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2014 IL App (3d) 120540-U

Order filed March 6, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0540
v.	)	Circuit No. 11-CF-256
	)	
KRISTIN HOLZMAN,	)	Honorable
	)	Charles H. Stengel,
Defendant-Appellant.	)	Judge, Presiding.

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

**ORDER**

- ¶ 1 *Held:* Defendant's sentence for solicitation of obstruction of justice is reduced to the maximum allowed for a Class A misdemeanor.
- ¶ 2 Defendant, Kristin Holzman, was convicted of theft (720 ILCS 5/16-1(a)(2)(A), (b)(5) (West 2010)) and solicitation of obstruction of justice (720 ILCS 5/8-1(a), (c); 31-4 (West 2010)). The trial court sentenced defendant to concurrent terms of three years in prison and ordered her to pay \$16,821.06 in restitution. Defendant appeals, arguing that the trial court

misapprehended the sentencing class of her solicitation offense. We reduce defendant's sentence for solicitation of obstruction of justice and otherwise affirm.

¶ 3

### FACTS

¶ 4 Defendant was charged with theft (720 ILCS 5/16-1(a)(2)(A), (b)(5) (West 2010)) and solicitation of obstruction of justice (720 ILCS 5/8-1(a), (c); 31-4 (West 2010)). During trial, evidence established that defendant accepted charitable gifts of money and services by falsely creating the impression that she was suffering from inoperable brain stem glioma, or brain cancer.

¶ 5 The charitable gifts defendant received included: (1) \$800 from a bake sale; (2) \$3,300 from a spaghetti dinner; (3) \$2,300 from a hog roast; (4) \$1,000 from Thrivent Financial; (5) \$5,006.37 from Rebuilding Together for roof repairs; and (6) \$3,000 from Arthur Hooker, through his church. After being charged, defendant contacted Hooker and asked him to lie about the purpose of his donations so that her penalty would be reduced. Hooker stated that he considered the request deceptive and refused to state that the donations were not related to defendant's claim that she had cancer.

¶ 6 At the conclusion of the trial, defendant was found guilty of both offenses. During the sentencing hearing, the trial court noted that defendant had violated the trust of the community and her actions had a chilling effect on helping other people who are in dire need of funds. The court found that defendant was calculating and a complete fraud. It noted that the large sum of money defendant received—over \$16,000—and the countless hours people spent helping her rendered the crime very serious. Because of this, the court stated that placing defendant on probation would send the wrong message. Therefore, the trial court sentenced defendant to concurrent three-year terms of imprisonment. In doing so, the court noted that it believed

defendant's solicitation of obstruction of justice offense was a Class 4 felony. Defendant appeals.

¶ 7

#### ANALYSIS

¶ 8 On appeal, defendant initially raised two issues. First, defendant argued that the trial court misapprehended the sentencing class of the solicitation offense. Second, defendant alleged that her restitution should be reduced by \$2,957. However, after receiving the State's brief, defendant has withdrawn her argument regarding restitution. Therefore, we are left with only the sentencing issue.

¶ 9 Defendant's offense for solicitation of obstruction of justice was a Class A misdemeanor. See 720 ILCS 5/8-1(c); 8-4(c)(5) (West 2010). However, during sentencing, the trial court stated that the offense was a Class 4 felony and sentenced defendant to the maximum term of three years. See 730 ILCS 5/5-4.5-45 (West 2010) (a Class 4 felony is punishable by a term of imprisonment of not less than one year and not more than three years). As a result, defendant was sentenced to a term that exceeded the maximum sentence for a Class A misdemeanor. See 730 ILCS 5/5-4.5-55 (West 2010) (the sentence for a Class A misdemeanor shall be a determinate sentence of less than one year). The State concedes the issue. Therefore, we find that the trial court erred when it sentenced defendant to three years for solicitation of obstruction of justice.

¶ 10 Having concluded that the trial court erred in sentencing defendant, we must determine whether the cause should be remanded for a new sentencing hearing. After our review of the record, we agree with the State that remand for resentencing is not necessary. First, we find no evidence to support defendant's claim that her sentence for theft was in some way premised on the incorrect sentence she received for solicitation of obstruction of justice. Second, the record clearly demonstrates that despite the mistake in classification, the trial court found defendant's

crimes very serious and intended to impose a maximum term sentence for the solicitation offense. Therefore, we reduce defendant's sentence on the solicitation charge to 364 days in prison, the maximum term for a Class A misdemeanor. See Illinois Supreme Court Rule 615(b)(4) (on appeal, the reviewing court may reduce the punishment imposed by the trial court); 730 ILCS 5/5-4.5-55 (West 2010).

¶ 11

#### CONCLUSION

¶ 12 The judgment of the circuit court of Henry County is affirmed as modified.

¶ 13 Affirmed as modified.