FILED
APR 30 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )
Plaintiff-Appellee, )
vs. )
JOHN LYLE DIXON, )
Defendant-Appellant. )

Filed April 30, 1985 396

5-65
84-1050

Appeal from the Iowa District Court for Marshall County - Sandra J. Holien, District Associate Judge.

Defendant appeals from his conviction of assault causing bodily injury in violation of Iowa Code section 708.2(2). AFFIRMED AS MODIFIED.

Charles L. Harrington, Appellate Defender, and John P. Messina, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Valencia Voyd McCown, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

Defendant appeals from the sentence imposed following his conviction for assault causing bodily injury in violation of Iowa Code section 708.2(2) (1983). The defendant was found guilty of causing bodily injury to a fellow cellmate at the Marshall County Jail. On June 19, 1984, the trial court's judgment order sentenced defendant as follows:

> That defendant should be and is hereby Ordered committed to the custody of the Marshall County Sheriff for a period not to exceed 270 [days]. Commitment on this sentence is hereby Ordered withheld until such time as the defendant shall be discharged or paroled from the custody of the Director of the Division of Adult Corrections. At such time the Marshall County Sheriff shall take immediate custody of the defendant and he will be taken to the Marshall County Jail to commence serving said 270-day sentence.

Defendant appeals from the sentence imposed asserting that the sentence was indeterminate, rather than being for a determinate period of time within a one-year period as required by Iowa Code section 903.1(2) (1983). The State claims that although the trial court stated in one portion of the order that the sentence shall "not exceed 270" days, the judge in a subsequent portion of the order clearly stated that defendant shall "commence serving said 270-day sentence." The State maintains this indicates that the trial court intended the defendant to serve a determinate sentence of 270 days.

Punishment for a serious misdemeanor must be for a determinate period of time not to exceed one year imprisonment, or a fine not to exceed one thousand dollars, or both. See Iowa Code § 903.1(2) (1983). The trial court's order on its face is internally inconsistent because it calls for a sentence not to exceed 270 days while also requiring defendant to serve a 270-day sentence. We find that the sentence ordered by the trial court was indeterminate because it did not clearly state a specific number of days to be served by defendant.

The State further contends that even if the sentence is indeterminate, this

court should modify the trial court's order pursuant to Iowa Code section 814.20 (1983). This Code section provides that if a trial court orders an impermissible sentence, then the appellate court can use its discretion to modify the order instead of reversing and remanding the case for further sentencing. See State v. White, 337 N.W.2d 517 (Iowa 1983).

By following White, we choose to exercise the power to modify the trial court's order because there is sufficient support in the record to conclude that the trial court intended that defendant serve a 270-day sentence. Pursuant to section 814.20 authority, we modify the trial court's order to comply with the applicable statutes. Defendant's sentence is modified to provide that he shall serve a sentence of 270 days pursuant to the trial court's direction.

As modified, we affirm the trial court's judgment.

AFFIRMED AS MODIFIED.