

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Patrick Monaghan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 30, 2023

Court of Appeals Case No.  
22A-CR-2896

Appeal from the Marion Superior  
Court

The Honorable Jose D. Salinas,  
Judge

Trial Court Cause No.  
49D23-2110-CM-33210

**Memorandum Decision by Judge Bailey**  
Judges Brown and Weissman concur.

**Bailey, Judge.**

## Case Summary

- [1] Patrick Monaghan challenges his sentence following his conviction for Operating a Vehicle With a Schedule I or II Controlled Substance or its Metabolite in the Person's Blood, a Class C misdemeanor.<sup>1</sup> He presents the sole issue of whether he is entitled to a remand for resentencing because the trial court determined that Monaghan has a prior conviction for Operating While Intoxicated<sup>2</sup> in reliance upon an uncertified document generated by the Marion County Prosecutor's office as opposed to a certified criminal record. We affirm.

## Facts and Procedural History

- [2] On June 16, 2021, Indiana State Police Detective Hope Mueller responded to a report of a vehicular accident on westbound Interstate 70 in Marion County. Detective Mueller found Monaghan in the driver's seat of a vehicle that had come to a stop at an angle, with the front facing a concrete barrier and the rear partially protruding into the left travel lane. Monaghan consented to a blood draw; the results indicated that Monaghan had ingested fentanyl and other substances.

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<sup>1</sup> Ind. Code § 9-30-5-1(c).

<sup>2</sup> I. C. § 9-30-5-2.

[3] On October 28, 2021, Monaghan was charged with Operating a Vehicle While Intoxicated, Endangering a Person, as a Class A misdemeanor; Operating a Vehicle with a Schedule I or II Controlled Substance or its Metabolite in the Person’s Blood, a Class C misdemeanor; Operating a Vehicle While Intoxicated, as a Class C misdemeanor; and Driving While Suspended, a Class A infraction.<sup>3</sup>

[4] On September 28, 2022, the trial court conducted a bench trial and found Monaghan guilty of only the second count. The State then asked the trial court to take judicial notice of Monaghan’s prior conviction, offering in support a Marion County Prosecutor’s Office “Crossmatch” report, to which Monaghan objected. (Tr. Vol. II, pgs. 142-43.) The trial court invited the submission of written memoranda, and argument was heard on October 26, 2022. At that hearing, the State advised the trial court that “certified CCS and OAR”<sup>4</sup> documents were available. (*Id.* at 150.) However, the trial court concluded that it could take judicial notice of the prior conviction in reliance upon the Crossmatch report in the case file. Monaghan was given the opportunity to challenge the factual finding that he had a prior conviction, but he declined to do so, indicating that he deemed it a “burden-shifting” measure. (*Id.* at 153.)

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<sup>3</sup> I.C. § 9-24-19-1.

<sup>4</sup> It is unclear from the record to what “OAR” refers.

[5] The parties appeared for a sentencing hearing on November 9, 2022. The trial court sentenced Monaghan to sixty days to be served in the Marion County Jail but suspended fifty-five of those days. The sentencing order was stayed pending this appeal.

## Discussion and Decision

[6] Relevant to Monaghan’s sentencing, Indiana Code Section 9-30-5-1(a) provides for an additional penalty of five days imprisonment “if the person has one (1) previous conviction of operating while intoxicated.” Monaghan contends that the trial court made a factual determination that he has one such prior conviction, absent a reliable basis therefor.

[7] Sentencing is “principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Clippinger v. State*, 54 N.E.3d 986, 988 (Ind. 2016). Accordingly, a sentencing order is reviewed for an abuse of discretion. *Id.* However, if the issue presented is a question of law, our review is de novo. *Id.*

[8] To support its request for the statutory five-day additional penalty, the State asked the trial court to take judicial notice of Monaghan’s prior conviction pursuant to Indiana Evidence Rule 201. Rule 201 limits the scope of judicial notice to: facts not subject to reasonable dispute; facts accurately and readily determined from sources whose accuracy cannot reasonably be questioned; the

existence of published regulations of governmental agencies, ordinances of municipalities, and records of a court of this state; and certain kinds of laws.

[9] However, Evidence Rule 101(d)(2) specifies that the rules of evidence, other than privilege, do not apply to sentencing. Our Indiana Supreme Court has explained that sentencing proceedings are exempted from the rules of evidence “to provide the trial judge with the widest range of relevant information in reaching an informed decision.” *Dumas v. State*, 803 N.E.2d 1113, 1121 (Ind. 2004). An accused possesses a due process right not to be sentenced on the basis of unreliable information. *Malenchik v. State*, 928 N.E.2d 564, 574 (Ind. 2010). But a trial judge may consider almost any relevant information that “satisfies the reliability requirement.” *Id.* at 575.

[10] Here, the State proffered an uncertified document, which had apparently been generated by the local prosecutor’s office and made available in a court file. It bore a warning to the effect that the information was for prosecutorial use and the accuracy of the information had not been certified. However, the State also offered to submit into evidence a certified chronological case summary pertaining to the prior offense. The trial court did not avail itself of the best evidence available. That said, however, we agree with the State that – in this misdemeanor context where a presentence investigation report is not required and a trial court routinely relies on other sources – any error here is harmless. This is because Monaghan was provided an opportunity to refute the factual contention and did not do so and because the existence of a prior conviction could be readily ascertained by the trial court and this Court by means of

Indiana's electronic case management system. *See* Indiana Appellate Rule 66(A):

No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.

[11] Accordingly, we need not remand the matter for an additional sentencing hearing.

## Conclusion

[12] Monaghan has not shown that he is entitled to a remand for resentencing.

[13] Affirmed.

Brown, J., and Weissmann, J., concur.