

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY 1999 SESSION

**FILED**  
**August 27, 1999**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 v. )  
 )  
 DARREN E. MATTHEWS, )  
 )  
 Appellant. )

No. 02C01-9812-CR-00372  
Shelby County  
Honorable Arthur T. Bennett, Judge  
(Habitual Motor Vehicle Offender)

For the Appellant:

A. C. Wharton  
Public Defender  
Criminal Justice Complex  
201 Poplar Avenue  
Memphis, TN 38103  
(AT TRIAL)

Walker Gwinn  
Assistant Public Defender  
201 Poplar Avenue, 2nd Floor  
Memphis, TN 38103  
(ON APPEAL)

For the Appellee:

Paul G. Summers  
Attorney General of Tennessee  
and  
J. Ross Dyer  
Assistant Attorney General of Tennessee  
425 Fifth Avenue North  
2nd Floor, Cordell Hull Building  
Nashville, TN 37243-0493

William L. Gibbons  
District Attorney General  
and  
Lee Coffee  
Assistant District Attorney General  
Criminal Justice Complex, Suite 301  
201 Poplar Avenue  
Memphis, TN 38103

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

AFFIRMED

Joseph M. Tipton  
Judge

## OPINION

The defendant, Darren E. Matthews, appeals as of right from the Shelby County Criminal Court's denial of alternative sentencing for his conviction for violating the Habitual Motor Vehicle Offenders (HMVO) Act, a Class E felony. The defendant pled guilty pursuant to an agreement and received a sentence of one year as a Range I, standard offender in the Shelby County Correctional Center with the issue of alternative sentencing reserved for judicial determination. The defendant asserts on appeal that the trial court erred in denying him a community corrections sentence. We affirm the trial court.

The defendant was declared a habitual motor vehicle offender in June 1994. In August 1997, the defendant was stopped for speeding and arrested for violating the HMVO order prohibiting him from driving. At the sentencing hearing, the defendant testified that he had been driving to and from work at the time of his arrest. He stated, however, that he was no longer driving and was getting to work by riding with co-workers or taking the bus. He acknowledged five or six previous convictions for driving while his license was suspended or revoked. He promised to abide by the court order in the future. He also said he was paying child support for his two daughters.

The trial court denied alternative sentencing, stating that the defendant's continued driving in defiance of the order indicated that the previous cases did not get the defendant's attention. It also found that the defendant's demeanor while testifying indicated that the defendant was not taking the matter seriously.

The defendant contends that he should be placed in the community corrections program in order to keep his employment and to continue timely child

support payments. He also asserts that the program is his best opportunity for rehabilitation and his “best chance” either to obtain a driver’s license or to adapt to earning a livelihood without driving. He argues that confinement is not the least severe measure to achieve the purpose for which the sentence was imposed. See Tenn. Code Ann. § 40-35-103(4).

As a Range I, standard, Class E felon, the defendant is presumed to be a favorable candidate for alternative sentencing options in the absence of evidence to the contrary. See Tenn. Code Ann. § 40-35-102(6). However, the record reflects that the defendant continually disregarded both the driver’s licensing laws and the ultimate court order barring him from driving. Also, the trial court found that the defendant showed a poor attitude at the sentencing hearing. Obviously, one of the main purposes of confinement is for the defendant to appreciate the seriousness of his repeated violation of the driving law. In this respect, the record supports a conclusion that the statutory presumption has been overcome. The judgment of conviction is affirmed.

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Joseph M. Tipton, Judge

CONCUR:

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James Curwood Witt, Jr., Judge

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John Everett Williams, Judge