FILED
FEB 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed February 26, 1986 320
vs.	)	
KORY TODD ORTH,	)	5-679 85-1092
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Worth County (No. 2238) - Paul W. Riffel, Judge.

Defendant appeals the judgment and sentence entered upon his conviction of operating a motor vehicle without the owner's consent in violation of Iowa Code section 714.7, asserting that the trial court's determinate two-year sentence was illegal under Iowa Code section 903.2. **AFFIRMED AS MODIFIED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney General; and Eric Bigen, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Shell and Schlegel, JJ.

Defendant Kory Todd Orth was convicted of operating a motor vehicle without the owner's consent under Iowa Code section 714.7 (1985). At the sentencing proceeding, the trial court committed Orth "to the custody of the Director of Adult Corrections of the State of Iowa for a term of two years . . . ." The written judgment entry also reflected that Orth was to be imprisoned "for a term of two years."

On appeal, Orth argues that the trial court erred in sentencing him to a determinate sentence of two years rather than an indeterminate sentence not to exceed two years. Orth, therefore, requests that his sentence be vacated and his case remanded for resentencing.

Operating without consent is classified as an aggravated misdemeanor under Iowa Code section 714.7 (1985). Iowa Code section 903.1(2) (1985) provides the maximum sentence for misdemeanants as follows:

> When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years, or a fine not to exceed five thousand dollars, or both. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.

In this case, the trial court obviously intended to impose the maximum two-year sentence. However, rather than stating that Orth's sentence was "not to exceed two years," the trial court stated that Orth was committed "for a term of two years."

In these circumstances, we conclude that it is proper to exercise our Iowa Code section 814.20 authority to modify the district court judgment so that it will comply with section 903.1(2). See State v. White, 337 N.W.2d 517, 521 (Iowa 1983) (modification of a determinate sentence of ten years to an

indeterminate sentence not to exceed ten years). Therefore, Orth's sentence is modified to provide that he shall serve a term not to exceed two years.

AFFIRMED AS MODIFIED.