2017 IL App (1st) 150349-U

No. 1-15-0349

Order filed August 10, 2017

Fourth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County,
	)	
v.	)	No. 14 CR 1490
	)	
TERRELL WILLIAMS,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant not entitled to resentencing when court imposed valid extended-term sentence after remarking that extended term would be unwarranted; presumption that court knows the law was not affirmatively refuted, and record shows that court was aware of the unextended and extended sentencing ranges.

¶ 2 Following a 2014 bench trial, defendant Terrell Williams was convicted of possession of cannabis with intent to deliver and sentenced to an extended prison term of five and one-half years due to his criminal history. On appeal, defendant contends that the court mistakenly

imposed an extended-term sentence because it was under a misapprehension as to the unextended sentencing range. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with possession of cannabis – more than 30 grams but not more than 500 grams – with intent to deliver, allegedly committed on or about December 4, 2013.

¶ 4 On the day trial commenced in mid-July 2014, defendant first asked the court for a plea conference. The conference was held, and defendant rejected the plea offer. In the course of admonishing defendant regarding the offer and rejection, the court stated that he could be sentenced to 2 to 5 years in prison, or 5 to 10 years if the court found him extendable. The court mentioned an extended range of "5 to 10 years" six times. The case proceeded to trial where, after two police officers testified and the parties stipulated to the effect that 32.2 grams of the recovered substance tested positive for cannabis, the court found defendant guilty as charged.

¶ 5 The presentencing investigation report (PSI) reflects in relevant part that defendant, born in 1978, had convictions for controlled substance and cannabis offenses in 1997, 2001, 2003, 2004, 2005, 2009, and 2014. (Misdemeanor and other violations were also reflected.) While many of his offenses received probation, he received prison sentences of four years in 2001, one year in 2003, and seven years in 2009.

¶ 6 At sentencing in mid-October 2014, the State argued defendant's criminal history in aggravation, and in particular argued that his sentence was extendible and the court should impose the maximum extended sentence. Defense counsel argued in mitigation that defendant had a long criminal record but none of his offenses were violent, he admitted his substance abuse problem and was seeking help, he maintained his familial relationships, and he had been employed. Counsel asked the court "to impose a reasonable sentence. I know that you could

easily give him a long extended-term sentence." Defendant addressed the court, acknowledging his mistake in smoking marijuana and asking the court for leniency.

¶ 7 The court noted that defendant received many sentences of probation and remarked that "you were given so many chances with probation, so many, you just thought it was going to go on forever and it's not." The court disagreed with defendant's characterization that he had the marijuana to smoke it, finding that his intent to deliver was proven at trial. The court then said: "I don't find that there is any extended term warranted in this case. It's a *** finding of guilty, five and a half years" imprisonment.

¶ 8 Defendant filed a post-sentencing motion contending that his sentence was excessive in light of the nonviolent nature of the offense, and that the court improperly balanced aggravating and mitigating factors. At the motion hearing, defense counsel did not note or argue the court's reference to an extended term being unwarranted. The court denied the motion, stating "while the court understands that it is in regard to possession of cannabis, the court will note his seven prior felonies. We also have four misdemeanors as recently as in the last year, and driving on a suspended or revoked driver's license. The court took all of this in consideration. The court did not come to this conclusion lightly. The court weighed everything in mitigation and aggravation, and the court is of the opinion that this is the correct sentence."

¶ 9 On appeal, defendant contends that the court mistakenly imposed an extended-term sentence because it was under a misapprehension as to the unextended sentencing range.

¶ 10 The parties agree that defendant did not raise this issue in the trial court and thus has forfeited it, and that plain error is an exception to forfeiture. *People v. McDonald*, 2016 IL 118882, ¶ 45. The plain-error doctrine permits this court to consider an otherwise-forfeited error when it is clear or obvious and either (1) the evidence was so closely balanced that the error

threatened to tip the scales of justice against the defendant, or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Id*., ¶ 48. The first step in plain-error analysis is determining whether an error occurred at all. *Id*.

¶ 11 Possession of 30 to 500 grams of cannabis with intent to deliver is a Class 3 felony with an unextended term of 2 to 5 years and an extended term of 5 to 10 years. 720 ILCS 550/5(d); 730 ILCS 5/5-4.5-40(a) (West 2014). A defendant may receive an extended term for a felony "after having been previously convicted *** of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts." 730 ILCS 5/5-5-3.2(b)(1) (West 2014).

¶ 12 The trial court is presumed to know the law and follow it accordingly, unless the record affirmatively demonstrates the contrary. *People v. Guja*, 2016 IL App (1st) 140046, ¶ 62.

¶ 13 Here, defendant infers from the juxtaposition of the court's remark that an extended term was unwarranted and its imposition of an extended-term sentence that the court misapprehended the unextended sentencing range for his offense and believed that it was imposing an unextended sentence. We need not, and do not, accept his inference. The presumption that the trial court knows the law was not affirmatively refuted; that is, the court did not state an incorrect sentencing range. Indeed, the court clearly demonstrated its knowledge of the unextended and extended sentencing ranges for defendant's Class 3 felony just before trial. In context – the court's earlier expression of knowledge, the parties' sentencing arguments regarding extended-term sentencing, and the fact that the court's sentence is only a half-year above the maximum unextended sentence – we find it more likely that the trial court found a *long* extended term to be unwarranted but expressed that finding inelegantly. We find no error, and thus no plain error.

¶ 14 Accordingly, the judgment of the circuit court is affirmed.

¶ 15 Affirmed.