

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 3, 2003

STATE OF TENNESSEE v. LAWRENCE E. TRUMAN

**Appeal from the Circuit Court for Williamson County
No. I-185-1201 Donald P. Harris, Judge**

No. M2002-03086-CCA-R3-CD - Filed June 27, 2003

The defendant, Lawrence E. Truman, appeals as of right his conviction by the Williamson County Circuit Court for driving under the influence of an intoxicant (DUI), a Class A misdemeanor. The trial court sentenced the defendant to eleven months, twenty-nine days, with seven days of the sentence to be served in the county jail and the balance on probation. The defendant, who remained free on bond following his conviction, failed to appear for a subsequent review hearing, and the trial court issued a *capias* for his arrest. In this appeal, the defendant contends that the evidence is insufficient to support his DUI conviction. We dismiss the appeal because the defendant remains on escape status.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which DAVID G. HAYES and JAMES CURWOOD WITT, JR., JJ., joined.

John L. Henderson, District Public Defender, and Douglas P. Nanney, Assistant Public Defender, for the appellant, Lawrence E. Truman.

Paul G. Summers, Attorney General and Reporter; Kathy D. Aslinger, Assistant Attorney General; Ronald L. Davis, District Attorney General; and Lee E. Dryer, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Following an October 31, 2002 bench trial, the trial court convicted the defendant of driving while intoxicated on the evening of June 8, 2001, and imposed the above noted sentence. It also ordered that he pay a \$500 fine, be assessed for alcohol treatment, attend Alcohol Safety School, have an ignition interlock device installed on his car, and that his driver's license be restricted. The court ordered that the defendant remain on the same bond and appear on December 9, 2002, for review of his case. The trial court's December 13, 2002 judgment nisi states that the defendant failed to appear and that his bond is forfeited and orders the issuance of a *capias*. Defense counsel

filed a notice of appeal on behalf of the defendant on December 17, 2002. The defendant is presently still at large according to court records.

A defendant who escapes waives the right to appeal his or her conviction. Bradford v. State, 184 Tenn. 694, 698-99, 202 S.W.2d 647, 648-49 (1947); Knight v. State, 190 Tenn. 326, 327, 229 S.W.2d 501, 502 (1950). This remains true unless the defendant returns to custody by the time the appellate court considers his or her appeal. Knight, 190 Tenn. at 327, 229 S.W.2d at 502. This court has applied these holdings to dismiss the appeal of a defendant who forfeited bond and had an outstanding *capias* for arrest due to failure to appear for a sentencing hearing. State v. Darrell J. Dufrene, No. W200003129-CCA-R3-CD, Hardin County (Tenn. Crim. App. Dec. 7, 2001), app. denied (Tenn. May 5, 2002). The present defendant remains at large after failing to appear for a review hearing preceding the inception of this appeal. Thus, he has forfeited this court's review of his conviction and, accordingly, his appeal is dismissed.

JOSEPH M. TIPTON, JUDGE