

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 24, 2010

**STATE OF TENNESSEE v. JOSHUA LEE ARP**

**Direct Appeal from the Circuit Court for Sevier County**  
**Nos. 14167-III, 14238-III      Rex Henry Ogle, Judge**

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**No. E2010-00371-CCA-R3-CD - Filed September 29, 2010**

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JOSEPH M. TIPTON, P.J., concurring.

I concur in the results reached in the majority opinion. However, I would affirm the trial court because of the defendant's failure to include the trial transcript in the record and the attendant presumption that the trial court's determinations were correct. See State v. Oody, 823 S.W.2d 554 (Tenn. Crim. App. 1991) (holding trial court's ruling presumed correct in the absence of an adequate record on appeal). The 1989 Sentencing Act, as amended, requires a sentencing court to consider evidence received at the trial. T.C.A. § 40-35-210(b)(1). Absent the trial transcript, it is impossible for us to do a de novo review of the matters relevant to sentencing.

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JOSEPH M. TIPTON, PRESIDING JUDGE