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IN THE
COURT OF APPEALS OF INDIANA

MARCO HERNANDEZ-LOPEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0912-CR-1178
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G16-0908-FD-76416

July 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Marco Hernandez-Lopez ("Lopez") appeals the sentence imposed by the trial court after his conviction on one count of conversion, as a class A misdemeanor, following his trial by jury.

We affirm.

ISSUE

Whether the trial court abused its discretion and acted outside its statutory limits in extending a no-contact order to the executed sentence.

FACTS

On the evening of August 28, 2009, Lopez appeared unannounced at the home of his girlfriend, Esperanza Gonzalez, and the two argued. Gonzalez asked Lopez to leave and Lopez refused. When Gonzalez attempted to use her cell phone to call the police, Lopez slapped her wrist, inflicting a red mark on her wrist and causing Gonzalez to drop her phone. Lopez picked her cell phone off the floor and broke it into several pieces. Gonzalez then ran to a neighbor's house and called 911. Police arrived and arrested Lopez, who still possessed several pieces of the broken cell phone belonging to Gonzalez.

After Lopez's arrest, a no-contact order was imposed. On September 1, 2009, the State charged Lopez with Count 1, domestic battery, a class D felony; Count 2, domestic battery, a class A misdemeanor; Count 3, battery, a class A misdemeanor; Count 4,

interference with reporting a crime, a class A misdemeanor; and Count 5, conversion, a class A misdemeanor. On November 5, 2009, the trial court held a jury trial. The jury found Lopez guilty of conversion in Count 5.

At sentencing, the trial court noted that Lopez was wanted by the State of Georgia for operating while intoxicated with a child in the car, and the United States Immigration and Customs Enforcement Agency and had placed an immigration hold on him. The trial court sentenced Lopez to 365 days. It specified that of those 365 days, 198 days were to be executed, in the Marion County Jail ("MCJ"), with 167 days suspended. After receiving jail-time credit of 69 days at two-for-one credit, only 30 actual days remained to be served in the MCJ. The transcript reflects that at sentencing, the trial court explained in great detail its sentencing rationale, and stated that the sentence would be modified to time-served in anticipation of another jurisdiction's arrival to take custody of Lopez.

DECISION

Lopez argues that the court abused its discretion by imposing a no-contact order as part of his executed sentence because he was ordered to jail during the remainder of his time in Marion County. Specifically, he argues that the trial court's no-contact order was not within its statutory limits, which requires us to vacate the no-contact order. In response, the State argues that because the sentence was partially suspended, the issuance of a no-contact order was proper. The State further argues that, even if the no-contact

order was erroneous, the issue is moot because Lopez's executed sentence has expired. Mootness notwithstanding, the State argues that the "trial courts should be permitted, in their sentencing discretion, to impose no-contact orders against sentenced defendants for the duration of the executed portions of their sentences, when a pre-trial no-contact order was issued and will continue while the defendant is on probation after an executed sentence." (State's Br. 4-5). We agree with the State.

Indiana law provides that a person who commits a class A misdemeanor may "be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5000)." "Sentencing decisions are entrusted to the sound discretion of the trial court, are given great deference, and will only be reversed for an abuse of discretion." *Nash v. State*, 754 N.E.2d 1021, 1026 (Ind. 2001). While the judge is vested with broad discretion in sentencing, he must act within statutorily prescribed limits." *Laux v. State*, 821 N.E.2d 816, 816 (Ind. 2005).

In *Laux*, the jury found the defendant guilty of three charges: murder, felony murder, and burglary resulting in bodily injury. Laux was, then, sentenced to life in prison without parole for the murder and consecutive term of twenty years for the burglary. The trial court also imposed a no-contact order. We later held that a no-contact order was an improper condition to the sentence; however, we further held that had the court suspended part of the sentence, it could have conditioned that suspension on no contact. *Id*. Lopez was sentenced to 365 days, 198 days were to be executed with 167

days suspended. Along with that, Lopez was given credit time for 69 days, leaving him only 30 days to serve in the the MCJ. Unlike *Laux*, a portion of Lopez's sentence was suspended; therefore, *Laux* does not support Lopez's argument.

Even if there were an abuse of discretion, such would be a harmless error here. Sentencing occurred on November 5, 2009, and the executed portion of Lopez's sentence expired December 5, 2009. Therefore, Lopez now appeals a condition of a sentence that he has already served. In Indiana, it has been a long-standing rule that a case is deemed moot when no effective relief can be rendered to the parties before the court. *Hamed v. State*, 852 N.E.2d 619, 622 (Ind. 2006). A case may be decided on its merits under an exception to the general rule in an instance of negative collateral consequences and "great public" interest. *Id*. Based on the facts of this case, we do not find these exceptions to apply.

There was a pre-trial no-contact order and a post-trial no-contact order for the duration of the probationary period. Allowing Lopez to contact Gonzalez while serving the thirty days in the MCJ could have been detrimental to both the victim and the community. Without the order, Lopez could have harassed Gonzalez, directly or indirectly, by telephone, by letter, or any other possible means of communication during the time of his incarceration. Further, the trial court stated that when the State of Georgia authorities were ready and present to take Lopez, it would amend its sentence to be time served. Hence, it is apparent that the trial court's concern was to maintain the "peace and

quietude" of the community of Marion County. (Tr. 106). In cases like this, where a valid no-contact order exists both before and after an executed sentence, we find no error in a sentence that maintains the no-contact order. Accordingly, we find no abuse of discretion.

Affirmed.

BAKER, C.J., and CRONE, J., concur.