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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-601 / 94-664

STATE OF IOWA,

Appellee,

vs.

LONNIE JOE GRIFFITHS,

Appellant.

Appeal from the Iowa District Court for Wapello County, E. Richard Meadows, Jr., District Associate Judge.

Lonnie Griffiths appeals the sentence imposed on his conviction, following a guilty plea, of assault causing bodily injury and interference with official acts. **SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

R. T. Starken of Alexander & Starken, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, William H. Appel, County Attorney, and Laura Roan, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Huitink, JJ.

HUITINK, J.

Lonnie Griffiths appeals from the sentence imposed on his conviction, following a guilty plea, of assault causing bodily injury, in violation of Iowa Code sections 708.1 and 708.2(2), and interference with official acts, in violation of Iowa Code section 719.1(1). We vacate the sentence and remand for resentencing.

On March 18, 1994, Lonnie Griffiths appeared for arraignment on two unrelated cases and for contempt proceedings. He pled guilty to driving while barred, in violation of Iowa Code sections 321.560 and 321.561 (1993), interference with official acts, in violation of section 719.1(1), and assault causing bodily injury, in violation of sections 708.1 and 708.2(2). The court also found Griffiths to be in contempt of court.

Griffiths waived his right to file a motion in arrest of judgment and opted for immediate sentencing. The court sentenced Griffiths to (1) a prison term of up to two years for driving while barred, with a twenty-five-day credit for time served and the remainder suspended; (2) one year in jail for assault causing bodily injury; (3) one year in jail for interference with official acts; and (4) thirty days in jail for contempt. The court did not allow credit for time served in the last three sentences. The court provided all sentences would run concurrently.

The sentencing judge indicated he chose the above sentences due to, among other things, Griffiths' poor track

record on probation, failure to satisfy past financial obligations to the court, rehabilitation, protection of community, and the seriousness of the offense. After Griffiths objected to being sentenced to jail instead of a prison term, the court noted: "I understand you would rather go to prison for two years rather than eight months in jail. Probably you would rather do that because you probably wouldn't spend two years in prison . . . ."

Griffiths contends the district court imposed an illegal sentence in committing him to county jail for one year and twenty-five days. He argues he was required to be committed to the custody of the department of corrections for a sentence exceeding one year. See Iowa Code §§ 901.7 and 903.4 (1993). He also argues the court abused its discretion in sentencing him to jail instead of prison. He maintains the court considered an impermissible factor (possibility of parole) in making its sentencing decision.

The State contends Griffiths waived error by failing to object at sentencing. The State also argues Griffiths' sentences did not exceed one year because they were concurrent and that consideration of parole did not motivate the court's sentencing decision.

Our review of the district court's sentencing decision is limited to corrections of errors at law. Iowa R. App. 4.

We initially consider and reject the State's contention that Griffiths has failed to preserve these sentencing

issues for appeal. His claim questioning the propriety of his confinement in the county jail is a challenge to the legality of his sentence. See State v. Morris, 416 N.W.2d 688, 689 (Iowa 1987); State v. Young, 292 N.W.2d 432, 435 (Iowa 1980). The general rule prohibiting consideration of an issue not raised in the district court is accordingly inapplicable. Iowa R. Crim. P. 23(5)(a); Overton v. State, 493 N.W.2d 857, 859 (Iowa 1992) (citation omitted). In State v. Thomas, 520 N.W.2d 311 (Iowa App. 1994), we rejected the State's notion that the defendant was required to raise objections to the court's sentencing considerations during the sentencing hearing to preserve error. Thomas, 520 N.W.2d at 313. The State advances no reason supporting a departure from our holding in Thomas, and we will proceed to consider the merits of Griffiths' claimed sentencing errors.

Iowa Code section 903.4 provides:

> All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had . . . . All persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the Iowa department of corrections ....

(Emphasis added.)

This statute expresses the legislature's intent that no person should be confined in a county jail for more than one year. See Morris, 416 N.W.2d at 690. A sentence of confinement for more than one year in the county jail is void because it is not permitted by this statute. See

Overton, 493 N.W.2d at 859 (citing State v. Wiese, 201 N.W.2d 734, 737 (Iowa 1972)).

Our review of the record leads us to conclude that Griffiths was, in fact, sentenced to a term of confinement for more than one year. We reach this conclusion after considering the chronology of events leading up to Griffiths' plea and sentencing.

Griffiths was incarcerated on February 26, 1994, following his arrest for driving while barred. The events underlying the charges of assault and interference with official acts did not occur until March 14, 1994, and Griffiths was not charged with these offenses until March 18, 1994, the same day he entered his plea. The State's argument necessarily presumes Griffiths could serve all of the sentences imposed concurrently. We believe this notion conflicts with our general rules regarding concurrent sentences and the provisions of Iowa Code section 903A.5 regarding credit for time served before sentence is imposed.

In Iowa concurrent sentences operate at the same time. Each day the defendant serves is a day credited to each sentence. State v. Harrison, 468 N.W.2d 215, 217 (Iowa 1991). Any sentence of confinement begins when the defendant enters an institution, even if the confinement predates sentencing. Id. If concurrent sentences are imposed for offenses charged subsequent to the defendant's entry into the institution, the date of entry is not

considered the beginning date of the sentence for the subsequent offense. Id. The beginning date of the subsequent offense is the date an arrest warrant is served or, if none is served, that date sentence is imposed. Id. Griffiths is therefore not entitled to concurrent credit against his sentence on the subsequent offenses for any presentence time served on the driving while barred offense.

Under these circumstances, the presentence time Griffiths served for driving while barred must be added to the one-year period of confinement imposed for the two subsequent offenses. The resulting one-year-and-twenty-five-day period of confinement in the county jail is void because it exceeds that permitted by Iowa Code section 903.4 (1993).

Our determination that the sentence is void precludes consideration of the defendant's remaining argument. The district court's sentence is vacated, and we remand this case for resentencing.

SENTENCE VACATED AND REMANDED FOR RESENTENCING.