2019 IL App (1st) 161846-U

No. 1-16-1846

Order filed January 10, 2019

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. 15 CR 15648 |
| | ) | |
| SEGUNDO URGILES, | ) | Honorable |
| | ) | Stanley J. Sacks, |
| Defendant-Appellant. | ) | Judge, presiding. |

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

**ORDER**

¶ 1 *Held*: Judgment affirmed over defendant's claim that the State failed to produce evidence of his prior convictions to enhance his conviction for driving while his license was revoked from a Class A misdemeanor to a Class 4 felony.

¶ 2 Following a bench trial, defendant Segundo Urgiles was convicted of aggravated driving while under the influence of alcohol (DUI) and felony driving while his license was revoked (DWLR), and sentenced to concurrent terms of four years' imprisonment. The DWLR conviction was enhanced from a Class A misdemeanor to a Class 4 felony based on defendant's prior

convictions pursuant to section 6-303(d-3) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(d-3) (West 2014)). On appeal, defendant does not challenge the guilty findings, but contends that his DWLR conviction must be reduced from a Class 4 felony to a Class A misdemeanor because the State failed to present any evidence to support the enhancement, *i.e.*, that his license had been revoked based on a DUI, and that he had four prior convictions for DWLR which all occurred while his license was revoked for a DUI-related offense. We affirm.

¶ 3 Defendant was charged in this case with five counts of aggravated DUI and six counts of felony DWLR. The DWLR counts alleged that on September 20, 2015, defendant committed DWLR in that he drove a motor vehicle on a highway at a time when his driver's license was suspended or revoked in violation of section 6-303(a) of the Code. All of the DWLR counts further alleged that the State sought to sentence defendant as a Class 4 offender based on his prior convictions. Count VI alleged that the enhancement was sought pursuant to section 6-303(d-3) of the Code in that his license had been revoked for a violation of section 11-501 of the Code, he was previously convicted of four violations of section 6-303 (DWLR), and those prior convictions occurred while his license had been revoked for violating one of several statutes, including section 11-501 of the Code, or for a statutory summary suspension under section 11-501.1 of the Code. Count VII also sought enhancement pursuant to section 6-303(d-3) based on the same four prior convictions, but alleged that his license had been suspended rather than revoked due to a statutory summary suspension under section 11-501.1 of the Code.

¶ 4 At trial, the State presented a stipulation to adopt the testimony of Chicago police officer Gremo[1] from a prior hearing on defendant's motion to quash arrest and suppress evidence, which

[1] Gremo's first name does not appear in the record.

had been denied. Gremo testified that at 3:15 a.m. on September 20, 2015, he observed defendant drive through a red light and conducted a traffic stop. Officer Gremo approached defendant's vehicle and asked defendant for his driver's license and proof of insurance. The officer smelled an odor of alcohol on defendant's breath and suspected he might be intoxicated. Defendant produced an identification card. The officer returned to his vehicle and verified that defendant did not have a driver's license, and requested assistance from Chicago police officer Phillip Travis, whom Gremo considered a DUI specialist. Gremo's dashboard camera was recording when he initiated the traffic stop, but stopped recording prior to Travis arriving at the scene.

¶ 5 Officer Travis testified that he arrived at the scene about 3:15 a.m., and observed defendant sitting in the driver's seat of a Dodge vehicle. After speaking with Gremo, Travis approached the driver's window of the Dodge and asked defendant for his driver's license and proof of insurance. Travis immediately detected a strong odor of alcohol on defendant's breath, and observed that defendant's eyes and face were red and his speech was slurred. Defendant told Travis that he drank four beers three hours earlier. Travis asked defendant to exit his vehicle and perform three field sobriety tests. During those tests, Travis observed numerous indications of impairment. Based on all of his observations and defendant's admission that he had been drinking, Travis arrested defendant for DUI. Defendant refused to take a breathalyzer test. On cross-examination, Travis testified that defendant told him that it was his vehicle, that he was driving home, that his license was revoked, and that he could not produce proof of insurance.

¶ 6 The State presented a stipulation to the foundation of the video recorded by Gremo's dashboard camera, which was admitted in evidence and then published to the jury. The video depicts a Dodge vehicle running a stop sign, crossing over the center line, then pulling over to

the curb at a diagonal position when stopped by police. The video further depicts Gremo approaching the driver's door and motioning for the driver to roll down his window. The driver hands what appears to be an identification card to Gremo, who returns to his vehicle holding up the identification card. The video then ends.

¶ 7 The State presented a certified copy of the Secretary of State's driving abstract for defendant. The abstract states "REVOCATION WAS IN EFFECT ON 09-20-2015." The abstract also indicates that defendant's driver's license was issued on August 7, 1997, and expired on October 16, 2001.

¶ 8 The defense presented testimony from Rosa Urgiles, defendant's sister-in-law, who testified that she has known defendant for over 20 years, and he lived with her and her husband. She testified that defendant speaks Spanish, not English, and she never heard him speak English.

¶ 9 The trial court found defendant guilty of all counts of aggravated DUI and felony DWLR. The court then merged the charges into one count for each offense.

¶ 10 At sentencing, in aggravation, the State pointed out that at the time of this offense, defendant was on probation for a Class 4 aggravated DUI in a 2012 case. The State noted that defendant also had two prior misdemeanor DUIs. In addition, the State argued that defendant had "four prior 6-303 driving on a suspended license misdemeanors that show him having driven without a proper driver's license on top of the DUIs for which he was already previously convicted."

¶ 11 In mitigation, defense counsel argued that defendant has four children, two of whom he supports, and that he is a hard worker who maintains employment. Counsel acknowledged that

defendant drove while he was on probation imposed by the same trial judge, and requested the minimum sentence of three years' imprisonment.

¶ 12 In allocution, defendant stated that he made a mistake and regretted what he had done. He further stated that he worked very hard to support his children, and that he was going to seek help from Alcoholics Anonymous upon his release from prison.

¶ 13 Defendant's presentence investigation report (PSI) includes a printout of defendant's driving record maintained by the Secretary of State. The driving record indicates, in relevant part, that defendant's driver's license was revoked on May 10, 1998, pursuant to a statutory summary suspension or revocation based on a violation of section 11-501.1 of the Code. The record further indicates that while the revocation was in effect, defendant received four DWLR convictions for violating section 6-303(a)(1) of the Code on June 28, 1998, July 15, 1998, June 14, 1998, and October 27, 2011.

¶ 14 The trial court stated that defendant had been driving without a license "for a long, long time," and that he was "driving drunk a few of those times as well." The court noted that it had given defendant probation for one of his prior DUI cases, and he did not comply with that. The court stated that defendant was "a serial driver with no license who drives drunk oftentimes." The court found no credibility in defendant's statements that he wanted to change and take care of his children. The court stated that defendant refused to obey the law, and warned him that if he drove drunk again without a license that he would face a possible term of 14 years in prison. The court then sentenced defendant to concurrent terms of four years' imprisonment.

¶ 15 On appeal, defendant contends that his DWLR conviction must be reduced from a Class 4 felony to a Class A misdemeanor because the State failed to present any evidence to support

the enhancement, *i.e.*, that his license had been revoked based on a DUI, and that he had four prior convictions for DWLR which all occurred while his license was revoked for a DUI-related offense listed in the statute. Defendant argues in his opening brief that the driving record in the PSI did not indicate when defendant was convicted of the prior offenses or on what basis. He further argues that the record does not show whether the prior DWLR offenses were based on DUI-related offenses listed in the statute.

¶ 16 The State responds that defendant forfeited the issue for review because he failed to object during the sentencing hearing and did not raise the issue in a postsentencing motion. The State further argues that the plain error doctrine does not apply because no error occurred where the driving record in the PSI provides all of the detail to establish the enhancement. The State points out that the codes used in the driving record are explained in the Secretary of State's offense table in the Illinois Administrative Code (92 Ill. Adm. Code 1040.20 (2015)). Referring to the driving record, the State identifies the dates the offenses occurred, the codes for the offenses, and the statutory references for each offense.

¶ 17 In reply, defendant argues that his claim may be reviewed under both prongs of the plain error doctrine. Defendant claims that the State failed to present the trial court with a "key" for the codes used in the driving record, and therefore, the report presented at sentencing was "indecipherable." He maintains that the State's proof at sentencing was inadequate to sustain the enhancement.

¶ 18 To preserve a sentencing error for review, both a contemporaneous objection during the sentencing hearing and a written postsentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, the record shows that defendant made no objection

during the sentencing hearing and failed to file a written motion to reconsider his sentence. Consequently, we find that defendant failed to preserve his issue for appeal, and therefore, it is forfeited. *Hillier*, 237 Ill. 2d at 544-45.

¶ 19 Defendant argues, however, that his claim may be reviewed under both prongs of the plain error doctrine. The plain error doctrine is a limited and narrow exception to the forfeiture rule which can only be invoked after defendant first demonstrates that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. Thereafter, defendant must show that the evidence at the sentencing hearing was closely balanced, or that the error was so egregious that he was denied a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545. The burden of persuasion is on defendant, and if he fails to meet that burden, the procedural default will be honored. *Hillier*, 237 Ill. 2d at 545.

¶ 20 To prove defendant guilty of DWLR in this case, the State was required to show that he drove a motor vehicle on any highway in this state while his driver's license was revoked or suspended as provided for by the Code. 625 ILCS 5/6-303(a) (West 2014). Ordinarily, a DWLR violation is a Class A misdemeanor. 625 ILCS 5/6-303(a) (West 2014). 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: (1) his license was suspended or revoked for a violation of section 11-401 or 11-501 of the Code, or due to a statutory summary suspension or revocation under section 11-501.1 of the Code; and (2) his prior 6-303 convictions occurred while his license was suspended or revoked for a violation of section 11-401 or 11-501 of the Code, or due to a statutory summary suspension or revocation under section 11-501.1 of the Code. 625 ILCS 5/6-303(d-3) (West 2014).

¶ 21 Generally, when a statute sets out the elements of an offense and separately lists sentencing classifications based on other factors, those factors serve only to enhance the punishment and do not create a new offense. *People v. Owens*, 2016 IL App (4th) 140090, ¶ 33. Illinois courts have held that 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. Instead, the predicate offenses are used after the defendant's conviction to increase the classification of the offense at sentencing. *People v. DiPace*, 354 Ill. App. 3d 104, 114 (2004).

¶ 22 The State must prove a defendant is eligible for an enhanced sentence by a preponderance of the evidence. *People v. Brown*, 229 Ill. 2d 374, 385 (2008). " 'A preponderance of the evidence is evidence that renders a fact more likely than not.' " *Brown*, 229 Ill. 2d at 385 (quoting *People v. Urdiales*, 225 Ill. 2d 354, 430 (2007)). For any prosecution under section 6-303 of the Code, a certified copy of the defendant's driving abstract can be admitted as proof of his prior convictions. 625 ILCS 5/6-303(f) (West 2014). Moreover, "[a] court properly may consider a presentencing report 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." *DiPace*, 354 Ill. App. 3d at 115.

¶ 23 Here, defendant's claim that the State failed to present any evidence to support the enhancement of his DWLR offense to a Class 4 felony is belied by the record. At trial, the State presented a certified copy of defendant's driving abstract from the Secretary of State which stated that revocation of defendant's driver's license was in effect on September 20, 2015, the date of the DWLR offense. At sentencing, the State referred to the information contained in

defendant's driving record in the PSI. The driving record shows that on May 10, 1998, defendant received a statutory summary suspension or revocation of his driver's license pursuant to section 11-501.1 of the Code. That statute provides that when a law enforcement officer has probable cause to believe a person is driving under the influence of alcohol in violation of section 11-501 of the Code, and the person refuses to submit to testing to determine the content of alcohol in his blood, such refusal will result in the statutory summary suspension or revocation of his license. 625 ILCS 5/11-501.1 (West 2014). The record thus shows that defendant's driver's license was revoked based on a DUI-related offense.

¶ 24 There is no indication that defendant's driver's license has ever been reinstated. Since the 1998 revocation, defendant has received several DUI and DWLR convictions. Travis also testified that defendant admitted to him that his license was revoked. Further, the same trial judge had presided over at least one of defendant's previous cases and was familiar with defendant's record.

¶ 25 Defendant's driving record further shows that since the revocation of his license, he received four DWLR convictions pursuant to section 6-303(a)(1) of the Code. Those DWLR offenses occurred on June 28, 1998, July 15, 1998, June 14, 2003, and October 27, 2011. The driving record indicates that the revocation based on the DUI-related offense was still in effect at the time of these DWLR convictions. The record thus shows that the State proved defendant's eligibility for the enhancement to a Class 4 felony.

¶ 26 We find no merit in defendant's claim that the driving record was "indecipherable" because the State did not present the trial court with a "key" for the codes in the record. It is clear from the record that the parties and the trial court were able to understand and decipher the

codes. There is no indication that there was any confusion regarding the numerous convictions reflected on defendant's driving record in the PSI. Since no error occurred, we conclude that the plain error doctrine does not apply, and we honor defendant's forfeiture of this issue. *Hillier*, 237 Ill. 2d at 545-46.

¶ 27 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.