

FIRST DIVISION
MARCH 29, 2013

No. 1-10-3068

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 3333
)	
HOWARD LOVELADY,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the trial court is affirmed because trial counsel was not ineffective at the directed verdict stage, the trial court's error did not constitute plain error, and the defendant's mandatory supervised release term is not void.

¶ 2 This appeal arises from a September 15, 2010 judgment entered by the circuit court of Cook County which found defendant-appellant Howard Lovelady (Lovelady) guilty of burglary pursuant to section 19-1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/19-1(a) (West 2008)). On appeal, Lovelady argues that: (1) trial counsel was ineffective because, at the directed verdict stage, counsel failed to argue that there was insufficient evidence to support the residential burglary count;

(2) the trial court committed reversible error when it provided the jury with an improper jury instruction for the offense of residential burglary; and (3) his mandatory supervised release (MSR) term of three years is void, and must be reduced to two years. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On December 15, 2009, several items including a refrigerator, a stove and multiple kitchen cabinets were taken from an apartment (unit one) in a multiple-unit apartment building at 311 South Kilbourn Avenue in Chicago, Illinois. On January 31, 2010, Lovelady was arrested in connection with the incident. Lovelady was charged by information with one count of residential burglary pursuant to section 19-3(a) of the Code (720 ILCS 5/19-3(a) (West 2008)) and one count of burglary pursuant to section 19-1(a) of the Code.

¶ 5 On September 14, 2010, Lovelady's jury trial commenced in the circuit court of Cook County. The evidence showed that unit one is an apartment within a single building (the Kilbourn building) that consists of the addresses 311 South Kilbourn Avenue and 309 South Kilbourn Avenue. Both addresses of the Kilbourn building contain multiple apartment units that share a common entrance into the building. Juanita Gilmore (Gilmore), a resident of the Kilbourn building, testified that around 7 p.m. on December 15, 2009, she was in front of the Kilbourn building working on her car with her mechanic. Lovelady approached Gilmore and engaged her in conversation. Gilmore knew Lovelady because he was the former maintenance man of the Kilbourn building. Gilmore testified that Lovelady asked her if she was going to "say anything" if he "[brought] some stuff out of [the Kilbourn building]." She responded "I ain't got nothing to do with that." Gilmore testified

that when she went back inside the Kilbourn building to retrieve a component of her car from her apartment, she saw Lovelady and another man she did not recognize, carrying appliances out of the front exit of the building. Gilmore then left her apartment to go back outside to her car. Gilmore testified that on her way outside the Kilbourn building, she again noticed Lovelady and the unidentified man carrying appliances out of the building. Gilmore's mechanic was waiting for her at the door of the Kilbourn building and offered to help Lovelady and the unidentified man carry an appliance. Gilmore testified that she told her mechanic not to get involved with moving the appliances before he was actually able to help Lovelady and the unidentified man. She stated that she saw Lovelady and the unidentified man move a refrigerator and a stove.

¶ 6 Gilmore further testified that on December 16, 2009, she was stopped by police outside of the Kilbourn building. Gilmore testified that the police asked her name, handcuffed her, and put her in the back of a police car. She had a conversation with the police, however, the court did not allow the content of the conversation into evidence. Gilmore testified that after her conversation with the police, they took her inside the Kilbourn building and showed her a security camera recording. Gilmore was then released. Gilmore was never charged or taken to the police station.

¶ 7 Andrew Bulkowski (Bulkowski) testified that he owned the Kilbourn building. He stated that the Kilbourn building is a 10-unit apartment building consisting of one bedroom and two bedroom apartments. At the time of the trial, most of the apartments were leased. Bulkowski testified that the Kilbourn building has a security system that consists of cameras in the hallways and outside the building. Bulkowski stated that in December 2008, he hired Lovelady as the custodian and caretaker of the Kilbourn building. Lovelady worked for Bulkowski for about nine months until September

2009. Bulkowski testified that he did not lease an apartment to Lovelady, but that Lovelady lived in the Kilbourn building with his girlfriend who leased an apartment from Bulkowski. Bulkowski stated that on December 15, 2009, he owned unit one and it was not being leased to anyone. He testified that unit one was fully equipped with a refrigerator, a stove, and cabinets in the kitchen. Bulkowski stated that unit one was ready to be leased, and that he had showed the apartment to prospective tenants as recently as "a day or two before [December 15, 2009]." Bulkowski testified that he was the only one who had keys to unit one, and was the only one with permission to enter unit one. He stated that no rehabilitation work was being done on unit one because it was ready to be leased.

¶ 8 Bulkowski testified that on December 16, 2009, he received a telephone call from Eugene Parker (Parker), the maintenance man of the Kilbourn building at the time of the burglary. The trial court did not permit Bulkowski to testify about the content of the telephone call, but Bulkowski stated that he immediately went to the Kilbourn building after speaking with Parker. When Bulkowski arrived at the Kilbourn building, he went to unit one to check if there was any damage. Bulkowski testified that he noticed that the door to unit one was "kicked in." He also noticed that the kitchen floor was scratched and the refrigerator, stove, and kitchen cabinets were missing. Bulkowski stated that he owned all of the items that were missing.

¶ 9 Bulkowski testified that he then checked the security camera recording from the previous night. There are six security cameras that monitor the Kilbourn building; four cameras monitor the outside of the building, and two cameras monitor the hallways inside the building. One of the security cameras records in the hallway outside of unit one. Bulkowski testified that he created a

DVD of the security camera recording outside unit one from 6:45 p.m. to 12:22 a.m. on December 15, 2009. Bulkowski stated that he viewed the security camera recording multiple times and gave the DVD to the police. The State then played the security camera recording in court while questioning Bulkowski. Bulkowski testified that the recording showed Lovelady and three individuals that he did not recognize, removing his appliances and kitchen cabinets from the Kilbourn building.

¶ 10 Chicago Police Department Detective Jody Longos (Detective Longos) testified that he reviewed the security camera recording with Bulkowski a few days after December 15, 2009. Detective Longos testified that the recording showed Lovelady "moving appliances." Detective Longos stated that he interviewed Gilmore and Parker in connection with the missing appliances. Detective Longos testified that on January 31, 2010, he and other police officers went to the Kilbourn building in search of Lovelady. When they arrived at the Kilbourn building, the officers proceeded to the second floor and approached the apartment of Lovelady's girlfriend. Detective Longos testified that when the officers initially gained entry to the apartment, they heard a door slamming from inside. The officers found a female in the apartment but could not locate Lovelady. Detective Longos testified that eventually, the officers located Lovelady on the roof of the Kilbourn building and arrested him.

¶ 11 Detective Longos testified that he interviewed Lovelady at the police station after reading him his *Miranda* rights. Detective Longos stated that he questioned Lovelady about the missing items from unit one, and Lovelady responded "I stole the stuff, but I would never do anything to hurt [Bulkowski] or the building." Detective Longos testified that Lovelady also said that the other

individuals involved in moving the appliances did not know that the appliances did not belong to Lovelady. Detective Longos stated that his interview with Lovelady was unrecorded and Lovelady did not provide a handwritten statement. Detective Longos testified that he took notes during his interview with Lovelady.

¶ 12 After Detective Longos' testimony, the State rested its case. Lovelady moved for a directed verdict, but the trial court denied Lovelady's motion.

¶ 13 Ruthie Eubanks (Eubanks) testified that on December 15, 2009, she lived in an apartment in the Kilbourn building with Lovelady and her three children. Eubanks testified that Lovelady is her boyfriend and the father of one of her three children. Eubanks stated that on the evening of December 15, 2009, someone knocked on her apartment door and Lovelady answered the door. Eubanks did not see who knocked on the door. Eubanks testified that Lovelady conversed with the person at the door and then told her that "he was going." Eubanks stated that Lovelady then left her apartment. Eubanks testified that she did not know what Lovelady did after he left her apartment.

¶ 14 Lovelady then testified in his own defense. He testified that around 7 p.m. on December 15, 2009, he was watching television with Eubanks, his daughter, and Eubanks' two children. He heard a knock at the door and answered the door. Lovelady testified that the person at the door was a man who Lovelady recognized as a painter (the painter) employed by Bulkowski. Lovelady stated that he had talked to the painter before but did not know his name. Lovelady testified that he conversed with the painter about moving some items from one of the vacant apartments, and agreed to meet the painter and other men on the first floor of the Kilbourn building. According to Lovelady, when he got to the first floor of the Kilbourn building there were already men inside unit one, and a stove

and refrigerator were sitting in the hallway. Lovelady testified that he helped carry the stove from the first floor of the Kilbourn building to a van that was parked outside. Lovelady stated that there were four other men present, and that he did not recognize anyone else other than the painter. He testified that he did not enter unit one and did not kick down the door. He said that he helped the men move a refrigerator, a stove, and kitchen cabinets. Lovelady stated that he thought the items he was moving belonged to Bulkowski. Lovelady testified that he received \$20 for helping the other men move the items.

¶ 15 Lovelady testified that he did not think he was doing anything illegal on December 15, 2009. He stated that he saw Gilmore on the night of December 15, 2009, but did not say anything to her. He testified that he did not call Bulkowski to ask why the appliances were being moved out of unit one. Lovelady testified that on December 16, 2009, he spoke with Parker about the missing items from unit one. He stated that Parker then called Bulkowski on his cellular phone. According to Lovelady, Parker handed the cellular phone to Lovelady and Lovelady spoke to Bulkowski about the missing items. Lovelady testified that on January 31, 2010, he was inside Eubanks' apartment and heard the police outside. Lovelady stated that he answered the door and the police told him that he was under arrest. Lovelady testified that he did not make any statements to the police. He stated that between December 15, 2009 and his arrest, he spoke to Bulkowski and told Bulkowski that he helped someone "[move] some stuff out." Lovelady testified that he did not tell police about the events of December 15, 2009 until he was arrested.

¶ 16 After Lovelady testified, the parties held a jury instruction conference off the record. The trial court summarized the results of the conference and Lovelady did not raise any objections to the

definitions of "burglary" and "dwelling." Following closing arguments, the jury retired to deliberate. At 4:20 p.m., the jury sent a note to the trial court stating that it was split on its verdicts for residential burglary and burglary. The votes at that point for the residential burglary count were as follows: four votes for guilty, and eight votes for not guilty. The votes at that point for the burglary count were as follows: nine votes for guilty, and three votes for not guilty. The jury was told to continue to deliberate.

¶ 17 At 5:15 p.m., the jury sent a note to the trial court stating that its decisions would not change. The trial court then issued the jury instructions pursuant to *People v. Prim*, 53 Ill. 2d 62 (1972). The jury was told to continue to deliberate. At 5:45 p.m., the jury asked for a transcript of Bulkowski's testimony. The jury was told that the transcript would be given to them when it became available, and that the jurors should continue to deliberate. At 7:20 p.m., the jury sent a note to the trial court stating that it had agreed on one count, but that the vote on the undecided count was nine to three. The jury was told to keep deliberating. At 8:15 p.m., the jury sent a note to the trial court stating that its deliberations were deadlocked. Defense counsel requested that the trial court accept the verdict on the decided count, and declare a mistrial on the undecided count. Over the State's objection, the trial court accepted the jury's verdict. The jury found Lovelady guilty of burglary. The jury was hung on the residential burglary count.

¶ 18 On October 4, 2010, Lovelady filed a motion to reconsider. On October 5, 2010, the trial court denied Lovelady's motion to reconsider. On October 7, 2010, the trial court sentenced Lovelady to 12 years' imprisonment as a Class X offender. On that same day, Lovelady filed a motion to reconsider his sentence. The trial court denied Lovelady's motion to reconsider his

sentence. The State then dismissed the residential burglary count against Lovelady.

¶ 19 Also, on October 7, 2010, Lovelady filed a timely notice of appeal. Therefore, this court has jurisdiction to consider Lovelady's arguments on appeal pursuant to Illinois Supreme Court Rule 603 (eff. Oct. 1, 2010) and Illinois Supreme Court Rule 606 (eff. Jan. 1, 2013).

¶ 20 ANALYSIS

¶ 21 We determine the following issues on appeal: (1) whether trial counsel for Lovelady was ineffective because, at the directed verdict stage, counsel failed to argue that there was insufficient evidence to support the residential burglary count; (2) whether the trial court committed reversible error when it instructed the jury on the offense of residential burglary; and (3) whether Lovelady's MSR term of three years is void and must be reduced to two years.

¶ 22 We first determine whether trial counsel for Lovelady was ineffective because, at the directed verdict stage, counsel failed to argue that there was insufficient evidence to support the residential burglary count.

¶ 23 Lovelady argues that his trial counsel was ineffective because at the directed verdict stage, counsel did not argue that there was insufficient evidence to support the residential burglary count. Specifically, Lovelady argues that pursuant to section 19-3(a) of the Code, in order for him to be convicted of residential burglary the State must have been able to prove that he entered the "dwelling place of another" with the intent to commit a felony therein. Lovelady asserts that for the purpose of residential burglary, the definition of the term "dwelling" is set forth in section 2-6(b) of the Code, which states:

"(b) For the purpose of Section 19-3 of this Code, 'dwelling'

means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owner or occupants actually reside or in their absence intended within a reasonable period of time to reside." 720 ILCS 5/2-6(b) (West 2008).

Lovelady argues that because there was no resident living or intending to live in unit one at the time of the burglary, then unit one could not have been considered a dwelling and the residential burglary count should have been dismissed. Lovelady contends that because the jury was improperly allowed to consider the residential burglary count, it resulted in a compromise verdict on the burglary count. He claims that the record shows that due to the length and contentiousness of the jury's deliberations, the jury agreed to find Lovelady guilty of burglary because it could not reach an agreement on the residential burglary count. Thus, Lovelady argues that if counsel had argued that unit one did not qualify as a dwelling under the residential burglary statute, then the residential burglary count would have been dismissed and the jury would not have compromised to find Lovelady guilty of burglary.

¶ 24 In response, the State argues that counsel for Lovelady was not ineffective for failing to argue that there was insufficient evidence to support the residential burglary count during the directed verdict stage of the trial. Specifically, the State argues that defense counsel's representation of Lovelady was not deficient because unit one qualified as a dwelling under both section 2-6(a) of the Code and section 2-6(b) of the Code. The State claims that Illinois case law has repeatedly shown that an apartment which is vacant at the time of a burglary is still considered a dwelling under section 2-6(b) of the Code. Thus, the State argues that defense counsel's performance was not deficient because an argument that unit one did not constitute a dwelling under section 2-6(b) of the

Code, would have been futile.

¶ 25 Moreover, the State argues that Lovelady was not prejudiced by defense counsel's performance at the directed verdict stage of the trial. The State points out that the jury failed to reach a consensus on the residential burglary count, and the count was later dismissed. The State contends that Lovelady's argument that the jury reached a compromise verdict on the burglary count due to its deliberations on the residential burglary count, is entirely based on speculation. Rather, the State argues that the record shows that the jury reached a unanimous decision to find Lovelady guilty of burglary, but could not reach a consensus on the residential burglary count. The State argues that in order for Lovelady to prove that defense counsel was ineffective, he must be able to demonstrate *actual prejudice*, and not mere speculation as to prejudice. Therefore, the State asserts that defense counsel was not ineffective because Lovelady suffered no prejudice as a result of counsel's performance.

¶ 26 In order to prevail on a claim of ineffective assistance of counsel, the defendant must establish that: (1) counsel's performance was deficient; and (2) counsel's deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). An attorney's performance is considered deficient when his representation of the defendant falls below an objective standard of reasonableness. *Id.* at 687-88. In order to show prejudice, the defendant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "In reviewing claims of ineffective assistance of counsel, we use a bifurcated standard of review, wherein we defer to the trial court's findings of fact unless they are against the manifest weight of the evidence, but make a *de novo* assessment of

the ultimate legal issue of whether counsel's actions support an ineffective assistance claim." *People v. Nowicki*, 385 Ill. App. 3d 53, 82 (2008). Because the facts surrounding Lovelady's claim of ineffective assistance of counsel are undisputed, we apply the *de novo* standard of review.

¶ 27 In order for Lovelady to prevail on his claim of ineffective assistance of counsel, he must be able to show that counsel's performance was deficient, and that he suffered prejudice as a result of the deficient performance. We note that Lovelady's ineffective assistance of counsel argument is based entirely on counsel's performance regarding the residential burglary count. Lovelady dedicates a significant portion of his brief on appeal to arguing that unit one did not constitute a dwelling under the residential burglary statute, and that counsel should have argued as such at the directed verdict stage of the trial. However, the jury failed to reach a consensus on the residential burglary count, and that count was later dismissed. Thus, the residential burglary count is not the underlying issue in this case. We need not address Lovelady's arguments regarding whether unit one was a dwelling under the residential burglary statute because it is clear that he suffered no prejudice as a result of counsel's performance.

¶ 28 Lovelady's theory is that because the jury engaged in lengthy and contentious deliberations on the residential burglary count and could not reach a consensus, it decided to compromise and return a guilty verdict on the burglary count. However, this theory is based on pure speculation. The record shows that there was sufficient evidence for the jury to find Lovelady guilty of *both* residential burglary and burglary. Even at the beginning of the jury's deliberations, the overwhelming majority of the jury voted to find Lovelady guilty of burglary. This does not suggest that the jury ultimately compromised on its final verdict. Rather, it suggests that over time the jurors

were able to reach a consensus on the burglary count. In order for Lovelady's ineffective assistance of counsel argument to be successful, he must demonstrate *actual* prejudice, not mere speculation that there may have been prejudice. Lovelady cannot reasonably argue that he was prejudiced by counsel's performance regarding the residential burglary count when that count was dismissed, and the outcome of the trial would not have been any different if counsel had presented the arguments that Lovelady suggests. Therefore, we are not persuaded by Lovelady's argument that trial counsel was ineffective for failing to argue that the residential burglary count should have been dismissed, during the directed verdict stage of trial. We hold that counsel was not ineffective.

¶ 29 Next, we determine whether the trial court committed reversible error when it instructed the jury on the residential burglary count.

¶ 30 Lovelady argues that the trial court committed reversible error when it instructed the jury on the definition of the term "dwelling" for the residential burglary count. As Lovelady points out, regarding the residential burglary count, the trial court provided the jury with the definition of "dwelling" as set forth in section 2-6(a) of the Code, instead of section 2-6(b) of the Code. Section 2-6(a) states:

"(a) Except as otherwise provided in subsection (b) of this Section, 'dwelling' means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence." 720 ILCS 5/2-6(a) (West 2008).

Lovelady asserts that the Illinois Pattern Jury Instructions state that when the court instructs a jury

on residential burglary, it should instruct the jury on the definition of "dwelling" as set forth in section 2-6(b) of the Code. See Illinois Pattern Jury Instructions, Criminal No. 4.03 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 4.03). Lovelady argues that section 2-6(b) of the Code provides a stricter definition of the term "dwelling" than section 2-6(a) of the Code. Thus, Lovelady contends that if the jury was unable to reach a verdict on residential burglary using the definition of "dwelling" as set forth in section 2-6(a) of the Code, it is likely that it would have unanimously acquitted Lovelady of residential burglary if it had used the definition of "dwelling" as set forth in section 2-6(b) of the Code. Lovelady argues that if the jury had unanimously acquitted Lovelady of residential burglary using section 2-6(b) of the Code, then the jury would not have entered into what he terms a compromise verdict on the burglary count. Therefore, Lovelady argues that if the trial court provided the jury with the correct definition of "dwelling" as set forth in section 2-6(b) of the Code, then the jury would have acquitted Lovelady of residential burglary, and it is likely that the jury's verdict would have been different regarding the burglary count. Lovelady acknowledges that he did not object to the jury instruction at trial and did not present these arguments in his posttrial motion. However, he asks this court to review the trial court's error under the plain-error doctrine.

¶ 31 The State responds by arguing that Lovelady forfeited his argument that the trial court erred in providing the improper jury instructions because he did not object to the jury instructions at trial, and did not include the issue in his posttrial motion. The State contends that although the trial court erred in instructing the jury on the definition of "dwelling" as set forth in section 2-6(a) of the Code, the error was not a "substantial defect" and thus should not survive the forfeiture rule. Therefore, the State argues that this court should not consider Lovelady's improper jury instruction argument

because the outcome of the case would not have been different if the proper instruction had been given.

¶ 32 Further, the State argues that although the trial court erred in instructing the jury on the definition of "dwelling" as set forth in section 2-6(a) of the Code, the error was harmless because Lovelady suffered no prejudice as a result of the instruction. The State contends that despite using the incorrect definition of "dwelling," the jury was unable to reach a consensus on the residential burglary count and the count was later dismissed. The State argues that the record shows that the jury's verdict of guilty on the burglary count was the result of a unanimous decision and not a compromise verdict. Also, the State asserts that unit one qualified as a "dwelling" under both section 2-6(a) of the Code and section 2-6(b) of the Code. Therefore, the State argues that the outcome of the case would not have been any different if the court had used the correct definition of "dwelling" when instructing the jury.

¶ 33 Generally, if a defendant does not object to a jury instruction at trial and does not raise the issue in a posttrial motion, he forfeits review of any supposed jury instruction error. *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). However, Illinois Supreme Court Rule 451(c) (eff. July 1, 2006) states that "'substantial defects'" in criminal jury instructions are not [forfeited] for failure to make timely objections. *Id.* (citing *People v. Herron*, 215 Ill. 2d 167, 175 (2005)). The principle of forfeiture regarding criminal jury instructions is coextensive with the plain-error doctrine, and the two rules are construed identically. *Id.* (citing *Herron*, 215 Ill. 2d at 175). The plain-error doctrine allows a reviewing court to consider a forfeited error when: (1) the evidence in a case is "so closely balanced that the error alone severely threatened to tip the scales of justice against [the defendant]";

or (2) "the error was so serious that it affected the fairness of the defendant's trial." *Herron*, 215 Ill. 2d at 186-87.

¶ 34 In this case, Lovelady argues and the State concedes that when instructing the jury on the residential burglary count, the trial court erroneously provided the definition of "dwelling" as set forth in section 2-6(a) of the Code instead of the correct definition as set forth in section 2-6(b) of the Code. Lovelady urges this court to review the trial court's error under the plain-error doctrine. He argues that the evidence in this case is closely balanced, and that the error affected the fairness of his trial. However, we are unpersuaded that the trial court's error in this case rises to the level of plain error.

¶ 35 It is important to emphasize that in this case, Lovelady is requesting that this court reverse his conviction of *burglary* and remand the matter for a new trial. Thus, any plain error analysis that we apply must be applied regarding the *burglary count* and not the residential burglary count. The majority of Lovelady's improper jury instruction arguments are directed to the residential burglary count. The evidence regarding the burglary count is not closely balanced. The evidence supporting Lovelady's conviction of burglary included: Gilmore's testimony that Lovelady asked her if she would "say anything" if he removed some items from the Kilbourn building; Gilmore's testimony that she saw Lovelady carrying appliances out of the Kilbourn building; Bulkowski's testimony that the security camera recording showed Lovelady carrying appliances out of the Kilbourn building; Detective Longos' testimony that during an interview, Lovelady said "I stole the stuff"; and Lovelady's testimony that he helped carry appliances out of the Kilbourn building. This evidence is more than sufficient to support the jury's guilty verdict on the burglary count. Likewise, the trial

court's error did not affect the fairness of Lovelady's trial. As previously discussed, Lovelady suffered no prejudice as a result of the jury considering the residential burglary count. There is nothing in the record to suggest that the trial court's error in providing the jury with the definition of "dwelling" as set forth in section 2-6(a) of the Code, influenced the jury's verdict on the burglary count. The record shows that the majority of the jury voted to find Lovelady guilty of burglary at the outset of the deliberations. Therefore, the evidence in this case regarding the burglary count was not closely balanced and did not affect the fairness of Lovelady's trial. We hold that the trial court's error did not rise to the level of plain error.

¶ 36 We next determine whether Lovelady's MSR term of three years is void, and whether his MSR term must be reduced to two years.

¶ 37 In this case, Lovelady was found guilty of burglary, which is a Class 2 felony. 720 ILCS 5/19-1(b) (West 2010). Because of his prior convictions, Lovelady was sentenced as a Class X offender. 730 ILCS 5/5-5-3(c)(8) (West 2008). The MSR term for a Class X sentence is three years. 730 ILCS 5/5-8-1(d)(1) (West 2010). Lovelady argues that although he was *sentenced* as a Class X offender, the *offense* of which he was convicted remains a Class 2 felony. Lovelady contends that because MSR terms are based on the class of the felony of which an offender has been convicted, his MSR term should be the term that applies to Class 2 felonies. Class 2 felonies require MSR terms of two years. 730 ILCS 5/5-8-1(d)(2) (West 2010). Thus, Lovelady argues that his MSR term of three years is void, and this court should reduce his MSR term to two years. However, as the State points out, Lovelady's argument flies in the face of well established Illinois case law. See *People v. McKinney*, 399 Ill. App. 3d 77, 83 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1072-73 (2010);

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People v. Watkins, 387 Ill. App. 3d 764, 766-67 (2009); *People v. Smart*, 311 Ill. App. 3d 415, 418 (2000); *People v. Anderson*, 272 Ill. App. 3d 537, 541-42 (1995). Therefore, Lovelady's argument is without merit. We hold that Lovelady's MSR term of three years is not void.

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 39 Affirmed.