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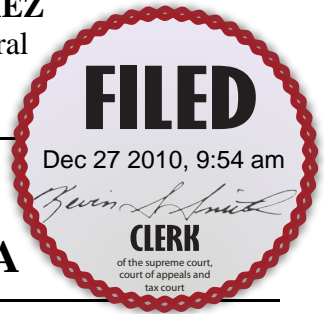
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**IN THE
COURT OF APPEALS OF INDIANA**

STEVE URIBE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1003-CR-346

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebecca Pierson-Treacy, Judge
The Honorable Steven J. Rubick, Magistrate
Cause No. 49F19-0905-CM-43578

December 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Steve Uribe appeals the 180 day executed portion of his 365 day sentence for criminal recklessness. As the trial court did not abuse its discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

In the early morning of April 28, 2009, Uribe was pulled over by Officer Geoffrey Barbieri for traveling at a high rate of speed in an area with a posted speed limit of 35 miles per hour. Uribe was charged with Class A misdemeanor carrying a handgun without a license,¹ Class A misdemeanor criminal recklessness,² and Class B misdemeanor reckless driving.³ On March 2, 2010, after a bench trial, Uribe was found guilty of Class A misdemeanor criminal recklessness⁴ and sentenced to 365 days, with 180 days incarcerated and 185 days suspended to probation.

DISCUSSION AND DECISION

Sentencing decisions are within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 489, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). As long as the sentence falls within the statutory range, it is subject to review only for abuse of discretion. *Id.* A trial court abuses its discretion when its 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.” *Id.*

For his conviction of Class A misdemeanor criminal recklessness, the court sentenced

¹ Ind. Code § 35-47-2-1.

² Ind. Code § 35-42-2-2.

³ Ind. Code § 9-21-8-52.

⁴ The trial court found Uribe not guilty of carrying a handgun without a license, and merged the reckless driving charge with the criminal recklessness charge.

Uribe to 365 days, with 180 days to be executed in the Marion County Jail and 185 days suspended to probation. Because Uribe began serving his sentence on March 2, 2010, he has already served the executed portion of his sentence that he appeals and, regardless of the outcome of our opinion, he cannot be granted relief; thus his appeal is moot. *See Irwin v. State*, 744 N.E.2d 565, 568 (Ind. Ct. App. 2001) (once sentence has been served, the issue of the validity of the sentence is rendered moot, and the appellate court does not engage in discussions of moot questions). However, because the issue raised by Uribe is one that is likely to recur, we address the merits of his claim. *See Hamed v. State*, 852 N.E.2d 619, 622 (Ind. Ct. App. 2006).

The statute that governs sentencing for Class A misdemeanors states: “A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year.” Ind. Code § 35-50-3-2. Uribe argues his 180 days incarcerated is an “enhanced” sentence. However, our legislature defined the sentences for misdemeanors in such a way that there is no “presumptive sentence” that can be “enhanced.” *See, e.g., Goldsberry v. State*, 821 N.E.2d 447, 462 (Ind. Ct. App. 2005) (noting trial court could impose one-year sentence without finding any aggravators because the maximum possible sentence for a Class A misdemeanor, one year, was “within the presumptive sentence range assigned by the legislature”). Rather there is simply a maximum allowable sentence. Thus, it is not possible that Uribe received an enhanced sentence. Because Uribe fails to explain how or why his sentence is an enhanced sentence when it is “not more than one (1) year,” *see* I.C. § 35-50-3-2, he has waived the issue on appeal. Ind. App. Rule 46(A)(8)(a); *see also Lyles v. State*,

834 N.E.2d 1035, 1051 (Ind. Ct. App. 2005), *trans. denied* (issue waived for failure to provide a cogent argument).

Waiver notwithstanding, we find no error in his sentence. Uribe argues the trial court improperly considered a material element of the crime to be an aggravator for sentencing. While it is an abuse of discretion to consider a material element of a crime as an aggravating factor when sentencing a defendant for a felony, *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007), the same is not true for misdemeanors. *Creekmore v. State*, 853 N.E.2d 523, 527 (Ind. Ct. App. 2006). Thus we find no error based on the court's consideration of Uribe's "obscenely dangerous" (Tr. at 48) driving when sentencing him.

Uribe's 180-day sentence did not exceed the one-year statutory limit. See I.C. § 35-50-3-2. "Where, as here, the penalty assessed is in keeping with that prescribed by the legislature, we cannot interfere. We may not rewrite the statute nor absent an abuse of discretion substitute what we deem to be more equitable penalty." *Gray v. State*, 159 Ind. App. 200, 205, 305 N.E.2d 886, 889 (1974). Accordingly, we affirm the decision of the trial court.

Affirmed.

ROBB, J., concurs in result.

VAIDIK, J., concurs.