

No. 1-12-1024

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 14447
	)	
NATHANIEL CHANDLER,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Presiding Justice McBride and Justice Taylor concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** We affirm defendant's uncontested robbery conviction, affirm the three-year MSR term and modify the fines and fee order.
- ¶ 2 Following a jury trial, defendant Nathaniel Chandler was convicted of robbery, sentenced as a Class X offender to 12 years' imprisonment and assessed \$530 in fines and fees. On appeal, defendant does not contest his robbery conviction but asserts that his mandatory supervised release (MSR) term should be reduced from three to two years. He also challenges certain pecuniary penalties imposed by the court. We affirm as modified.
- ¶ 3 Defendant and Erica Rodriguez were riding on the CTA green line about 10 a.m. on August 24, 2011. When defendant was exiting, he grabbed a gold chain with a medallion from

Rodriguez, who immediately chased him. Rodriguez and a police officer caught up with defendant.

¶ 4 Defendant first contends that the three-year term of MSR that attached to his Class X sentence is void and should be reduced to two years because he was convicted of a Class 2 offense. Although a void sentence can be challenged at any time, we review the sentence to assess whether it is actually void. *People v. Balle*, 379 Ill. App. 3d 146, 151 (2008). For the reasons that follow, we find that it is not.

¶ 5 Defendant does not dispute his status as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2010)), because he was previously convicted of two Class 2 or greater class felonies. Specifically, defendant has been Class X mandatory since 1992 based on his multiple convictions of robbery, theft, vehicular invasion and possession with intent to deliver. The instant robbery is a Class 2 felony (720 ILCS 5/18-1(c) (West 2010)).

¶ 6 A Class X felony warrants a three-year MSR term and a Class 2 felony requires a two-year MSR term. 730 ILCS 5/5-8-1(d) (West 2010). Defendant observes that the language in the Class X offender statute does not change the classification of his underlying Class 2 felony offense and, therefore, argues that the two-year MSR term for the Class 2 felony should apply. However, our court has reached the contrary conclusion and held that a defendant "sentenced as a Class X offender" is subject to the Class X three-year term of MSR. See, e.g., *People v. Brisco*, 2012 IL App (1st) 101612, ¶¶ 59-60; *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶¶ 47-49; *People v. Watkins*, 387 Ill. App. 3d 764, 767 (2009); *People v. Smart*, 311 Ill. App. 3d 415, 417-18 (2000); *People v. Anderson*, 272 Ill. App. 3d 537, 541-42 (1995).

¶ 7 Defendant takes issue with these holdings and cites to *People v. Pullen*, 192 Ill. 2d 36 (2000), for support. In that case, the supreme court held that a defendant's maximum consecutive sentence is determined by the classification of the underlying felonies. *Pullen*, 192 Ill. 2d at 46. Reviewing courts that have considered the application of *Pullen* in similar situations have

concluded, contrary to defendant's position, that a defendant sentenced as a Class X offender is subject to a three-year term of MSR. See *People v. Wade*, 2013 IL App (1st) 112547, ¶¶ 36-38; *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010); and *People v. McKinney*, 399 Ill. App. 3d 77, 83 (2010).

¶ 8 We also reject defendant's argument based on statutory construction. Class 1 and Class 2 felonies are subject to two-year terms of MSR. 730 ILCS 5/5-8-1(d)(2) (West 2010). Defendant observes that the legislature amended this statute effective in 2009 to provide increased MSR terms for certain criminal sexual offenses, such as, child pornography. Based on the amendment, defendant argues that he was subject to the normal two-year MSR term for his underlying Class 2 felony of robbery because the legislature could have, but did not, add similar language in the amendment to cover offenders who were being sentenced at a Class X level due to recidivism. For this proposition, defendant relies on a rule of statutory construction that provides that "where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions," *i.e.*, *expressio unius est exclusio alterius*. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151-52 (1997). Defendant's position is unpersuasive because this maxim cannot be applied to defeat the ascertained legislative intent and may be overcome by a strong indication of legislative intent. *Aldridge*, 179 Ill. 2d at 153-54.

¶ 9 Although "the expression of one thing in a statute can be construed to mean the exclusion of things unexpressed, this aid to the construction of a statute is subordinate to the rule that legislative intent controls interpreting a statute." *People v. Lee*, 397 Ill. App. 3d 1067, 1071 (2010). As the prior discussion explained, the legislature intended "to punish recidivist criminals more harshly than first-time offenders" under the Class X offender statute. *Lee*, 397 Ill. App. 3d at 1071. Moreover, under the doctrine of *in pari materia*, two statutes or different sections of the same statute dealing with the same subject will be considered with reference to one another to give them harmonious effect. *People v. McCarty*, 223 Ill. 2d 109, 133-34 (2006); *People v.*

*Rinehart*, 2012 IL 111719, ¶ 26; *People v. McCurry*, 2011 IL App (1st) 093411, ¶ 14. Both the Class X offender statute and the general MSR statute deal with the same subject matter, *i.e.*, the imposition of a term of MSR. Both statutes provide for an increased MSR term where applicable. These provisions should be read to give effect to the clear legislative intent as established in the plain language of the statutes and to give them the harmonious effect represented by the legislature in punishing certain offenders more harshly.

¶ 10 We adhere to our prior decisions and find that defendant, who is a Class X offender, was properly subject to a three-year term of MSR. In so finding, we further note that defendant's argument that the doctrine of lenity requires that he be sentenced to the two-year MSR term has also been rejected by this court. See *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011).

¶ 11 Defendant next correctly contends that the trial court erred in imposing a \$25 fine under section 10(c)(1) of the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(c)(1) (West 2010)). Instead, defendant maintains, and the State agrees, that a \$4 fine should be imposed under section 10(b) of the Act (725 ILCS 240/10(b) (West 2010)). We agree with that assessment.

¶ 12 Section 10 of the Act allows the trial court to assess a penalty against a defendant in support of a fund for victims of violent crime. 725 ILCS 240/10 (West 2010). However, subsection (c) of this Act applies only where no other fine is imposed. 725 ILCS 240/10(c) (West 2010). Where another fine has been imposed, the proper fine is calculated under subsection (b) of the Act, which allows for an assessment of \$4 for each \$40, or fraction thereof, of fines imposed against the defendant. 725 ILCS 240/10(b) (West 2010).

¶ 13 Here, the trial court imposed a \$30 children's advocacy assessment (55 ILCS 5/5-1101(f-5) (West 2010)), which constitutes a fine (*e.g.*, *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 107). In light of the \$30 fine, defendant should have been assessed \$4, not \$25, under section 10(b) of the Act.

¶ 14 Defendant also contends, and the State agrees, that he spent time in custody before sentencing and is entitled to a \$5 per-day custody credit to offset fines imposed by the trial court pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)). Here, the fines imposed against defendant included a \$30 children's advocacy assessment and a \$25 violent crime victim assistance (VCVA) charge, which, as stated above, has been reduced to \$4. The violent crime victim assistance charge is not subject to offset. 725 ILCS 240/10(c) (West 2010). However, because the children's advocacy assessment is a fine, and fines are subject to reduction (*People v. Jones*, 223 Ill. 2d 569, 587-599 (2006)), defendant is entitled to a presentence incarceration credit to offset it. The parties correctly agree that defendant served more than six days in presentence custody, and thus his \$30 children's advocacy assessment is offset against defendant's credit. The mittimus should thus reflect a total assessment of \$479, which includes the remaining \$4 VCVA charge and the \$475 in assessments not offset by the presentence credit.

¶ 15 For the foregoing reasons, we vacate the \$25 fine pursuant to section 10(c)(1) of the Act; impose a \$4 fine pursuant to section 10(b) of the Act; and find that defendant is entitled to a \$5 per day custody credit to offset the \$30 children's advocacy assessment. We affirm the judgment of the trial court in all other respects.

¶ 16 Affirmed as modified.