



IN THE
Indiana Supreme Court

Supreme Court Case No. 22S-CR-46

Carl Eugene McDonald,
Appellant/Defendant,

–v–

State of Indiana,
Appellee/Plaintiff.

Argued: January 20, 2022 | Decided: January 31, 2022

Appeal from the Cass Superior Court
No. 09D01-1907-F6-250
The Honorable James Muehlhausen, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-CR-363

Per Curiam Opinion

Chief Justice Rush and Justices David, Massa, Slaughter, and Goff concur.

Per curiam.

Carl Eugene McDonald, who has never held a driver's license, operated his vehicle while intoxicated with his three young grandchildren in the vehicle. The State charged McDonald with Level 6 felony operating a vehicle while intoxicated, endangering a person with a passenger less than eighteen years old; three counts Level 6 felony neglect of a dependent; and Class C misdemeanor operating a vehicle without ever receiving a license. The State also alleged McDonald is a habitual vehicle substance offender (HVSO). McDonald pleaded guilty to all charges and the HVSO enhancement without a plea agreement.

At the sentencing hearings, the State, McDonald's counsel, and the trial court agreed the HVSO enhancement was nonsuspendible. The court entered an order sentencing McDonald to two years on each of the felony convictions and 60 days on the misdemeanor conviction, with all sentences suspended and served concurrently to each other and consecutively to the HVSO sentence. The court sentenced McDonald to four and one-half years on the HVSO enhancement. The abstract of judgment differs from the sentencing order by imposing a two-year sentence for the misdemeanor conviction.

On appeal, McDonald argues his multiple convictions constitute double jeopardy and that the trial court erred in sentencing. The Court of Appeals dismissed in part, affirmed in part, reversed in part, and remanded with instructions. *McDonald v. State*, 173 N.E.3d 1043 (Ind. Ct. App. 2021). We grant transfer and summarily affirm the Court of Appeals opinion, *see* Ind. Appellate Rule 58(A)(2), with one exception.

We summarily affirm the "Double Jeopardy" section of the Court of Appeals opinion, agreeing "[i]t is well-established that a defendant who has pleaded guilty may not challenge the validity of his conviction on direct appeal." 173 N.E.3d at 1047 (citing *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996)).

We also summarily affirm the "Sentencing" section of the opinion but for the Court of Appeals' conclusion that remand for a new sentencing is unnecessary. The Court of Appeals concluded that the abstract of

judgment is incorrect regarding the sentence imposed for operating without a license; the trial court incorrectly entered the HVSO enhancement as a separate, consecutive sentence rather than as an enhancement to a felony conviction, *citing* I.C. § 9-30-15-5.2(d); and the trial court did not understand the HVSO enhancement could be suspended, *comparing* Ind. Code § 9-30-15.5-2 *with* § 35-50-2-8(i). The Court of Appeals remanded to the trial court to issue a corrected abstract of judgment and to issue a new sentencing order specifying which felony conviction is enhanced by the HVSO finding. But the Court of Appeals concluded that although the trial court did not understand the HVSO enhancement was suspendible, remand for a new sentencing is unnecessary because the Court of Appeals is “confident that the trial court would have imposed the same sentence had it realized that it could have suspended the HVSO enhancement.” 173 N.E.3d at 1409. We are not so sure. Given the multiple irregularities in McDonald’s sentencing, we find it appropriate to remand to the trial court for resentencing.

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.

ATTORNEYS FOR APPELLANT

Mark K. Leeman
William Kelly Leeman
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Caroline G. Templeton
Deputy Attorney General
Indianapolis, Indiana