

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dennis J. Turner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 27, 2023

Court of Appeals Case No.
22A-CR-2015

Appeal from the Marion Superior
Court

The Honorable Christina R.
Klineman, Judge

The Honorable Ian L. Stewart,
Magistrate

Trial Court Cause No.
49D17-2108-F6-24696

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

- [1] Dennis Turner appeals the trial court's sentencing order after his convictions for resisting law enforcement, a Level 6 felony, and criminal mischief, a Class B misdemeanor. Turner argues that the sentencing order does not accurately reflect the sentence imposed by the trial court at the sentencing hearing. We disagree and, accordingly, affirm.

Issue

- [2] Turner raises one issue, which we restate as whether the written sentencing order is erroneous.

Facts

- [3] In July 2022, a jury found Turner guilty of resisting law enforcement, a Level 6 felony, and criminal mischief, a Class B misdemeanor. At the August 4, 2022 sentencing hearing, the trial court stated:

[O]n Count One (1), Resisting Law Enforcement, as a Level-Six (6) Felony, I'm going to sentence him to three hundred and sixty-five (365) days. Of that, **I'm going to suspend one hundred and eighty (180) days, executed will be two sixty-five (265).** [] Criminal Mischief as a Class-B Misdemeanor, I'm going to sentence to one hundred days (100) executed. I'm going to sentence all of this time to be served in the DOC.

Tr. Vol. III p. 36 (emphasis added); *see also id.* at 37. The trial court then stated that the sentences would be served concurrently but consecutively to Turner's sentence in a separate case.

[4] The following entries were made on the Chronological Case Summary ("CCS") at 10:30 a.m. and 10:31 a.m.:

08/04/2022 **Sentenced** (Judicial Officer: Stewart, Ian MAG)
4. 08/07/2021 35-43-1-2(a)/MB:Criminal Mischief
Confinement to Commence: 08/04/2022
Agency: Indiana Department of Correction
Term: 100 Days
Jail Credit: 8 Days
Suspended: 0 Days
Created by: Julie Bullard at 08/04/2022 10:31 AM
08/04/2022 **Sentenced** (Judicial Officer: Stewart, Ian MAG)
1. 08/07/2021 35-44.1-3-1(a)(3)/F6: Resisting Law Enforcement-Same as 3929, but def. uses a vehicle.
Confinement to Commence: 08/04/2022
Agency: Indiana Department of Correction
Term: 365 Days
Jail Credit: 8 Days
Suspended: 180 Days
Created by: Julie Bullard at 08/04/2022 10:30 AM

Appellant's App. Vol. II p. 8.

[5] Shortly thereafter, at 10:39 a.m. and 10:40 a.m., the following entries were made on the CCS:

08/04/2022 **Sentenced** (Judicial Officer: Stewart, Ian MAG)
4. 08/07/2021 35-43-1-2(a)/MB:Criminal Mischief
Confinement to Commence: 08/04/2022
Agency: Indiana Department of Correction
Term: 100 Days
Jail Credit: 8 Days
Suspended: 0 Days
Created by: Julie Bullard at 08/04/2022 10:40 AM
08/04/2022 **Sentenced** (Judicial Officer: Stewart, Ian MAG)
1. 08/07/2021 35-44.1-3-1(a)(3)/F6: Resisting Law Enforcement-Same as 3929, but def. uses a vehicle.
Confinement to Commence: 08/04/2022
Agency: Indiana Department of Correction
Term: 365 Days
Jail Credit: 8 Days
Suspended: 100 Days
Created by: Julie Bullard at 08/04/2022 10:39 AM

Id. Thus, the later entry reflected a suspended sentence of 100 days, rather than 180 days, on the resisting law enforcement conviction.

[6] The written sentencing order then provides that, for the resisting law enforcement conviction, the trial court sentenced Turner to 365 days with 100 days suspended. For the criminal mischief conviction, the trial court sentenced Turner to 100 days with no time suspended. The two sentences were to be served concurrently but consecutively to a sentence imposed in a separate case. Turner now appeals.

Discussion and Decision

[7] Turner challenges the accuracy of the sentencing order and asks this Court to “correct his sentencing order to match the trial court’s oral pronouncement.” Appellant’s Br. p. 13. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). “An abuse occurs only if the 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.” *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[8] Here, “we are faced with a situation in which the oral and written sentencing statements conflict.” *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007). In reviewing sentences in non-capital cases, we examine both the written and oral sentencing statements to discern the findings of the trial court. *Id.* “Rather than

presuming the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court.” *Id.* We have “the option of crediting the statement that accurately pronounces the sentence or remanding for resentencing.” *Id.* “This is different from pronouncing a bright line rule that an oral sentencing statement trumps a written one.” *Id.*

- [9] Turner argues that the trial court intended to suspend 180 days of his 365-day sentence for his resisting law enforcement conviction rather than suspending only 100 days. We disagree. The trial court stated at the sentencing hearing that it was sentencing Turner to 365 days with 180 days suspended “leaving two hundred and sixty-five (265) days executed.” Tr. Vol. III p. 37; *see also id.* at 36. If 265 days of the 365-day sentence are executed, however, only 100 days would be suspended. In the CCS, the trial court initially made the same mistake of suspending 180 days, but shortly thereafter, the trial court corrected the mistake in the CCS and suspended only 100 days. In the written sentencing order, the trial court again suspended only 100 days of the 365-day sentence. We conclude that, under these circumstances, the sentencing order accurately reflects the sentence imposed by the trial court. The trial court merely misspoke during the sentencing hearing when it stated that 180 days would be suspended but accurately stated that Turner would serve 265 days executed. The trial court clearly intended to suspend only 100 days of the sentence. *See, e.g., Dowell v. State*, 873 N.E.2d 59, 60-61 (Ind. 2007) (holding that the trial court misspoke

at the sentencing hearing and did not intend to suspend the three-year sentence) (per curiam).

Conclusion

[10] The trial court's sentencing order accurately reflects the sentence imposed. Accordingly, we affirm.

[11] Affirmed.

Vaidik, J., and Foley, J., concur.