

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-170661
		C-170662
Plaintiff-Appellee,	:	
vs.	:	TRIAL NOS. 17TRD-30607A
		17TRD-30607B
TYRONE FRANKLIN,	:	
Defendant-Appellant.	:	<i>JUDGMENT ENTRY.</i>

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Tyrone Franklin appeals his convictions for driving under suspension and having an unauthorized license plate. Franklin challenges the trial court's findings of guilt, alleging they were against the manifest weight of the evidence. We affirm.

Franklin's assignments of error rely on facts that were introduced at trial before the trial court. However, Franklin failed to properly provide this court with a transcript of that hearing. Under App.R. 9(B), it is the appellant's responsibility to order the transcript in writing and file a copy of the transcript order with the clerk of the trial court. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). App.R. 9 also allows for the submission of a narrative transcript when no verbatim transcript is available, or for the submission of an agreed upon

statement of the case. App.R. 9(C) and (D). Franklin failed to file either a transcript or an alternative acceptable under App.R. 9.

Franklin elected to proceed pro se on appeal. However, Franklin's pro se status does not excuse his failure to properly file a transcript of the proceedings. "As pro se litigants are presumed to have knowledge of correct legal procedure, the Appellate Rules apply equally to the most learned legal counsel and the pro se litigant." *Pasquarella v. Williams*, 7th Dist. Jefferson No. 04JE5, 2004-Ohio-4404, ¶ 12. Therefore, Franklin must comply with the Ohio Rules of Appellate Procedure and file a transcript of the proceedings where his assignments of error are based on evidence produced at trial.¹

The law is clear that, when necessary portions of the transcript of the proceedings are omitted from the record, the reviewing court has nothing to pass on and thus the court has no choice but to presume regularity in the lower court's proceedings. *See Knapp*, at 199; *see also State v. Render*, 43 Ohio St.2d 17, 21, 330 N.E.2d 690 (1975). Therefore, since the record does not contain a transcript of the proceedings, we must presume regularity in the proceedings below. Accordingly, Franklin's assignments of error are overruled, and the judgments of the trial court are affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. We will refrain from taxing costs against Appellant.

BERGERON, P.J., CROUSE and WINKLER, JJ.

¹ While Franklin made no claim regarding an inability to afford the transcript fee, we note that he did not avail himself of his right to a transcript at public expense. Pursuant to *State ex rel. Partee v. McMahon*, 175 Ohio St. 243, 248, 193 N.E.2d 266 (1963), an indigent defendant is entitled to one copy of a transcript at public expense if, at the time he makes an application therefor, his appeal as of right is presently pending.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on April 5, 2019

per order of the court _____.
Presiding Judge

