



## Case Summary

Mark A. Conley (“Conley”) appeals from his conviction for Escape, as a Class D felony.<sup>1</sup> He raises a single issue for our review, whether the trial court erred when it denied his motion for a directed verdict because the sentencing order that committed him to home detention did not provide notice that he could be prosecuted for Escape if he failed to comply with the conditions of home detention.

We affirm.

## Facts and Procedural History

On July 25, 2007, Conley pled guilty to Operation of a Vehicle while Intoxicated<sup>2</sup> and Operating a Motor Vehicle while Privileges are Suspended<sup>3</sup> in Cause Number 79D06-0607-FD-00153 in Tippecanoe County. He was sentenced to two terms of 1 ½ years on two counts, run concurrently, with an enhancement of 4 ½ years added to the sentence for Operating a Motor Vehicle while Privileges are Suspended as a Habitual Traffic Violator, for an aggregate sentence of six years. The sentencing court suspended two years of the six and ordered one year served in the Department of Correction, with three years on “House Arrest” through Tippecanoe County Community Corrections with a recommendation that he be placed in Carroll County Community Corrections. (Ex. 1.)

On January 3, 2008, Conley began the “House Arrest” portion of his sentence, which was administered by the Carroll County Probation Department (“the Department”). The In-

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<sup>1</sup> Ind. Code § 35-44-3-5(b).

<sup>2</sup> Ind. Code § 9-30-5-3.

<sup>3</sup> Ind. Code § 9-30-10-16.

Home Detention Program Agreement (“the Agreement”) between Conley and the Department provided, “I understand that any unauthorized absence from my home may result in criminal charges.” (Ex. 2.) The Agreement also provided that if Conley were to consume drugs or alcohol or go to a liquor store, tavern, or bar, he would violate the terms of his in-home detention. Conley signed the Agreement and initialed next to these and other provisions, acknowledging that he had read and understood them. Renee Kinsler (“Kinsler”), a home detention coordinator with the Carroll County Probation Department, was assigned to oversee Conley’s in-home detention.

On the evening of October 31, 2009, Conley was reported as being out of his home without authorization. As a result, Kinsler spoke with Conley the following day, when she reminded him that he was not permitted to be out of his home without authorization and that he could be prosecuted for Escape if he failed to comply with this requirement. Conley acknowledged that he understood this rule and stated that he would comply with it.

On April 7, 2010, at around 7:30 p.m., Conley left his home without authorization. Conley went to a local bar. Upon receiving notification from the monitoring service that Conley was not home, Kinsler went to his residence and met Conley when he returned at 9:38 p.m. Kinsler again told Conley that he could be prosecuted and his home detention could be revoked.

On April 20, 2010, Conley was charged with two counts of Escape; one charge related to the October 31, 2009, incident, and the other charge related to the April 7, 2010, incident.

On March 8, 2011, a jury trial was conducted. At the close of the State’s evidence,

Conley moved for a directed verdict, arguing that because the Agreement did not comply with the requirement of Indiana Code section 35-38-2.5-6 that individuals subject to certain home detention orders be informed that violation of the order could result in prosecution for Escape, he was entitled to a directed verdict on both charges against him. The trial court initially denied this motion, but later indicated that it would reconsider the motion and took it under advisement. At the conclusion of the trial, the case was submitted to the jury, which found Conley not guilty of Escape with respect to the October 31, 2009, incident, but found him guilty of Escape with respect to the April 7, 2010, incident.

On March 9, 2011, the trial court again denied Conley's motion for a directed verdict, concluding that the sentencing order from Tippecanoe County under which Conley served his home detention did not fall within those governed by Indiana Code section 35-38-2.5-6. The court further held that the statutory provision in question does not impose a requirement that an individual be notified of the possibility of prosecution for Escape as a requisite element of the offense.

On April 7, 2011, a sentencing hearing was conducted, during which the trial court entered judgment of conviction against Conley for Escape and sentenced him to three years imprisonment, suspending all but forty nine days to probation.

This appeal followed.

### **Discussion and Decision**

Conley appeals from the trial court's denial of his motion for a directed verdict on the charge of Escape. For a trial court to grant a motion for a directed verdict, "there must be a

total lack of evidence regarding an essential element of the crime, or the evidence must be without conflict and susceptible only to an inference in favor of the innocence of the defendant.” Edwards v. State, 862 N.E.2d 1254, 1262 (Ind. Ct. App. 2007) (citing Proffit v. State, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), trans. denied), trans. denied. Where there is sufficient evidence to sustain a conviction upon appeal, a trial court’s denial of a motion for a directed verdict is proper. Our standard of review in such cases is, then, “essentially the same as that upon a challenge to the sufficiency of the evidence.” Id. Thus, we neither reweigh evidence nor judge witness credibility, but consider only the evidence that supports the conviction and reasonable inferences most favorable to the judgment that may be drawn from the evidence. Id.

Here, Conley was charged with Escape, as a Class D felony. To obtain a conviction, the State was required to prove beyond a reasonable doubt that on April 7, 2010, Conley knowingly or intentionally violated a home detention order by leaving his residence without permission. I.C. § 35-44-3-5(b); App. 9.

Conley’s sole contention on appeal is that he did not knowingly or intentionally violate a home detention order because the Agreement did not specifically inform him that he could be prosecuted for Escape under Indiana Code section 35-44-3-5. The State argues that the provision of the Indiana Code to which Conley points as setting forth the requirements for a home detention order, section 35-38-2.5-6, does not apply to Conley’s in-home detention order; even if that provision does apply, the statutory requirement was complied with; and even if the requirement was not complied with, Conley was not prejudiced by that error.

Conley was sentenced to in-home detention, which was administered by the Carroll County Probation Department. He does not contend that he did not knowingly or intentionally leave his home on April 7, 2010, when he was not permitted to do so. He does not contend that he did not knowingly or intentionally violate the provisions of the home detention order and agreement. He does not contend that he was not given notice of the possibility of prosecution for leaving his home without authorization. He knowingly engaged in the proscribed conduct, but lodges a collateral challenge based upon a claimed deficiency in the Agreement, namely, that the home detention order was deficient because it failed to give him notice that he could be prosecuted for Escape under Indiana Code section 35-44-3-5.

The elements of the offense of Escape under Indiana Code section 35-44-3-5(b) do not require notice of the possibility of prosecution generally, let alone notice of the possibility of prosecution for the specific offense of Escape. Moreover, Conley received notice in the Agreement that he could be criminally prosecuted for failure to comply with the requirements of home detention. After the incident on October 31, 2009, he also received verbal notice from Kinsler that he could be subject to prosecution for Escape.

In light of the absence of an element of Escape requiring notice of that offense as an element which the State was required to prove in order to obtain a conviction, we cannot conclude that Conley was entitled to a directed verdict. The evidence is in all other respects sufficient to support Conley's conviction, and we therefore affirm the judgment.

Affirmed.

MATHIAS, J., and CRONE, J., concur.