

No. 1-12-2201

**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. 11 CR 15308         |
|                                      | ) |                         |
| JULIUS McBEE,                        | ) | Honorable               |
|                                      | ) | Rosemary Grant-Higgins, |
| Defendant-Appellant.                 | ) | Judge Presiding.        |

---

JUSTICE SIMON delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Judgment affirmed over defendant's challenges to the propriety of multiple convictions entered against him, where the counts at issue had been merged.
- ¶ 2 Following a bench trial, defendant, Julius McBee, was convicted of two counts of armed habitual criminal, and four counts of Class 2 unlawful use or possession of a weapon by a felon (UUWF). In this appeal, defendant does not challenge the sufficiency of the evidence to sustain those convictions, but questions the propriety of the multiple convictions entered based on his

possession of two loaded firearms. He further argues that he was subject to an impermissible double enhancement when the court convicted him of Class 2 UUWF instead of Class 3.

¶ 3 The record shows that defendant was convicted of the charged offenses on evidence showing that during the execution of a search warrant, Officer Robert McHale spoke to defendant, and, after admonishing him of his *Miranda* rights, defendant informed him that there were two guns, a .22 and .357 revolver, in the basement where he slept. The officer recovered the guns, each of which contained six live rounds, and a letter addressed to defendant from the State Comptroller, from the basement. The State further introduced evidence that defendant had prior convictions for UUWF and for possession of a controlled substance with intent to deliver.

¶ 4 After the presentation of aggravating and mitigating evidence at the sentencing hearing, the court sentenced defendant as follows:

"I think you are deserving and have earned the minimum sentence, 6 years in the Illinois Department of Corrections with treatment as a condition[.] \*\*\* That is on the charge of armed habitual criminal, Count 1. Count 2 will merge with Count 1. Count 3 is a Class 2 felony of unlawful use of [sic] possession of a weapon. That sentence will be 3 years in the Illinois Department of Corrections, which will merge as well. Again, treatment as a condition. Count 4 will receive the same sentence, a Class 2 unlawful use or possession of [a] weapon by [a] felon, three years, which will merge into Count 1. And Count 5 is also the unlawful use or possession of a weapon by a felon, Class 2 felony, sentence 3 years. That will merge as well into Count 1."

¶ 5 The mittimus, entered on June 27, 2012, indicates that defendant was convicted of two counts of Class X armed habitual criminal, each carrying a sentence of six years' imprisonment, and four counts of Class 2 UUWF, each carrying a sentence of three years' imprisonment. It also contains a notation that "Ct. 2, 3, 4, 5, 6 merge into Ct. 1[.]"

¶ 6 On appeal, defendant initially contends that this court should vacate two of his UUWF convictions under the one-act one-crime doctrine, and the remaining two UUWF convictions because the legislature did not intend to permit multiple convictions based on the possession of a loaded firearm. The State responds that this issue is moot as the trial court merged those counts into defendant's armed habitual criminal conviction. In his reply brief, defendant concedes the merger, but maintains that this court should issue a corrected mittimus for the reasons set forth in his second argument.

¶ 7 Before considering that argument, we observe that the trial court clearly merged counts two through six into count one, and entered a single sentence on his armed habitual criminal conviction. However, the manner in which the mittimus was drafted appears to have caused some confusion, because, as defendant notes, his inmate status report indicates that he was convicted of two counts of armed habitual criminal, and four counts of UUWF in relation to this case. To alleviate this confusion, we direct the clerk of the circuit court pursuant to Supreme Court Rule 615(b) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999), to amend the mittimus to reflect a single conviction of armed habitual criminal, and a single sentence of six years' imprisonment. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)).

¶ 8 Defendant nonetheless contends that he was subject to an impermissible double enhancement when the court convicted him of four UUWF counts as Class 2 offenses, instead of Class 3 offenses. He asserts that he was improperly sentenced to a Class 2 offense because his

prior UUWF conviction was used as both an element of the offense and again as a factor to enhance his sentence to a Class 2 felony, violating the prohibition against double enhancement. The State initially contends that this issue is also moot due to the merger of these counts, and, alternatively, that there was no double enhancement. We agree.

¶ 9 In light of our directive that defendant's mittimus be amended to reflect his single conviction and sentence for armed habitual criminal, we find that defendant's contention is moot. That said, we observe that this court addressed the double enhancement issue asserted by defendant in *People v. Powell*, 2012 IL App (1st) 102363, and decided it adversely to the position advocated by defendant. In *Powell*, 2012 IL App (1st) 102363, ¶ 11, we found that defendant, who had a prior conviction for a forcible felony, was properly convicted of the Class 2 offense of UUWF, over defendant's argument that such a conviction constituted a double enhancement. In so holding, we observed that the language of the UUWF statute shows that the legislature intended to upgrade the class of the offense and the applicable penalty on the basis of some aspect of the offense; namely, the type of felony committed, and that “[o]nce defendant was convicted of the Class 2 felony, no further enhancement occurred.” *Powell*, 2012 IL App (1st) 102363, ¶ 11.

¶ 10 Defendant acknowledges that this court's decision in *Powell* would defeat his argument, but contends that it was wrongly decided. We see no appreciable difference in defendant's case to warrant a different result where the trial court simply imposed the penalty range established by the legislature. *Powell*, 2012 IL App (1st) 102363, ¶ 11.

¶ 11 For the reasons stated, we affirm the judgment of the circuit court of Cook County and order the mittimus corrected.

¶ 12 Affirmed; mittimus corrected.