

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1996 SESSION

FILED
November 6, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
) APPELLEE,)
)
)
v.)
)
KENNETH EUGENE TROUTMAN,)
)
) APPELLANT.)

No. 03-C-01-9509-CC-00287
Washington County
Arden L. Hill, Judge
(Driving While Under the Influence)

FOR THE APPELLANT:

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OPINION FILED: _____

CONVICTION AFFIRMED; REMANDED FOR A NEW SENTENCING HEARING

Joe B. Jones, Presiding Judge

OPINION

The appellant, Kenneth Eugene Troutman, was convicted of driving while under the influence, third offense, a Class A misdemeanor, by a jury of his peers.¹ The trial court sentenced the appellant to pay a fine of \$1,000 and serve eleven months and twenty-nine days in the Washington County Jail. This sentence must be served consecutively to “any prior sentences.” In this Court, the appellant contends that the trial court did not comply with the provisions of the Tennessee Criminal Sentencing Reform Act of 1989 when imposing the sentence. After a thorough review of the record, the briefs submitted by the parties, and the law governing the issue presented for review, it is the judgment of this Court that the appellant’s conviction should be affirmed and this cause remanded to the trial court for a new sentencing hearing.

There are three reasons why this Court cannot conduct a de novo review pursuant to Tenn. Code Ann. § 40-35-401(d). First, the trial court failed to consider and place on the record the findings required by law. Second, the appellant has failed to include a transcript of the trial proceedings in the record. One of the factors this Court must consider in conducting a de novo review is the circumstances of the offense. Third, the appellant has briefed this case based upon the trial court’s failure to comply with the Act. He asks this Court to return this case to the trial court for a new sentencing hearing. The State of Tennessee has ignored the issue presented for review and the relief sought by the appellant. The state has briefed the following issue: “Did the trial court impose an excessive sentence?”

The record reveals that the trial court did not address the purposes of the Tennessee Criminal Sentencing Reform Act of 1989, Tenn. Code Ann. § 40-35-102, the sentencing considerations enumerated in the Act, Tenn. Code Ann. § 40-35-103, the mitigating factors that might be present, Tenn. Code Ann. § 40-35-113, or the enhancing factors that are supported by the record. Tenn. Code Ann. § 40-35-114. Nor did the trial court state why this sentence should be served consecutively to all prior sentences. As the Supreme Court stated in State v. Moss, 727 S.W.2d 229, 237 (Tenn. 1986), “[a] panoply

¹The only indication that the appellant was convicted following a jury trial is the sentencing judgment.

of statutory provisions guides sentencing courts in the exercise of their discretion.” As this Court said in State v. Gauldin, 737 S.W.2d 795, 798 (Tenn. Crim. App. 1987):

The Tennessee Criminal Sentencing Reform Act of 1982 makes it clear that the record of the sentencing hearing “shall include specific findings of fact upon which application of the sentencing principles were based.” T.C.A. § 40-35-209(c). This provision is mandatory. See Stubbs v. State, 216 Tenn. 567, 393 S.W.2d 150, 154 (1965); Blankenship v. State, 223 Tenn. 158, 443 S.W.2d 442, 445 (1969). The fact that this Court must review the sentence imposed by the trial court de novo . . . does not relieve the trial judge from complying with this mandate. See T.C.A. 40-35-40[1](d).

Where the trial court fails to comply with the requirements of the Act, this Court must remand the case for a new sentencing hearing. State v. Dulsworth, 781 S.W.2d 277, 290 (Tenn. Crim. App.), per. app. denied (Tenn. 1989); Gauldin, 737 S.W.2d at 798. There are numerous unreported cases decided by this Court which have been remanded for a new sentencing hearing under these circumstances. If either party is aggrieved by the sentence imposed on remand, the aggrieved party may appeal as of right to this Court.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

DAVID G. HAYES, JUDGE