

**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).

2015 IL App (4th) 130681-U

NO. 4-13-0681

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

June 25, 2015

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
THOMAS L. JARRETT,	)	No. 11CF1701
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

---

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

**ORDER**

¶ 1 *Held:* No plain error occurred as a result of the prosecutor's misstatement about the defendant's eligibility for extended-term sentencing.

¶ 2 After a February 2013 trial, a jury found defendant, Thomas L. Jarrett, guilty of one count of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)), a Class X felony, and one count of unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2010)), a Class 1 felony. The information for both of the aforementioned charges stated defendant had a previous conviction of unlawful possession of a controlled substance with the intent to deliver (People v. Jarrett, No. 05-CF-805 (Cir. Ct. Macon Co.)). At defendant's April 2013 sentencing hearing, the State introduced without objection a certified copy of defendant's conviction in case No. 05-CF-805. The prosecutor argued defendant was eligible for an extended-term sentence based on

defendant's prior conviction. The Macon County circuit court sentenced defendant to 16 years' imprisonment for unlawful possession of a controlled substance with the intent to deliver.

¶ 3 Defendant appeals, asserting his sentence should be vacated and his case remanded for a new sentencing hearing because the trial court sentenced him under a mistaken impression he was eligible for an extended-term sentence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Count I of the information asserted that, on December 5, 2011, defendant committed the following:

"UNLAWFUL POSSESSION [*sic.*] CONTROLLED  
SUBSTANCE WITH INTENT TO DELIVER WITH A PRIOR  
UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE  
WITH INTENT TO DELIVER CONVICTION In that the said  
defendant knowingly and unlawfully possessed with intent to  
deliver 15 grams or more, but less than 100 grams of a substance  
containing cocaine, a controlled substance, \*\*\* and the said  
defendant, having been previously convicted of Unlawful  
Possession of Controlled Substance With Intent to Deliver \*\*\* in a  
case entitled the People of the State of Illinois vs. Thomas Jarrett,  
Criminal Number 05-CF-805." (Capitalization in original.)

The information listed the sentencing range as 6 to 60 years' imprisonment. Count II, unlawful possession of a controlled substance, also included the language about defendant's prior conviction in case No. 05-CF-805 and stated a sentencing range of 4 to 30 years' imprisonment. Count III charged defendant with the offense of armed habitual criminal (720 ILCS 5/24-1.7(a))

(West 2010) (text of section effective July 1, 2011)) and mentioned defendant's conviction in case No. 05-CF-805 and his aggravated battery conviction in Macon County case No. 98-CF-1433.

¶ 6 Before beginning defendant's February 2013 trial, the trial court severed the trial on count III from the trial on the first two counts at defendant's request. The court then commenced the trial on counts I and II. At the conclusion of the trial, the jury found defendant guilty of both charges, but the court vacated the guilty finding as to count II under the one-act, one-crime rule. Defendant did not file a posttrial motion.

¶ 7 On April 29, 2013, the trial court held defendant's sentencing hearing on count I. Defendant's presentence investigation report showed that, in addition to the two previously mentioned felonies, defendant had 17 misdemeanor convictions for, *inter alia*, driving on a revoked license, possession of cannabis, and resisting a peace officer. He also had a felony conviction in a juvenile case that defense counsel believed was a conviction in adult court. As previously stated, the State presented a certified copy of defendant's conviction in case No. 05-CF-805. Defendant's father, Robert Barbee, testified on defendant's behalf. Barbee testified he was very close to defendant and was unaware of defendant's involvement with drugs. He had never seen defendant drink alcohol or use drugs. Barbee would support defendant's efforts to be a productive member of society. In its argument, the State asserted defendant was subject to a sentencing range of 6 to 60 years' imprisonment based on his prior conviction. However, the State recommended a prison sentence of 20 years based on defendant's prior record and continued recidivism. Defense counsel suggested a 10-year prison term.

¶ 8 In sentencing defendant to 16 years' imprisonment, the trial court recognized defendant's mitigation evidence but found the aggravating factors far outweighed the mitigation.

The court noted defendant had "a lot of prior criminal offenses" and noted the 2005 drug offense was a serious one with a nine-year prison term. Moreover, it pointed out defendant did not learn from that experience and committed more offenses after he served his time on the 2005 drug offense. Thus, the court concluded the sentence in this case "should be somewhat substantially greater than \*\*\* just barely above the 9 years."

¶ 9 On May 16, 2013, defense counsel filed a motion to reconsider defendant's sentence, asserting his sentence was excessive and the court placed undue emphasis on other-crimes evidence offered in aggravation. Defendant filed *pro se* a motion to reduce his sentence, which defense counsel adopted. After an August 8, 2013, hearing, the trial court denied defendant's postsentencing motions. On August 12, 2013, defendant filed a notice of appeal. On August 22, 2013, defendant filed a timely amended notice of appeal in compliance with Illinois Supreme Court Rules 606 (eff. Feb. 6, 2013) and 303(b)(5) (eff. May 30, 2008). Thus, this court has jurisdiction under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 10 II. ANALYSIS

¶ 11 Defendant contends he was not eligible for extended-term sentencing under section 5-5-3.2(b)(1) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(b)(1) (West 2010) (as amended by Pub. Acts 97-38, § 90-200 (eff. June 28, 2011) and 97-333, § 560 (eff. Aug. 12, 2011)) because his prior felony was a Class 1 felony, which is not the same class or a greater class felony than his current Class X felony. He further argues the trial court's mistaken belief he was eligible for an extended-term sentence influenced the court's sentencing decision. The State agrees defendant was not eligible for an extended-term sentence but asserts defendant forfeited the issue and the error is not plain error. We disagree with the parties an error occurred in this case.

¶ 12 Section 408(a) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/408(a) (West 2010)) provides the following: "Any person convicted of a second or subsequent offense under this Act may be sentenced to imprisonment for a term up to twice the maximum term otherwise authorized, fined an amount up to twice that otherwise authorized, or both." In this case, defendant was convicted of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010)), a Class X felony, which carries a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-4.5-25(a) (West 2010)). As previously noted, defendant did have a previous conviction of unlawful possession of a controlled substance with the intent to deliver (People v. Jarrett, No. 05-CF-805 (Cir. Ct. Macon Co.)). Thus, under section 408(a) of the Act, defendant could be sentenced to a prison term up to twice the maximum for a Class X felony, which would be 60 years' imprisonment. Accordingly, the sentencing range stated in the information and by the prosecutor at defendant's sentencing hearing was correct.

13

III. CONCLUSION

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

¶ 15 Affirmed.