

THIRD DIVISION
September 23, 2015

No. 1-13-3653

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 20140
)	
JESUS PABON,)	Honorable
)	Shelley Sutker-Dermer,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court properly sentenced defendant to a mandatory supervised release term of three years.

¶ 2 After a bench trial, defendant Jesus Pabon was found guilty of attempted aggravated robbery and sentenced as a Class X offender, based on criminal background, to 18 years in prison and a mandatory supervised release term of three years. On appeal, Pabon contends that his mandatory supervised release term of three years is void and must be reduced to two years

because he was convicted of a Class 2 felony, not a Class X felony. For the reasons that follow, we affirm.

¶ 3 The State charged Pabon with attempted aggravated robbery and unlawful restraint arising from the October 31, 2010 attempted robbery of a convenience store at 5457 North Clark Street in Chicago. Based on the evidence presented at Pabon's trial, which we do not summarize because it is not relevant to the sole issue raised on appeal, the trial court found him guilty of attempted aggravated robbery, but acquitted him on the unlawful restraint charge.

¶ 4 At defendant's sentencing hearing, the State noted that Pabon had previously been convicted of armed robbery, a Class X felony, and burglary, a Class 2 felony. Accordingly, the State argued that the trial court was required to sentence Pabon as a Class X offender to between 6 and 30 years in prison. Defense counsel conceded Pabon was required to be sentenced to between 6 and 30 years in prison, but requested a shorter sentence because "nothing violent occurred" during the offense. The trial court later sentenced Pabon to 18 years in prison and a mandatory supervised release term of three years. Pabon filed a motion to reconsider his sentence, which the trial court denied. This appeal followed.

¶ 5 On appeal, Pabon does not dispute that he was properly sentenced as a Class X offender or that his prison term was appropriate, but contends that the trial court erred in sentencing him to a mandatory supervised release term of three years. In particular, Pabon argues that because he was convicted of a Class 2 felony, and not a Class X felony, his term of mandatory supervised release should be reduced to two years. Because this issue involves a question of statutory interpretation, our review is *de novo*. *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 59.

¶ 6 Section 5-4.5-95(b) of the Unified Code of Corrections directs that when a defendant is convicted of a Class 1 or 2 felony, and has previously been convicted twice of offenses classified

as Class 2 felonies or greater, "that defendant shall be sentenced as a Class X offender." 730 ILCS 5/5-4.5-95(b) (West 2010). Although the Unified Code of Corrections states that the term of mandatory supervised release for a Class 2 felony is two years (see 730 ILCS 5/5-8-1(d)(2) (West 2010)), our courts have consistently held "that when a defendant qualifies for a Class X sentencing enhancement, a three-year period of [mandatory supervised release] must be imposed." *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 72; see also *People v. Wade*, 2013 IL App (1st) 112547, ¶¶ 37-38; *Brisco*, 2012 IL App (1st) 101612, ¶ 60.

¶ 7 Pabon acknowledges that many appellate courts have found the proper term of mandatory supervised release for a defendant sentenced as a Class X offender is three years, but nevertheless relies on *People v. Pullen*, 192 Ill. 2d 36 (2000), arguing that those appellate decisions "misread the plain language of the [mandatory supervised release] statute and contradict settled law about the impact of Class X sentencing."

¶ 8 In *Pullen*, our supreme court held that when a defendant pled guilty to multiple Class 2 felonies, but was sentenced as a Class X offender based on criminal background, the maximum sentence the defendant could receive was calculated based upon the classification of the underlying offenses not based on Class X offenses. *Id.* at 38-39, 42-43. But this court has repeatedly rejected claims that *Pullen* should be read to require mandatory supervised release terms of two years instead of three years. See *Brisco*, 2012 IL App (1st) 101612, ¶¶ 61-62; *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lee*, 397 Ill. App. 3d 1067, 1072-73 (2010). This court's prior decisions are unwavering that *Pullen* does not influence the issue on appeal, and thus, we see no reason to depart from them.

¶ 9 We also reject Pabon's related argument that the principle of lenity requires us to find that the proper term of mandatory supervised release is two years. We have previously considered

and rejected an identical argument in *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011). We adhere to the reasoning in *Allen*.

¶ 10 Accordingly, we find that the trial court properly sentenced Pabon to a mandatory supervised release term of three years.

¶ 11 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 12 Affirmed.