

No. 1-11-3286

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 351
	)	
JOSUE ARENA,	)	Honorable
	)	Diane Cannon,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE R. GORDON delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where a defendant is convicted of two counts arising from the same physical act, the conviction on the more serious offense shall be affirmed and the conviction on the less serious offense shall be vacated under the one act, one crime rule. Where defendant was convicted of a Class 2 offense but, due to his criminal history, was sentenced as a Class X offender, the trial court shall sentence the defendant to serve the mandatory supervised release term mandated for Class X offenders.

¶ 2 After a bench trial, defendant Josue Arena was convicted of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)) and two counts of driving while his license was revoked or suspended (625 ILCS 5/6-303(a) (West 2008)). After hearing arguments in

No. 1-11-3286

aggravation and mitigation, the trial court sentenced defendant to six years in the Illinois Department of Corrections for the possession conviction and to three-year terms for each count (2) of driving on a revoked or suspended license, all to run concurrently with a three-year term of mandatory supervised release (MSR) following incarceration. 730 ILCS 5/5-4.5-95 (West 2008).

¶ 3 Defendant appeals, arguing, first, that his convictions for two counts of driving while his license was suspended or revoked violated the one act, one crime rule. The State agrees and joins defendant in asking us to correct the mittimus to reflect only one conviction for driving with a revoked or suspended license, and we order this correction. Second, defendant argues that he should receive the two-year MSR term mandated for Class 2 offenses, rather than the three-year term mandated for Class X offenses because the sentencing statute mandates that the length of MSR terms are based on the class of offense of which the defendant was convicted. 730 ILCS 5/5-8-1(d)(2) (West 2008). Defendant argues that the trial court failed to follow the sentencing statute, and thus his sentence is void. We have rejected this same argument several times before and we adhere to our well-established precedent. *People v. McKinney*, 399 Ill. App. 3d 77, 80-81 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); *People v. Watkins*, 387 Ill. App. 3d 764, 766-77 (2009); *People v. Smart*, 311 Ill. App. 3d 415, 417-18 (2000); *People v. Anderson*, 272 Ill. App. 3d 537, 541 (1995). Thus, for the following reasons, we affirm and remand to correct the mittimus.

¶ 4

#### BACKGROUND

¶ 5 Defendant was charged with one count of possession of a stolen motor vehicle, one count of burglary, and two counts of driving while his license was suspended or revoked. One count of

No. 1-11-3286

driving on a suspended or revoked license alleges that his license had been suspended due to a statutory summary suspension, while the other count alleges that his license had been revoked for driving under the influence of alcohol or drugs.

¶ 6 At a bench trial, the State presented the following evidence and testimony. On December 1, 2009, a covert vehicle theft section of the Chicago police department conducted a bait vehicle operation around the 3100 block of North Milwaukee Avenue in Chicago. Officer Don Cornelious acted as the staging officer; at 11 a.m., he drove the bait vehicle to the operation location on the 3100 block of North Milwaukee. The bait vehicle was a silver Ford Explorer, registered to the Chicago police department, that contained equipment designed to detect vehicle thefts, including a global positioning system (GPS), audio and video recorders, and a remote engine kill mechanism. When Cornelious, dressed in civilian clothing, arrived at the operation location in the bait vehicle, other members of his team arrived in a marked squad vehicle and pulled over the officer. Cornelious parked the bait vehicle legally, turned the engine off, left the doors unlocked and the windows partially down, and placed the keys in the center console. Cornelious' team members then "arrested" Cornelious and placed him in the back of their squad vehicle. After his "arrest," Cornelious became a "take down" officer, who was responsible for arresting the individual or individuals who attempted to take the bait vehicle.

¶ 7 Officer Michael Coughlin, another member of the bait vehicle operation team, was assigned as the surveillance officer. At 11 a.m., Coughlin drove an unmarked vehicle to the 3100 block of North Milwaukee Avenue. Coughlin testified that the day was clear and that he had a clear and unobstructed view of the front and driver's side of the bait vehicle from his surveillance

No. 1-11-3286

location 100 feet away. At 11:10 a.m., he observed the "arrest" of Cornelious. At 11:12 am, Coughlin observed a man enter the passenger side of the bait vehicle. The man stayed in the bait vehicle for roughly 20 seconds, then exited the bait vehicle. Coughlin then observed a group of roughly five or six men standing on a nearby corner. Coughlin testified that one of those men was defendant, and the officer made an in-court identification of defendant. At 11:18 a.m., Coughlin observed defendant enter the bait vehicle from the passenger side rummaging through the bait vehicle, turning the bait vehicle on and off quickly, then exit the bait vehicle. Coughlin was in radio contact with his team members, and he notified them that he observed defendant enter and exit the bait vehicle.

¶ 8 At 11:24 a.m., Coughlin observed another man enter the bait vehicle from the rear passenger door, and observed the man inside the bait vehicle for 20 to 30 seconds, then observed the man exit the vehicle through the front passenger door. At 11:26 a.m., Coughlin observed defendant enter the bait vehicle through the driver door and observed the second man enter the bait vehicle through the passenger door. Coughlin observed defendant start the vehicle and commence driving northbound on Milwaukee Avenue. Coughlin pursued the bait vehicle to the intersection of Milwaukee and Belmont, where he observed his team take defendant into custody. Coughlin testified that at no point in the operation did he give defendant permission to enter and drive the bait vehicle.

¶ 9 Officer Kevin Sheetz, another member of the bait vehicle operation team, served as the computer officer for the operation and monitored the activity occurring inside and around the bait vehicle through the recording equipment inside the bait vehicle. Sheetz testified that the bait

No. 1-11-3286

vehicle contained multiple pieces of high tech equipment, including two pin hole video cameras located in the radio and in the passenger door, which recorded defendant's entry into the bait vehicle. Sheetz could control most of the equipment in the bait vehicle remotely from his computer. Sheetz testified that on the morning of the operation, he checked all of the equipment in the bait vehicle to ensure it was working properly before he transferred the vehicle to Cornelious. Sheetz testified that the only problem that he recorded was that the time stamp on the vehicle's recording device was off by one hour.

¶ 10 Sheetz and his sergeant drove to an alley near the intersection of Milwaukee and Belmont for the purpose of monitoring the bait vehicle, and was in radio contact with his fellow operation team members. At 11:12 a.m., a team member instructed Sheetz to activate the bait vehicle's equipment and monitor all entries into the bait vehicle. Sheetz's computer recorded the same entries and exits into and out of the bait vehicle that Coughlin observed. Sheetz observed that the bait vehicle's video recorder began recording an image. At 11:26 a.m., Sheetz's computer indicated that the bait vehicle's ignition had been turned on and that the bait vehicle was moving. The sergeant drove out of the alley, where Sheetz could observe the bait vehicle, and Sheetz remotely locked the bait vehicle's doors and disabled its ignition. As the bait vehicle came to a stop, Sheetz observed two people inside the vehicle. Sheetz testified that at no point during the operation did he give defendant permission to enter the bait vehicle.

¶ 11 Cornelious took defendant and the other man into custody. Cornelious drove the bait vehicle back to the police station and turned it over to Sheetz. Sheetz saved the recorded information from the bait vehicle's recording equipment on two CDs and gave the CDs to

No. 1-11-3286

Cornelious to be inventoried as evidence. The CDs were admitted into evidence at trial.

¶ 12 At the police station, Coughlin read defendant his *Miranda* rights. Coughlin testified that defendant told him that "some guys told [defendant] that someone was locked up and the police left the [vehicle] and [defendant] was just going to take it for a cruise" and that defendant admitted that it was a "stupid idea."

¶ 13 Following the officers' testimony, the State moved its exhibits into evidence without objection. These exhibits included (1) a certified driving abstract of defendant's driving record which indicated that defendant's license had been revoked, (2) the title to the bait vehicle indicating that the Chicago police department held title to the bait vehicle, and (3) defendant's criminal record, which indicated that defendant had been convicted of three prior offenses. The defense did not put on any evidence, and during closing arguments, defense counsel informed the trial court that defendant was not contesting the two charges of driving while his license was suspended or revoked. The trial court found defendant not guilty of burglary and found him guilty of possession of a stolen vehicle and guilty of both counts of driving with a suspended or revoked license.

¶ 14 Defendant filed a posttrial motion requesting a new trial, arguing that although the bait vehicle operation did not meet the legal definition of entrapment, the nature of the operation made his commission of the offense of possession of a stolen vehicle impossible. The trial court denied defendant's motion, and proceeded to sentencing. After hearing arguments in aggravation and mitigation, the trial court sentenced defendant as a Class X offender because defendant had been previously convicted of two Class 1 or Class 2 offenses. The trial court sentenced

No. 1-11-3286

defendant to a total of six years followed by a three-year MSR term. Defendant received a six-year sentence for the possession of a stolen motor vehicle conviction and a three-year term for each count (2) for driving while his license was suspended or revoked, with all three terms to run concurrently. Defendant moved to reduce or modify his sentence, and the trial court denied the motion. Defendant filed a timely notice of appeal, and this appeal follows.

¶ 15

#### ANALYSIS

¶ 16 Defendant argues on appeal: (1) that both of his convictions for driving while his license was suspended or revoked stem from the same action and thus violated the one act, one crime rule, and (2) that even though he was properly sentenced as a Class X offender, he should have received the Class 2 MSR term because the crime of possession of a stolen motor vehicle is a Class 2 offense. 625 ILCS 5/4-103(b) (West 2008). Defendant argues that the three-year MSR term violates the sentencing statute mandating a two-year MSR term for Class 2 offenses (730 ILCS 5/5-8-1(d)(2) (West 2008)), and is thus void. *People v. Jackson*, 2011 IL 110615, ¶ 10 (2011) (holding that sentences that do not conform to statutory requirements are void). The State agrees that defendant's convictions on both counts of driving while his license was suspended or revoked violates the one act, one crime rule, and joins defendant in asking us to correct the mittimus to reflect only one conviction for driving with a suspended or revoked license. We order the mittimus corrected.

¶ 17 The State argues that the trial court's sentencing of defendant to a Class X MSR term was proper while the defendant argues it was not. For the following reasons, we affirm and order the mittimus corrected.

¶ 18

### I. Standard of Review

¶ 19 Whether a defendant was improperly convicted of multiple crimes based on the same act is a question of law, which we review *de novo*. *People v. Boyd*, 307 Ill. App. 3d 991, 998 (1999). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 20 Whether defendant should have received a two-year or three-year MSR term is a question of statutory interpretation that we review *de novo*. *People v. Robinson*, 172 Ill. 2d 452, 457 (1996). The primary purpose of statutory interpretation is to "ascertain and give effect to the intent of the legislature." *Robinson*, 172 Ill. 2d at 457. "The most reliable indicator of legislative intent is the language of the statute itself." *Robinson*, 172 Ill. 2d at 457. "The statutory language must be given its plain and ordinary meaning \*\*\* and where that language is clear and unambiguous, we must apply the statute without further aids of statutory construction." *Robinson*, 172 Ill. 2d at 457. In general, ambiguities in a criminal statute must be resolved in favor of the defendant. *Robinson*, 172 Ill. 2d at 457.

¶ 21

### II. One Act, One Crime

¶ 22 Defendant first argues that his two separate convictions for driving while his license was suspended or revoked violate the one act, one crime rule. The one act, one crime rule states that a defendant may not be convicted of multiple crimes based upon the same physical act. *People v. Latta*, 304 Ill. App. 3d 791, 806 (1999). In the case at bar, each count of driving on a revoked or suspended license alleges that defendant was driving or in actual physical control of a vehicle when his license was revoked or suspended, in violation of section 303(a) of the Illinois Driver

No. 1-11-3286

Licensing Law (625 ILCS 5/6-303(a) (West 2008)). One count alleges that defendant's license had been *suspended* pursuant to a statutory summary suspension under section 501.1 of the Illinois Rules of the Road (625 ILCS 5/11-501.1 (West 2008)), and the other count alleges that defendant's license had been *revoked* pursuant to section 501 of the Illinois Rules of the Road (625 ILCS 5/11-501 (West 2008)).

¶ 23 The parties agree that both counts were based on the same physical act, namely, defendant's unauthorized driving of the bait vehicle. The parties further agree that the two convictions violate the one act, one crime rule and that the mittimus should be corrected. However, the parties do not agree about which conviction must stand. The State cites *People v. Eubanks*, 279 Ill. App. 3d 949, 963 (1996) (citing *People v. Holman*, 103 Ill. 2d 133, 159 (1984)), to argue that it has the right to elect which conviction should stand. In response, defendant argues that the issue must be remanded to the trial court to determine which is the more serious conviction. *People v. Artis*, 232 Ill. 2d 156, 177 (2009). For the following reasons, we find that the count alleging that defendant's license had been revoked is the more serious offense, and we order that the mittimus be corrected to reflect only that more serious offense.

¶ 24 In *Eubanks*, cited by the State, the defendant was convicted of three counts of aggravated criminal sexual assault, and on appeal, this court affirmed the conviction on one count and vacated the convictions on the other two counts. *Eubanks*, 279 Ill. App. 3d at 951. The first count alleged that the defendant had committed an act of sexual penetration upon a victim under the age of 13. *Eubanks*, 279 Ill. App. 3d at 963 (citing 720 ILCS 5/12-14(b)(1) (West 1992)). The second and third counts alleged that the defendant committed an act of sexual penetration

No. 1-11-3286

upon a victim who could not understand the nature of the act, or, in the alternative, upon a victim who could not give knowing consent. *Eubanks*, 279 Ill. App. 3d at 963 (citing Ill. Rev. Stat. 1991, ch. 38, ¶ 12-14(a)(2)). All three convictions were based on the same physical act, and the parties conceded that under the one act, one crime rule, only one conviction could stand.

*Eubanks*, 279 Ill. App. 3d at 963. Relying on our supreme court's decision in *Holman*, 103 Ill. 2d at 159, this court held that the State has "the right to elect which conviction should be retained" and the State chose to retain the conviction for sexual penetration upon a victim who could not understand the nature of the act. *Eubanks*, 279 Ill. App. 3d at 963.

¶ 25 Subsequent to *Holman* and *Eubanks*, our Illinois supreme court determined in *Artis* that the State's right to elect which conviction should be retained is not absolute. *Artis*, 232 Ill. 2d at 176. In *Artis*, the defendant plead guilty to two counts of aggravated sexual assault, perpetrated during the course of a home invasion and residential burglary. *Artis*, 232 Ill. 2d at 159. On appeal, the defendant argued that one of his convictions for aggravated sexual assault should be vacated because both convictions were based on the same act of penetration. *Artis*, 232 Ill. 2d at 160. The State conceded that the two convictions violated the one act, one crime rule, but the parties disagreed about which offense was more serious. *Artis*, 232 Ill. 2d at 160. The State also argued that, regardless of which offense was more serious, it had the right to elect which conviction should be vacated, under the principle of prosecutorial discretion. *Artis*, 232 Ill. 2d at 160.

¶ 26 Our Illinois supreme court held that it "has 'always held' that under the one-act, one-crime doctrine, sentence should be imposed on the more serious offense and the less serious offense

No. 1-11-3286

should be vacated." *Artis*, 232 Ill. 2d at 170 (quoting *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004)). "In determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *Artis*, 232 Ill. 2d at 170. Courts must look to the plain language of the statutes, and "common sense dictates that the General Assembly would mandate greater punishment for offenses it deems more serious." *Artis*, 232 Ill. 2d at 170 (citing *Lee*, 213 Ill. 2d at 228). "Where the offenses provide for identical punishments, [our supreme court] has remanded to the trial court to determine which convictions should be retained." *Artis*, 232 Ill. 2d at 170 (citing *People v. Garcia*, 179 Ill. 2d 55, 71 (1997)). However, our supreme court has also considered which of the convictions has the more culpable mental state in situations in which the degree of the offenses and their sentencing classifications are identical. *Artis*, 232 Ill. 2d at 171 (citing *People v. Mack*, 105 Ill. 2d 103 (1984), *vacated on other grounds*, 479 U.S. 1074 (1987)). Our supreme court concluded that when there are multiple convictions of criminal sexual assault based upon the same physical act, none of the offenses are more serious than the other because none of the offenses involve a more culpable or less culpable mental state. *Artis*, 232 Ill. 2d at 172.

¶ 27 In *Holman*, the case upon which *Eubanks* relies, our supreme court's disposition of the issues required that the case be remanded to the trial court for a new sentencing hearing. *Artis*, 232 Ill. 2d at 176 (citing *Holman*, 103 Ill. 2d at 159). Our supreme court clarified that its decision in *Holman* "does not stand for the proposition that the State should be allowed to exercise its prosecutorial discretion whenever a one-act, one-crime violation occurs and it cannot be determined which of the offenses is the more serious." *Artis*, 232 Ill. 2d at 176. Rather, the

No. 1-11-3286

*Holman* decision to allow the State to decide on remand which conviction should stand "is consistent with the notion that the power of the prosecutor to [*nolle prosequi*] a charge extends throughout the trial proceedings up until the time the sentence is imposed." *Artis*, 232 Ill. 2d at 176. The new sentencing hearing ordered by our supreme court in *Holman* would be part of those proceedings, and thus the State had the right to elect which counts to *nolle prosequi*. *Artis*, 232 Ill. 2d at 176 (citing *Holman*, 103 Ill. 2d at 159). *Artis* did not require a new sentencing hearing, and therefore, prosecutorial discretion was not implicated because the State had already decided which counts to pursue for sentencing. *Artis*, 232 Ill. 2d at 176-77. Our supreme court concluded that Illinois courts must "continue to adhere to the principle that when it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination." *Artis*, 232 Ill. 2d at 177.

¶ 28 In the case at bar, both of defendant's convictions for driving while his license was suspended or revoked are based upon the same statute. 625 ILCS 5/6-303(a) (West 2008). However, one conviction was based on the *suspension* of defendant's driver's license and the other conviction was based on the *revocation* of his driver's license. The Illinois Vehicle Code defines "revocation of driver's license" as "[t]he *termination* by formal action of the Secretary [of State] of a person's license or privilege to operate a motor vehicle on public highways, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the Secretary after the expiration of at least one year after the date of revocation." (Emphasis added.) 625 ILCS 5/1-176 (West 2008). The Illinois

No. 1-11-3286

Vehicle Code defines "suspension of driver's license" as "[t]he *temporary withdrawal* by formal action of the Secretary [of State] of a person's license or privilege to operate a motor vehicle on the public highways, for a period specifically designated by the Secretary." (Emphasis added.) 625 ILCS 5/1-204 (West 2008). Under *Artis*, which states that we must compare the relative punishments of the offenses and look at the plain language of the statute, we find that revocation is a more severe punishment than suspension. *Artis*, 232 Ill. 2d at 170. Revocation is the complete termination of a person's license, whereas suspension is a "temporary" loss of a person's license. 625 ILCS 5/1-176, 1-204 (West 2008). The definitions indicate that the General Assembly determined revocation to be a harsher penalty, and therefore the count based on the revocation of defendant's license is the more serious offense. *Artis*, 232 Ill. 2d at 170 (citing *Lee*, 213 Ill. 2d at 228). Therefore, we order that the mittimus corrected to include only one conviction for driving while defendant's license was revoked. The conviction for driving while defendant's license was suspended is vacated.

¶ 29

### III. Mandatory Supervised Release

¶ 30 Defendant next argues that, even though he was properly sentenced as a Class X offender, MSR terms are not part of a sentence, and he should have received the two-year Class 2 MSR term rather than the three-year Class X MSR term. Defendant argues that because MSR terms are mandated by statute, the incorrect MSR term renders his sentence void. *Jackson*, 2011 IL 110615, ¶ 10. For the following reasons, we affirm.

¶ 31 The Unified Code of Corrections (the Code) states that "[w]hen a defendant, over the age of 21, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state

No. 1-11-3286

or federal court of an offense that contains the same elements as an offense now \*\*\* classified in Illinois as a Class 2 or greater felony, \*\*\* that defendant shall be sentenced as a Class X offender." 730 ILCS 5/5-4.5-95(b) (West 2008). Furthermore, the Code states that the MSR term "shall be written as part of the sentencing order." 730 ILCS 5/5-8-1(d) (West 2008). The MSR term for Class X offenders shall be three years. 730 ILCS 5/5-8-1(d)(1) (West 2008). The parties do not dispute that defendant has previously been convicted of at least two Class 2 or greater felonies and was properly sentenced as a Class X offender.

¶ 32 The Illinois Appellate Court has, on multiple occasions, interpreted the Code to require that defendants sentenced as Class X offenders must receive the entire sentence that an offender convicted of a Class X offense would receive. *People v. McKinney*, 399 Ill. App. 3d 77, 80-81 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); *People v. Watkins*, 387 Ill. App. 3d 764, 766-77 (2009); *People v. Smart*, 311 Ill. App. 3d 415, 417-18 (2000); *People v. Anderson*, 272 Ill. App. 3d 537, 541 (1995). The MSR term is treated as part of an offender's sentence. *McKinney*, 399 Ill. App. 3d at 81; *Lee*, 397 Ill. App. 3d at 1073. Therefore, when an offender is convicted of a Class 1 or Class 2 felony, if the offender is to be sentenced as a Class X offender pursuant to section 5-5-3, the offender receives the Class X MSR term. *McKinney*, 399 Ill. App. 3d at 81.

¶ 33 Although the Code mandates that Class X offenders receive a three-year MSR term, defendant argues that he should receive the two-year MSR term because possession of a stolen motor vehicle is a Class 2 offense and the sentencing statute imposed a two-year MSR term to offenders sentenced as Class 1 or Class 2 offenders. 730 ILCS 5/5-8-1(d)(2) (West 2008).

No. 1-11-3286

Although defendant acknowledges that his argument has been rejected many times by the Illinois Appellate Court, he argues that these cases were wrongly decided. Defendant points to the Illinois Supreme Court's decision in *People v. Pullen*, 192 Ill. 2d 36 (2000), to support his argument. Many of the decisions adverse to defendant's position have been decided subsequent to *Pullen*, which was decided in 2000. For example, *McKinney* and *Lee* were each decided 10 years after *Pullen*. *McKinney*, 399 Ill. App. 3d 77; *Lee*, 397 Ill. App. 3d 1067.

¶ 34 In *Pullen*, our supreme court was asked to analyze a sentencing statute that applied to offenders serving consecutive sentences. *Pullen*, 192 Ill. 2d at 40. The defendant in *Pullen* entered a negotiated guilty plea to five counts of burglary. *Pullen*, 192 Ill. 2d at 38. The defendant had an extensive criminal record, and was sentenced as a Class X offender, even though burglary is a Class 2 felony. *Pullen*, 192 Ill. 2d at 38-39. The defendant was sentenced to 15 years on each count of burglary; the sentences for counts I and II ran concurrently with each other, the sentences for counts III, IV, and V ran concurrently with each other, and those two terms were to be served consecutively, resulting in a total of 30 years' incarceration. *Pullen*, 192 Ill. 2d at 39.

¶ 35 On a motion to withdraw his guilty plea, the defendant argued that the 30-year sentence was void because it violated a statute limiting the aggregate length of consecutive prison terms to the sum of the maximum extended terms for the two most serious felonies. *Pullen*, 192 Ill. 2d at 39. During the relevant time period, the statutory limit for extended sentences for Class 2 felonies, such as burglary, was 14 years. *Pullen*, 192 Ill. 2d at 40-41 (citing 730 ILCS 5/5-8-2 (West 1994)). The defendant in *Pullen* argued that, because his sentence was comprised of two

No. 1-11-3286

separate terms to be served consecutively, his total sentence could not exceed 28 years, or 14 years for each consecutive term. *Pullen*, 192 Ill. 2d at 40.

¶ 36 The Illinois Supreme Court held that the defendant was required to be sentenced as a Class X offender because of his prior criminal history. *Pullen*, 192 Ill. 2d at 41. However, the court concluded that, under the terms of section 5-8-4(c)(2) of the Unified Code of Corrections (730 ILCS 5/5-8-4(c)(2) (West 1994)), the defendant's aggregate sentence could not exceed 28 years' imprisonment. *Pullen*, 192 Ill. 2d at 43-44. The court found that the terms of the statute explicitly stated that the maximum sentence for consecutive terms could not exceed the sum of the maximum terms authorized for the two most serious felonies. *Pullen*, 192 Ill. 2d at 42. The two most serious felonies involved were burglaries, a Class 2 offense, and therefore, the maximum terms for Class 2 offenses applied. *Pullen*, 192 Ill. 2d at 42-43.

¶ 37 Defendant argues that the reasoning in *Pullen* should apply here, but his arguments are not persuasive. As the Second District held in *McKinney*, the sentencing statute at issue here differs from the statute at issue in *Pullen* because the sentencing statute at issue "specifie[d] part of the sentence for a defendant's offense," whereas the statute at issue in *Pullen* "delineate[d] how separate sentences for separate crimes are served." *McKinney*, 399 Ill. App. 3d at 83.

¶ 38 The Illinois Supreme Court noted in *Pullen* that, had the defendant been sentenced to a single term, he would have been eligible for a longer sentence because he was sentenced as a Class X offender and would not have been subject to the maximum consecutive sentences statute. *Pullen*, 192 Ill. 2d at 45.

¶ 39 *Pullen* is distinguishable from the case at bar. The Illinois Supreme Court indicated that,

No. 1-11-3286

had the defendant not been sentenced to consecutive sentences, he would have received the sentence mandated by statute to Class X offenders. *Pullen*, 192 Ill. 2d at 45. Defendant is not subject to consecutive sentences, and the sentencing statutes indicate that offenders with criminal histories similar to defendant's shall be sentenced as Class X offenders, regardless of the classification of the underlying offense. 730 ILCS 5/5-4.5-95(b) (West 2008). Illinois courts have consistently held that MSR terms are inseparable parts of sentences. *McKinney*, 399 Ill. App. 3d at 81; *Lee*, 397 Ill. App. 3d at 1073. The statute in the case at bar does not delineate between the prison sentence and the MSR term; rather, it states that convicted defendants "shall be sentenced as a Class X offender." 730 ILCS 5/5-4.5-95(b) (West 2008). As a result, offenders who commit Class 1 or Class 2 offenses but are to be sentenced as Class X offenders are to be subject to Class X sentencing guidelines for every part of the sentence, including the MSR term.

¶ 40

#### CONCLUSION

¶ 41 For the aforementioned reasons, we affirm and order the mittimus corrected. First, defendant's two convictions of driving while his license was suspended or revoked stemmed from the same physical act, thus violating the one act, one crime rule, and therefore, we order the mittimus corrected to reflect only the conviction based on defendant driving on a revoked license. Second, we find that the Illinois recidivism statute mandates that defendants sentenced as Class X offenders must receive the entire Class X sentence, including the statutorily prescribed MSR term. Therefore, the trial court properly sentenced defendant to a three-year MSR term pursuant to the Code's recidivism statute requiring defendant to be sentenced as a

No. 1-11-3286

Class X offender.

¶ 42 Affirmed, mittimus corrected.