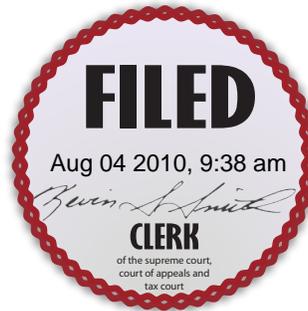


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT L. TERRY,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0910-CR-993

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
The Honorable John J. Boyce, Commissioner
Cause No. 49F08-0907-CM-63484

August 4, 2010

MEMORANDUM DECISION ON REHEARING – NOT FOR PUBLICATION

KIRSCH, Judge

On May 19, 2010, this court issued an unpublished memorandum decision in *Terry v. State*, No. 49A02-0910-CR-993 (Ind. Ct. App. May 19, 2010). In that opinion we affirmed Robert L. Terry's ("Terry") conviction for operating a vehicle while intoxicated ("OWI")¹ as a Class A misdemeanor and public intoxication,² a Class B misdemeanor after finding: (1) the trial court did not err in denying Terry's motion for involuntary dismissal pursuant to Indiana Trial Rule 41(B); and (2) there was sufficient evidence to support his convictions for OWI and public intoxication. As to those two issues, we affirm our opinion in all regards. We grant Terry's petition for rehearing for the sole purpose of remanding this case to the trial court for clarification regarding the third issue.

In issue three of our memorandum decision, we addressed the question of whether the trial court's order to suspend Terry's driving privileges for a fixed period of two years and ninety days was contrary to law. Our discussion of this third issue was prefaced by the statement, "Both parties contend, and we agree, that the basis for the suspension of Terry's driving privileges is not the model of clarity." *Terry*, slip op. at 15. Arguably, confusion arose because the suspension of Terry's driving privileges was comprised of two parts: (1) an administrative suspension under circumstances where Terry, as a driver, refused to submit to a chemical test, Ind. Code § 9-30-6-9; and (2) a suspension following his conviction for OWI, Ind. Code § 9-30-5-10.

¹ See Ind. Code § 9-30-5-2(b).

² See Ind. Code § 7.1-5-1-3.

From the evidence presented to this court on appeal, it was our understanding that the trial court intended that Terry's OWI conviction warranted a license suspension of ninety days, the minimum suspension allowed. This ninety-day suspension plus the BMV's two-year administrative suspension, which was already in place for Terry's refusal to submit to a chemical test, resulted in the trial court declaring that Terry's license would be suspended for a period of two years and ninety days. The trial court's decision was conveyed to the BMV by means of a Certification of Indiana Abstract of Court Record ("SR 16"), which apparently noted that Terry's driving privileges should be suspended for 820 days (or two years and ninety days). The BMV, understanding that Terry's license had already been administratively suspended for two years, interpreted the 820 days listed on the SR 16 as the trial court's intention to suspend Terry's license for a total of four years and ninety days—two-years for the administrative suspension plus two years and ninety days for the OWI. Suspending Terry's license for four years and ninety days is not only contrary to Indiana law, *see* Ind. Code §§ 9-30-6-9, 9-30-5-10, it also appears to be contrary to the trial court's intent to give Terry the minimum sentence. *Pet. for Reh'g* at 1.³

We grant Terry's petition for rehearing as to issue three of our original memorandum decision for the limited purpose of remanding this case to the trial court with orders to issue an amended SR 16 that is consistent with the trial court's intent

³ In his Petition for Rehearing, Terry notes that the trial court has prepared, but not acted on, an amended SR 16, which provides that his license should be suspended for 730 days. *Addendum to Pet. for Reh'g* at 6. If this SR 16 is filed with the BMV, Terry's license will be suspended for four years. While a four-year license suspension under the facts of this case is not contrary to law, it is our understanding that the trial court intended that Terry's license be suspended for two years and ninety days.

regarding the suspension of Terry's driving privileges. We reaffirm our opinion in all other respects.

Affirmed and remanded.

FRIEDLANDER, J., and ROBB, J., concur.