2018 IL App (1st) 152610-U

No. 1-15-2610

Order filed May 3, 2018

Fourth Division

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. 13 CR 12756
	)	
SADAT MOHAMMED,	)	Honorable
	)	Erica L. Riddick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 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.

¶ 2 Following a bench trial, defendant Sadat Mohammed was found guilty of driving while his license was revoked or suspended (DWLR). Defendant was sentenced to 24 months of probation based on the enhancement of his conviction and sentence to a Class 4 felony under section 6-303(d-3) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(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an enhanced Class 4 felony conviction and sentence because the evidence, taken as true, did not show that his license was revoked for driving under the influence of alcohol (DUI). Therefore, defendant requests that this court reduce his conviction to a Class A misdemeanor. For the following reasons, we affirm.

¶ 3 Following a May 22, 2013, incident, defendant was charged by indictment with DWLR. Count I alleged on May 22, 2013, defendant "drove *** on any highway of this State, at a time when his driver's license, *** was revoked" in violation of section 6-303(a) of the Code. Count I further alleged that the State "shall seek to sentence [defendant] as a class 4 offender pursuant to section 6-303(d-3) in that the revocation was for a violation of section 11-501 of this Code, or a similar out-of-state offense, *** and he has previously committed three violations" of section 6-303 of the Code.

¶ 4 The matter proceeded to a bench trial where Chicago Police Officer Peter Theodorides testified that on May 22, 2013, he observed a black Mercedes driving "in the middle of the street." Theodorides curbed the vehicle. He identified defendant in court as driver and sole occupant of the vehicle. Theodorides asked defendant for a driver's license and proof of insurance. Defendant did not produce either. Theodorides took defendant into custody for driving without a driver's license. After learning defendant's name and date of birth, Theodorides searched the Secretary of State's database and learned that defendant's driver's license was revoked.

¶ 5 The State then introduced a certified copy of the Secretary of State's driving abstract for defendant. This document stated that "Revocation" of defendant's driver's license was "in effect" on May 22, 2013.

¶ 6 The defense next presented the testimony of Pamela Sampath, defendant's girlfriend, who testified that she was driving that evening.[1] She double-parked the vehicle and "ran" inside to change her outfit. Sampath denied that defendant drove that evening.

¶ 7 In rebuttal, the State presented the testimony of Officer Nicholas Cervantes who testified that he observed defendant exit the vehicle from the driver's side.

¶ 8 The trial court found defendant guilty of count I, driving while his license was revoked. The court then ordered that a presentence investigation report (PSI) be prepared.

¶ 9 Defendant's PSI listed seven prior convictions for driving on a revoked or suspended license, including two felony convictions in case numbers 06 CR 440837 and 08 CR 22328. The PSI also indicated that "defendant has at least one DUI conviction in his background from 2002."

¶ 10 At sentencing, the State argued in aggravation that defendant's driver's license was "revoked for DUI" and that "he was driving at the time of his revocation." The State noted that based upon defendant's background, his driver's license "has been suspended for Statutory Summary Suspension since 2001." The State then listed defendant's criminal background, which included multiple prior convictions for "driving while [his license was] revoked or suspended," two of which were felonies. Defendant also had two prior felony convictions for possession of a controlled substance. Finally, the State noted that defendant also had a 2003 misdemeanor DUI conviction. Therefore, the State asked that defendant be sentenced to prison.

[1] Although Sampath identified herself as defendant's girlfriend at trial, defendant's presentence investigation report identifies her as his wife.

¶ 11 The defense responded, *inter alia*, that defendant has a wife and three children, was currently studying at Harold Washington College, and was involved in his mosque. Defendant stated in allocution that he had associated "with the wrong crowd" and that this was the explanation for "every case" in which he was convicted. He also stated that the "laws have changed" and that "DUI wasn't a felony at first." Defendant finally admitted that he did not "do the proper procedures to get his license back." The trial court sentenced defendant to 24 months of probation.

¶ 12 On appeal, defendant contends that his Class 4 felony conviction for DWLR must be reduced to a Class A misdemeanor because the State "introduced no evidence that [defendant's] license revocation" was due to a DUI. He argues that even accepting as true that his license was revoked on May 22, 2013, that revocation, in and of itself, did not establish his eligibility for a Class 4 conviction and sentence.

¶ 13 Defendant acknowledges that he failed to raise this argument before the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion). However, he contends that this court may still reach his contention on appeal pursuant to the plain error doctrine. See *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005) (a court may consider an unpreserved error when (1) the evidence was so closely balanced that the error alone tipped the scales of justice against the defendant or (2) the error was so serious that it affected the fairness of the defendant's trial). In the alternative, defendant contends that he was denied the effective assistance of counsel when counsel did not challenge his eligibility to be sentenced as a

Class 4 offender. We must first determine whether there was error, as absent "a clear or obvious error," there can be no plain error. *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 14 A person commits the offense of DWLR when he "drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so *** is revoked or suspended as provided by this Code or the law of another state." 625 ILCS 5/6-303(a) (West 2012). Ordinarily, the offense of DWLR is a Class A misdemeanor. 625 ILCS 5/6-303(a) (West 2012). However, DWLR is a Class 4 felony when a defendant is convicted of a "fourth, fifth, sixth, seventh, eighth, or ninth violation" of section 6-303 "if the 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-3) (West 2012).

¶ 15 Generally, when a statute sets out the elements of an offense and then separately lists sentencing classifications based on other factors, these factors serve only to enhance the punishment and "do not create new offenses." *People v. Owens*, 2016 IL App (4th) 140090, ¶ 33. In other words, "the State is not required to prove, as an element of a defendant's enhanced [DWLR] offense, the fact that the original revocation of his license was predicated on a DUI conviction." *Owens*, 2016 IL App (4th) 140090, ¶ 33. See also *People v. Lucas*, 231 Ill. 2d 169, 180-81 (2008) (determining that the prior offenses are not elements of the offense that the State must prove at trial). "A revocation based on a DUI is the functional equivalent of a prior conviction" and does not need to be proved to the finder of fact; rather, "it is reserved for sentencing." *Owens*, 2016 IL App (4th) 140090, ¶ 39.

¶ 16 The State must prove a defendant eligible for an enhanced sentence by a preponderance of the evidence. *People v. Robinson*, 167 Ill. 2d 53, 71-73 (1995). 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). Moreover, a trial court "properly may consider a [PSI] to determine a defendant's criminal record; such a report is a reliable source for the purpose of inquiring into a defendant's criminal history." *People v. DiPace*, 354 Ill. App. 3d 104, 115 (2004).

¶ 17 In the case at bar, the certified copy of defendant's driving abstract showed that defendant's license was revoked. Defendant's PSI shows that he had more than four prior convictions for DWLR, and that he had a prior conviction for DUI. Furthermore, defendant acknowledged that he had a prior DUI and that he did not follow the "proper procedures" to obtain his license back. The evidence at sentencing was sufficient for the trial court to find that the revocation of defendant's driver's license was for a DUI, which in combination with his seven previous DWLR convictions, rendered him subject to section 6-303(d-3) of the Code. 625 ILCS 5/6-303(a), (d-3) (West 2012). See also *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).

¶ 18 Defendant, however, argues that although the certified driving abstract was admitted into evidence at trial to show that his license was revoked on the day in question, the State failed to present evidence at sentencing that the revocation was due to a DUI. However, a PSI is a "reliable source for the purpose of inquiring into a defendant's criminal history." *DiPace*, 354 Ill.

App. 3d at 115. Here, the facts that defendant had a DUI conviction as well as multiple prior DWLR convictions were listed in the PSI. The State referred to defendant's criminal history at sentencing and stated that his license had been revoked for DUI and that the revocation was in effect when defendant was driving in the instant case. Furthermore, the record reveals that defendant did not object to any of the information regarding his criminal history in the PSI or to the characterization of his driving record at sentencing. In fact, defendant admitted that he had a DUI and that he did not follow "the proper procedures in getting [his] license back." Based on the record, it was reasonable for the trial court to infer that defendant's license continued to be revoked for DUI at the time of the instant offense. *Owens*, 2016 IL App (4th) 140090, ¶ 43. Therefore, the trial court did not err in enhancing defendant's conviction and sentence to a Class 4 felony based upon his prior criminal history.

¶ 19 As there was no clear or obvious error, there can be no plain error (*Sebby*, 2017 IL 119445, ¶ 49), and we must honor defendant's procedural default. See *Hillier*, 237 Ill. 2d at 544 (a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion). Moreover, defendant's argument that he was denied the effective assistance of counsel based upon counsel's failure to challenge his eligibility to be sentenced as a Class 4 offender must also fail, because, as discussed above, defendant was eligible to be sentenced as a Class 4 offender. See *People v. Patterson*, 217 Ill. 2d 407, 438 (2005) (counsel cannot be deemed ineffective based upon the failure to file a futile motion).

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.