

IN THE COURT OF APPEALS OF IOWA

No. 9-031 / 08-1146
Filed March 11, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYRONE GILLISON,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson (plea) and Gregory W. Steensland (sentencing), Judges.

Defendant appeals the sentence imposed after his guilty plea.

AFFIRMED AS MODIFIED.

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Christine Shockey, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

In May 2008, pursuant to a plea agreement, Tyrone Gillison pled guilty to the class D felony of leaving the scene of a fatality accident. Additionally, Gillison admitted he was a habitual offender subject to sentencing enhancement. Prior to sentencing, Gillison filed a motion in arrest of judgment and a resistance to the proposed sentencing enhancement. While Gillison admitted he had two prior New Jersey convictions, he argued enhancement is not allowed because those convictions are third-degree crimes, also called high misdemeanors, and not felonies.

At the sentencing hearing, the district court ruled the prior New Jersey convictions are felonies for the purposes of Iowa's habitual offender statute. See Iowa Code § 902.8 (2007). The court ordered Gillison to serve an indeterminate term of incarceration not to exceed fifteen years and to pay a fine.

Gillison argues his sentence is illegal because his New Jersey convictions are not "felonies" and therefore, his sentence may not be enhanced. "Our review of challenges to the illegality of a sentence is for errors at law." *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

Iowa's habitual offender statute applies to Gillison's class D felony conviction if he "has twice before been convicted of any felony in a court of this or any other state." Iowa Code § 902.8. The New Jersey criminal code, however, has "not utilized the felony-misdemeanor . . . classification." *State v. Doyle*, 200 A.2d 606, 613 (N.J. 1964). Rather, it utilizes a classification system which includes misdemeanors and high misdemeanors. *Id.* As of 1981, "the term 'high

misdemeanor' shall mean crimes of the first, second, or third degree." N.J. Stat. Ann. § 2C:1-4(d) (1981). High misdemeanors "are punishable generally by a fine . . . or imprisonment for a maximum term of seven years, or both." *Doyle*, 200 A.2d at 614.

In cases where it is necessary to determine whether a felony has been committed, the New Jersey courts hold that "offenses which are punishable by more than one year in state prison should be treated as common law felonies." *Serio v. Allstate Ins. Co.*, 509 A.2d 273, 277 n.1 (N.J. Super. Ct. App. Div. 1986). *Accord Doyle*, 200 A.2d at 614. Consequently, Gillison's two prior convictions in New Jersey for third-degree crimes or high misdemeanors "should be treated as felonies" and support enhancement under Iowa law. See Iowa Code § 902.8. We find no error in the court's sentencing enhancement.

Gillison also argues the court erred in imposing a fine on his habitual offender sentence. The State concedes Gillison's fine was in error. Therefore, the portion of the sentence imposing the fine is vacated.

AFFIRMED AS MODIFIED.