

SUPREME COURT OF INDIANA

Davidson v. State

926 N.E.2d 1023 (Ind. 2010) · No. 49S02-1001-CR-41 · Decided May 25, 2010

SUMMARY

The Indiana Supreme Court held that appellate review under Indiana Appellate Rule 7(B) may consider the totality of the penal consequences imposed in a sentence, including suspended time and other sentencing components. The court affirmed the defendant’s aggregate 545-day sentence, with 180 days executed and 365 days suspended to probation, and disapproved contrary Court of Appeals decisions.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Justice Dickson; Chief Justice Shepard; Justice Sullivan; Justice Boehm; Justice Rucker
JURISDICTION	Indiana
DECIDED	May 25, 2010
DOCKET	49S02-1001-CR-41
DISPOSITION	affirmed
PROCEDURAL POSTURE	Davidson appealed his sentence under Indiana Appellate Rule 7(B), arguing that his aggregate 545-day sentence was inappropriate. The Indiana Court of Appeals affirmed. The Indiana Supreme Court granted transfer to resolve conflicting approaches concerning whether the suspended portion of a sentence may be considered during appellate sentence review.
STANDARD OF REVIEW	Under Indiana Appellate Rule 7(B), an appellate court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the sentence is inappropriate in light of the nature of the offense and the character of the offender. Appellate review may consider the totality of the penal consequences imposed, including suspended portions and other sentencing components.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Desmond Davidson v. State of Indiana

TOPICS

sentencing

appellate procedure

standard of review

criminal procedure

probation

PRACTICE AREAS

criminal law

appellate sentencing

Indiana criminal procedure

QUESTIONS PRESENTED

1. Whether appellate review under Indiana Appellate Rule 7(B) may consider the suspended portion of a criminal sentence and other penal consequences imposed by the trial court.
2. Whether Davidson's aggregate 545-day sentence was inappropriate in light of the nature of the offense and the character of the offender.

HOLDINGS

1. Appellate courts reviewing sentence appropriateness under Indiana Appellate Rule 7(B) may consider all aspects of the penal consequences imposed by the trial judge, including the portion of a sentence suspended to probation and other sentencing consequences.
2. The Court of Appeals correctly affirmed Davidson's sentence because Rule 7(B) review properly included consideration of the suspended portion of the 545-day sentence, and the judgment was affirmed.

KEY QUOTATIONS

“Upon the review of sentence appropriateness under Appellate Rule 7, appellate courts may consider all aspects of the penal consequences imposed by the trial judge in sentencing the defendant.” (926 N.E.2d at 1025)

“We decline to narrowly interpret the word “sentence” in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge.” (926 N.E.2d at 1025)

FACTUAL BACKGROUND

Davidson was convicted of auto theft, a Class D felony, and resisting law enforcement, a Class A misdemeanor. He received an aggregate sentence of 545 days, consisting of 180 executed days and 365 days suspended to probation. His sole appellate claim was that the sentence should be reviewed as a full 545-day sentence without considering the suspension.

PROCEDURAL HISTORY

Davidson was convicted of auto theft, a Class D felony, and resisting law enforcement, a Class A misdemeanor. The trial court imposed an aggregate 545-day sentence, with 180 days executed and 365 days suspended to probation. The Court of Appeals affirmed, and the Supreme Court of Indiana granted transfer and affirmed.

DISPOSITION

affirmed

CASES CITED

- Davidson v. State, 916 N.E.2d 954 (Ind. Ct. App. 2009)
- Jenkins v. State, 909 N.E.2d 1080 (Ind. Ct. App. 2009)
- Eaton v. State, 825 N.E.2d 1287 (Ind. Ct. App. 2005)
- Beck v. State, 790 N.E.2d 520 (Ind. Ct. App. 2003)
- Pagan v. State, 809 N.E.2d 915 (Ind. Ct. App. 2004)
- Cox v. State, 792 N.E.2d 898 (Ind. Ct. App. 2003)

OPINION

DICKSON, J.

926 N.E.2d 1023 (2010) Desmond DAVIDSON, Appellant (Defendant below), v. STATE of Indiana, Appellee (Plaintiff below). No. 49S02-1001-CR-41. Supreme Court of Indiana. May 25, 2010. *1024 Joel M. Schumm, Ruth Ann Johnson, Marion County Public Defender, Indianapolis, IN, Attorneys for Appellant. Gregory F. Zoeller, Attorney General of Indiana, Gary Damon Secrest, Wade James Hornbacher, James Edward Porter II, Deputy Attorney Generals, Indianapolis, IN, Attorneys for Appellee.

On Transfer from the Indiana Court of Appeals, No. 49A02-0904-CR-287 DICKSON, Justice. Contrasting opinions of the Court of Appeals have disagreed about the manner and extent of consideration to be given to the suspended portion of a sentence upon appellate review.

To resolve this conflict, we granted transfer and hold that appellate review under Indiana Appellate Rule 7 may include consideration of the totality of the penal consequences found in a trial court's sentence. The defendant was convicted of Auto Theft, a class D felony, and Resisting Law Enforcement, a class A misdemeanor.

For these convictions, he received an aggregate sentence of 545 days, the advisory sentence for a class D felony, with 180 days executed and 365 days suspended to probation. The defendant appealed, presenting only a claim for appellate review and revision of the sentence under Indiana Appellate Rule 7(B) and asserting that the total sentence of 545 days was inappropriate.

The Court of Appeals affirmed. Davidson v. State, 916 N.E.2d 954 (Ind.Ct. App.2009). The Court of Appeals panel, however, was not in full agreement regarding whether "to review his partially-suspended advisory sentence the same as if it were a fully-executed advisory sentence." Id. at 958.

The majority opinion, authored by Judge Najam, favored consideration of the fact that a portion of the sentence was suspended, agreeing with Judge Bradford's majority opinion for a unanimous

panel in *Jenkins v. State*, 909 N.E.2d 1080, 1084-86 (Ind.Ct.App.2009), trans. denied, which adopted Judge Kirsch's dissenting view in *Eaton v. State*, 825 N.E.2d 1287, 1291 (Ind.Ct.App.2005), trans. not sought.

Accord *Beck v. State*, 790 N.E.2d 520, 522-23 (Ind.Ct.App.2003), trans. not sought. Judge Barnes wrote a separate concurring-in-result opinion in the present case, urging that the reviewing court should consider only the defendant's full 545-day sentence "without regard for the fact that a majority of that sentence was suspended to probation." *Davidson*, 916 N.E.2d at 962.

This view was also favored in *Eaton*, 825 N.E.2d at 1290-91 (declining to consider the fact that part of the sentence was suspended); *Pagan v. State*, 809 N.E.2d 915, 926 n. 9 (Ind.Ct.App.2004), trans. denied (including both the executed and the suspended portions of the sentence when *1025 determining whether the defendant received a maximum sentence); and *Cox v. State*, 792 N.E.2d 898, 904 n. 6 (Ind.Ct.

App.2003), trans. denied (finding the maximum sentence was imposed despite the fact that part of the sentence was suspended). In the present case, the defendant's sole claim on transfer is that, upon review under Appellate Rule 7(B), the reviewing court should evaluate only the full, aggregate sentence without considering whether all or any portion of it was suspended.

The Indiana Constitution expressly provides an appellate power to "review and revise the sentence imposed." Ind. Const. art. 7, § 4. Pursuant to this provision, Indiana Appellate Rule 7 authorizes a criminal defendant to appeal a sentence and states that the reviewing court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

App. R. 7(B). The defendant urges that in exercising this power, only his aggregate sentence of 545 days should be evaluated, without consideration of the fact that the sentencing judge ordered 365 days suspended to probation and only 180 days to be executed.

In determining the penal consequences for a convicted defendant, trial courts have a variety of options beyond that of determining the length of a sentence. In imposing a sentence, trial judges may order, for example, suspension of the sentence,[1] probation,[2] home detention,[3] placement in a community corrections program,[4] executed time in a Department of Correction facility,[5] or serving of sentences on multiple convictions concurrently rather than consecutively.[6] And the General Assembly provides for additional penalties that can be levied against a defendant such as restitution and fines.[7] We decline to narrowly interpret the word "sentence" in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge.

This does not preclude a reviewing court from determining a sentence to be inappropriate due to its overall sentence length despite the suspension of a substantial portion thereof. A defendant on probation is subject to the revocation of probation and may be required to serve up to the full original sentence. Conclusion Upon the review of sentence appropriateness under Appellate Rule 7, appellate courts may consider all aspects of the penal consequences imposed by the trial judge in sentencing the defendant.

The Court of Appeals in this case was correct. We disapprove of the contrary views expressed in Eaton, 825 N.E.2d at 1290-91; Pagan, 809 N.E.2d at 926; and Cox, 792 N.E.2d at 904. The judgment of the trial court is affirmed. SHEPARD, C.J., and SULLIVAN, BOEHM, and RUCKER, JJ., concur. NOTES [1] Ind.Code §§ 35-38-1-17, 35-50-2-2.

[2] I.C. § 35-38-2. [3] I.C. § 35-38-2.5. [4] I.C. § 35-38-2.6. [5] I.C. § 35-38-3. [6] I.C. § 35-50-1-2. [7] I.C. § 35-50-5.