FILED
JUL 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-293 / 89-1753

STATE OF IOWA,

Appellee,

vs.

PAUL RYAN PURVIANCE,

Appellant.

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Appeal from the Iowa District Court for Dallas County, Arthur E. Gamble, Van Wifvat, and Michael J. Streit, Judges.

Defendant appeals the district court's denial of his motion to correct an illegal sentence. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, David Welu, County Attorney, and Constance C. Welu, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

The defendant, Paul Ryan Purviance, appeals his sentence following his guilty plea to OWI third offense. He claims the five (5) year prison term is an illegal sentence. We affirm.

Purviance contends that Iowa Code section 321J.2(2)(c), as it read at the time of his 1987 offense, provided that a person convicted of third-offense OWI could only be "imprisoned in the county jail or community-based correctional facility," not in an institution administered by the director of the department of corrections. Purviance then notes that under Iowa Code section 903.4, any sentence of over a year must be served in an institution administered by the director of the department of corrections, not in a county jail or community-based facility. On the basis of these two claims, Purviance argues that a sentence of more than one year was unavailable for the crime of third-offense OWI in 1987, even though the crime was classified as a class D felony and otherwise would have carried a maximum sentence of up to five years.

Purviance acknowledges that after the date of his offense, section 321J.2(2)(c) was amended to state clearly that a person convicted of third-offense OWI could be committed to the custody of the director of the department of corrections, as well as to a county jail or

community-based facility. However, he claims that this was not true at the time of his 1987 offense, and he argues that the application of the subsequently amended statute to his case would be an ex post facto application of a law.

In construing statutes, the legislature has directed that courts:

> In enacting a statute, it is presumed that:
> .3. A just and reasonable result is intended.

Iowa Code section 4.4.

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider, among other matters:
> .5. The consequences of a particular construction.

Iowa Code section 4.6.

> If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

Iowa Code section 4.7.

We find the legislature intended to grant the district court three alternatives in sentencing persons convicted of more than two OWI crimes, the minimum being thirty days in the county jail under section 321J.2(2)(c), the maximum being five years imprisonment under section 902.9(4). A third option was a one-year sentence in the county jail under section 902.3 which states:

> However, the court may sentence a person convicted of a class "D" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection four,

> and the person shall not be under the custody of the Director of the Iowa Department of Corrections.

We find the legislature intended if the district court elected to sentence a defendant to the county jail for up to one year, that person was not in the custody of the Director of the Iowa Department of Corrections.

Iowa Code section 321.2(2)(c) provides:

> A Class "D" felony for a third offense and each subsequent offense and shall be imprisoned in the county jail or community-based correctional facility for not less than thirty days. . . . .

We find the legislature intended this section to set a minimum sentence of thirty (30) days in the county jail.

Section 902.9(4) provides:

> A Class "D" felon, not an habitual offender, shall be confined for no more than five years. . . . A class "D" felon, such felony being for a violation of section 321J.2, may be sentenced to imprisonment for up to one year in the county jail.

We find the legislature intended to set a maximum sentence for all class D felonies at five years and provided a third option to the sentencing court to sentence a person to one year in the county jail.

Because the district court had discretion to sentence Purviance to five years imprisonment, the sentence in this case is affirmed.

AFFIRMED.