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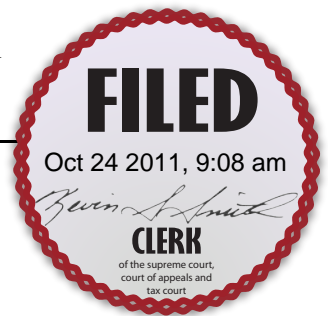
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**IN THE
COURT OF APPEALS OF INDIANA**

SHAMMY WINGO,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 27A02-1103-CR-226

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Warren Haas, Judge
Cause No. 27D03-1010-FD-742

October 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Shammy Wingo appeals the jury's determination that he committed the offenses of Operating a Motor Vehicle Without Financial Responsibility (Financial Responsibility Offense),¹ a class A infraction, and Operating a Vehicle Displaying a Fictitious Registration Number,² a class C infraction (Incorrect Registration Offense). He also appeals his criminal convictions for Resisting Law Enforcement,³ a class A misdemeanor, and Driving while Suspended,⁴ a class A misdemeanor.

Wingo challenges the sufficiency of the evidence with regard to the two infractions and claims that the fine imposed for the Financial Responsibility Offense violates the proportionality clause of the Indiana Constitution. Finally, Wingo contends that the trial court abused its discretion in ordering consecutive sentences on the resisting law enforcement and driving while suspended offenses.

Concluding that Wingo was properly sentenced and finding no other error, we affirm the judgment of the trial court.

FACTS

On September 2, 2010, at approximately 11:00 p.m., Marion Police Officers Jared Reel and Gregg Melton were on routine patrol when they saw Wingo driving a motorcycle without its headlights. Sergeant Reel turned his patrol car around and

¹ Ind. Code § 9-25-8-2(a)(1).

² Ind. Code § 9-18-2-27(a)(2).

³ Ind. Code § 35-44-3-3(a)(1).

⁴ Ind Code § 9-24-19-2.

followed Wingo to a nearby convenience store. As Wingo was leaving the store, Sergeant Reel verbally ordered him several times to approach the police vehicle. Wingo glanced around, looked in Sergeant Reel's direction, and ran away. Following a brief chase, the officers apprehended Wingo approximately one block away. Sergeant Reel called the dispatcher to check the motorcycle's license plate and learned that the plate was not registered to that vehicle. Sergeant Reel then checked Wingo's driver's license and found that it had been suspended. Thereafter, the police officers searched Wingo and the motorcycle and were not able to find any registration or insurance information.

Wingo was charged with the above offenses, along with the failure to use headlights, a class C infraction, and operating a vehicle as a habitual traffic violator, a class D felony. On January 10, 2011, the State dismissed the habitual charge and added a charge for driving while suspended as a class A misdemeanor.

Following a jury trial on February 16, 2011, Wingo was found guilty of resisting law enforcement and driving while suspended. The jury also found that Wingo had committed the charged traffic infractions.

The jury assessed Wingo a fine of \$200 on the Incorrect Registration Offense, \$7500 for the Financial Responsibility Offense, and a \$50 fine for operating a motor vehicle without using headlights. On February 17, 2011, the trial court sentenced Wingo

to consecutive one-year terms of incarceration on the two criminal offenses. Wingo now appeals.⁵

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Wingo claims that the evidence was insufficient to show that he committed either the Financial Responsibility Offense or Incorrect Registration Offense. In essence, Wingo contends that the police officers' testimony failed to establish the commission of the offenses.

We initially observe that traffic infractions are civil, rather than criminal in nature, and the State must prove the commission of the infraction by only a preponderance of the evidence. Rosenbaum v. State, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), trans. denied. We neither reweigh the evidence nor reassess the credibility of witnesses. Simpson v. State, 915 N.E.2d 511, 514-15 (Ind. Ct. App. 2009), trans. denied. We consider only the evidence favorable to the verdict and all reasonable inferences therefrom. Alvies v. State, 905 N.E.2d 57, 61 (Ind. Ct. App. 2009). If there is substantial evidence of probative value supporting the trial court's judgment, it will not be overturned.

The Incorrect Registration Offense statute provides that

(a) Except as provided in subsections (b) and (c), a vehicle required to be registered under this chapter may not be used or operated upon the highways if the motor vehicle displays any of the following:

⁵ The State asserts on cross-appeal that we should dismiss the appeal because neither the record nor the docket indicates that a Notice of Appeal was filed. However, Wingo did, in fact, file a Notice of Appeal on March 10, 2011.

- (1) A registration number belonging to any other vehicle.
- (2) A fictitious registration number.

I.C. § 9-18-2-27.

In this case, the evidence shows that Sergeant Reel contacted the police dispatch unit and had personnel check the license plate information. Tr. p. 4. Wingo had no registration documents, and dispatch determined that the license was not registered to the motorcycle. Id. This sufficiently proved that Wingo was operating a vehicle with a license plate that was not registered to the motorcycle. Id.

As for the Financial Responsibility Offense, Indiana Code section 9-25-8-2(a) provides that

A person who knowingly:

- (1) operates; or
- (2) permits the operation of;

a motor vehicle on a public highway in Indiana commits a Class A infraction unless financial responsibility is in effect with respect to the motor vehicle under IC 9-25-4-4.

In this case, once Sergeant Reel apprehended Wingo, it was established that Wingo had no proof of insurance. Tr. p. 10. A subsequent search of the motorcycle revealed neither insurance nor registration information. Id. at 10-11. In our view, Sergeant Reel's uncontroverted testimony that Wingo did not possess registration or insurance was sufficient to prove the charged offense by a preponderance of the evidence.

II. Fines and the Proportionality Clause

Wingo next claims that the fine imposed for violating the Financial Responsibility Offense violates the Proportionality Clause of the Indiana Constitution. In support of this claim, Wingo argues that the fine that was imposed here must be set aside because the jury did not identify any aggravating circumstances in support of the fine. Wingo also points out that the maximum fine for committing this offense is the same as for the commission of a class A felony.

The Proportionality Clause, pursuant to Article I, Section 16, of the Indiana Constitution, requires that “[a]ll penalties shall be proportioned to the nature of the offense.” And our courts have consistently maintained that the nature and extent of penal sanctions are primarily legislative considerations.” Balls v. State, 725 N.E.2d 450, 453 (Ind. Ct. App. 2000). Our review of a legislatively sanctioned penalty is very deferential, and we will not disturb the legislature’s determination except upon a showing of clear constitutional infirmity. The analysis is “straightforward” where the statutory punishment of a single crime is alleged to be constitutionally disproportionate. State v. Moss–Dwyer, 686 N.E.2d 109, 112 (Ind. 1997).

Our Supreme Court has determined that Section 16 applies only when a penalty is not graduated and proportioned to the nature of an offense. Conner v. State, 626 N.E.2d 803, 806 (Ind.1993). And we are not free “to set aside the legislative determination as to the appropriate penalty merely because it seems too severe.” Moss–Dwyer, 686 N.E.2d at 112. Rather, a sentence will be found to have violated the Proportionality Clause

where it is so severe and entirely out of proportion to the gravity of offense committed as “to shock public sentiment and violate the judgment of a reasonable people.” Pritscher v. State, 675 N.E.2d 727, 731 (Ind. Ct. App. 1996) (quoting Cox v. State, 203 Ind. 544, 549, 181 N.E. 469, 472 (1932)).

Here, the offense that Wingo committed is a class A infraction. And in accordance with Indiana Code section 34-28-5-4(a), a judgment up to the amount of \$10,000 may be entered for the commission of a class A infraction. That being said, Wingo acknowledges that the \$7500 fine imposed for the offense falls within the statutory limits. However, he asserts that the fine violates the Proportionality Clause because the State did not present any aggravating factors in support of the amount of the fine.

Notwithstanding Wingo’s contention, Wingo directs us to no authority—and we have found none—that a jury must consider such factors before imposing a fine that is authorized by statute. Indeed, we find that the jury acted within its discretion when it imposed the \$7500 fine. See Horne v. State, 572 N.E.2d 1333, 1335 (Ind. Ct. App. 1991) (holding that because infractions are governed by the rules of civil procedure, it is the province of the jury to determine the amount of a defendant’s liability).

We also reject Wingo’s contention that the penalty is disproportionate to the offense that was charged in light of his reference to the fine that may be imposed for the commission of a class A felony. In addition to the fine, a class A felony conviction carries with it, a potential term of imprisonment of up to fifty years, and no less than

twenty years. Ind. Code § 35-50-2-4. Infractions carry no terms of imprisonment and the fine is the sole remedy that is available to protect the State and its citizens. That said, Wingo's implication that the fine must be set aside because class A infractions may be punished as severely as class A felonies is without merit. In short, Wingo has failed to establish that the fine violates the Proportionality Clause pursuant to Article I, Section 16, of the Indiana Constitution.

III. Imposition of Consecutive Sentences

Wingo next argues that the trial court abused its discretion in imposing consecutive sentences following his convictions for resisting law enforcement and driving while suspended. Wingo argues that the sentences should have been ordered to run concurrently because these offenses occurred as a result of a "single episode of criminal conduct." Appellant's Br. p. 8.

We review a trial court's sentencing decision, including the imposition of consecutive sentences, for an abuse of discretion. Reynolds v. State, 657 N.E.2d 438, 440 (Ind. Ct. App. 1995). Indiana Code section 35-50-1-2(c) provides that trial courts are limited in imposing aggregate sentences for a single episode of criminal conduct resulting in multiple felony convictions. And an "episode of criminal conduct" is composed of "offenses or a connected series of offenses that are closely connected in time, place, and circumstance." Ind. Code § 35-52-1-2(b).

Here, as noted above, Wingo was convicted of two class A misdemeanors. Appellant's App. p. 15-16; Tr. p. 94-95. Thus, the provisions of Indiana Code section

35-50-1-2(c) do not apply to limit his aggregate sentence. See Dunn v. State, 900 N.E.2d 1291, 1292 (Ind. Ct. App. 2009) (holding that the clear and unambiguous language of Indiana Code section 35-50-1-2(c) requires the defendant to be sentenced for felony convictions in order to fall within its purview).

Moreover, even if Wingo had been sentenced for felonies, we cannot say that his offenses amounted to an “episode of criminal” conduct. More specifically, it is apparent that Wingo made two independent, unrelated illegal decisions. First, he decided to drive with a suspended license. Tr. p. 9. Then, after choosing to drive illegally on public roads with that suspended license, he subsequently chose to flee from law enforcement officials. For this additional reason, we conclude that Wingo’s crimes did not amount to an episode of criminal conduct within the meaning of Indiana Code section 35-52-1-2(b). As a result, we conclude that the trial court did not abuse its discretion in sentencing Wingo.

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.