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2012 IL App (3d) 100653-U

Order filed July 3, 2012

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 3-10-0653
)	Circuit No. 09-CF-152
LIONEL WATSON,)	
)	Honorable Kathy Elliott,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant's actions indicated he was armed with a firearm or dangerous weapon, and that he took property by threatening the imminent use of force. The court properly sentenced defendant to three years of mandatory supervised release since defendant was required to be sentenced as a Class X offender.

¶ 2 Lionel Watson appeals his conviction and sentence for aggravated robbery. A jury found him guilty of aggravated robbery of a credit union. He argues that the State did not prove beyond a reasonable doubt that he indicated to anyone that he was armed, or that he used, or threatened the imminent use of force. We find that the State presented sufficient evidence for a jury to find, beyond a reasonable doubt, that defendant was armed and threatened the imminent use of force, where it presented evidence that defendant kept his right hand in his coat pocket throughout the robbery and gestured with that coat pocket as he became agitated during the course of the robbery, even though defendant never said he had a weapon and none of the witnesses saw a weapon.

¶ 3 Defendant also argues that the three-year term of mandatory supervised release (MSR) included in his sentence is void. He argues that while he was properly sentenced as a Class X offender, he was only guilty of a Class 1 felony; therefore, the court was statutorily required to sentence defendant to a two-year term of MSR. We find that defendant's three-year term of MSR is proper. We affirm defendant's conviction for aggravated robbery and the three-year term of MSR.

¶ 4 **BACKGROUND**

¶ 5 At defendant's trial for aggravated robbery, Sandra Birch testified to the following: On the day of the robbery, she was working as a teller at Bell Financial Community Credit Union. Between 2:30 and 3 p.m., defendant approached the counter, which was waist high and two-feet wide. He told her in a normal tone to give him all the money. Defendant's hands were in his

coat pockets, and he initially kept them below the counter.

¶ 6 Birch hesitated at first. Defendant then pressed up against the counter, leaving his right hand in his pocket. At this point, she wondered if he was armed. Defendant then repeated his demand for all the money, this time more loudly than before. Defendant's voice got louder as he gave instructions and pounded on the counter with his left hand. At some point, defendant moved his right hand, still in the coat pocket, above the counter and pushed it forward. Birch looked down, and defendant saw that she was looking at his coat pocket being pushed forward. She believed defendant had a gun, but did not make any inquiry about whether or not he had a gun.

¶ 7 Birch started placing smaller denomination bills on the counter. This upset defendant and he pounded on the counter and loudly demanded that Birch give him what he wanted, which she interpreted to mean the \$50 and \$100 bills. She put all the money from her cash drawer on the counter; defendant then took the money, ordered the employees on the floor and left. After he left, Birch got up and locked the door. She then calculated that defendant took \$15,000.

¶ 8 Dawn Akerman testified as follows: Akerman and Birch were the only two employees at the bank when defendant entered. She was seated at her desk, behind and to the side of Birch's station. As defendant approached the counter, he left his right hand in his coat pocket. Defendant then said, "You are going to give me all the money." Akerman saw defendant motion toward Birch with his right coat pocket. She said that the defendant "was insinuating that he had a weapon in his pocket." Akerman also said that defendant "was edging forward with his

pocket.” She admitted: she did not know whether it was his finger; he never said that he had a weapon; and, she never saw a weapon. Akerman also testified that defendant kept raising his voice until he was yelling. He also pounded on the counter. After defendant left, Akerman called 911.

¶ 9 The jury found defendant guilty. The court determined that due to defendant’s prior criminal history, it was required to sentence him as a Class X offender. The court sentenced him to 25 years in prison and three years of MSR. This appeal followed.

¶ 10 ANALYSIS

¶ 11 Defendant argues that the State failed to prove two elements of aggravated robbery beyond a reasonable doubt: first, that he used force or threatened the imminent use of force; second, that he indicated verbally or by his actions that he was armed with a firearm or dangerous weapon. He also argues that the three-year term of MSR was not authorized by statute.

¶ 12 I. Reasonable Doubt

¶ 13 We review a challenge to the sufficiency of the evidence by viewing the evidence in the light most favorable to the prosecution; we affirm if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 14 A person commits aggravated battery by: (1) taking property from the person or presence of another; (2) by the use of force or by threatening the imminent use of force; and (3) while indicating verbally, or through actions to the victim that he is armed with a firearm or other

dangerous weapon. 720 ILCS 5/18-5(a) (West 2010); *People v. Hall*, 352 Ill. App. 3d 537, 542 (2004). Defendant argues only that the State failed to prove the second and third elements beyond a reasonable doubt. The proof of each of these elements rests on whether or not defendant's actions of keeping his right hand in his pocket, placing it on the counter and moving it toward the teller are sufficient to prove that defendant indicated that he was armed with a firearm or other dangerous weapon. If in addition to having announced his intent to rob the credit union defendant indicated he was armed, the conviction for aggravated robbery is proper. *People v. Grengler*, 247 Ill. App. 3d 1006, 1012 (1993).

¶ 15 Defendant's actions indicated that he was armed with a weapon. A rational person confronted by a bank robber who: ordered them to give them all of the money, became more and more agitated, never took his hand out of his coat pocket, and made a point of placing his hand, still in the pocket on top of the counter and moving it toward the teller, would think that the bank robber had, or wanted them to think he had, a weapon of some sort. There is ample evidence to support a finding that a rational fact finder would find beyond a reasonable doubt that defendant indicated he had a weapon, and threatened the use of force in taking the \$15,000. The conviction for aggravated battery is affirmed.

¶ 16 II. Class X Sentencing

¶ 17 Defendant argues that his three-year sentence of MSR is void as it is not authorized by statute. Aggravated robbery is a Class 1 felony. 720 ILCS 5/18-5(b) (West 2010). Generally, conviction of a Class 1 felony requires a two-year term of MSR. 730 ILCS 5/5-8-1(d)(2) (West

2010).

¶ 18 Defendant was sentenced as a Class X offender pursuant to section 5-5-3(c)(8) of the Unified Code of Corrections (the Code). 730 ILCS 5/5-5-3(c)(8) (West 2008). This section states that when a defendant who previously has been convicted of two Class 2 or greater felonies, is convicted of a Class 1 or 2 felony, he “shall be sentenced as a Class X offender.” *Id.* The sentence imposed for a Class X felony must include a three-year term of MSR. 730 ILCS 5/5-8-1(d)(1) (West 2010). Defendant concedes that the court was required to sentence him as a Class X offender; however, he argues that this does not require that he be sentenced to a three-year term of MSR. Defendant raises an issue of statutory construction, which we review *de novo*. *People v. Robinson*, 172 Ill. 2d 452, 457 (1996).

¶ 19 Defendant argues that pursuant to section 5-5-3(c)(8), he is to be sentenced as a Class X offender, but since he was not convicted of a Class X felony, he cannot receive the three-year term of MSR required for the conviction of a Class X felony. Since section 5-8-1(d) sets the required MSR terms by reference to the class of the crime a defendant is convicted of, not the class of felony he is to be sentenced as, defendant argues that his conviction of a Class 1 felony requires the court to impose a two-year term of MSR. We disagree. If defendant had not been subject to section 5-5-3, he would have been subject to the two-year term of MSR. But he is subject to section 5-5-3 and must be sentenced as a Class X offender. MSR is a part of the sentence. Section 5-8-1 makes clear that a three-year term of MSR is required for a Class X felony.

¶ 20 Defendant argues that a different result is required in light of *People v. Pullen*, 192 Ill. 2d 36 (2000). In *Pullen*, the Illinois Supreme Court held that when a defendant is sentenced as a Class X offender pursuant to section 5-5-3, the felonies for which he is convicted remain either Class 1 or Class 2 felonies. See *Pullen*, 192 Ill. 2d at 42-43. The defendant in *Pullen* had been convicted of multiple Class 2 felonies. *Id.* at 38-39. The maximum term that the defendant could receive was “ ‘the sum of the maximum terms *** for the 2 most serious felonies involved.’ ” *Id.* The issue before the court was whether the maximum permissible sentence was 28 years (the maximum term for two Class 2 felonies), or 120 years (the maximum term for two Class X felonies). *Id.* The court held that since the controlling language was in terms of the felonies involved, and section 5-5-3 of the Code did not change the underlying felonies to Class X felonies, the maximum sentence that could be imposed was 28 years. *Id.* *Pullen* “merely limits the extent to which separate sentences for separate offenses may be served consecutively.” *People v. McKinney*, 399 Ill. App. 3d 77, 83 (2010).

¶ 21 The holding in *Pullen* does not change the outcome in this case. Here, a specific statutory provision alters a general provision. “It is [] a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.” *Knolls Condominium Ass’n v. Harms*, 202 Ill. 2d 450, 459 (2002).

¶ 22 The general rule is that conviction of a Class 1 felony requires a two-year term of MSR. 730 ILCS 5/5-8-1(d)(2) (West 2010). In this case, a specific rule applies requiring defendant to

receive the MSR term required for Class X offenders: three years. *Id.*; 730 ILCS 5/5-5-3(c)(8) (West 2008). In *Pullen*, there was no specific rule to apply, so the general rule applied. In this case, we must apply the specific rule.

¶ 23 A number of courts have addressed this issue in light of *Pullen*. Each court to do so has rejected the argument advanced by defendant. See *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); *People v. McKinney*, 399 Ill. App. 3d at 83; *People v. Watkins*, 387 Ill. App. 3d 764, 766-67 (2009). The trial court correctly imposed a three-year term of MSR as required by the Code.

¶ 24 CONCLUSION

¶ 25 For the forgoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 26 Affirmed.