

NOTICE
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2013 IL App (4th) 120016-U

NO. 4-12-0016

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 12, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
FRED W. EICHHORST,)	No. 06CF1167
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant was properly sentenced as a Class 2 felon because Public Acts 94-110, 94-116, and 94-329 did not irreconcilably conflict as to the class of felony for a third DUI violation committed while the violator's driving privileges were revoked or suspended.

- ¶ 2 Where defendant had an extensive criminal record with numerous DUIs and was still drinking alcohol, the trial court's maximum sentence of seven years' imprisonment was not an abuse of discretion despite the existence of mitigating factors.

- ¶ 3 Four of the fines assessed against defendant must be vacated due to a lack of statutory authority for the imposition of them against defendant and because three of them were not judicially imposed.

- ¶ 4 In August 2011, defendant, Fred W. Eichhorst, pleaded guilty to one count of driving under the influence of alcohol (DUI), a Class 2 felony (Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2.1) (West 2004) (excluding Pub. Act 93-1039))). In

October 2011, the Champaign County circuit court sentenced defendant to seven years' imprisonment and ordered him to pay, *inter alia*, a \$10 Crime Stoppers assessment. Defendant filed a motion to reconsider his sentence or, in the alternative, to withdraw his guilty plea. After a January 2012 hearing, the court denied defendant's postplea motion.

¶ 5 Defendant appeals, asserting (1) Public Act 94-116 irreconcilably conflicts with Public Acts 94-110 and 94-329 and thus his conviction must be reduced to a Class 3 felony, (2) his sentence is excessive given the mitigating factors, and (3) the court lacked authority to impose various charges on him. We affirm in part, vacate in part, and remand with directions.

¶ 6 I. BACKGROUND

¶ 7 In July 2006, the State charged defendant by information with one count of DUI. The information asserted defendant committed the crime on July 10, 2006, had two other DUI violations, and had his license revoked at the time of the offense due to another DUI violation. In November 2006, the State filed a second DUI charge, a Class X felony (Pub. Act 94-114 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(c-16))), against defendant. The second charge was also based on defendant's actions on July 10, 2006, but asserted defendant had five prior DUI violations.

¶ 8 In a separate case, the State filed a July 31, 2006, complaint for forfeiture under sections 36-1 to 36-4 of the Criminal Code of 1961 (720 ILCS 5/36-1 to 36-4 (West 2006)), seeking forfeiture of the vehicle defendant was driving when he allegedly committed the DUI at issue. *In re 1998 Cadillac Seville*, No. 06-MR-486 (Cir. Ct. Champaign Co.). In September 2006, the trial court "involuntarily dismissed" the forfeiture complaint.

¶ 9 In May 2007, defendant filed a motion to dismiss the DUI charges in this case,

asserting the prosecution of the charges was barred by double jeopardy due to the involuntary dismissal of the forfeiture complaint. In September 2007, the trial court denied the motion. Pursuant to Illinois Supreme Court Rule 604(f) (eff. July 1, 2006), defendant appealed the denial of his motion to dismiss, and this court affirmed the denial. *People v. Eichhorst*, No. 4-07-0815 (June 4, 2008) (unpublished order under Supreme Court Rule 23).

¶ 10 In August 2011, pursuant to a plea agreement, defendant pleaded guilty to the first DUI charge, and the State agreed to dismiss the second one. The parties' agreement was open as to sentencing. The trial court admonished defendant the charge he was pleading guilty to was a Class 2 felony with a sentencing range of three to seven years' imprisonment. Defendant indicated he understood the aforementioned information. At the end of the hearing, the court accepted defendant's guilty plea to the first DUI charge.

¶ 11 In October 2011, the trial court held defendant's sentencing hearing. Defendant presented the testimony of his friend, Alan Greenstein. Greenstein testified defendant's mother died three years ago and defendant had been diagnosed with cancer. About three years ago, Greenstein noticed defendant seemed more regretful for his past drinking. Defendant also spoke in allocution. He admitted being an alcoholic and recognized he had made some horrible decisions. Defendant apologized for his actions and noted his cancer diagnosis shook him up and made him consider his past actions. He also explained he was still undergoing cancer treatment. After hearing the parties' arguments, the court explained its analysis in sentencing defendant to seven years' imprisonment. The court also ordered defendant to pay a \$2,500 fine; a \$10 Crime Stoppers assessment; and a \$200 genetic-marker-grouping-analysis fee.

¶ 12 Defendant's postplea motion asserted the trial court did not consider his medical

condition fully in sentencing him to seven years' imprisonment. The motion also asserted an eighth amendment violation (U.S. Const., amend. VIII) based on defendant's medical condition and the length of the prison term. Defense counsel filed the certificate required by Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). After a January 4, 2012, hearing, the court denied the postplea motion.

¶ 13 On January 5, 2012 (as evidenced by the docket sheet), defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009). See *Netto v. Goldenberg*, 266 Ill. App. 3d 174, 178, 640 N.E.2d 948, 952 (1994) (indicating the notice of appeal may list either the order disposing of the posttrial motion or the order entering the judgment), *overruled on other grounds* by *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 118-19, 679 N.E.2d 1202, 1212 (1997). Thus, this court has jurisdiction under Rule 604(d).

¶ 14 II. ANALYSIS

¶ 15 A. DUI Statute

¶ 16 Citing section 6 of the Statute on Statutes (5 ILCS 70/6 (West 2006)), defendant first asserts his DUI conviction should be a Class 3 felony because Public Act 94-116, which made a third DUI violation a Class 2 felony, irreconcilably conflicts with Public Acts 94-110 and 94-329, both of which treat a third DUI violation as a Class 3 felony. The State contends an irreconcilable conflict does not exist. While defendant did not raise this issue in the trial court, a sentence that does not conform to statutory requirements is void and may be challenged at any time. *People v. Maldonado*, 386 Ill. App. 3d 964, 967, 897 N.E.2d 854, 859 (2008) (*Maldonado I*). Thus, we will address defendant's issue.

¶ 17 Section 6 of the Statute on Statutes (5 ILCS 70/6 (West 2006)) provides, in pertinent part, the following:

"Two or more Acts which relate to same subject matter and which are enacted by the same General Assembly shall be construed together in such manner as to give full effect to each Act except in case of an irreconcilable conflict. In case of an irreconcilable conflict the Act last acted upon by the General Assembly is controlling to the extent of such conflict. The Act last acted upon is determined by reference to the final legislative action taken by either house of the General Assembly ***."

Under section 6, "[a]n irreconcilable conflict between 2 or more Acts which amend the same section of an Act exists only if the amendatory Acts make inconsistent changes in the section as it theretofore existed." 5 ILCS 70/6 (West 2006). Our supreme court has emphasized that, if a court can construe two acts so that both may stand, it must do so. *People ex rel. Dickey v. Southern Ry. Co.*, 17 Ill. 2d 550, 555, 162 N.E.2d 417, 420 (1959).

¶ 18 As with any statutory construction, the legislature's intent is the primary goal, rather than the technical priority of the passage of the acts. *Dickey*, 17 Ill. 2d at 554-55, 162 N.E.2d at 420. The legislature's whole record, including acts passed at subsequent sessions, must be examined to ascertain such intent. *Dickey*, 17 Ill. 2d at 555, 162 N.E.2d at 420. Once the legislature's intent is ascertained, courts give it effect irrespective of priority of enactment. *Dickey*, 17 Ill. 2d at 555, 162 N.E.2d at 420. For a later enactment to operate as a repeal by implication of an earlier one, a total and manifest repugnance preventing the two acts from

standing together must exist. *Dickey*, 17 Ill. 2d at 555, 162 N.E.2d at 420.

¶ 19 Section 11-501 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501 (West 2006)) has undergone numerous amendments. Both the 93rd and 94th General Assemblies each passed seven separate public acts regarding section 11-501. To add to the already complex situation, some of the amendments enacted by the 93rd General Assembly are not reflected in the public acts passed by the 94th General Assembly. Moreover, except for Public Act 94-963, which was the final one, none of the 94th General Assembly's public acts incorporate the amendments made by the other acts passed during the same General Assembly. Several cases have already addressed the interplay of some of the amendments enacted by 94th General Assembly on other provisions of section 11-501 of the Vehicle Code (625 ILCS 5/11-501 (West 2006)) but not subsections (c-1)(2) and (c-1)(2.1). See *People v. Newton*, 407 Ill. App. 3d 517, 944 N.E.2d 471 (2011) (subsection (c-1)(4)); *People v. Maldonado*, 402 Ill. App. 3d 1068, 932 N.E.2d 1038 (2010) (*Maldonado II*) (subsections (c-1)(4) and (c-16)); *People v. Harper*, 392 Ill. App. 3d 809, 910 N.E.2d 691 (2009) (subsection (d)(10)(H)); *People v. Gonzalez*, 388 Ill. App. 3d 1003, 906 N.E.2d 34 (2009) (subsections (d)(1)(G) and (d)(1)(H)); *Maldonado I*, 386 Ill. App. 3d 964, 897 N.E.2d 854 (subsection (d)(1)(G)); *People v. Prouty*, 385 Ill. App. 3d 149, 895 N.E.2d 48 (2008) (subsection(d)(2)). Thus, we closely examine the language of section 11-501 in its entirety and the language of the three public acts raised by defendant.

¶ 20 The following is a general overview of section 11-501 before the public acts of the 94th General Assembly. Subsection (a) of section 11-501 set out the elements of DUI. 625 ILCS 5/11-501(a) (West 2004). Subsection (b-2) provided that, except as section 11-501 provides otherwise, a violation of subsection (a) was a Class A misdemeanor. 625 ILCS 5/11-

501(b-2) (West 2004). Subsection (c-1) addressed the class of the offense and sentencing conditions when the violation of subsection (a) was committed during a period in which the violator's driving privileges was revoked or suspended for enumerated reasons. 625 ILCS 5/11-501(c-1) (West 2004). Subsection (c-1)(2) specifically addressed a third violation of subsection (a) while driving privileges are revoked or suspended. 625 ILCS 5/11-501(c-1)(2) (West 2004). Before Public Act 93-1093 (eff. Mar. 29, 2005) (striking 625 ILCS 5/11-501(c-1)(2.1)), subsection (c-1)(2.1) also addressed a third violation of subsection (a) and set forth sentencing conditions if the violator received probation, of which such language was not contained in subsection (c-1)(2) (625 ILCS 5/11-501(c-1)(2) (West 2004) (excluding Pub. Act 93-1039)). 625 ILCS 5/11-501(c-1)(2.1) (West 2004) (excluding Pub. Act 93-1039)). Public Act 93-1093 eliminated the duplicity of subsections (c-1)(2) and (c-1)(2.1) by striking subsection (c-1)(2.1) and moving the probation language of that section into subsection (c-1)(2). Pub. Act 93-1093 (eff. Mar. 29, 2005) (amending 625 ILCS 5/11-501(c-1)(2), (c-1)(2.1) (West Supp. 2003)). Subsection (c-5) addressed the class of the offense and sentencing conditions when the violation of subsection (a) occurred while the violator was transporting a person under the age of 16. 625 ILCS 5/11-501(c-5) (West 2004). Subsection (c-6) provided the class of the offense and sentencing conditions when the violator's blood, breath, or urine alcohol concentration was 0.16 or more at the time of the violation of subsection (a). 625 ILCS 5/11-501(c-6) (West 2004). Last, subsection (d) addressed situations that constituted aggravated DUI. Notably, a third violation of subsection (a) was aggravated DUI, and a Class 4 felony. 625 ILCS 5/11-501(d)(1)(A), (d)(2) (West 2004).

¶ 21 Public Act 94-116, which the legislature passed on May 16, 2005, amended

section 11-501 of the Vehicle Code as it existed prior to Public Act 93-1093. Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501 (West 2004) (excluding Pub. Act 93-1039)). In subsection (c-1)(2), Public Act 94-116 struck the language regarding the revocation or suspension of driving privileges and made any third violation of subsection (a) a Class 2 felony. Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2) (West 2004) (excluding Pub. Act 93-1039)). With regard to subsection (c-1)(2.1), it only changed the offense from a Class 3 felony to a Class 2 felony. Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2.1) (West 2004) (excluding Pub. Act 93-1039)). Public Act 94-116 further changed all types of third and fourth violations of subsection (a) to a Class 2 felony and provided a fifth or subsequent violation of subsection (a) was a Class 1 felony. Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2.1), (3), (4) (West 2004) (excluding Pub. Act 93-1039)).

¶ 22 On May 17, 2005, the legislature passed Public Act 94-110, which also amended section 11-501 of the Vehicle Code as it existed prior to Public 93-1093. Almost all of the amendments set forth in Public Act 94-110 pertained to the provisions of section 11-501 addressing a violation of subsection (a) when transporting a person under age 16. Pub. Act 94-110 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-5) to (c-11) (West 2004) (excluding Pub. Act 93-1039)). However, Public Act 94-110 did make the same changes to subsections (c-1)(2) and (c-1)(2.1) as Public Act 93-1093 did and combined the two into subsection (c-1)(2). Pub. Act 94-110 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2), (c-1)(2.1) (West 2004) (excluding Pub. Act 93-1039)). Accordingly, a third violation of subsection (a) while driving on a suspended or revoked license was still listed as a Class 3 felony. The only other amendment

not addressing a provision regarding the transportation of minors was a change to some of the language of subsection (c-13), which was also done by Public Act 93-1093. Pub. Act 94-110 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-13) (West 2004) (excluding Pub. Act 93-1039)).

¶ 23 The third act raised by defendant was Public Act 94-329, which was passed by the legislature on May 18, 2005. Pub. Act 94-329 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501 (West 2004) (excluding Pub. Act 93-1039)). It is unclear what version of section 11-501 it amended because the sources listed with the act do not contain section 11-501 of the Vehicle Code. Public Act 94-329 appears to also amend a version of section 11-501 before the amendments of Public Act 93-1093. Pub. Act 94-329 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501 (West 2004) (excluding Pub. Act 93-1039)). Public Act 94-329 added the following language to subsections (c-1)(1) to (c-1)(3), including (c-1)(2.1): "is guilty of aggravated driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof and." Pub. Act 94-329 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(1) to (c-1)(3) (West 2004) (excluding Pub. Act 93-1039)). It did not change the class of the offense, and thus a violation of section (c-1)(2.1) was still listed as a Class 3 felony. Pub. Act 94-329 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(c-1)(2.1), (d)(2) (West 2004) (excluding Pub. Act 93-1039)). Public Act 94-329 also added subsections (d)(1)(G) and (d)(1)(H), which added additional circumstances for aggravated DUI. Pub. Act 94-329 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(d)(1)(G), (d)(1)(H)). In subsection (d)(2), Public Act 94-329 added language excepting subsections (c-1)(2) and (c-1)(2.1) from its provision that made an aggravated DUI, a Class 4 felony. Pub. Act 94-329 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-

501 (d)(2) (West 2004) (excluding Pub. Act 93-1039)).

¶ 24 Defendant asserts Public Act 94-116, which amended subsection (c-1)(2.1) to increase the penalty from a Class 3 to a Class 2 felony irreconcilably conflicts with Public Acts 94-110 and 94-329, which amended other parts of the same subsection but did not change the offense from a Class 3 felony. First, all three acts amended older versions of the statute and did not in any way address each other. Second, all three acts were pending in the legislature at the same time. Thus, it is not a surprise the acts do not incorporate or address each other. Last, we note the Class 3 language in Public Acts 94-110 and 94-329 was preexisting language as no deletion or addition marks were noted in the act. Accordingly, we disagree with defendant that Public Acts 94-110 and 94-329 continuing to state the offense at issue was a Class 3 felony indicates the legislature intended to disagree with Public Act 94-116's elevation of the offense to a Class 2 felony. Public Act 94-116 was the only act that specifically addressed the class of felony for a third DUI violation while driving privileges are revoked or suspended and amended that part of the provision. Thus, while the acts are inconsistent on the surface, they do not irreconcilably conflict as to the appropriate class of felony.

¶ 25 The aforementioned conclusion is supported by a review of the three public acts in their entirety. An examination of the acts shows the legislature, with each act, had a different reason for amending section 11-501. With Public Act 94-116, the legislature focused on increasing the penalties for three or more violations of section 11-501(a). Public Act 94-110 focused on the provisions dealing with the transportation of children when section 11-501(a) is violated. Finally, Public Act 94-329 addressed aggravated DUI by making section 11-501(d) more consistent with other provisions of section 11-501 and adding new provisions. A reading

of all three acts demonstrates the Public Act 94-116 was the only act where the legislature intended to specifically address the class of felony for three or more DUI violations when driving privileges had been revoked. Thus, the broad purposes of the three acts may coexist with each other. See *Prouty*, 385 Ill. App. 3d at 155, 895 N.E.2d at 52-53.

¶ 26 Accordingly, this case is distinguishable from *Maldonado II*, 402 Ill. App. 3d at 1073-74, 932 N.E.2d at 1042-43, where the reviewing court concluded Public Acts 94-114 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501 (West 2004) (excluding Pub. Act 93-1039)) and 94-116 irreconcilably conflicted. We note *Maldonado II* is the only case to find an irreconcilable conflict between public acts passed by the 94th General Assembly. There, both public acts amended section 11-501 as it existed before either was passed and did so in contradictory ways. *Maldonado II*, 402 Ill. App. 3d at 1073, 932 N.E.2d at 1042. Public Act 94-114 specifically made a sixth or subsequent DUI a Class X felony. Pub. Act 94-114 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(c-16)). On the other hand, Public Act 94-116 specifically made a fifth or subsequent DUI (thus a sixth or subsequent DUI), a Class 1 felony. Pub. Act 94-116 (eff. Jan. 1, 2006) (adding 625 ILCS 5/11-501(c-1)(4)). Thus, both acts specifically addressed the class of felony for a sixth or subsequent DUI. See *Maldonado II*, 402 Ill. App. 3d at 1073-74, 932 N.E.2d at 1042. As the Second District noted, the inconsistency was one of commission, not mere omission. *Maldonado II*, 402 Ill. App. 3d at 1074, 932 N.E.2d at 1043.

¶ 27 Conversely, this case is similar to *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52, where the Second District concluded the inconsistencies between Public Acts 94-116 and 94-609 regarding section 11-501(d)(2) were not irreconcilable under section 6 of the Statute on Statutes. Public Act 94-116 amended subsection (d)(2) by adding language that provided

aggravated DUI as defined in subsection (d)(1)(A) was a Class 2 felony. Pub. Act 94-116 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501(d)(2) (West 2004) (excluding Pub. Act 93-1039)). Subsection (d)(2) in Public Act 94-609 lacked the language that Public Act 94-116 added to make aggravated DUI as defined in subsection (d)(1)(A), a Class 2 felony. Pub. Act 94-609 (eff. Jan. 1, 2006) (amending 625 ILCS 5/11-501 (West 2004) (excluding Pub. Act 93-1039)). The Second District noted Public Act 94-609 did not explicitly repeal the amendments made by Public Act 94-116. *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52. It further stated the respects in which the two acts explicitly amended the original DUI statute were not inconsistent because Public Act 94-609 made a limited change to subsection (d)(1)(F) that was separate from the changes made by Public Act 94-116. *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52.

¶ 28 Moreover, the *Prouty* court declared that, "had the legislature consciously intended to repeal what it had passed four days earlier, it probably would have done so explicitly by striking out the language that Public Act 94-116 had added to subsection (d)(2) and by restoring, through italicizing, the language that Public Act 94-116 had stricken from subsection (c-1)." *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52. The fact the two acts were passed only four days apart suggests the drafters of Public Act 94-609 simply overlooked what they intended to add with Public Act 94-116. *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52. "Such an inference is more plausible than positing that the legislators had a sudden change of heart but chose to express it by passive indirection." *Prouty*, 385 Ill. App. 3d at 154, 895 N.E.2d at 52.

¶ 29 Here, the three acts at issue were each passed on three separate, consecutive days. Thus, we agree with *Prouty*'s conclusion the proper and logical inference is the lack of the Class 2 language in Public Acts 94-110 and 94-329 was an oversight due to the close proximity of the

acts' approvals. Moreover, like *Prouty*, no strikeouts in Public Acts 94-110 and 94-339 expressly indicated an overruling of the Class 2 felony language of Public Act 94-116. Additionally, only Public Act 94-116 specifically addressed the class of felony for a third DUI violation while driving privileges are revoked or suspended. We recognize both Public Acts 94-116 and 94-110 addressed the duplicative nature of subsections (c-1)(2) and (c-1)(2.1) in different ways, but the end result was the same, *i.e.*, one subsection addressing the third DUI violation while driving privileges are revoked. Thus, that surface inconsistency does not alter our analysis.

¶ 30 Accordingly, we find Public Acts 94-116, 94-110, and 94-329 are not irreconcilably inconsistent with regard to the class of felony for a third DUI violation while driving privileges are revoked or suspended. Thus, defendant was properly sentenced as a Class 2 felon.

¶ 31 B. Prison Term

¶ 32 Defendant also asserts his seven-year prison term was excessive given the mitigating factors in existence in this case. The State disagrees the sentence was erroneous. We agree with the State.

¶ 33 For excessive-sentence claims, this court has explained appellate review of a defendant's sentence as follows:

"A trial court's sentencing determination must be based on the particular circumstances of each case, including factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. [Citations.] Generally, the trial court is in a better position than a court of

review to determine an appropriate sentence based upon the particular facts and circumstances of each individual case. [Citation.] Thus, the trial court is the proper forum for the determination of a defendant's sentence, and the trial court's decisions in regard to sentencing are entitled to great deference and weight. [Citation.] Absent an abuse of discretion by the trial court, a sentence may not be altered upon review. [Citation.] If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." (Internal quotation marks omitted.) *People v. Price*, 2011 IL App (4th) 100311, ¶ 36, 958 N.E.2d 341 (quoting *People v. Hensley*, 354 Ill. App. 3d 224, 234-35, 819 N.E.2d 1274, 1284 (2004)).

¶ 34 Here, defendant acknowledges the trial court considered his medical condition as a factor in mitigation but asserts the court erred by sentencing him to the maximum penalty. However, this court has recognized the "existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed." *People v. Phippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). At the hearing on defendant's postplea motion, the court emphasized it had considered all of the factors in mitigation at sentencing and found the maximum penalty was warranted based on defendant's lengthy problem with alcohol and driving. It also stated defendant was "a clear and present danger when he is free to drink and drive." The

record shows the court considered and weighed all of the relevant factors, including defendant's age, medical needs, and potential for rehabilitation.

¶ 35 Defendant further claims he had personally addressed his alcohol problem and expressed a desire to improve. However, at the time of his October 2011 presentence investigation, defendant noted he had been diagnosed with throat cancer 2 1/2 years ago. Despite the cancer diagnosis, defendant admitted in the presentencing report he still got "loaded" once a week and also drank two to three other times a week. Defendant had a recent public-intoxication conviction for his actions in March 2010. Thus, abundant evidence was presented from which the court could disbelieve defendant's statements suggesting he had changed his attitude about drinking.

¶ 36 Here, defendant committed his first criminal offense in 1968 and his first DUI in 1981. At the time of sentencing in this case, defendant had 7 prior DUI convictions and 14 misdemeanor convictions. At defendant's sentencing hearing, the trial court noted it had extensive experience in sentencing people for DUI and had never seen a person with a DUI record as extensive as defendant's. Defendant's record provides ample support for a maximum penalty.

¶ 37 Accordingly, we find the trial court did not abuse its discretion in sentencing defendant to seven years' imprisonment.

¶ 38 C. Fines

¶ 39 Last, defendant challenges the trial court's imposition of the following fines: \$10 for Crime Stoppers, \$15 for the Fire Prevention Fund, \$15 for the Fire Truck Revolving Loan Fund, and \$10 for the State Police Operations Assistance Fund. Specifically, he asserts the

Crime Stoppers fine does not apply to prison sentences (see *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002)), and the other three fines were not in existence when he committed the offense at issue. The State concedes the fines were improperly imposed. After reviewing the matter, we accept the State's concession and vacate the four aforementioned fines. In doing so, we note the latter three fines were not even ordered by the trial court. The imposition of a fine is a judicial act and, therefore, any fine not imposed by a judge must be vacated. *People v. Shaw*, 386 Ill. App. 3d 704, 711, 898 N.E.2d 755, 762-63 (2008).

¶ 40

III. CONCLUSION

¶ 41 For the reasons stated, we affirm in part, vacate in part, and remand the cause to the Champaign County circuit court for a modified sentencing order in conformance with this order. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 42 Affirmed in part and vacated in part; cause remanded with directions.