

No. 1-11-2026

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 22046
)	
)	
DOUGLAS JOHNSON,)	The Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* This court held defendant was not subjected to improper double enhancement because the trial court relied on different factors when enhancing the class of defendant's offense and subjecting him to a Class X sentence. The judgment of the circuit court is affirmed.

¶ 2 Following a bench trial, defendant Douglas Johnson was found guilty of unlawful possession of a weapon by a felon (UUWF), then sentenced to six years' imprisonment. On appeal, defendant contends the trial court used the same prior conviction to first elevate his Class 3 UUWF offense to a the more serious Class 2 offense, which made him Class X eligible, and then used the same prior conviction as a basis to subject him to a Class X sentence. He contends

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this was improper double enhancement. We affirm.

¶ 3

BACKGROUND

¶ 4 Defendant does not now raise a challenge to the sufficiency of the evidence.

Accordingly, we include only those facts necessary to address his sentencing claim. Defendant was arrested and then charged with unlawful possession of a weapon by a felon (UUWF) after police discovered defendant at a party in a barbershop with a firearm on or about his person. The offense of UUWF, by definition, requires the defendant to have committed a predicate felony. 720 ILCS 5/24-1.1(a) (West 2010). Count 2 of the indictment, in accordance with the UUWF statute, set forth defendant's predicate 2004 felony conviction of "defacing identification marks of firearms" (case No. 03CR14932), which was a Class 2 offense. In addition, in Count 2 of the indictment, the State alleged that because defendant was on mandatory supervised release (MSR) at the time he committed the UUWF offense, under that statute he was eligible to have his sentence elevated from Class 3 (carrying 2 to 10 years in prison) to Class 2 (carrying 3 to 14 years in prison). See 720 ILCS 5/24-1.1(e) (West 2010). The 2009 conviction for which defendant was on MSR was a Class 2 felony drug offense (case No. 09CR285001). Defendant's criminal history also consisted of several other Class 4 felony offenses.

¶ 5 At sentencing, the State argued defendant was "Class X mandatory" (carrying a term of 6 to 30 years in prison (see 730 ILCS 5/5-4.5-25(a) (West 2010)) on Count 2 given defendant's criminal history and the elevation of his UUWF offense to a Class 2 offense. Over defense counsel's objection, the trial court sentenced defendant to a mandatory Class X prison term of six years, with the mittimus reflecting that the sentence was imposed on Count 2. Defendant filed a motion to reconsider the sentence, which was denied. This appeal followed.

¶ 6

ANALYSIS

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¶ 7 Defendant contends the trial court engaged in improper double enhancement at sentencing by using the same prior drug conviction to first elevate the charged UUWF offense from a Class 3 to a Class 2 felony and then also as a basis for subjecting him to a Class X sentence. The State argues that “no single factor was utilized twice in order to enhance defendant’s sentence.” For the reasons to follow, we agree with the State.

¶ 8 It is well established that a single factor cannot be used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed; nor can a single factor be used twice to elevate the seriousness of the offense, itself. *People v. Phelps*, 211 Ill. 2d 1, 11-13 (2004). Such dual use of a single factor is often referred to as a “double enhancement.” *Id.* at 12. The reasoning behind this prohibition is that it is assumed that the legislature, in determining the appropriate range of punishment for a criminal offense, necessarily accounted for the inherent factors of the offense. *People v. Gonzalez*, 151 Ill. 2d 79, 84 (1992). Indeed, the legislature prescribes the sentencing range for an offense by putting the offense into a specific class of offenses (*e.g.*, a “Class 3 felony” or a “Class A misdemeanor”), then designates the sentences which may be imposed for each class of offenses; in making that designation, it necessarily considers the factors that make up each offense in that class. *Id.* Thus, to use one of those same factors that make up the offense as the basis for imposing a harsher penalty than might otherwise be imposed constitutes a double use of a single factor. *Id.* The double-enhancement rule is one of statutory construction and therefore the standard of review is *de novo*. *Phelps*, 211 Ill. 2d at 12.

¶ 9 In this case, defendant’s criminal history consisted of only two Class 2 felony convictions, one in 2004 for defacing identification marks on firearms, and, another in 2009 for drugs. Defendant acknowledges he was still on MSR for his 2009 drug conviction when he

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committed UUWF. While UUWF normally is a Class 3 felony carrying 2 to 10 years in prison, if it is committed while on MSR, the offense is elevated to a Class 2 felony carrying a term of 3 to 14 years in prison. 720 ILCS 5/24-1.1(e) (West 2010). Based on that statutory provision, defendant's UUWF offense thus constituted a Class 2 felony, and the trial court was required by the legislative mandate to sentence defendant as such. The parties apparently agree on this point. Where they part ways is whether that same 2009 drug conviction for which defendant was serving MSR could then be used as a basis to subject defendant to a Class X sentence carrying a term of 6 to 30 years in prison (see 730 ILCS 5/5-4.5-25(a) (West 2010)).

¶ 10 Under relevant portions of that provision, the Illinois legislature has mandated that when a defendant is convicted of a Class 2 felony after "having twice been convicted" of a Class 2 or greater offense, the defendant "shall be sentenced as a Class X offender ***." 730 ILCS 5/5-4.5-95(b) (West 2010). Because defendant had three Class 2 convictions under his belt, the State argues a Class X sentence was mandatory in this case. Defendant counters that the elevation of the UUWF felony class and enhancement of his sentence to Class X cannot arise out of the same conviction. He relies on *People v. Griham*, 399 Ill. App. 3d 1169 (2010), *People v. Chaney*, 379 Ill. App. 3d 524 (2008), *People v. Owens*, 377 Ill. App. 3d 302 (2007), which held that the trial courts engaged in improper double enhancement by using the same prior conviction to upgrade the class of the defendants' charged offense and then also as a basis to sentence the defendants under the Class X sentencing scheme.

¶ 11 We find this case distinguishable from those cases, because the factor used to elevate the UUWF offense from a Class 3 to a Class 2 felony was not defendant's conviction, *per se*, but, rather, his commission of the UUWF offense while on MSR for the 2009 drug offense and while still technically under the Department of Corrections' custody. This was an act the legislature

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apparently wanted to punish more harshly. By contrast, it was defendant's recidivist nature, including his Class 2 drug *conviction*, together with his other previous Class 2 felony conviction, that made him eligible to be sentenced under the Class X scheme following his UUWF conviction. In that sense, this case is akin to *People v. Brown*, 182 Ill. App. 3d 491 (1989), where the defendant committed a misdemeanor theft that was upgraded to a felony based on his prior burglary conviction and in which the defendant was also subject to a consecutive sentence because he committed the theft while out on bond for the burglary conviction. This court concluded that there was no double-enhancement issue because "the factor which mandated the consecutive sentence was the commission of a criminal offense while out on bond, not the prior burglary conviction" and "[t]he factor which elevated the misdemeanor to a felony was not the same factor which resulted in the consecutive sentence." *Brown*, 182 Ill. App. 3d at 493; *see also People v. Thomas*, 171 Ill. 2d 207, 227 (1996) (a trial court can use a prior conviction to impose a Class X sentence and then also consider that same prior conviction as an aggravating circumstance at sentencing). Similarly, in this case, the factor that elevated the class of defendant's UUWF offense was not the same factor that served as a basis for his Class X sentence.

¶ 12

CONCLUSION

¶ 13 Based on the foregoing, we affirm the judgment of the circuit court of Cook County sentencing defendant to six years under the Class X statute.

¶ 14 Affirmed.