

STATE OF MAINE

v.

JAMES AUGER

Submitted on Briefs June 24, 2004

Decided July 27, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS and LEVY, JJ.

MEMORANDUM OF DECISION

James Auger appeals his conviction for operating after habitual offender revocation (Class C), pursuant to 29-A M.R.S.A. § 2557(1), (2)(B) (Supp. 2003), entered after a jury trial in the Superior Court (York County, *Crowley, J.*). He was sentenced to five years incarceration, with all but three suspended, and four years probation. Auger asserts that his license remained revoked only because he was unable to pay the reinstatement fee, and contends that conviction on this ground is unconstitutional. He also argues that his sentence is illegal because it constitutes cruel and unusual punishment, and that the evidence of identification was insufficient to support the conviction.

The record does not indicate that Auger petitioned the Secretary of State for reinstatement pursuant to 29-A M.R.S.A. § 2554 (1996 & Supp. 2003). Further, Auger raised financial difficulties only at sentencing where the court found his claims not credible. Thus, Auger's challenges to his conviction are not properly preserved. His sentence is within the range allowed by law. *See State v. Worthley*, 2003 ME 14, ¶ 6, 815 A.2d 375, 376-77. The evidence of identification is sufficient to support the conviction for operating after habitual offender revocation. *See State v. Burgess*, 2001 ME 117, ¶¶ 1, 12-14, 776 A.2d 1223, 1225, 1228-29.

The entry is:

Judgment affirmed.

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