2011 IL App (2d) 100261-U
No. 2-10-0261
Order filed September 28, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-2731
	)	
ANGEL MADRIGAL,	)	Honorable George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: (1) Defendant properly received an extended-term sentence on an offense other than his most serious, as the two offenses, though simultaneous, arose from unrelated courses of conduct; (2) defendant improperly received an extended-term sentence on a different offense that did arise from a related course of conduct, and we reduced the sentence to the maximum nonextended term. We affirmed as modified the trial court's judgment.

¶ 1 Defendant, Angel Madrigal, pleaded guilty to one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)) and, following a jury trial, was found guilty of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(d)(2)(D) (West 2008)) and driving while his license was revoked (DWLR) (625 ILCS 5/6-303(a), (d-3) (West 2008)). The

trial court sentenced defendant to eight years' imprisonment on the aggravated DUI conviction and six years' imprisonment on the convictions of unlawful possession of a controlled substance and DWLR, all sentences to run concurrently. Defendant appeals, arguing that the extended-term six-year sentences are void. For the reasons that follow, we affirm the six-year sentence on defendant's conviction of unlawful possession of a controlled substance, but reduce the sentence on his conviction of DWLR to three years.

¶ 2 BACKGROUND

¶ 3 As part of defendant's plea of guilty to the charge of unlawful possession of a controlled substance, the parties stipulated to the following factual basis. On October 30, 2009, defendant was arrested for DUI and DWLR. When defendant arrived at the police station, an officer conducted an inventory search of defendant, during which a small packet of cocaine was found in defendant's wallet.

¶ 4 At the trial on the charges of aggravated DUI and DWLR, the evidence tended to prove the following. On October 30, 2009, Aurora police officers responded to a call of a vehicle left on the roadway. When they arrived at the scene, the officers found defendant leaning against his car, which was in the ditch. The officers observed that defendant appeared to be under the influence of alcohol. The results of sobriety tests the officers conducted on defendant also suggested that defendant was under the influence of alcohol. As of October 30, 2009, defendant's driver's license was revoked.

¶ 5 Following the return of the jury's guilty verdicts on the charges of aggravated DUI and DWLR, the trial court sentenced defendant to eight years' imprisonment on the aggravated DUI conviction and six years' imprisonment on the convictions of unlawful possession of a controlled substance and DWLR, all sentences to run concurrently. The six-year sentences were extended-term sentences.

¶ 6 Defendant now appeals.

¶ 7 ANALYSIS

¶ 8 On appeal, defendant contends that the sentences imposed on the convictions of possessing a controlled substance and DWLR are void because an extended-term sentence may be imposed for only the most serious offense, *i.e.*, aggravated DUI. Defendant did not raise this issue in the trial court, nor did his attorney file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Because, however, defendant contends that his sentences are void, his failure to file a motion to reconsider and a Rule 604(d) certificate does not bar our review of his claim. See *People v. Wilson*, 181 Ill. 2d 409, 413 (1998) (failure to file a motion to withdraw guilty plea did not bar review of the defendant's claim that sentence was void); *People v. Williams*, 179 Ill. 2d 331, 333 (1997) (same). The State counters that these cases are inapplicable because defendant's extended-term sentence for possession was based on an independent course of action and criminal motive, and, therefore, was not void. See *Wilson*, 181 Ill. 2d at 413 ("a *challenge* to a trial court's statutory authority to impose a particular sentence is not waived when a defendant fails to withdraw his guilty plea and vacate the judgment" (emphasis added)); *Williams*, 179 Ill. 2d at 333 (holding that the defendant's failure to move to withdraw his guilty plea was not a bar where the defendant "*argue[d]* that the court imposed a sentence which, under the statute, it had no authority to impose" (emphasis added)).

¶ 9 When a defendant is convicted of multiple offenses, he may be sentenced to an extended term on only the most serious offense. *People v. Bell*, 196 Ill. 2d 343, 350 (2001). Where, however, separately charged, differing class offenses arise from unrelated courses of conduct, an extended-term sentence may be imposed on each of them. *Bell*, 196 Ill. 2d at 350. Offenses arise from

unrelated courses of conduct if there was a "substantial change in the nature of the criminal objective." *Id.* at 354.

¶ 10 Defendant argues that, because he was driving under the influence at the same time he possessed the controlled substance, there was no change in the nature of his conduct. Although it is certainly true that defendant simultaneously drove under the influence and possessed a controlled substance, he offers no argument as to how driving under the influence and possessing a controlled substance represent the same criminal *objective*. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued are waived."). We decline to research this point and argue it for defendant. See *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research."). Accordingly, because defendant has not offered any argument as to how his actions were not unrelated courses of conduct, we affirm defendant's sentence on his conviction of unlawful possession of a controlled substance.

¶ 11 With respect to defendant's conviction of DWLR, the State concedes that the imposition of an extended-term sentence was improper, because that conviction arose from a course of conduct related to the course of conduct that gave rise to defendant's more serious conviction of aggravated DUI.

¶ 12 The issue then becomes whether we should reduce the sentence on defendant's conviction of DWLR or whether we should vacate his sentences for aggravated DUI and DWLR and remand for resentencing. Defendant argues that, because we cannot determine with certainty that the sentence imposed for DWLR did not influence the trial court's sentencing decision on defendant's conviction of aggravated DUI, we should remand for resentencing. We disagree. The trial court sentenced defendant to eight years' imprisonment on the conviction of aggravated DUI and six

years' on the other two convictions, all sentences to run concurrently. As the shorter sentences would be served before the expiration of the longer, the length of the shorter sentences could not have affected the trial court's imposition of the longer term, and resentencing is unnecessary. Accordingly, we reduce the sentence on defendant's conviction of DWLR to three years' imprisonment, the maximum nonextended-term sentence for a Class 4 felony (see 730 ILCS 5/5-8-1(a)(7) (West 2008)).

¶ 13 CONCLUSION

¶ 14 For the reasons stated, we reduce the DWLR sentence to three years' imprisonment and affirm the sentences on the remaining convictions.

¶ 15 Affirmed as modified.