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FILED
Sep 02 2009, 9:23 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

PAUL BENJIMAN MURPHY,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 29A02-0905-CR-464
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0705-FD-1881

September 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Paul Murphy appeals from the sentence imposed following his guilty pleas to Class D felony Operating a Vehicle while Suspended as a Habitual Traffic Violator ("operating while suspended")[1] Class D felony Operating a Vehicle while Intoxicated ("OWI"), [2] and Class A misdemeanor Resisting Law Enforcement.[3] We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

At approximately 2:15 a.m. on January 19, 2007, police observed Murphy driving forty-six miles per hour in a forty-mile-per-hour zone in Hamilton County. Murphy fled his vehicle after stopping but was apprehended, at which point police noticed the odor of alcoholic beverage and that his eyes were bloodshot and balance unsteady. It was later determined that Murphy had a blood alcohol concentration of .14 grams of alcohol per 100 milliliters of blood and that his driving privileges had been suspended due to being adjudged a habitual traffic violator, a suspension of which Murphy was aware.

Also on January 19, 2007, the State charged Murphy with Class D felony driving while suspended, Class A misdemeanor resisting law enforcement, Class C misdemeanor operating a vehicle with an alcohol concentration equivalent ("ACE") of .08 or greater, Class C misdemeanor OWI, Class D felony operating a vehicle with an ACE of .08 or greater, and Class D felony OWI. On November 10, 2008, Murphy pled guilty as charged. On January 5,

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[1] Ind. Code § 9-30-10-16(a)(1) (2006).

[2] Ind. Code § 9-30-5-3 (2006).

[3] Ind. Code § 35-44-3-3(a) (2006).

2009, the trial court sentenced Murphy to three years of incarceration for Class D felony operating while suspended, one year for Class A misdemeanor resisting law enforcement, and three years for Class D felony OWI,[4] with the Class D felony sentences to be served consecutively and the misdemeanor sentence to be served concurrently with them, for an aggregate sentence of six years of incarceration.

DISCUSSION AND DECISION

Murphy contends, and the State concedes, that his aggregate six-year sentence is illegal because his crimes arose from the same episode of criminal conduct and none of them are statutory crimes of violence. Indiana Code section 35-50-1-2 (2006) provides, in part, as follows:

> The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment … to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

It is undisputed that all of Murphy's convictions arose out of a single episode of criminal conduct and that none of them were for crimes of violence (as defined in Indiana Code section 35-50-1-2(a)), limiting his maximum sentence to the four-year advisory sentence for a Class C felony. We therefore remand with instructions to impose a total sentence of four years of incarceration.

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[4] The trial court merged Murphy's remaining three convictions into the Class D felony OWI conviction.

The judgment of the trial court is reversed and remanded with instructions.

BAILEY, J., and VAIDIK, J., concur.