

sworn statement, on December 17, 2011, police stopped defendant for speeding at approximately 3:15 a.m. The officer noticed a "very strong odor of alcohol" on defendant's breath. Defendant admitted consuming five to seven shots of alcohol. Defendant's performance on the field sobriety tests "indicated impairment." Defendant submitted to chemical testing, which showed his blood-alcohol concentration was 0.138.

¶ 6 On May 16, 2012, the State and defendant entered into a partially negotiated plea agreement, under which defendant would plead open to count I (625 ILCS 5/11-501(a)(2) (West 2010)), and the State would dismiss count II as well as the charge in Champaign County case No. 11-TR-23237 (presumably, the initial speeding violation, which was the basis for the stop). The trial court accepted defendant's guilty plea and set the matter for sentencing.

¶ 7 Following a July 13, 2012, sentencing hearing, the trial court sentenced defendant to 18 months' conditional discharge.

¶ 8 On August 13, 2012, defendant filed a motion to reconsider sentence, arguing the trial court abused its discretion in sentencing him to conditional discharge rather than court supervision where the court (1) stated it could not find defendant was unlikely to commit further offenses and (2) "placed great weight" on defendant's driving record, which showed four petty speeding tickets over a three-year period.

¶ 9 Following a September 5, 2012, hearing, the trial court denied defendant's motion to reconsider sentence.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the trial court abused its discretion in sentencing him

to 18 months' conditional discharge rather than court supervision. Specifically, defendant contends the court erred in "essentially creat[ing] a new class of [d]efendants who are ineligible for court supervision" when it found conditional discharge was more appropriate because it could not find defendant was unlikely to commit further offenses.

¶ 13 It is the burden of the defendant, as the appellant, to supply this court with an adequate record on appeal. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156, 839 N.E.2d 524, 531 (2005). Illinois Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides the appellant has the responsibility to ensure the record on appeal contains a report of proceedings, a bystander's report, or an agreed statement of facts including all the evidence pertinent to the issues on appeal (see Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005)). "Without an adequate record preserving the claimed error, the reviewing court must presume the [trial] court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral*, 217 Ill. 2d at 157, 839 N.E.2d at 532 (reviewing court should resolve doubts arising from the incompleteness of the record against the appellant).

¶ 14 In this case, defendant argues the trial court abused its discretion in sentencing him to conditional discharge. In other words, defendant is challenging the trial court's reasoning in determining conditional discharge was the most appropriate sentence. However, no report of the proceedings from either the July 13, 2012, sentencing hearing or the September 5, 2012, hearing on defendant's motion to reconsider sentence is included in the record on appeal. Defendant has also failed to provide this court with a bystander's report or stipulated facts.

¶ 15 Defendant did include a transcript of the sentencing hearing as part of the appendix to his brief on appeal. (We note defendant did not include in the appendix a transcript for the

hearing on his motion to reconsider sentence.) However, it is well established this court may not consider documents which are not part of the certified record on appeal. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14, 909 N.E.2d 848, 861 (2009) (attachments to appellate briefs not also contained in the certified record on appeal cannot be used to supplement the record and thus are not properly before the reviewing court); *People v. Gacho*, 122 Ill. 2d 221, 254, 522 N.E.2d 1146, 1162 (1988) (reviewing court should only consider what appears in the record on appeal); *Stutzke v. Illinois Commerce Comm'n*, 242 Ill. App. 3d 315, 317, 610 N.E.2d 724, 725 (1993) (an appendix is not part of the record). Despite the fact the State raised this issue in its brief, defendant did not address it in his reply brief. It also appears defendant never moved to supplement the record with the transcripts. While it is welcome and often helpful to this court to have documents and transcripts from the record reproduced in an appendix, such a practice is not a substitute for the document's inclusion in the certified record.

¶ 16 While defendant challenges the reasoning underlying the trial court's sentencing decision, we have no way of knowing what took place during the sentencing hearing nor the hearing on defendant's motion to reconsider. More important, without transcripts of those proceedings, we are unable to discern the court's reasoning and whether it abused its discretion. As a result, we must assume, absent evidence to the contrary, the court's ruling was in conformity with the law. *Corral*, 217 Ill. 2d at 157, 839 N.E.2d at 532.

¶ 17 In this case, defendant's presentence investigation report (PSI), contained in the record on appeal, shows he had five prior traffic offenses, which resulted in a court supervision, two speeding convictions, having to take a driver remedial program, and a conviction for

disregarding a traffic control device. In addition, on July 8, 2011, the Illinois Secretary of State imposed a discretionary 90-day suspension until October 8, 2011. On February 1, 2012, the Secretary of State imposed a 180-day statutory summary suspension through August 1, 2012. We note, the PSI also shows a March 21, 2012, conviction for speeding in Iowa. "Supervision is not a right of any defendant, but a sentencing alternative to be employed in the discretion of the court." *People v. Price*, 247 Ill. App. 3d 787, 790, 617 N.E.2d 909, 911 (1993). Following our review of the common law record, we cannot say the court abused its discretion when it sentenced defendant to 18 months' conditional discharge.

¶ 18

III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 20

Affirmed.