

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs May 4, 2004

STATE OF TENNESSEE v. BRUCE FRANKS, JR.

Appeal from the Circuit Court for Hardin County
No. 8192 C. Creed McGinley, Judge

No. W2003-01673-CCA-R3-CD - Filed August 27, 2004

JOSEPH M. TIPTON, J., concurring.

I concur in the results reached in the majority opinion. However, I disagree with its conclusion that a sentence of split confinement fulfills the requirement of an alternative sentencing presumption. I believe an alternative sentence means one that is an alternative to confinement, as explained in my dissent in State v. Christina B. Jones, M2002-02428-CCA-R3-CD, Williamson County (Tenn. Crim. App. June 23, 2003), app. denied (Tenn. Oct. 27, 2003).

I agree with the imposition of sixty days confinement in this case as reasoned in the majority opinion. Given the defendant's recidivist tendencies regarding arson, which are difficult to treat, the "shock probation" used by the trial court may aid the defendant in realizing the seriousness of his actions and controlling them. See T.C.A. § 40-35-306, Sentencing Commission Comments.

JOSEPH M. TIPTON, JUDGE