IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

AUGUST 1996 SESSION

STATE OF TENNESSEE,	)	No. 02C01-9508-CC-00246
	)	
Appellee	)	HARDEMAN COUNTY
V.	)	
	)	HON. JON KERRY BLACKWOOD,
PAUL D. HOPPER,	)	JUDGE
	)	
Appellant.	)	(DUI, THIRD OFFENSE)
	)	
	)	

For the Appellant:

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OPINION FILED: _____

AFFIRMED

William M. Barker, Judge

OPINION

Appellant, Paul D. Hopper, appeals as of right his conviction in the Hardeman County Circuit Court of driving under the influence, third offense and driving on a revoked license. He was sentenced to eleven months, twenty-nine days to be served at seventy-five percent; probation for seven months, twenty-nine days after serving 120 days; and a fine of $1100 on the DUI conviction. For driving on a revoked license, he was sentenced to six months at seventy-five percent, probation for five months, twenty-eight days after serving two days and a $300 fine.

Appellant raises only one issue for review: the trial court erred in using two prior convictions to sentence him as third time offender. Due to an incomplete record, we cannot review this issue. The judgment of the trial court is affirmed.

Appellant does not contest the sufficiency of the evidence and a recitation of the facts is not necessary. His only argument on appeal is that the two convictions used by the trial court to qualify him as a third offender were constitutionally infirm and should not have been considered. His allegation is that the two prior convictions were the result of guilty pleas and the requirements of State v. Mackey, 553 S.W.2d 337 (Tenn. 1977) were not followed. The fatal flaw in appellant's argument is that nothing in the record demonstrates their infirmity. The record is absent of any substantive evidence about these convictions; appellant's brief contains mere assertions that these convictions were violative of Mackey. Appellant did not attempt to prove that Mackey was not followed by including the transcripts from the sentencing for these convictions. In fact, the record contains only copies of the convictions. A substantive error, such as a Mackey deficiency, cannot be discerned merely by examining the conviction.

In addition, the sentencing order entered by the trial judge does not reflect the specific convictions upon which he relied. The record reflects that appellant had five prior DUI convictions. Neither do we have the transcripts from the trial or the

sentencing hearing to determine if use of the convictions were objected to or if the trial court made any ruling in this respect. If an objection had been made contemporaneously with their use and this was reflected in a transcript, perhaps we could evaluate the validity of appellant's claim. However, without *any* information in the record about the circumstances of these convictions or whether the error was raised at trial or sentencing, our review is severely handicapped. With only appellant's bald assertion supported by nothing more, we cannot review the issue. See Tenn. Ct. Crim. App. R. 10(6) and Tenn. R. App. P. 27(a)(7).

Without a complete record of the evidence, we are unable to determine if the convictions were constitutionally infirm. It is the duty of the appellant to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal. Tenn. R. App. P. 24(g) and State v. Ballard, 855 S.W.2d 557, 560 (Tenn. 1993) (citations omitted). An appellate court is precluded from considering the merits of an issue where the relevant material is absent from the record. Id. We must decline to review the issue.

Having an incomplete record on appeal, this Court must presume that the trial court's determination is correct. State v. Boling, 840 S.W.2d 944, 951 (Tenn. Crim. App. 1992) (citations omitted). Appellant's conviction and sentence are affirmed.

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William M. Barker, Judge

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Gary R. Wade, Judge

_____
Jerry L. Smith, Judge