2018 IL App (1st) 170073-U

No. 1-17-0073

Order filed June 7, 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. 14 CR 21997
	)	
JASON WOODS,	)	Honorable
	)	Gregory R. Ginex,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's six-year sentence for aggravated discharge of a firearm is affirmed over his contention that, due to a conflict in the sentencing statute, he is entitled to receive day-for-day credit on his sentence. Mittimus amended to reflect the court's oral pronouncements.

¶ 2 Following a bench trial, defendant Jason Woods was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)) and unlawful use of a weapon by a felon (720 ILCS 5/24-1.1 (West 2014)). He was sentenced to concurrent terms of six years'

imprisonment. On appeal, he contends that he is entitled to receive day-for-day credit on his sentence for aggravated discharge of a firearm. He also contends that his mittimus should be corrected to reflect the proper number of convictions. We affirm and correct the mittimus.

¶ 3 On November 21, 2014, a shooting occurred at the Cindy Lynn Motel. Defendant was arrested in relation to that shooting and charged with aggravated discharged of a firearm (count I), unlawful use of a weapon by a felon (count II), and two counts of aggravated unlawful use of a weapon (counts III and IV). Because defendant does not challenge the sufficiency of the evidence to sustain his convictions, we recount the facts here only to the extent necessary to resolve the issues on appeal.

¶ 4 The evidence presented at trial showed that, on November 21, 2014, defendant rented a room at the Cindy Lynn Motel in Chicago from the desk clerk, Alfredo Alvarado. Defendant was accompanied by a woman and registered for the room under the name Dejon Carr. An hour later, the woman returned to the lobby, panicked, and told Alvarado to call the police because someone was shooting a gun. Alvarado called the police and checked the security monitors that showed views from various cameras located throughout the motel. A parking lot security camera captured defendant holding a gun, pointing it, and firing it at two individuals who were running away from him.

¶ 5 Defendant then ran inside the lobby and started arguing with the woman. Alvarado heard defendant threaten to shoot the woman and accuse her of setting him up to be robbed. Alvarado told defendant that he had called the police and asked him to put the gun down. Defendant refused to relinquish the weapon until he observed the lights from the police vehicles outside of

the lobby of the hotel. He then placed the gun onto Alvarado's counter until the police entered the lobby and took possession of it.

¶ 6 Defendant testified on his own behalf and admitted that he had rented the motel room under a fictitious name. He was accompanied by two women, whom he identified as "Poo" and Leanora. The three of them drank alcohol and smoked marijuana in his motel room. Poo left the room to obtain condoms and returned with a man named Buster. Defendant did not know Buster and observed that he had a gun. Defendant was afraid that they were planning to rob him and he reached for Buster's gun. During the struggle, the gun discharged. Eventually, defendant gained control of the gun and Buster ran out of the room. Defendant followed and, in the parking lot, believed he observed Buster gesturing toward more people to join the attack. Buster and Leanora then started running from defendant toward Ogden Avenue. Defendant raised his arm and the "the gun went off." Defendant denied that he told police that he was upset and fired the gun to the side of the people running to scare them.

¶ 7 In rebuttal, Detective Rios testified that defendant was taken into custody and given his *Miranda* rights. Rios spoke with defendant, who told him that he shot one round at Buster to scare him, but did not intend to kill him. Rios admitted that this detail was not included in his report. Based on this evidence, the trial court found defendant guilty of the charged offenses. The case then proceeded to sentencing.

¶ 8 At sentencing, after considering factors in aggravation and mitigation, the court determined that defendant was Class X mandatory based on his background and sentenced him to eight years' imprisonment for aggravated discharged of a firearm (count I) and a concurrent term of six years' imprisonment for unlawful use of a weapon by a felon (count II). In

announcing its sentence, the court explained that defendant was required to serve 85% of his sentence on count I and 50% of his sentence on count II. The court also merged the two counts of aggravated unlawful use of a weapon (counts III and IV) into count II. Subsequently, the court granted defendant's motion to reconsider his sentence and reduced the sentence for count I to six years' imprisonment to be served at 85%.

¶ 9 On appeal, defendant contends that there is a conflict between two sections of the sentencing statute as to what amount of good-time credit for time served he should receive with regard to his sentence for aggravated discharge of a firearm. He argues that this conflict governs whether he is entitled to receive day-for-day credit against his sentence (allowing him to serve as little as 50% of his sentence) or whether he must serve at least 85% of his sentence. He maintains that the rule of leniency dictates that the conflict should be resolved in his favor.

¶ 10 Initially, the State responds that defendant has forfeited this issue by not objecting to the court's oral pronouncements or including these alleged errors in his motion to reconsider sentence. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) ("It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). Defendant, citing *People v. Owens*, 377 Ill. App. 3d 302, 304 (2007), replies that we may review this issue under the plain-error doctrine because it implicates his substantial rights. However, to accept defendant's argument would be to shortcut the plain-error analysis, which we decline to do. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 62 (clarifying that "the alleged error here was forfeited rather than waived" and rejecting the principle that "sentencing errors are always reviewable as plain error"). Therefore,

defendant must meet the requirements of the plain-error doctrine to avoid forfeiture. *Brown*, 2017 IL App (1st) 142877, ¶ 62.

¶ 11 To establish plain error in the context of sentencing, a defendant must show that a clear or obvious error occurred and "that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. Under either prong of the plain-error doctrine, the burden of persuasion remains on the defendant. *Hillier*, 237 Ill. 2d at 545. A reviewing court conducting a plain-error analysis must first determine whether an error occurred, as "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). Here, we find no error.

¶ 12 The interpretation of the language of a statute is a question of law which we review *de novo. People v. Lloyd,* 2013 IL 113510, ¶ 25. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. McClure,* 218 Ill. 2d 375, 381 (2006). The best indicator of legislative intent is the language of the statute, and where possible, the court should give that language its plain and ordinary meaning. *McClure*, 218 Ill. 2d at 382.

¶ 13 Section 3-6-3(a)(2) of the Unified Code of Corrections (Code) provides, in relevant part:

> "(2) The rules and regulations on early release shall provide, with respect to offenses listed in clause (i), (ii), or (iii) of this paragraph (2) committed on or after June 19, 1998 or with respect to the offense listed in clause (iv) of this paragraph (2) committed on or after June 23, 2005 (the effective date of Public Act 94–71) ***, the following:
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> * * *

> (iii) that a prisoner serving a sentence for *** aggravated discharge of a firearm *** when the court has made and entered a finding, pursuant to subsection (c–1) of Section 5–4–1 of this Code, that the conduct leading to conviction *** resulted in great bodily harm to a victim, shall receive no more than 4.5 days of good conduct credit for each month of his or her sentence of imprisonment;
>
> (iv) that a prisoner serving a sentence for aggravated discharge of a firearm, whether or not the conduct leading to conviction for the offense resulted in great bodily harm to the victim, shall receive no more than 4.5 days of good conduct credit for each month of his or her sentence of imprisonment[.]" 730 ILCS 5/3-6-3(a)(2) (West 2014).

¶ 14 Defendant maintains that both subsections (a)(2)(iii) and (a)(2)(iv) of section 3-6-3 apply to his sentence for aggravated discharge of a firearm because his offense took place on November 21, 2014, which falls within both date ranges articulated in the statute. 730 ILCS 5/3-6-3(a)(2) (West 2014). Specifically, he argues that because subsection (a)(2)(iii) requires a defendant to serve 85% of his sentence for the offense of aggravated discharge of a firearm (committed on or after June 19, 1998) only when a trial court has entered a finding of "great bodily harm," whereas subsection (a)(2)(iv) requires a defendant to serve 85% of his sentence for the same offense (committed on or after June 23, 2005) regardless of whether the trial court made a finding of "great bodily harm," the two provisions directly contradict each other. He asserts that because the trial court did not find great bodily harm in this case, under the rule of lenity, the provision which is in his favor, subsection (a)(2)(iii), should have been applied entitling him to day-for-day credit.

¶ 15 In setting forth this argument defendant acknowledges that this court has previously rejected challenges to the same statutory sentencing provisions at issue in this case. See *People v. Williams*, 2015 IL App (1st) 130097 (*Williams* I); *People v. Williams*, 2017 IL App (1st) 150795 (*Williams* II). He nevertheless argues that we should ignore our precedent and find that there is an ambiguity or conflict in the statute. In support of this argument, he claims that our previous opinions did not engage with any of the traditional tools of statutory construction, such as a comparative analysis of the two provisions, in arriving at their conclusions and, therefore, our previous conclusions should not be followed. We disagree.

¶ 16 Here, the plain language of the sentencing statute is not ambiguous. As we found in *Williams* I, "[t]he plain language of subsection (a)(2)(iv) reveals the legislature's intent that a defendant who commits the offense of aggravated discharge of a firearm *after* June 23, 2005[,] must serve at least 85% of his sentence regardless of whether the conduct resulted in 'great bodily harm' to a victim." (Emphasis in original.) *Williams* I, 2015 IL App (1st) 130097, ¶ 63. Thus, the plain language made clear that "the legislature deemed this offense to be of such a serious nature, that it sought to enhance the time served provision regardless of bodily harm to a victim." *Williams* I, 2015 IL App (1st) 130097, ¶ 63. Put another way, "it seems that the legislature intended, by including these two effective dates, that the penalties for aggravated discharge of a firearm should change depending on when they were committed." *Williams* II, 2017 IL App (1st) 150795, ¶ 54. Such a reading ensures that neither provision is rendered absurd, meaningless, or superfluous. See *People v. Viverette*, 2016 IL App (1st) 122954, ¶ 9 ("[W]e ascertain and give effect to the legislature's intent and purpose by construing the statute so that no part is rendered meaningless or superfluous.").

¶ 17 In sum, we see no reason to depart from our previous rulings on this issue and again find that that there is no ambiguity or conflict in subsections (a)(2)(iii) and (a)(2)(iv). Pursuant to the statute, defendant is required to serve 85% of his sentence for aggravated discharge of a firearm (count I), and thus, the trial court did not err in imposing its sentence.

¶ 18 Defendant next contends, and the State properly agrees, that the mittimus should be corrected to reflect only his conviction and sentence for aggravated discharge of a firearm (count I) and unlawful use of a weapon by a felon (count II). The record shows that the trial court merged the two counts of aggravated unlawful use of a weapon (counts III and IV) into unlawful use of a weapon by a felon (count II). However, the mittimus reflects a conviction and sentence for all four offenses. 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.

¶ 19 Accordingly, pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1968)), we direct the clerk of the circuit court to correct the mittimus to reflect defendant's conviction and sentence for aggravated discharge of a firearm (count I) and unlawful use of a weapon by a felon (count II). See *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County and correct the mittimus.

¶ 21 Affirmed; mittimus corrected.