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2015 IL App (3d) 130413-U

Order filed May 15, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0413
)	Circuit Nos. 12-CF-550 and 12-DT-562
PHILLIP DELVALLEE,)	
Defendant-Appellant.)	Honorable Cynthia M. Raccuglia, Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's unsentenced conviction of criminal trespass to vehicles is not a final judgment subject to appeal.

¶ 2 Defendant, Phillip Delvallee, was found guilty by a jury of criminal trespass to vehicles (720 ILCS 5/21-2 (West 2012)), aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2012)), and driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501 (West 2012)). The trial court sentenced defendant to six years' imprisonment on the offense of aggravated fleeing or attempting to elude a peace officer and

entered "straight convictions" on the offenses of criminal trespass to vehicles and DUI. Defendant was also ordered to pay restitution in the amount of \$1,250. Defendant appeals contending he was convicted of an offense with which he was not charged.

¶ 3

FACTS

¶ 4

On December 4, 2012, defendant was charged by indictment with unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)) and aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(1) (West 2012)); and a charge of DUI (625 ILCS 5/11-501 (West 2012)) was consolidated with the charges in the indictment. Defendant pled not guilty and the case was set for a jury trial.

¶ 5

The trial court granted defendant's request to instruct the jury on the offense of criminal trespass to vehicles (720 ILCS 5/21-2 (West 2012)) as a lesser included offense of unlawful possession of a stolen motor vehicle. The jury found defendant guilty of aggravated fleeing or attempting to elude a peace officer, DUI, and the lesser included offense of criminal trespass to vehicles.

¶ 6

After the jury had been dismissed, the court informed the parties that it would enter judgment as to the aggravated fleeing or attempting to elude a peace officer charge, but would leave the other charges open for sentencing.

¶ 7

At the sentencing hearing, the trial court entered a single judgment sentencing defendant to six years' imprisonment for aggravated fleeing or attempting to elude a peace officer, ordered defendant to pay restitution, and entered "straight convictions" as to the criminal trespass to vehicles and DUI charges. Defendant appeals.

¶ 8

ANALYSIS

¶ 9 On appeal, defendant contends the trial court erroneously considered criminal trespass to vehicles as a lesser included offense of unlawful possession of a stolen motor vehicle. The State argues that this court does not have jurisdiction to hear the appeal. Because the final judgment in a criminal case is the imposition of a sentence, and in light of the fact defendant was not sentenced on the criminal trespass to vehicles conviction, we are without jurisdiction to consider defendant's appeal.

¶ 10 The final judgment in a criminal case is the sentence, and, in the absence of the imposition of a sentence, an appeal cannot be entertained. *People v. Caballero*, 102 Ill. 2d 23, 51 (1984). In the instant case, defendant appeals from his conviction for criminal trespass to vehicles. However, the trial court only imposed a sentence on the aggravated fleeing or attempting to elude a peace officer conviction. A careful review of the record shows that the restitution ordered by the court was part of the sentence for the aggravated fleeing and was not a sentence imposed on the other convictions. Defendant concedes that no sentence was imposed on the conviction he is currently appealing and has made no argument otherwise. Without a sentence imposed on the criminal trespass to vehicles conviction, there is no final judgment on this particular offense and there can be no appeal. *Id.*

¶ 11 Although not cited by either party on appeal, the appellate court's decision in *People v. Michel*, 230 Ill. App. 3d 675 (1992) is analogous to the instant case. There, the trial court entered convictions on one count of filing a fraudulent retailers' occupation tax return and one count of signing a fraudulent retailers' occupation tax return. *Id.* at 676. A sentence was imposed only on defendant's conviction for filing a fraudulent retailers' occupation tax return. *Id.* Defendant appealed her conviction for signing a fraudulent retailers' occupation tax return. The court dismissed defendant's appeal because no sentence was imposed on the appealed

conviction and defendant had not raised any issue with respect to the conviction or sentence on the filing a fraudulent retailers' occupation tax offense. *Id.* at 678.

¶ 12 In reaching our conclusion, we reject defendant's contention that the supreme court's decision in *People v. Lilly*, 56 Ill. 2d 493 (1974) provides this court with jurisdiction to review defendant's unsentenced conviction. Under *Lilly*, a reviewing court may exercise jurisdiction to review an unsentenced conviction when an appeal from a final judgment on another offense is taken. *Lilly*, 56 Ill. 2d at 496. However, on appeal, defendant has not raised any issue as to his sentenced conviction. Without properly being before this court on the conviction for which a sentence was imposed, we cannot entertain defendant's appeal from the unsentenced criminal trespass to vehicles conviction. *Michel*, 230 Ill. App. 3d at 678.

¶ 13 **CONCLUSION**

¶ 14 The appeal from the judgment of the circuit court of La Salle County is dismissed.

¶ 15 Appeal dismissed.