

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Da'Voncia Beasley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 29, 2023

Court of Appeals Case No.
23A-CR-262

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-2111-MR-35704

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Da'Voncia Willie Beasley (Beasley), appeals his sentences for murder and attempted robbery resulting in serious bodily injury, and his sentence enhancements for being an habitual offender and for using a firearm in the commission of the offenses.
- [2] We remand with instruction.

ISSUE

- [3] Beasley presents this court with one issue on appeal, which we restate as follows: Whether remand is necessary for correction of the sentencing statement to reflect that the habitual offender enhancement is not a separate, consecutive sentences.

FACTS AND PROCEDURAL HISTORY

- [4] On November 21, 2021, the State filed an Information, charging Beasley with two Counts of murder, felonies, Ind. Code § 35-42-1-1(1)-(2), and one Count of robbery resulting in serious bodily injury, a Level 2 felony, I.C. § 35-42-5-1(a)(1). A year later, on November 28, 2022, the State amended the Information by adding two enhancements, which alleged Beasley to be an habitual offender, I.C. § 35-50-2-8, and to have used a firearm in the commission of the offenses, I.C. § 35-50-2-11.
- [5] On November 29 and 30, 2022, the trial court conducted a jury trial. At the close of the evidence, the jury found Beasley guilty as charged. On January 20,

2023, the sentencing hearing was held. During the proceedings, the trial court entered judgment on Count I, murder, vacated Count II, murder, and entered judgment on Count III on the lesser included offense of Level 5 felony robbery resulting in serious bodily injury. The trial court orally sentenced Beasley to sixty years on Count I and enhanced that sentence by fifteen years for the use of a firearm for a total of seventy-five years. The trial court then sentenced Beasley to ten years for the habitual offender enhancement and ran that sentence consecutive to his sentence for Count I, and it sentenced him to three years on Count III, to run concurrently to Count I, for an aggregate sentence of eighty-five years. With respect to Count I, the written sentencing order and abstract of judgment indicate that the trial court imposed “60 [y]ears for count [I] executed to [the Department of Correction (DOC)], 15 years for firearms enhancement executed to DOC consecutive to count [I]. 10 years for habitual offender enhancement consecutive to count [I] and the firearms enhancement for grand total of 85 years.” (Appellant’s App. Vol. II, pp. 21, 24).

[6] Beasley now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[7] Beasley contends—and the State agrees—that remand is necessary to correct the trial court’s sentencing statement because an habitual offender enhancement is not a separate crime and does not result in a consecutive sentence. Beasley does not challenge the enhancements *per se*, nor the length of the enhancements.

[8] Notwithstanding the authority afforded to appellate courts by Indiana Appellate Rule 7(B), “sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the 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.” *K.S v. State*, 849 N.E.2d 538, 544 (Ind. 2006). A trial court may abuse its discretion in sentencing a defendant by imposing a sentence for reasons that are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490. “Where the issue presented is a pure question of law, we review the matter *de novo*.” *State v. Moss-Dwyer*, 686 N.E.2d 109, 110 (Ind. 1997).

[9] “Habitual offender is a status that results in an enhanced sentence. It is not a separate crime and does not result in a consecutive sentence.” I.C. § 35-50-2-8(j). Accordingly, the trial court in the case before us erred when it treated Beasley’s habitual offender adjudication as a separate offense by ordering the sentence to run consecutively. We remand to the trial court with instruction to amend its sentencing statements to accurately reflect the 85-year sentence that it imposed: a 60-year sentence for murder enhanced by 10 years by the habitual offender finding and by 15 years due to the firearms enhancement. *See Woodruff v. State*, 80 N.E.3d 216 (Ind. Ct. App. 2017) (remanding for correction of aggregate 40-year sentence for aggravated battery that was comprised of 15

years for the underlying count, enhanced by 15 years by the habitual offender finding and by 10 years by the firearms enhancement).

CONCLUSION

[10] Based on the foregoing, we remand to the trial court with instruction to amend the sentencing statement in accordance with this opinion.

[11] Remanded.

[12] Bradford, J. and Weissmann, J. concur