

No. 1-11-2550

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 17080
)	
PHILLIP BAKER,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant was in constructive possession of heroin found in a jacket; defendant was entitled to an additional day of presentence custody credit and a reduction in his fines.

¶ 2 Following a bench trial, defendant Phillip Baker was convicted of possession of a controlled substance and sentenced as a Class X offender to seven years' imprisonment. On appeal, defendant asserts that the evidence was insufficient to establish that he had constructive possession of the recovered heroin. Defendant also asserts that his mandatory supervised release (MSR) term should be reduced from three to two years and that his mittimus should be amended

1-11-2550

to reflect one additional day of credit for the time he spent in presentence custody. He finally requests that his \$200 DNA fine be vacated and asserts that he is entitled to a \$5 per-day custody credit to offset fines imposed by the trial court. We affirm as modified.

¶ 3 At trial, Officer Michael Jolliff-Blake testified that at about 7:20 a.m. on August 24, 2010, he was part of a team of officers executing a search warrant in a first floor apartment at 646 North St. Louis Avenue in Chicago. The target of the search warrant was defendant. When Blake forced entry into the residence, he observed defendant exiting the closest bedroom to the front door and saw four or five other individuals in the apartment. After detaining defendant and securing the residence, Blake and Officer Sadjak searched the residence. When searching the bedroom that Blake saw defendant exit, Blake and Sadjak recovered a letter from a bank addressed to defendant at the address in question; defendant's state identification card (I.D.), which contained a Berwyn address; a folder containing papers, letters and envelopes, several of which contained defendant's name and a Berwyn address; money; and a blue coat that was hanging on the back of the bedroom door. Inside the pocket of the blue coat, Blake and Sadjak recovered numerous baggies of suspect heroin. Officer Sadjak testified similarly to Blake.

¶ 4 Jasmine Edwards, defendant's girlfriend, testified that the night before police searched the bedroom where the heroin was recovered, she and defendant slept there. Edwards indicated that the bedroom was normally occupied by defendant's foster brother, who was at his girlfriend's house. According to Edwards, defendant's two foster brothers and his foster sister, who paid the bills, lived at 646 North St. Louis Avenue. Defendant moved into the apartment on St. Louis Avenue in July 2010, and slept on the couch when everyone who lived in the house was present. Defendant kept all of his belongings in the front closet by the front door. Previously, defendant lived with a different brother, and also lived with Edwards in an apartment in Berwyn. Edwards was present when police executed the search warrant and remembered the jacket in question hanging on the back of the door. Edwards testified that the jacket did not belong to defendant,

1-11-2550

and she had seen other people wearing it. Edwards further indicated that defendant was arrested in the front room, not the bedroom.

¶ 5 The parties stipulated that Hasnain Hamayat, a forensic chemist, would testify that he performed tests on the contents of several of the recovered items, and that the substance weighed 15.1 grams and contained heroin.

¶ 6 Following closing arguments, the trial court found defendant guilty of possession of a controlled substance. In doing so, the court stated that the evidence showed defendant lived at 646 North St. Louis Avenue, and that he was in constructive possession of the heroin inside of the jacket found in the bedroom. The court specifically noted that Edwards testified that she slept with defendant in the bedroom where the heroin was found, and defendant's personal belongings, including evidence showing that defendant lived at the address in question, were also found in that same bedroom.

¶ 7 At sentencing, the State established that defendant was a Class X offender. Specifically, the State detailed that defendant had two prior Class 1 felonies, including convictions for unlawful vehicular invasion and criminal drug conspiracy. The court sentenced defendant to seven years' imprisonment, imposed a three-year MSR term and awarded him 348 days of presentence custody credit. The court also imposed \$2,660 in fines and fees, including a \$200 DNA fine.

¶ 8 On appeal, defendant contends that the State failed to meet its burden of proving that he knew heroin was inside of the jacket, and that he had immediate and exclusive control over the area where it was found. He thus maintains that the State did not prove that he constructively possessed the heroin.

¶ 9 Where, as here, a defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of

the crime beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43 (2009). In order to sustain a conviction for possession of a controlled substance, the State must prove beyond a reasonable doubt that the defendant knowingly possessed a controlled substance. 720 ILCS 570/402 (West 2010). In a possession of a controlled substance case, it is not necessary for the State to prove actual possession. Instead, it may show constructive possession. *People v. Burks*, 343 Ill. App. 3d 765, 769 (2003). Possession can be constructive where it is established that the defendant knew of the presence of the substance and that it was in his exclusive and immediate control. *People v. Jones*, 295 Ill. App. 3d 444, 453 (1998).

¶ 10 A defendant is deemed to have acted knowingly if he is proven to be aware of the existence of facts that make his conduct unlawful. *People v. Hodogbey*, 306 Ill. App. 3d 555, 559 (1999). The element of knowledge is rarely susceptible to direct proof and can be established by circumstantial evidence of acts, statements or conduct of the defendant, as well as the surrounding circumstances, which support the inference that he knew of the existence of narcotics at the place they were found. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). In a bench trial, the determination of whether the defendant had knowledge is a question of fact for the court. *People v. Williams*, 267 Ill. App. 3d 870, 877 (1994). The court's determinations will not be disturbed on review unless the evidence is so palpably contrary to the verdict or judgment that it creates a reasonable doubt of guilt. *Williams*, 267 Ill. App. 3d at 877.

¶ 11 It is well settled that "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to sustain a conviction absent other factors which might create a reasonable doubt as to defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413 (2000). Viewed in the light most favorable to the prosecution, the evidence in this case showed that defendant was arrested at 646 North St. Louis Avenue while exiting the bedroom closest to the front door. A search of that same bedroom revealed a bank letter addressed to defendant at the address in question, defendant's state I.D., a

folder containing papers, letters and envelopes, several of which contained defendant's name, and a blue coat containing heroin that was hanging on the back of the bedroom door. Defendant's girlfriend admitted that she and defendant slept in the bedroom where the heroin was found the night before the search warrant was executed and also testified that defendant lived at 646 North St. Louis Avenue. Therefore, defendant's knowledge of the presence of heroin inside the jacket can be inferred where he had access to and control over the bedroom where the heroin was found. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (holding that the defendant constructively possessed weapons and ammunition recovered by police in a bedroom where the evidence showed that the defendant lived at the address, and photos and mail addressed to him were found in the same drawer where the ammunition was recovered).

¶ 12 Nevertheless, defendant contends that his failure to attempt to conceal or dispose of the heroin when police entered the apartment demonstrates that he did not know heroin was inside the jacket. However, the evidence shows that, even if defendant wanted to conceal the heroin, he did not have time. Officer Blake specifically testified that when police forced entry into the residence, he saw defendant exiting the front bedroom. Defendant also contends that the evidence showed that the bedroom where the heroin was found belonged to his foster brother, and the State failed to prove that the jacket containing the heroin belonged to defendant, particularly where most of the items in that bedroom belonged to his brother. However, "[m]ere access by other persons to the area where drugs are found is insufficient to defeat a charge of constructive possession." *People v. Rentsch*, 167 Ill. App. 3d 368, 371 (1988). Here, whether defendant's brother had access to the bedroom and jacket is not dispositive in light of the evidence indicating that defendant intended to exercise control over them. Moreover, the evidence showed that the jacket belonged to defendant where he slept in the bedroom where it was found.

¶ 13 In reaching this conclusion, we find *People v. Macias*, 299 Ill. App. 3d 480 (1998),

People v. Adams, 242 Ill. App. 3d 830 (1993), and *People v. Wolski*, 27 Ill. App. 3d 526 (1975), relied on by defendant, distinguishable. In all three cases, the defendants' convictions were reversed, in large part, due to the lack of corroborating evidence offered to connect the defendants to the contraband. *Macias*, 299 Ill. App. 3d at 487-88; *Adams*, 242 Ill. App. 3d at 832-33; *Wolski*, 27 Ill. App. 3d at 528-29. Here, in contrast, there was significant evidence that connected defendant to the heroin found inside of the jacket in the front bedroom. As stated above, defendant kept his letters, papers and identification in the bedroom where the drugs were recovered. Moreover, defendant's girlfriend even testified that they were sleeping in that bedroom the evening before police executed the search warrant.

¶ 14 Defendant next contends that the three-year term of MSR that attached to his Class X sentence is void and should be reduced to two years because he was convicted of a Class 1 offense. We note that defendant does not dispute his status as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2010)), because he was previously convicted of two Class 2 or greater class felonies. Although a void sentence can be challenged at any time, we review the sentence to assess whether it is actually void. *People v. Balle*, 379 Ill. App. 3d 146, 151 (2008). For the reasons that follow, we find that it is not.

¶ 15 Section 5-8-1(d) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(d) (West 2010)), provides that the MSR term is three years for a Class X felony and two years for a Class 1 felony. Since defendant was convicted of a Class 1 felony, he maintains that he is only subject to a two-year term of MSR, relying on *People v. Pullen*, 192 Ill. 2d 36 (2000). *Pullen*, however, has been fully addressed by this court and found not to change the conclusion that a defendant sentenced as a Class X offender shall receive the same three-year MSR term imposed on defendants convicted of Class X felonies. See *People v. Wade*, 2013 IL App (1st) 112547, ¶¶ 36-38; *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 62; *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); and *People v. McKinney*, 399 Ill. App.

3d 77, 83 (2010). We agree with these decisions and likewise conclude that the three-year MSR term was correctly applied here. In so finding, we further note that defendant's argument that the doctrine of lenity requires that he be sentenced to the two-year MSR term has been rejected by this court. See *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011).

¶ 16 Defendant also contends, and the State correctly agrees, that he is entitled to 349 days of presentence custody credit. The record shows that defendant was arrested on August 24, 2010. Following his bench trial he was sentenced to seven years' imprisonment for possession of a controlled substance on August 8, 2011. The mittimus incorrectly awards defendant 348 days of presentence custody credit.

¶ 17 A reviewing court may correct the mittimus at any time. *People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002). The right to receive *per diem* credit is mandatory and normal waiver rules do not apply. *People v. Williams*, 328 Ill. App. 3d 879, 887 (2002). A defendant is statutorily entitled to credit for all time "spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010); *People v. Latona*, 184 Ill. 2d 260, 270 (1998). A defendant held in custody for any part of a day should be given credit against his sentence for that day. *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994). However, a defendant is not entitled to presentence custody credit for the date of sentencing. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Therefore, we award defendant presentence custody credit from August 24, 2010, through August 7, 2011, which amounts to 349 days.

¶ 18 Defendant further contends, and the State concedes, that the \$200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2010)), should be vacated. We agree that the \$200 DNA analysis fee cannot be imposed because defendant was assessed the fee upon a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). We thus vacate that fee.

¶ 19 Defendant finally contends, and the State agrees, that he spent time in custody before sentencing and is entitled to a \$5 per-day custody credit to offset fines imposed by the trial court

1-11-2550

pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)). Here, the fines imposed against defendant included a \$2,000 controlled substance fine, a \$5 drug court assessment and a \$30 children's advocacy assessment. 720 ILCS 570/411.2(a)(2) (West 2010); 55 ILCS 5/5-1101(f), (f-5) (West 2010). Because fines are subject to reduction (*People v. Jones*, 223 Ill. 2d 569, 587-599 (2006)), defendant is entitled to a presentence incarceration credit to offset them. The parties correctly agree that defendant served 349 days in presentencing custody, entitling him to \$1,745 to be applied toward his fines, reducing them to \$290. The mittimus should thus reflect a total assessment of \$715, which includes the remaining \$290 in fines and the \$425 in assessments not offset by the presentence credit.

¶ 20 For the foregoing reasons, we vacate the \$200 DNA fee, find that defendant is entitled to a \$5 per-day custody credit to reduce the \$2,000 controlled substance fine, \$5 drug court assessment and \$30 children's advocacy assessment; correct defendant's mittimus to accurately reflect a total of 349 days presentence custody credit and a total monetary assessment of \$715; and affirm his conviction in all other respects.

¶ 21 Affirmed as modified.