

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1078 / 11-0581  
Filed January 24, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DEONTAY DAYTRELL SANFORD,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Deontay Sanford appeals his conviction for domestic abuse assault, third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brook Jacobsen, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ. Bower, J., takes no part.

**TABOR, J.**

This appeal requires us to interpret Iowa Code section 708.2A(4) (2009), which enhances the penalty for a third or subsequent domestic abuse assault to a class “D” felony. Deontay Sanford argues the district court should not have sentenced him as third-time offender because judgments on his first and second convictions were entered on the same day. Sanford’s argument finds inspiration in the supreme court’s construction of the habitual offender statute, section 902.8.

Sanford’s comparison of recidivist statutes would be compelling were it not for the legislature’s wording at the close of section 708.2A(5)(b): “Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense.” Given the inclusion of that language, we affirm Sanford’s judgment and sentence.

***I. Background Proceedings***

In October 2010, Sanford threw his live-in girlfriend against a wall, bruising her right shoulder. On November 30, 2010, the State filed a trial information charging Sanford with domestic abuse assault, third offense, a class “D” felony, in violation of Iowa Code section 708.2A(4). The trial information alleged Sanford had two previous convictions for domestic abuse assault causing bodily injury; both convictions were entered on August 11, 2009.

Sanford entered a plea of guilty on March 24, 2011. He admitted to having two previous convictions for domestic abuse assault. The district court

accepted his guilty plea and sentenced him to an indeterminate five-year term, with a one-year mandatory minimum. Sanford appeals his felony sentence.

## **II. Standard of Review**

A sentence is illegal if it is not permitted by statute. *State v. Dailey*, 774 N.W.2d 316, 317 (Iowa Ct. App. 2009). We review for legal error to see if the challenged sentence complies with the relevant statutes. *Id.*

## **III. Analysis**

Sanford asks us to interpret the sentencing enhancement provision at section 708.2A(4) in the same way our supreme court has interpreted Iowa's habitual offender statute. That statute provides, in pertinent part: "An habitual offender is any person convicted of a class "C" or a class "D" felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States." Iowa Code § 902.8. The supreme court has read the habitual offender statute as requiring each prior offense to be complete as to a conviction and sentence before commission of the next offense to qualify for an enhanced penalty. See *State v. Hollins*, 310 N.W.2d 216, 217–18 (Iowa 1981).

The theory is that "[r]ecidivist statutes are enacted in an effort to deter and punish incorrigible offenders. They are intended to apply to persistent violators who have not responded to the restraining influence of conviction and punishment." *State v. Conley*, 222 N.W.2d 501, 503 (Iowa 1974) (citations omitted). The *Conley* court believed that logically, "[e]ven though the statute is silent on the point," each conviction and sentence serving as a predicate for an habitual offender enhancement should be viewed as a separate warning for the

offender. *Id.* If the convictions and sentences do not follow the proper sequence, the offender cannot be considered properly warned of an impending increase in punishment. *Id.*

The supreme court relied on *Hollins* in construing the 1981 version of the operating-while-intoxicated chapter to require prior OWI offenses to reach a final judgment before qualifying as predicate convictions for enhancement purposes. *State v. Clark*, 351 N.W.2d 532, 536 (Iowa 1984). In an apparent response to *Clark*, the general assembly added the following language to the OWI statute: “Each previous violation shall be considered a separate previous offense without regard to whether each was complete as to commission and conviction or deferral of judgment following or prior to any other previous violation.” See 1986 Iowa Acts ch. 1220, § 2. The legislature abbreviated its 1986 amendment in 1990 to read: “Each previous violation shall be considered a separate previous offense.” See 1990 Iowa Acts ch. 1233, § 20.<sup>1</sup> The supreme court interpreted the 1990 version of the statute as “negat[ing] the characterization of prior offenses” that it adopted in *Clark*. *State v. Spoonemore*, 598 N.W.2d 311, 312 (Iowa 1999).

The wording employed by legislative drafters to counteract *Clark* is essentially the same language incorporated into the assault chapter in 1991 to describe the prior domestic abuse convictions eligible to be counted as predicate

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<sup>1</sup> Another rewrite occurred in 1997, bringing the OWI enhancement language to its current form: “Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.” See 1997 Iowa Acts ch. 177, § 4 (now codified at Iowa Code § 321J.2(8)(c) (2011)).

offenses, i.e., “Each previous violation on which conviction or deferral of judgment was entered prior to the date of the offense charged shall be considered and counted as a separate previous offense.” See 1991 Iowa Acts ch. 218, § 27. By including the wording now at the end of section 708.2A(5)(b), “[t]he legislature understood the general rule applicable to habitual offender statutes and exercised its authority to exclude the application of the rule by including specific language evidencing its intent to do so.” See *State v. Freeman*, 705 N.W.2d 286, 291 (Iowa 2005).

Sanford does not dispute that he twice previously violated section 708.2A. The district court entered judgment of conviction on both of his prior violations before October 17, 2010, the date of the offense charged in this case. Accordingly, each previous violation “shall be considered and counted as a separate previous offense.” See Iowa Code § 708.2A(5)(b). Sanford’s complaint that the two prior convictions were both entered on August 11, 2009, does not raise the specter of an illegal sentence.

Because it does not matter under section 708.2A whether Sanford’s previous domestic abuse assault convictions were entered on the same day, we find it is unnecessary to resolve Sanford’s motion to modify or consolidate the record.

**AFFIRMED.**