



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480)362.6315

AL RICHARD CHARLIE,

Appellant,

-v-

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY,**

Appellee,

Appeal Case No.: APCR 19-0001

Trial Case No.: T-18-0278

**MEMORANDUM DECISION
and ORDER**

2019 MAY -8 AM 8:06

FILED
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COURT

On September 26, 2018, Al Charlie ("Appellant") pled guilty to Driving Under the Influence ("DUI") as a first offense and was sentenced to one hundred and twenty (120) days of incarceration and a fine of \$2,500 pursuant to Section 16-231(f)(1) of the Salt River Pima Maricopa Indian Community ("SRPMIC") Traffic Code. SRPMIC Court Judgment and Order, (9/27/2018).

Appellant appeals the sentence imposed by the SRPMIC Court on the grounds that the length of sentence violates the governing sentencing statute. The trial court stayed the sentence while this appeal is pending. We find that the trial court properly interpreted the statute and uphold the sentence.

This is a matter of statutory construction and this Court reviews the sentencing determination *de novo*. The language of the statute is as follows:

16-231(f) Penalties for violation of section 16-231 (a) – DUI.

Any person who violates section 16-231(a) as follows shall be convicted of a Criminal offense, and may be sentenced up to:

First violation. One year incarceration and shall pay a mandatory fine of no Less than \$700 and no more than \$5,000.00, as a first violation. The court may impose probation up to three years, but any sentence that is imposed shall include at least three but not more than five days of incarceration which shall not be deleted, deferred, or suspended.

Sec. 16-231 (f)(1), SRPMIC Traffic Code.

Section 16-251(f) goes on to provide enhanced sentences for a second violation, sec. 231(f)(2), and a third and subsequent violations, sec. 231(f)(3), each of which provides for a maximum incarceration of one year, probation as an alternative, but in each case requires a minimum number of days of required incarceration 60 days for the second violation and 90 days for the third and subsequent offenses, that "shall not be deleted, deferred or suspended." It is only with the first offense that the statute provides for a range of incarceration, 3 to 5 days, which shall not be deleted, deferred or suspended when probation is provided as an alternative.

In construing the statute, we look to the interpretation of the two sentences. The first provides for incarceration up to one year. This is consistent with the categorization of a first offense DUI as a Class B offense. See SRPMIC Code Sec. 8.3, Sentencing classifications: "the maximum penalty that may be imposed upon any person convicted of the offense shall be no more than one year of incarceration"

The second sentence allows the judge to offer probation. SRPMIC Code Sec. 8.6(a) explains that "[p]robation shall be available for persons convicted of an offense provided the offense does not provide for mandatory incarceration." A first DUI violation allows for probation with the exception of 3-5 days which shall be served and cannot be deleted, deferred or suspended. In this case, the judge did not offer probation but rather sentenced the Appellant consistent with the first sentence and sentenced the Appellant to 120 days in jail.

To see the correct application of the sentencing provision at work, let's look at a couple of examples:

Example 1: A judge chooses probation and sentences a defendant to one year of jail, suspended for a period of two years supervised probation. However, the defendant **MUST** serve from three to five days in jail, because those days cannot be suspended pursuant to the Code. His two year probation period would start as soon as he is released from custody. If the judge imposes five days mandatory, the defendant would be given credit for those five days in custody in the event his probation is revoked and he is required to serve his original sentence of one year in jail.

Example 2: A judge sentences the defendant to thirty days in jail, but wishes to suspend the jail time and upon the defendant's good behavior for a subsequent period of six months, if the defendant has no new criminal activity during those six months, he would not have to serve the thirty days. The judge would not be able to suspend all thirty days, because the Code requires that from three to five of those thirty days **MUST** be spent in jail as they cannot be deleted, deferred, or suspended. So only twenty-five to twenty-seven of those thirty days can be suspended.

What the Code requires is that **every** defendant **must** serve from three to five days in jail, period. Certainly, a sentence of four months in jail (as in Appellant's situation) meets the requirement of three to five days in jail. The three to five day jail term constitutes a *mandatory minimum* period of incarceration, not a maximum initial sentence as the

Appellant mistakenly claims. Appellant simply misreads Section 16-231(f). For a first offense Section 16-231(f) provides a maximum penalty of "[o]ne year incarceration and . . . a mandatory fine of no less than \$700 and no more than \$5,000.00." Since Appellant was sentenced to one hundred and twenty (120) days of incarceration and a fine of \$2,500, his sentence was well within the maximum period provided for a first DUI offence by Section 16-231(f) and therefore was lawful.

For Good Cause Appearing, **IT IS ORDERED** that the sentence is **AFFIRMED** and the case is remanded to the trial court for further action consistent with this Decision.

ISSUED this 7th day of May, 2019.

Electronically approved

/s/ Jan W. Morris

Jan W. Morris, Chief Justice

S E A L

Electronically approved

/s/ Judith M. Dworkin

Judith M. Dworkin, Licensed Justice

Electronically approved

/s/ Robert N. Clinton

Robert N. Clinton, Licensed Justice