

burglary (720 ILCS 5/19-1(a) (West 2006)), for his August 2006 entry into a Jefferson West Mini Storage building with the intent to commit therein a theft. In August 2010, defendant entered an open plea of guilty to burglary in exchange for the State capping its prison recommendation at eight years. Prior to accepting his guilty plea, the trial court informed defendant although he was charged with a Class 2 felony, due to his extensive criminal history, he would be sentenced under Class X sentencing guidelines and any prison sentence would be followed by three years' MSR. In January 2011, the trial court sentenced defendant as a Class X offender to seven years in prison followed by three years' MSR.

¶ 5 In September 2011, defendant filed a "motion to correct mandatory supervised release term" in which he asserted the trial court erred by imposing a three-year MSR term when he was only convicted of a Class 2 felony, which carries a two-year MSR term. In October 2011, the trial court denied defendant's motion, noting in a docket entry "defendant is incorrect in his application of the sentencing guidelines."

¶ 6 In January 2012, this court allowed defendant's motion to file late notice of appeal. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues he should have only received a two-year term of MSR, rather than a three-year MSR term, because he was convicted of a Class 2 felony. We disagree.

¶ 9 Defendant relies on *People v. Hoekstra*, 371 Ill. App. 3d 720, 728, 863 N.E.2d 847, 856 (2007), to support his contention the MSR term should reflect his Class 2 conviction rather than his Class X sentence. In *Hoekstra*, the defendant was convicted of a Class 2 felony, but according to the Department of Corrections (DOC) website, he was sentenced to three years'

MSR. On appeal, the defendant contended because he was convicted of a Class 2 felony, he should only be required to serve a two-year MSR term despite his Class X sentence. *Id.* The State conceded defendant need only complete two years' MSR but noted the issue was not with the *mittimus*, but was a DOC error. *Id.* The Second District Appellate Court accepted the State's concession. *Id.* Thus, defendant's reliance on *Hoekstra* is misplaced because the court did not actually analyze the MSR issue.

¶ 10 Defendant next contends the plain language of section 5-8-1(d) of the Unified Code (730 ILCS 5/5-8-1(d) (West 2006)) uses a conviction classification, rather than a sentence classification, to determine the length of MSR. Thus, because he was only convicted of a Class 2 felony, defendant argues his MSR term should be two years according to the plain language of the statute. However, this court rejected the same argument in *People v. Smart*, 311 Ill. App. 3d 415, 723 N.E.2d 1246 (2000), finding the "language [of section 5-8-1(d)] clearly makes the term of [MSR] part of the entire sentence. Thus, when section 5-5-3(c)(8) states that a recidivist like defendant is to be 'sentenced as a Class X offender' (730 ILCS 5/5-3(c)(8) (West 1998)), it necessarily means that he must receive an enhanced term of imprisonment *and* an enhanced term of [MSR]." (Emphasis in original.) *Id.* at 417-18, 723 N.E.2d at 1248.

¶ 11 Defendant next asserts our supreme court's decision in *People v. Pullen*, 192 Ill. 2d 36, 733 N.E.2d 1235 (2000), is instructive here. We disagree. As we recently noted in *People v. Lee*, 397 Ill. App. 3d 1067, 1072, 926 N.E.2d 402, 407 (2010)—an opinion defendant acknowledges but argues was wrongly decided—the issue in *Pullen* was the maximum length of sentences a trial court could impose under section 5-8-4(c)(2) of the Unified Code (730 ILCS 5/5-8-4(c)(2) (West 1994)). In contrast, the issue in this case, as in *Lee*, is whether a defendant,

convicted of a Class 2 felony but sentenced as a Class X felon pursuant to section 5-5-3(c)(8) of the Unified Code (730 ILCS 5/5-5-3(c)(8) (West 2006)) should be sentenced to a three-year term of MSR. In *Lee*, citing section 5-8-1(d) of the Unified Code (730 ILCS 5/5-8-1(d) (West 2006) (stating "every sentence shall include as though written therein a term in addition to the term of imprisonment")), we held a three-year MSR term attaches to defendants convicted of Class 2 burglaries when they are sentenced as Class X offenders because the MSR term is part of the sentence. *Lee*, 397 Ill. App. 3d at 1073, 733 N.E.2d at 407. Thus, we pronounced, "since the MSR term is part of the sentence under section 5-8-1(d) of the Unified Code and the sentence must be a Class X sentence under section 5-5-3(c)(8) of the Unified Code, a reading of the two provisions together requires a Class X MSR term, *i.e.*, a three-year term under section 5-8-1(d)(1) of the Unified Code." *Id.*

¶ 12 The State contends the actual issue in this case is whether this court's holding in *Lee* was affected by Public Act 95-1052, which struck the language, "every sentence shall include as though written therein a term in addition to the term of imprisonment." Pub. Act 95-1052, § 90 (eff. July 1, 2009) (2008 Ill. Laws 4204, 4272) (amending 730 ILCS 5/5-8-1(d) (West 2006)). We agree this is the proper inquiry; however, defendant did not respond to the State's contention and, thus, has provided this court with no authority to support a proposition the legislature intended to remove MSR from the terms of an offender's sentence. To the contrary, our review of the legislative history of Public Act 95-1052 provided by the State reveals nothing that would indicate the legislature intended such an outcome. See 95th Ill. Gen. Assem., Senate Proceedings, May 24, 2007, at 14-17 (Senator Cullerton explaining the purpose of rewriting the Criminal Code was not to make any substantive changes, but to recodify the sentencing provi-

sions and put them in a different order); 95th Ill. Gen. Assem., House Proceedings, November 20, 2008, at 30-34 (Representative Turner explaining all Senate Bill 100 does is codify the sentencing code so practitioners can go to one section to determine what sentence applies to a specific crime; also clarifying the bill does not enhance or reduce any penalties and is strictly a reorganization bill). Thus, we decline defendant's invitation to reconsider our holding in *Lee* or those of our sister districts which have also held a three-year MSR term attaches to a defendant convicted of a Class 2 felony but sentenced as a Class X felon. See, e.g., *People v. McKinney*, 399 Ill. App. 3d 77, 927, N.E.2d 116 (2010) (Second District); *People v. Watkins*, 387 Ill. App. 3d 764, 901 N.E.2d 964 (2009) (Third District); *People v. Lampley*, 405 Ill. App. 3d 1, 939 N.E.2d 525 (2010) (First District, Third Division); *People v. Davis*, 2012 IL App (5th) 100044, 975 N.E.2d 784 (Fifth District).

¶ 13

III. CONCLUSION

¶ 14 For the reasons stated, we affirm. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 15 Affirmed.