANUARY 1997 SESSION

**FILED**  
February 13, 1997  
Cecil W. Crowson  
Appellate Court Clerk  
C.C.A. NO. 01C01-9604-CC-00157

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 )  
 VS. )  
 )  
 )  
 PHILLIP DUANE ROBERTS )  
 )  
 Appellant. )

C.C.A. NO.

PUTNAM COUNTY  
HON. JOHN J. MADDUX, JR.,  
JUDGE  
(Driving on Revoked License,  
3rd Offense; Public Intoxication).

FOR THE APPELLANT:

**H. MARSHALL JUDD**  
Assistant Public Defender  
215 Reagan Street  
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FOR THE APPELLEE:

**CHARLES BURSON**  
Attorney General & Reporter  
  
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District Attorney General  
  
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Assistant District Attorney General  
145 S. Jefferson Ave.  
Cookeville, Tennessee 38501

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

**AFFIRMED**

**JOE G. RILEY,**  
**JUDGE**

## OPINION

The defendant appeals as of right from a conviction for driving on a revoked license, third offense and public intoxication. For the revoked license offense Roberts was sentenced to eleven months and twenty-nine days with eight months to be served in jail and the balance suspended. For public intoxication Roberts was fined \$25. The sole issue for review is whether the eight months of jail time is excessive. We affirm the sentence pursuant to Rule 20 of this Court.

### IMPROPRIETY OF THE SENTENCE

So long as the record reflects that the trial court considered appropriate sentencing principles and all relevant facts and circumstances, our review of the trial court's sentence is *de novo* with a presumption that the trial court's determinations are correct. T.C.A. §40-35-401(d)(1990); State v. Ashby, 823 S.W.2d 166 (Tenn. 1991). The trial court found Robert's history of criminal conduct, including 13 convictions within the past ten years, to be significant and enhanced his sentence accordingly. The court did not find any applicable mitigating factors.

#### A.

Robert's argues that the trial court failed to consider two mitigating factors under T.C.A. § 40-35-113. Roberts contends that T.C.A. § 40-35-113(1) should have been applied because his conduct neither caused nor threatened serious bodily injury. Clearly, Roberts' intoxication and subsequent decision to drive posed a significant risk to others on the highway. See State v. Smith, 1994 WL 682437, C.C.A. No. 03C01-9402-CR-000720 (Tenn. Crim. App. filed December 8, 1994, at Knoxville). Even if applicable, this mitigating factor is entitled to little weight. This issue is without merit.

Secondly, Roberts contends that "although guilty of the crime, [he] committed the offense under such unusual circumstances that it is unlikely that a sustained intent to violate the law motivated his conduct." T.C.A. § 40-35-113(11). Roberts

admitted to committing the offense. He has two prior convictions for driving on a revoked license. His extensive prior criminal history and his deliberate decision to drive on the revoked license clearly shows a sustained intent to violate the law. This issue is without merit.

B.

Roberts further alleges that his sentence is excessive in violation of T.C.A. § 40-35-103(4) and (6). Specifically, Roberts argues that his sentence is excessive because it is greater than the crime deserves and that community service alternatives were available. The trial court granted Roberts supervised probation after having served the required eight months. The record does not support a less severe punishment due to Roberts extensive criminal history, including numerous driving offenses. He is not a good candidate for alternative sentencing.

The judgment of the trial court is AFFIRMED pursuant to Rule 20 of this Court.

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JOE G. RILEY, JUDGE

CONCUR:

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JOHN H. PEAY, JUDGE

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DAVID H. WELLES, JUDGE