

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Richard Wetmore,  
*Appellant-Defendant,*  
  
v.

State of Indiana,  
*Appellee-Plaintiff.*

April 17, 2023

Court of Appeals Case No.  
23A-CR-36

Appeal from the Cass Superior  
Court

The Hon. Lisa L. Swaim, Judge  
Trial Court Cause No.  
09D02-2005-F3-9

**Memorandum Decision by Judge Bradford**  
Judges May and Mathias concur.

**Bradford, Judge.**

## Case Summary

- [1] After Richard Wetmore pled guilty to two Level 3 felonies and two misdemeanors and admitted to being a habitual offender, the trial court imposed a sentence that purported to suspend a portion of the habitual-offender enhancement to probation. Because both parties agree that the trial court may not legally suspend any portion of a habitual-offender enhancement, we reverse and remand for resentencing.

## Facts and Procedural History

- [2] On May 24, 2020, Wetmore severely beat Jimmy Simpson in Cass County, resulting in extensive subcutaneous emphysema, a shattered jaw, multiple broken and fractured bones in his nose, broken cheek bones, thirteen broken ribs, two broken vertebrae, and a ruptured spleen. On May 26, 2020, the State charged Wetmore with two counts of Level 3 felony aggravated battery, Class A misdemeanor resisting law enforcement, and Class B misdemeanor public intoxication and later alleged him to be a habitual offender. On September 14, 2022, Wetmore pled guilty as charged and admitted to being a habitual offender. On December 13, 2022, the trial court sentenced Wetmore to fourteen years of incarceration for each aggravated battery, 365 days for resisting law enforcement, and 180 days for public intoxication, with the aggravated battery sentences to be served concurrently to each other and the resisting-law-enforcement and the public intoxication sentences to be served concurrently to each other but consecutively to his sentence for aggravated battery. The trial court ordered a sentence enhancement of fourteen years by

virtue of Wetmore’s status as a habitual offender with six years of the enhancement suspended to probation.

## Discussion and Decision

[3] In general, sentencing lies within the discretion of the trial court. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002). A trial court, however, abuses its discretion when it imposes a sentence not permitted by law. *See Rhodes v. State*, 698 N.E.2d 304, 307 (Ind. 1998). Wetmore contends, and the State concedes, that the trial court imposed an illegal sentence by suspending a portion of his habitual-offender enhancement. If a person is convicted of a Level 3 felony and found to be a habitual offender, Indiana Code section 35-50-2-8(i) provides that the person can be sentenced on the underlying offense and to an additional, fixed term of between six and twenty years. However, “[a]n additional term imposed under this subsection is nonsuspendible.” Ind. Code § 35-50-2-8(i). Because the trial court abused its discretion by suspending a portion of Wetmore’s habitual-offender enhancement, we reverse the trial court’s sentencing order and remand for resentencing.<sup>1</sup>

[4] We reverse the trial court and remand for resentencing.

May, J., and Mathias, J., concur.

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<sup>1</sup> Wetmore requests that we provide the trial court with guidance in his resentencing. We decline to do so.