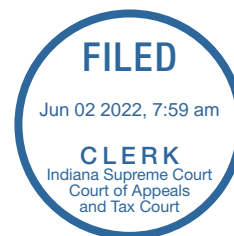


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

George D. Shanklin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 2, 2022

Court of Appeals Case No.
21A-CR-2137

Appeal from the Marion Superior
Court

The Honorable Jennifer Prinz
Harrison, Judge

Trial Court Cause No.
49D20-1907-F2-27995

Friedlander, Senior Judge.

- [1] George D. Shanklin appeals the sentence the trial court imposed after a jury determined he was guilty of several controlled-substance-related offenses and was an habitual offender. We affirm in part and reverse in part, and remand with instructions.

- [2] Police officers detained Shanklin during a traffic stop in conjunction with the execution of a search warrant at a residence. Controlled substances were found during the search. On July 18, 2019, the State charged Shanklin with dealing in a narcotic drug, a Level 2 felony; possession of a narcotic drug, a Level 3 felony; possession of marijuana, a Class B misdemeanor; and operating a motor vehicle without ever receiving a license, a Class C misdemeanor. Later, the State filed an habitual offender sentencing enhancement.
- [3] A jury determined that Shanklin was guilty as charged of the first four charges. The trial court vacated the judgment as to the charge of possession of a narcotic drug, citing double jeopardy concerns. Next, the jury determined that Shanklin was an habitual offender.
- [4] On September 15, 2021, the trial court presided over a sentencing hearing. The court sentenced Shanklin to fifteen years for dealing in a narcotic drug, 180 days for possession of marijuana, and sixty days for operating a motor vehicle, all to be served concurrently. As for the habitual offender sentencing enhancement, the court determined that his sentence should be increased by six years. In the sentencing order, the court directed that Shanklin would serve the habitual offender enhancement “consecutive” to his three convictions. Appellant’s App. Vol. II, p. 237. This appeal followed.
- [5] Shanklin argues the trial court made several errors in the course of imposing the sentence. In general, sentencing determinations are within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. *Edrington*

v. State, 909 N.E.2d 1093 (Ind. Ct. App. 2009), *trans. denied*. “An abuse of discretion has occurred when the sentencing decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007) (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

[6] Shanklin first claims that the trial court’s oral sentencing statement conflicts with the sentencing order as to whether he will serve his misdemeanor sentences consecutive to one another or concurrent with one another. We disagree with his reading of the sentencing order. The sentencing transcript demonstrates unequivocally that the trial court directed that Shanklin would serve his misdemeanor sentences concurrently. Further, the sentencing order includes columns identifying which sentences are to be served consecutively or concurrently, and they provide that Shanklin’s felony sentence and his two misdemeanor sentences shall be served concurrent with one another.

[7] Next, Shanklin argues the trial court erroneously treated the habitual offender sentencing enhancement as a separate offense. The State concedes that remand is necessary to correct the sentencing order.

[8] The Indiana General Assembly has provided:

The state may seek to have a person sentenced as a habitual offender for a felony by alleging, on one (1) or more pages separate from the rest of the charging instrument, that the person

has accumulated the required number of prior unrelated felony convictions in accordance with this section.

Ind. Code § 35-50-2-8 (2017).

- [9] If the State meets its burden of proof, the trial court shall sentence a felony defendant “to an additional fixed term.” *Id.* The General Assembly has further clarified that habitual offender status “is not a separate crime and does not result in a consecutive sentence. The court shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced.” *Id.*
- [10] In the current case, the trial court’s sentencing order treats the sentencing enhancement as a separate charge, to be served consecutive to all other sentences, rather than as an additional fixed term to be added to the sentence for Shanklin’s felony conviction. We agree with the parties that remand is necessary for a corrected sentencing order. *See Kilgore v. State*, 922 N.E.2d 114 (Ind. Ct. App. 2010) (trial court erred in treating habitual offender sentencing enhancement as separate sentence; case remanded for corrected sentencing order), *trans. denied.*
- [11] For the reasons set forth above, we affirm the trial court’s judgment in part, reverse in part, and remand with instructions.
- [12] Judgment affirmed in part, reversed in part, and remanded.
- [13] Najam, J., and Altice, J., concur.