

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Jennifer A. Joas
Madison, Indiana

ATTORNEY FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joseph Baldwin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2022

Court of Appeals Case No.
21A-CR-1979

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-2001-F6-34

Weissmann, Judge.

[1] The trial court enhanced Joseph Baldwin’s two-and-a-half-year sentence for OWI by eight years after finding he is a habitual vehicular substance offender (HVSO). Baldwin appeals his maximum, ten-and-a-half-year sentence, seeking remand for resentencing because all parties operated under the mistaken assumption that his HVSO enhancement was nonsuspendible. Based on Baldwin’s sentencing record, we cannot be sure the court would have imposed the same sentence had it realized it could have suspended the eight-year HVSO enhancement. We therefore reverse and remand for resentencing.

Facts

[2] Baldwin crashed his van into a guardrail near State Road 56. No one was injured in the crash, and Baldwin’s sole passenger was his dog. Appellant’s App. Vol. II, p. 20. When police arrived at the crash site, they discovered cans of open and unopened alcoholic beverages inside Baldwin’s van. *Id.* at 21. Baldwin subsequently failed four field sobriety tests and a field breathalyzer test, prompting police to take Baldwin into custody. *Id.* He then took a certified breathalyzer test, which revealed a blood alcohol content of .207—nearly two and a half times the legal limit. *Id.*

[3] The State charged Baldwin with Level 6 felony operating a vehicle while intoxicated (OWI) and sought an HVSO enhancement. Baldwin pleaded guilty to OWI and admitted to being an HVSO. At the sentencing hearing, the trial court, prosecutor, and defense counsel proceeded under the belief that the HVSO enhancement was not subject to suspension. Tr. Vol. II, p. 29. The trial

court then sentenced Baldwin to two-and-a-half-years for OWI with an eight-year HVSO enhancement—the maximum sentence Baldwin could have received. Baldwin now appeals.

Discussion and Decision

[4] Baldwin contends that we must remand for resentencing because the trial court sentenced him based on its incorrect belief, shared by the prosecutor and defense counsel, that the HVSO enhancement was not suspendible. Because sentencing decisions are within the sound discretion of the trial court, we review for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs “if the decision is clearly against the logic and effect of the facts and circumstances before the court.” *Id.* (internal quotation omitted). One way a trial court abuses its discretion is by considering factors that are improper as a matter of law when imposing a sentence. *Id.* at 491.

[5] While the standard habitual offender statute prohibits suspension of the enhancement, the HVSO statute does not. *McDonald v. State*, 179 N.E.3d 463, 464 (Ind. 2022) (comparing Ind. Code § 9-30-15.5-2 *with* Ind. Code § 35-50-2-8(i)). The record reflects that the trial court, prosecutor, and defense counsel all mistakenly believed Baldwin’s eight-year enhancement could not be suspended. Tr. Vol. II, P. 29. Because of this mistaken belief, the trial court abused its discretion in sentencing Baldwin without engaging in the proper considerations.

[6] When a trial court has abused its discretion in sentencing, we may remand for clarification, resentencing, or exercise our authority to review and revise the sentence. *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007). Our Supreme Court recently dealt with very similar facts in *McDonald v. State*, where both parties and the trial court incorrectly assumed the HVSO enhancement was nonsuspendible. 179 N.E.3d at 464. The Court in *McDonald* remanded for resentencing because the multiple irregularities in the defendant’s sentencing could not support this Court’s determination that the trial court would have imposed the same sentence had it realized it could have suspended the HVSO enhancement. *Id.*

[7] We have similar skepticism that the trial court here would have imposed the same sentence had the court realized it could have suspended the HVSO enhancement. Specifically, the trial court noted Baldwin should “do some jail time,” but suggested after six months, he could petition the court for modification of his sentence to in home detention or reporting probation. Tr. Vol. II, p. 33. This statement, along with others supported by the record, lend uncertainty to how the trial court would have sentenced Baldwin had it properly considered the suspendibility of the HVSO enhancement.¹

¹ Because remand for resentencing is appropriate for the HVSO enhancement, we decline to address Baldwin’s argument regarding the appropriateness of his sentence under Indiana Appellate Rule 7(B).

[8] The sentencing order is vacated and this matter is remanded for resentencing.

Najam, J., and Vaidik, J., concur.