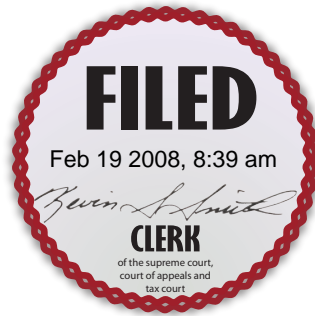


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SOLLIE A. NANCE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0708-CR-689

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 22
The Honorable Amy T. Barbar, Magistrate
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0704-FC-67763

February 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Sollie Nance (Nance), appeals his conviction for escape, as a Class C felony, Ind. Code § 35-44-3-5.

We affirm and remand.

ISSUES

Nance raises one issue on appeal: Whether the evidence is sufficient to support his escape conviction.

FACTS AND PROCEDURAL HISTORY

On April 19, 2007, Nance appeared before a commissioner for an initial hearing in Cause No. 49G22-0703-CM-041406 (Cause No. 041406), in which Nance was charged with misdemeanor counts of battery and criminal mischief. During the hearing, the commissioner informed Nance that there was a warrant for his arrest in the case, set bail at \$20,000, and told Nance that “he was now in the custody of the Marion County [S]heriff.” (Transcript p. 14). However, the hearing continued, and Nance was not immediately taken into physical custody. At the conclusion of the hearing, Nance began to exit the courtroom. The commissioner said Nance’s name, and Nance ran out of the courtroom and out of the courthouse. Several sheriff’s deputies pursued and eventually apprehended Nance.

On April 20, 2007, the State filed an Information charging Nance with escape, as a Class C felony, I.C. § 35-44-3-5. On June 26, 2007, the State filed an additional Information alleging that Nance is a habitual offender based upon prior felony convictions for battery and burglary. On June 28, 2007, a jury trial was held. The jury found Nance guilty of escape

and, after Nance stipulated to the prior felony convictions, also found him to be a habitual offender. The trial court sentenced Nance to six years at the Indiana Department of Correction for the escape conviction and added four years based upon the habitual offender finding for a total executed sentence of ten years.

Nance now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Nance argues that the evidence is insufficient to support his conviction. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict Nance of escape as a Class C felony, the State was required to prove beyond a reasonable doubt that Nance “intentionally fle[d] from lawful detention[.]” I.C. § 35-44-3-5(a). Nance contends that the State failed to prove that he fled from “lawful detention.” We disagree.

The statutory definition of “lawful detention” includes traditional meanings like arrest and detention in a penal facility, but it also includes a catch-all provision for “any other

detention for law enforcement purposes.” I.C. § 35-41-1-18(a). The statute “does not explicitly limit its application to situations in which a law enforcement officer has control of an individual.” *Anglin v. State*, 787 N.E.2d 1012, 1017 (Ind. Ct. App. 2003), *trans. denied*. In *Anglin*, the trial court sentenced the defendant to one year in the Noble County Jail and informed him that the sheriff’s department would pick him up at a designated location in the courthouse to transport him to the jail. The defendant fled before the transport officer picked him up. We held that the trial court “detained” the defendant when it informed him that the sheriff’s department would pick him up at a designated location in the courthouse. *Id.* The fact that the defendant “was not in the physical custody of the transport officer at the time that he fled [did] not exclude the conclusion that he was in ‘detention for law enforcement purposes.’” *Id.*

Similarly, in this case, we conclude that Nance was detained by the trial court when he was informed of the arrest warrant, told that his bail was \$20,000, and told that “he was now in the custody of the Marion County [S]heriff.” (Tr. p. 14). Though Nance was not immediately taken into physical custody after the commissioner made this statement, the statement was certainly sufficient to put Nance on notice that he was not free to leave, *i.e.*, that he was being detained. In fact, one could safely infer that Nance ran out of the courtroom because he *knew* he was being detained and preferred a life of freedom. We conclude that the evidence is sufficient to support Nance’s conviction.

Finally, we note, *sua sponte*, that the chronological case summary and abstract of judgment in this case indicate that the trial court imposed a separate sentence for Nance’s

habitual offender enhancement and ordered that sentence to run “consecutive” to the sentence for the underlying escape conviction. (Appellant’s App. pp. 12, 16). We have consistently held that it is error for a trial court to impose a habitual offender enhancement separately and consecutively to an underlying conviction because the enhancement is not a separate conviction. *Howard v. State*, 873 N.E.2d 685, 691 (Ind. Ct. App. 2007). Therefore, we remand this cause to the trial court with instructions to clarify that Nance’s habitual offender enhancement is not a separate conviction.

CONCLUSION

Based on the foregoing, we conclude that the evidence is sufficient to support Nance’s conviction. However, we remand this cause to the trial court with instructions to clarify that Nance’s habitual offender enhancement is not a separate conviction.

Affirmed and remanded.

KIRSCH, J., and MAY, J., concur.