

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 18, 2011

**STATE OF TENNESSEE v. CHRISTINE CAUDLE**

**Direct Appeal from the Circuit Court of Williamson County  
No. II-CR094394 Timothy L. Easter, Judge**

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**No. M2010-01172-CCA-R3-CD - Filed December 8, 2011**

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JEFFREY S. BIVINS, J., concurring.

I concur in the results reached in the majority opinion. I, however, would affirm the trial court on the merits of its sentencing decision.

This case illustrates the disagreement among the judges of this Court on the issue of whether we should presume the correctness of the trial court's ruling because the defendant failed to include in the appellate record the transcript of the guilty plea hearing. My colleagues in this case advocate a bright-line rule against a review on the merits if the defendant fails to include the guilty plea hearing transcript in the appellate record. I prefer a case-by-case approach in these cases.

Both sides of this issue were addressed articulately in separate opinions in the recent case of State of Tennessee v. Anna M. Steward, No. E2010-01918-CCA-R3-CD, 2011 WL 4346659 (Tenn. Crim. App. Sept. 19, 2011). Speaking for the majority in that case, Judge Witt presents the reasoning for approaching these cases on a case-by-case approach. Presiding Judge Tipton forcefully advocates for the bright-line position in his concurring opinion. I simply conclude that Judge Witt's position is the better position on this issue.

In my opinion, in this case, a review of the transcript of the sentencing hearing and of the exhibits to the plea hearing reveals an adequate record for us to accomplish meaningful appellate review of the sentencing decision. Moreover, the trial court made detailed findings on the appropriate factors applicable to sentencing decisions as required under statutory and case law. Therefore, I would affirm the trial court's sentencing decision on its merits.

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JEFFREY S. BIVINS, JUDGE