2017 IL App (1st) 141372-U

FOURTH DIVISION
January 26, 2017

No. 1-14-1372

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. 12 C4 41146
	)	
MICHAEL GRIFFIN,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment affirmed over defendant's claim that the evidence was insufficient to sustain the enhancement of his conviction and sentence for driving on a revoked or suspended license from a Class A misdemeanor to a Class 4 felony; mittimus corrected.

¶ 2 Following a jury trial, defendant Michael Griffin was found guilty of driving while his license was revoked or suspended (DWLR). The trial court sentenced defendant to three years' imprisonment with one year of mandatory supervised release based on the enhancement of his conviction and sentence to a Class 4 felony under section 6-303 of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(d), (d-3) (West 2012)). On appeal, defendant contends that the preponderance of the evidence did not establish his eligibility for an enhanced Class 4 felony conviction and sentence because the evidence, taken as true, did not show that his prior or current DWLR violations were based on a suspension or revocation for one of the enumerated predicate offenses. Therefore, defendant requests that this court reduce his conviction to a Class A misdemeanor. For the following reasons, we affirm.

¶ 3 The events giving rise to the charges occurred on October 9, 2012. Following his arrest, defendant was charged by information with DWLR under section 6-303(a) of the Code. The charge initially indicated the State's intent to seek to enhance defendant's sentence to a Class 3 felony pursuant to section 6-303(d-4), in that his license was suspended for a statutory summary suspension under section 11-501.1 of the Code and he had 11 prior violations of section 6-303. After determining that defendant had amassed fewer relevant prior violations, the State amended the charge to indicate it sought to sentence defendant under the Class 4, not the Class 3, felony provision.

¶ 4 At trial, Berkeley police officer Brent Hoekstra testified that he was on patrol at about 9 a.m. on the day in question. He was "[r]unning" any license plates he saw and "making sure the drivers on the road [were] supposed to be driving." When he ran the license plate for a gold

colored vehicle driving in front of him, Officer Hoekstra discovered that the vehicle's license plate was suspended, so he "curbed" the vehicle. Officer Hoekstra identified defendant as the driver, who stated during their initial conversation that he did not have a driver's license. After defendant was handcuffed, a "pat down" of his person revealed an Illinois State identification card with defendant's name and the number "61554057142G." When Officer Hoekstra called the information into dispatch, he learned that defendant's driving privileges were revoked and then arrested defendant.

¶ 5 The State sought leave to enter a certified driving license abstract from the Illinois Secretary of State for Michael Griffin, license number "G61554057142" into evidence as People's Exhibit 3. The court admitted the abstract into evidence and ruled that the State could use the abstract to prove that defendant's "driving privileges were revoked" on the day of the offense but the abstract would not be sent back with the jury.

¶ 6 Craig Turton, a court liaison for the Illinois Secretary of State Driver Services Department, testified that his office issues driver's licenses, State ID cards, vehicle registrations, and titles. As an assistant manager for eight years at the Secretary of State reinstatement facility, his duties included reinstating driver's licenses upon the receipt of court documents. Turton reviewed People's Exhibit 3 and testified that it was a certified driving abstract for defendant which showed that his license had first been revoked in 1999 and its status was revoked on October 9, 2012. He explained that the driving abstract would reflect the relevant process if a license had been reinstated. On cross-examination, Turton testified that unlike a revocation,

which remains in effect until reinstatement following a hearing, a suspension only remains in effect for the designated period.

¶ 7 Defendant testified that on October 9, 2012, his driver's license was revoked. That morning, his daughter asked him to drive her to her son's daycare so they could bring him his asthma medication. His daughter's license was also suspended at the time. The daycare center was five blocks away from defendant's home. On cross-examination, defendant testified that busses ran between his home and the center.

¶ 8 The jury found defendant guilty of DWLR. Defendant filed a motion for a new trial, which the court denied.

¶ 9 Arguing in aggravation at defendant's sentencing hearing, the State noted that defendant's driving abstract showed 14 total DWLR convictions, 7 of which occurred after a DUI conviction. Recommending a six-year sentence, the State pointed out that defendant had four prior felony convictions and was eligible for extended term sentencing.

¶ 10 In mitigation, defense counsel stated that defendant lived with one of his adult daughters and helped to raise his two grandchildren. Defense counsel argued that because the offense was elevated to a felony based on defendant's background, the legislature had already considered his "prior 6-303s inherent in the offense" and they could not be used in aggravation at sentencing. Counsel noted that the minimum sentence for this nonviolent offense was probation and argued that a one-year sentence would be sufficient.

¶ 11 Prior to imposing sentence, the trial court confirmed that the charge had been amended to a Class 4 felony and then indicated that it would only consider defendant's DWLR convictions

that occurred after his DUI conviction. The trial court found that defendant had seven such convictions, which placed him in the Class 4 felony category, and that he was eligible for an extended term in light of his background. Defendant was sentenced to three years' imprisonment with one year of mandatory supervised release.

¶ 12 Defendant immediately filed a motion to reconsider sentence, which the court denied.

¶ 13 On appeal, defendant contends that the preponderance of the evidence did not establish his eligibility for an enhanced Class 4 felony conviction and sentence because the evidence, taken as true, did not show that his prior or current DWLR violations were based on a suspension or revocation for one of the predicate offenses enumerated in the DWLR statute. Although defendant did not object at the sentencing hearing or raise this issue in a postsentencing motion, defendant maintains that we may review his claim of sentencing error as plain error. Absent error, there can be no plain error. *People v. Jones*, 2016 IL 119391, ¶ 33. Thus, the first step in the plain-error analysis is to determine whether there was an error. *Id*. ¶ 10.

¶ 14 The elements necessary to prove the offense of DWLR are '"(1) the act of driving a motor vehicle on the highways of this State, and (2) the fact of the revocation of the driver's license or privilege.'" *People v. Close*, 238 Ill. 2d 497, 509 (2010) (quoting *People v. Turner*, 64 Ill. 2d 183, 185 (1976)). Ordinarily, DWLR is a Class A misdemeanor. 625 ILCS 5/6-303(a) (West 2012). However, the statute includes several versions of DWLR that are Class 4 felonies. As relevant here, under section 6-303(d) a DWLR violation becomes a Class 4 felony when a defendant has a prior conviction for DWLR and "the original revocation or suspension was for a violation of

Section 11-401 or 11-501 of [the] Code, or *** a statutory summary suspension or revocation under Section 11-501.1 of [the] Code." 625 ILCS 5/6-303(d) (West 2012).

¶ 15 The predicate offense relevant in this case is defined in section 11-501.1, which is contained within Article V of the Code titled, "Driving While Intoxicated, Transporting Alcoholic Liquor, and Reckless Driving." 625 ILCS 5/11-500 *et seq.* (West 2012). A violation of section 11-501.1 occurs if a defendant either refuses to submit to a test or submits to a test that discloses an alcohol concentration of 0.08, or more, or any amount of various illegal substances. 625 ILCS 5/11-501.1(d) (West 2012). The penalty for a violation of section 11-501.1(d) is a "statutory summary suspension or revocation and disqualification." 625 ILCS 5/11-501.1(d), (e) (West 2012).

¶ 16 Our supreme court has held that section 6-303(d) is a substantive provision that allows the State to seek enhanced sentencing based on prior offenses. *People v. Lucas*, 231 Ill. 2d 169, 180 (2008). The prior offenses are not elements of the offense that the State must prove at trial (*id.* at 181), rather, they "are factors in aggravation" to be proved at sentencing. *People v. Thompson*, 328 Ill. App. 3d 360, 365 (2002); see also *People v. Owens*, 2016 IL App (4th) 140090, ¶ 39; *People v. DiPace*, 354 Ill. App. 3d 104, 115 (2004). A trial court has broad discretion in hearing sentencing evidence and imposing a sentence. *People v. Jackson*, 149 Ill. 2d 540, 549 (1992). At sentencing, a trial court may consider the pertinent evidence presented at trial (730 ILCS 5/5-4-1(a)(1) (West 2014)) and absent contrary evidence, reviewing courts assume that a trial judge considered only admissible evidence (*People v. Chapman*, 194 Ill. 2d 186, 247 (2000)). The evidence considered by a trial court in imposing sentence must have been

relevant and reliable and a trial court's consideration of evidence is reviewed for abuse of discretion. *People v. Rose*, 384 Ill. App. 3d 937, 941, 946 (2008).

¶ 17 For any prosecution under section 6-303 of the Code, "a certified copy of the driving abstract of the defendant shall be admitted as proof of any prior conviction." 625 ILCS 5/6-303(f) (West 2012). Here, defendant's certified driving abstract was introduced at trial, summarized in his PSI, and relied upon by the State in aggravation at sentencing. Defendant's certified driving abstract and the summary of the abstract attached to the PSI reflect that a statutory summary suspension became effective on May 13, 2000, that defendant incurred seven subsequent DWLR violations, and that his license had not been reinstated as of April 10, 2014. A statutory summary suspension period continues past its designated expiration date and remains in effect until the defendant pays the fees required to reinstate his license. *People v. Martinez*, 184 Ill. 2d 547, 551 (1998). The abstract shows, and defendant concedes, that his May 13, 2000, statutory summary suspension was for the offense "FAIL OR REFUSE ALCOHOL/DRUG TEST" under section 11-501.1, which is also reflected in the summary of the driving abstract attached to the PSI.

¶ 18 Therefore, the evidence at sentencing was sufficient for the trial court to find that defendant's statutory summary suspension was for a violation of section 11-501.1, which in combination with his seven subsequent DWLR violations, qualified him for sentencing as a Class 4 felon. 625 ILCS 5/6-303(d), (d-3) (West 2012). See *Owens*, 2016 IL App (4th) 140090, ¶ 43 (finding that it was reasonable for the trial court to infer that the defendant's license continued to be revoked for a DUI where the PSI revealed that the defendant's license was revoked

following two DUI convictions and there was no evidence that his license had been reinstated). Because we find that the trial court did not err in sentencing defendant as a Class 4 felon, there can be no plain error, and defendant's contention is forfeited. See *Jones*, 2016 IL 119391, ¶ 33.

¶ 19 Defendant nevertheless argues that although the certified driving abstract was admitted at trial to show that his license was revoked on the day in question, the State failed to follow up with the requisite proof at sentencing. However, "a PSI is generally a reliable source for the purpose of inquiring into a defendant's criminal history." *Id*. ¶ 37. Here, defendant's driving abstract is summarized in the PSI, it was referenced by the State in its argument in aggravation, and the trial court relied upon defendant's driving history in imposing sentence. Rather than object to the driving record information contained in the PSI or to the characterization of his driving record at the sentencing hearing, defendant conceded that his background qualified him for felony sentencing. Moreover, in his opening brief in this appeal, defendant conceded the accuracy of his certified driving abstract. When a defendant fails to challenge a driving abstract's accuracy, this court has held that the abstract's contents are deemed accurate. *People v. Meadows*, 371 Ill. App. 3d 259, 263 (2007); see also *People v. Baer*, 97 Ill. App. 3d 94, 96 (1981) (finding the trial court properly considered the driving abstract where defendant claimed that "'certain things' on the state report" were untrue but he did not challenge or identify any specific items and there was no evidence of particular errors in the record). Defendant's argument fails.

¶ 20 Defendant next attempts to cast doubt on the reliability of his PSI based on notations from Mary Nadolny, the probation officer who compiled the report. The probation officer

conducted an additional driver's abstract search under license number "B630-0385-9344" and found it to be associated with Albert Byrd, a name defendant had used as an alias in the past. According to the probation officer, the last five convictions on Byrd's abstract could not be attributed to defendant because he was incarcerated when they occurred. We note that the testimony and evidence presented at trial, defendant's certified driving abstract, and the PSI reflect that "G615-5405-7142" and not "B630-0385-9344" is defendant's driver's license number. Moreover, our review of the record shows no overlap between the dates of defendant's incarceration and the dates of the DWLR offenses in the abstract and its summary. Thus, defendant's attempt to cast doubt on the evidence of his driving history in the PSI is unpersuasive.

¶ 21 We are mindful of defendant's contention that the State may not assert, for the first time in this appeal, that the statutory summary suspension in 2000, and not the 1999 revocation, served as the predicate offense for the Class 4 felony enhancements. However, the charges against defendant placed him on notice that the State would seek enhanced sentencing in light of prior DWLR violations defendant accrued during a period of statutory summary suspension that resulted from a violation of section 11-501.1. In addition, at sentencing, the State argued that defendant received seven DWLR convictions after his DUI, which is the same number of prior DWLR violations defendant incurred after the effective date of the statutory summary suspension for the offense titled: "FAIL OR REFUSE ALCOHOL/DRUG TEST." Therefore, contrary to defendant's contention, we find defendant was placed on notice that the State

intended to seek to sentence defendant as a felon based on his statutory summary suspension in 2000, and not the 1999 revocation.

¶ 22 Although not raised by the parties, we observe that the mittimus incorrectly reflects that defendant was sentenced for a Class 3 felony. Prior to trial, the court granted the State leave to amend the charging document to reflect that defendant was charged with a Class 4, not Class 3, felony based on his prior DWLR violations. At sentencing, the court's oral pronouncement indicated that defendant was being sentenced for the Class 4 felony. Where, as here, a conflict arises between the oral pronouncement of the court and a written order, the oral pronouncement controls. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87 (2016); *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007) (ordering a corrected mittimus where it did not conform to the court's oral pronouncement). Accordingly, pursuant to Rule 615(b)(1) we direct the clerk of the court to amend the mittimus to reflect defendant's Class 4 felony conviction for DWLR (625 ILCS 5/6-303(d) (West 2014)).

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed; mittimus corrected.