

2014 IL App (2d) 120768-U
No. 2-12-0768
Order filed March 31, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
) of Ogle County.
Plaintiff-Appellee,)	
)
v.)	No. 11-CF-0074
)
CHARLES CHAMNESS,)	Honorable
) Michael T. Mallon,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence adduced at trial was sufficient to sustain defendant's convictions for aggravated discharge of a firearm. However, the trial court subjected defendant to an improper double enhancement when it relied on a factor that was inherent to the offense of aggravated discharge of a firearm as a factor in aggravation. Thus, we affirmed defendant's conviction, vacated his sentence, and pursuant to our authority under Supreme Court Rule 615(b)(4), modified his sentence to a term of 20 years' imprisonment for each count, to run concurrently.

¶ 2 Following a jury trial, defendant, Charles Chamness, was convicted of two counts of aggravated discharge of a firearm pursuant to section 24-1.2(a)(2) of the Criminal Code of 1961 (the Criminal Code) (720 ILCS 5/24-1.2(a)(2)(2010)), and sentenced to concurrent 30-year terms

of imprisonment. Defendant's convictions resulted from an incident where defendant allegedly discharged a firearm toward a purple Grand Am while standing a few feet away from that vehicle; and also discharging a firearm at an individual who was standing approximately seven feet away. No shell cases or bullet holes were found at the scene

¶ 3 Defendant raises two contentions on appeal: (1) his convictions must be reversed because the State failed to produce evidence establishing that he discharged a firearm within the meaning of the statute; and (2) the trial court abused its discretion in sentencing him to concurrent 30-year prison terms, which were the maximum extended prison terms allowed for his convictions. For the following reasons, we affirm defendant's convictions, vacate his sentence, but modify his sentence to a term of 20 years' imprisonment for each count, to run concurrently.

¶ 4 The record reflects that, on May 11, 2011, the State charged defendant by information with two counts of aggravated discharge of a firearm. Count 1 alleged that, on May 10, 2011, defendant knowingly discharged a firearm in the direction of a vehicle that he knew or should have known was occupied. Count 2 alleged that, on May 2, 2011, defendant knowingly discharged a firearm in the direction of Terrence Jones (Terry). The State also charged defendant with four counts of first-degree murder (attempt), with two counts being dismissed before trial.

¶ 5 On February 7, 2012, a jury trial commenced. Terry testified that he lived on the corner of Treatment Plant Road and Route 251 with his wife and two daughters. Terry's house faced a golf course that was east of Route 251. Terry testified that, on May 10, 2011, at approximately 4 p.m., he was on his front porch talking to his wife when he heard gunshots. Terry ran to his back

yard, where his children, ages 12 and 10, were playing. The son of Terry's neighbor, who was nine years old, was also in Terry's backyard.

¶ 6 Terry testified that, when he arrived in his backyard, he saw a purple Grand Am parked at the entrance to the trailer park, with a person sitting inside the vehicle on the driver's side and another person standing behind it. Terry testified that the men were screaming. Terry observed a gray Cadillac pull up and block the intersection of Treatment Plant Road and Route 251. Defendant exited the Cadillac with a revolver and ran toward the Grand Am. Terry testified that defendant was "fixated on the purple car" and ran up to it yelling "What's up motherfuckers." Terry yelled at defendant to not do "anything stupid" because kids were present. Terry testified that defendant was within five to seven feet of the Grand Am, aimed his revolver at the vehicle, and began firing. Terry testified that the person who was standing outside of the Grand Am got into the passenger side seat and the vehicle drove away toward Route 251.

¶ 7 Terry testified that after defendant fired at the Grand Am, Terry yelled at him and told him to stop. Terry testified that defendant turned toward him and "shot one shot." Defendant pulled the trigger a second time, but Terry did not hear a bullet. Thereafter, defendant fled the scene. Terry clarified in a written statement to law enforcement officials that when defendant pulled the trigger the second time, the gun clicked but did not fire.

¶ 8 Arturo Garcia testified that he has lived in the trailer park on Treatment Plant near Route 251 for 20 years. Garcia testified that, on May 10, 2011, he left his home early in the evening to drive to a Stop and Go store. While driving his vehicle, he observed a car pulling out of the trailer park and someone "shooting at it." Garcia heard gun shots and observed a purple Grand Am driving away. The person shooting was standing about 15 to 20 feet away from the Grand

Am. Garcia was unable to identify the shooter. After witnessing the shooting, Garcia stopped his vehicle and called 911.

¶ 9 On cross-examination, Garcia acknowledged that, when the shooter aimed his gun, a “big cement block building” was directly on the other side of the road as the car being shot at.

¶ 10 Angela Jones testified that she lived in a trailer park on Treatment Plant Road. Angela testified that, on May 10, 2011, she was inside her home when she heard what sounded like firecrackers. Angela ran out of her home because her son was outside and observed a man walking with a gun. Angela testified that the shooter was walking toward a “purplish” vehicle and she noticed a driver inside the vehicle. Angela did not see the person fire the gun. When shown a photo lineup by law enforcement officers, Angela identified the person with the gun with 80% certainty.

¶ 11 Chad Cavenagh testified that he lived in the trailer park off Route 251. On May 10, 2011, Cavenagh and his family were outside on his porch having a barbeque. A purple Grand Am with two people inside was circling the area when an altercation occurred. The Grand Am headed north and Cavenagh lost sight of the vehicle as it turned a corner. As the Grand Am drove away, Cavenagh observed a man with a revolver running behind it who “shot a few times.” Cavenagh testified that the shooter fired the first two shots directly in front of Cavenagh’s home. The shooter proceeded down the road to the corner and fired at least four more shots. After the shooting, Cavenagh observed the shooter in his back yard. Cavenagh testified that he was about three to four feet from the shooter. During his testimony, Cavenagh identified defendant as the shooter.

¶ 12 Officer James Jakymiw, a police officer with the Rochelle police department, testified that he responded to a “shots fired” call near 800 Treatment Plant Road. Jakymiw testified that

he attempted to find evidence of gunshots, such as bullet shell casings and damage to the surrounding area, but did not find any such evidence. Jakymiw testified that he had prior experience investigating shootings involving a revolver, and that he did not expect to find casings in those situations. He looked for bullet casings as part of this investigation to “cover[] bases.”

¶ 13 Detective Jeff Leininger, a detective with the Rochelle police department, testified that on May 11, 2011, he was told that a shooting had occurred the day before. He went to the area near 800 Treatment Plant Road to conduct a follow-up investigation. Upon arriving at the scene, Leininger looked for shell casings, broken glass, bullet holes, and other evidence that would indicate that a shooting had occurred. Leininger testified that he did not find any such evidence, but that he was not surprised because:

“I’ve been to several shootings and sometimes you just don’t find any. Depending on how they fire the gun. The angle of the gun. What they’re shooting towards. Whether or not it hits anything that stops the bullet. Whether the thing that was hit is still there.”

Leininger testified that Terry originally did not want to speak with law enforcement officials because he feared for his family, but Terry changed his mind and provided a statement. Leininger testified that, while he was at the scene, he received a radio call that a purple Grand Am was at a business called Casey’s. Upon arriving at Casey’s, Leininger spoke with Antonio Martinez, who Leininger believed was driving the Grand Am during the incident. Martinez refused to tell Leininger whether he had been shot at the day before. Leininger testified that he did not recover any evidence to indicate that the Grand Am had been struck by gun fire.

¶ 14 The jury found defendant guilty on both counts of aggravated discharge of a firearm but not guilty of attempted murder.

¶ 15 At defendant's sentencing hearing, the State introduced evidence that defendant had pleaded guilty to an aggravated-discharge-of-a-firearm charge in 2002. The State emphasized that, in this case, defendant had been found guilty of committing two shootings, at different people, and in a residential setting where children were present. The State noted that the shooting occurred during the day and that "it's lucky for everybody in this courtroom that we're not here discussing a murder case." The State continued:

"That being said, I do think that this case should be treated and sentenced similarly to a murder case, and that is because what *** defendant has showed here through his actions *** is a complete disregard *** for the safety of others and for the lives of others."

The State further argued:

"I understand the jury's verdict. We respect their verdict. We disagree. This was an attempt[ed] murder case. *** I understand the [c]ourt can't take that into account. This is what he's been found guilty of, but he turned and fired the gun in the direction of Terry Jones, and Terry Jones is trying to get him to stop shooting up the neighborhood."

The State requested that the trial court sentence defendant to a term of 20 years' imprisonment.

Defendant requested a sentence of 10 years' imprisonment.

¶ 16 The trial court sentenced defendant to a term of 30 years' imprisonment for each count, to run concurrently. The trial court's remarks, in their entirety, are as follows:

"For the record, I have considered the presentence report. I have considered the fact that--the factors in aggravation and mitigation, have taken into consideration the financial impact of incarceration to the taxpayers of the State of Illinois when someone is incarcerated in the Department of Corrections.

I don't think anybody mentioned it, but [defendant] was only 19 back in 2002 when he was given the break that he was given. This was clearly a crime of violence. A weapon was used. I just thank God you're not a very good shot, [defendant]. When you pointed that gun at Mr. Jones, you weren't very far away. You were lucky you missed him, or the gun misfired or both.

I guess--I believe it is necessary for the protection of the public that you be sentenced to the Illinois Department of Corrections. I believe that in this situation under these facts and circumstances that I'm going to sentence you to 30 years in the Illinois Department of Corrections."

¶ 17 Thereafter, defendant filed a motion to reconsider his sentence, arguing that his sentence was excessive. Defendant noted that the State argued at the sentencing hearing that this case should be treated and sentenced similarly to a murder case, even though defendant was never charged with murder and there were no allegations of bodily harm. Defendant further noted that the State also referred to this matter as an attempted murder case despite defendant being found not guilty of that charge. Defendant referenced the trial court's remark "I just thank God you're not a very good shot," and argued that statement implied that the trial court sentenced defendant based on attempted murder. Defendant also presented court records showing that, between 1993 and 2011, the range of sentences for aggravated discharge of a firearm within that judicial circuit ranged from probation to 15 years.

¶ 18 The trial court denied defendant's motion to reconsider sentence. The trial court noted that there were no mitigating factors "that I can see whatsoever." The trial court further concluded:

“I guess, for the record, I did consider the weapon discharged in the direction of people in a car and [Terry Jones]. The jury obviously found [defendant] not guilty of that charge, but I think those facts can be considered in sentencing. I think there’s an Ogle County case of *People v. Chanthaloth* where the defendant was found not guilty of murder, but was sentenced by a trial court *** to a substantial sentence, and the court did consider the facts of that case and the murder in that case, even though the defendant had been found not guilty of the murder.”

¶ 19 Defendant timely appealed.

¶ 20 Defendant’s first contention on appeal is that his convictions for aggravated discharge of a firearm must be reversed because the State failed to establish that he discharged a firearm within the meaning of section 24-1.2(a) of the Criminal Code. In support of this contention, defendant notes that a person commits the offense of aggravated discharge of a firearm when he “knowingly or intentionally *** discharges a firearm.” While section 24-1.2(a) does not define the term “discharge a firearm,” defendant notes that the Criminal Code’s general definitions article defines “personally discharged a firearm” as “knowingly and intentionally fir[ing] a firearm causing the ammunition projectile to be forcefully expelled from the firearm.” 720 ILCS 5/2-15.5 (2010). Thus, defendant maintains that this definition applies to the statutory term “discharges a firearm” provided in section 24-1.2(a) of the Criminal Code, and because the State failed to establish that defendant caused an “ammunition projectile to be forcibly expelled,” his conviction should be reversed. The State counters that, if the legislature had intended for the definition of “personally discharged a firearm” found in the Criminal Code’s general definitions article to apply to section 24-1.2(a), it could have amended section 24-1.2(a) to reflect that intent.

Further, the State argues that it produced sufficient evidence for the jury to conclude that defendant had caused an ammunition projectile to be forcibly expelled from the firearm.

¶ 21 Defendant's first argument, *i.e.*, that in order to be convicted of aggravated discharge of a firearm under section 24-1.2(a), the State must establish that he caused an ammunition projectile to be forcibly expelled from the firearm, presents a question of statutory interpretation that is subject to *de novo* review. *People v. Elliot*, 2014 IL 115308, ¶ 11. "The best indication of the legislature's intent is the language used in the statute, which must be given its plain and ordinary meaning." *People v. Davis*, 2012 IL App (2d) 110581, ¶ 20 (citing *People v. McClure*, 218 Ill. 2d 375, 382 (2006)). When statutory language is unambiguous, the statute must be applied as written without resorting to other aids of construction. *People v. Bywater*, 223 Ill. 2d 447, 481 (2006). Courts must construe the statute as a whole, bearing in mind both the subject the statute addresses and the legislature's objective in enacting it. *Moreland*, 2011 IL App (2d) 100699, ¶ 7. In doing so, however, a court "should not read into the statute exceptions, limitations, or conditions that the legislature did not provide." *Id.* (citing *McClure*, 218 Ill. 2d at 382).

¶ 22 Section 24-1.2 of the Criminal Code provides:

"(a) A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:

(2) Discharges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person."

Thus, the statute requires two elements for a defendant to commit the offense; that is, that the defendant (1) knowingly or intentionally discharged a firearm; and (2) in the direction of another person or in the direction of a vehicle known or reasonably should have been known to be occupied. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 22.

¶ 23 While section 24-1.2 does not define the term “[d]ischarges a firearm,” Section 2-15.5 of the Criminal Code defines “personally discharged a firearm” as occurring when a person, while armed with a firearm, knowingly and intentionally fires a firearm “causing the ammunition projectile to be forcefully expelled from the firearm.” 720 ILCS 5/2-15.5 (West 2010). Section 2-15.5 is contained in 2-0.5 of the Criminal Code, which provides definitions “for the purposes of this [Criminal Code].” 720 ILCS 5/2-0.5 (West 2010). Section 2-0.5 provides that “the words and phrases described in this [a]rticle have the meanings designated in this [a]rticle, except when a particular context clearly requires a different meaning.” 720 ILCS 5/2-0.5 (West 2010).

¶ 24 Because the legislature defined the term “personally discharged a firearm” in section 2-15.5 of the Criminal Code, we reject the State’s interpretation of “[d]ischarges a firearm” contained in section 24-1.2. We can discern no reason why the minor difference in the statutory phrases “personally discharged a firearm” and “discharges a firearm” should require two different interpretations. See *Leach*, 2011 IL App (1st) 090339, ¶ 23 (citing *Moran v. Katsinas*, 16 Ill. 2d 169, 175 (1959) (“In construing a statute where the same, or substantially the same, words or phrases appear in different parts of the same statute, they will be given a generally accepted and consistent meaning, where the legislative intent is not clearly expressed to the contrary”). Accordingly, in order to be convicted of aggravated discharge of a firearm under section 24-1.2 of the Criminal Code, the State must establish that a defendant discharged a firearm by “causing the ammunition projectile to be forcefully expelled from the firearm.”

¶ 25 Having interpreted the term “[d]ischarges a firearm” provided in section 24-1.2, we now consider defendant’s argument that the State failed to establish that he caused an ammunition projectile to be forcibly expelled from the revolver. When reviewing a challenge to the sufficiency of the evidence in a criminal proceeding, the relevant question is “whether, after

viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Reviewing courts apply this standard of review regardless of whether the evidence is direct or circumstantial, or whether the defendant received a bench or a jury trial. *People v. Norris*, 399 Ill. App. 3d 525, 531 (2010). Further, circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Id.* In applying this standard of review, a reviewing court is not permitted to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992). Accordingly, when considering a sufficiency of the evidence challenge, we will not retry the defendant and will not reverse a conviction “ ‘unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the] defendant’s guilt.’ ” *People v. Hires*, 396 Ill. App. 3d 315, 318 (2009) (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 26 In this case, the evidence that defendant caused an ammunition projectile to be forcibly expelled from a firearm was not so improbable, unsatisfactory, or inconclusive to create a reasonable doubt of his guilt. Three different witnesses identified defendant as either the shooter or as carrying a gun during the time of the shooting. Specifically, Terry testified that defendant aimed his revolver at the Grand Am and began firing; defendant subsequently aimed his revolver at Terry and “shot one shot” before pulling the trigger again. Terry testified that he had contact with defendant on “over a hundred” prior occasions and identified defendant as the shooter. Angela testified that she was inside her home when she heard what sounded like firecrackers. After going outside, she observed defendant walking with a gun toward a “purplish” vehicle.

Angela identified defendant with 80% certainty. Cavenagh testified that he witnessed defendant running behind the Grand Am and that defendant “shot a few times.” Based on this testimony, and viewing the evidence in the light most favorable to the State, the evidence was sufficient to establish that defendant discharged his revolver in the direction of the Grand Am and Terry. See *Norris*, 399 Ill. App. 3d 525, 532 (2010).

¶ 27 We are not persuaded by defendant’s arguments that the State’s “own witnesses established that the gun was fired in such close proximity to the purple Grand Am and Terry *** that both would have been struck by bullets, had bullets been emitted from the firearm”; and that no physical evidence existed that bullets had been fired at the crime scene. In *People v. Montes*, 2013 IL App (2d) 111132, the defendant challenged the sufficiency of the evidence for his convictions of attempted first-degree murder and aggravated discharge of a firearm. *Id.* ¶¶ 1, 3. The defendant argued that there “was no shooting” because the victim testified to hearing a “pop,” and no weapons, bullets, or casings were found. *Id.* ¶ 81. This court rejected that argument, noting that the victim testified that he saw a gun and that he was familiar with the sound of a gunshot because he had heard gunshots before. *Id.* We concluded that “it was the jury’s function to weigh the evidence and draw inferences therefrom.” *Id.*

¶ 28 Here, the jury heard testimony regarding the distance between defendant and both the Grand Am and Terry during the shootings. As in *Montes*, it was the jury’s function to weigh that testimony in light of the other evidence presented. We are not permitted to substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses (see *Sunderland*, 155 Ill. 2d at 17); thus we reject defendant’s arguments.

¶ 29 Defendant next contends that the trial court abused its discretion in sentencing him to concurrent maximum extended terms of 30 years for his two aggravated discharge of a firearm

convictions because that sentence was excessive. Defendant argues that the trial court's comments during the sentencing hearing and the hearing on defendant's motion to reconsider sentence indicated that the trial court considered facts that "were either untrue or inconsistent with the jury's verdicts." Defendant further notes that the State requested a 20-year sentence and argues that his sentence was excessive given the nature of the conduct involved and defendant's rehabilitative potential. In addition, at oral argument, we asked the parties to submit additional briefing on whether the trial court improperly used defendant's prior conviction for aggravated discharge of a firearm to make defendant eligible for an extended term sentence and also use that conviction as an aggravating factor in sentencing defendant.

¶ 30 We first address the double enhancement issue. Defendant argues that the trial court used his prior conviction to qualify him for an extended term sentence and also referenced that conviction as an aggravating factor when sentencing him to the maximum extended term sentence. According to defendant, his "sentences were improperly enhanced twice by the same prior conviction."

¶ 31 Double enhancement occurs when a factor already used to enhance an offense or penalty is used again to subject the defendant to a further enhanced offense or penalty. *People v. Thomas*, 171 Ill. 2d 207, 223-24 (1996). As our supreme court recently noted:

“ ‘A double enhancement occurs when either (1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself.’ ” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 232 (2009) (quoting *People v. Phelps*, 211 Ill. 2d 1, 11-13 (2004)).

Whether a trial court relied on an improper factor when sentencing a defendant is a question of law subject to *de novo* review. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. Nonetheless, there is a strong presumption that the trial court based its sentencing determination on proper legal reasoning and we will review the trial court's sentencing decision with deference. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009).

¶ 32 In *Thomas*, which the State cites, our supreme court addressed whether the defendant was subjected to an impermissible double enhancement when prior convictions were used to qualify the defendant as a Class X offender and those same convictions were considered again at the sentencing hearing in aggravation. *Thomas*, 171 Ill. 2d at 223. The *Thomas* court held:

“[T]he appellate court confused the concept of ‘double enhancement.’ What occurred in the instant action is a single enhancement of defendant’s punishment [to a Class X sentence]. The sentencing court then ‘reconsidered’ defendant’s two prior convictions, as part of defendant’s entire criminal history, in performing its constitutionally mandated duty to assess defendant’s rehabilitative potential in order to fashion an appropriate sentence. This exercise of judicial discretion was entirely proper and does not constitute an enhancement. We therefore hold that a sentencing court’s use of prior convictions to impose a Class X sentence *** does not preclude the court from considering those same prior convictions as an aggravating factor ***.” *Id.*

¶ 33 Here, the trial court used defendant’s prior conviction to qualify him for an extended-term sentence and then referenced that conviction during sentencing as a factor in aggravation. The only difference between this case and *Thomas* is that the trial court judge here used the prior conviction to qualify defendant for an extended-term sentence, whereas in *Thomas*, the trial court judge used prior convictions to impose a Class X sentence. Because we see no meaningful

distinction between the circumstances here from those in *Thomas*, we follow will *Thomas*. Therefore, we conclude that defendant was not subjected to an impermissible double enhancement when the trial court used his prior conviction to qualify him for an extended-term sentence and considered it again in aggravation during sentencing. See *id.*; *People v. Childress*, 321 Ill. App. 3d 13, 2008 (using defendant's prior convictions to qualify for an extended term and referencing those convictions again during sentencing was not an impermissible double enhancement).

¶ 34 However, after careful research on the double enhancement issue, we believe that the circumstances in this case fit within the first category of double enhancement. See generally *People v. Easley*, 2014 IL 115581 ¶¶ 27-30 (discussing whether the defendant was subjected to an improper double enhancement where a prior felony was both used as an element of the offense charged and to elevate the class of the offense). In *Abdelhadi*, this court considered a similar set of circumstances. In that case, the defendant was charged with aggravated arson and pleaded guilty. *Abdelhadi*, 2012 IL App (2d) 111053 ¶¶ 1-2. At sentencing, the State noted that aggravated arson is a Class X felony and argued that the trial court should consider in aggravation: (1) the defendant's acts endangered or could have endangered other people's lives; (2) the defendant's criminal history; and (3) that defendant was on probation. *Id.* ¶ 3. The trial court sentenced the defendant to a term of 10 years' imprisonment followed by 3 years of mandatory supervised release. *Id.* ¶ 5. In rendering its sentence, the trial court opined:

“Specifically in aggravation the Court has considered that the conduct caused by the defendant did, in fact, endanger the lives of individuals. That he was on probation at the time of the event. Court has considered his criminal history in aggravation.” *Id.* ¶ 4.

The defendant appealed, contending that his sentence was excessive because the “threat of harm to others” was an improper aggravating factor because that factor was inherent in the offense of aggravated arson. *Id.* ¶¶ 5-6.

¶ 35 On appeal, we found the defendant’s contention persuasive. The reviewing court began its analysis by noting that a single factor cannot be used both as an element of an offense and as a basis for imposing a harsher sentence than might have otherwise been imposed. *Id.* ¶ 8. The rationale underlying this prohibition is that the legislature has “already considered such a fact when setting the range of penalties and it would be improper to consider it once again as a justification for imposing a greater penalty.” *Id.* (quoting *People v. James*, 255 Ill. App. 3d 516, 532 (1993)).

¶ 36 Relying on *Dowding*, we concluded that “[t]he trial court’s recitation of aggravating factors mirrored the factors that the State argued in aggravation.” *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 12. The reviewing court continued:

“The mirroring *** shows not that the trial court merely mentioned the threat of harm to others in its summary of the circumstances of the case or in stressing the seriousness of the offense, but that the trial court actually considered that threat of harm as a factor in aggravation. Even in the presence of other, legitimate aggravating factors like the defendant’s being on probation at the time of the offense and his criminal history, we conclude that the trial court’s reliance on the threat of ‘harm to others’ was improper.” *Id.* (citing *Dowding*, 388 Ill. App. 3d at 944.)

¶ 37 The circumstances and reasoning in *Abdelhadi* are analogous to this case. At defendant’s sentencing hearing, the State emphasized that the shooting occurred in the middle of the day and that “it’s lucky for everyone *** that we’re not here discussing a murder case.” The State further

argued that defendant should be sentenced “similarly to a murder case” and that, although the jury found defendant not guilty of attempted murder, the State disagreed and believed that this was an “attempt[ed] murder case.” The trial court’s comments mirrored the State’s arguments. Specifically, the trial court expressed thanks that defendant was “not a very good shot” and that defendant was lucky that he missed Jones or that the gun had misfired. Further, at the hearing on defendant’s motion to reconsider, the trial court expressly noted that it had considered that a weapon had been discharged in the direction of Jones and the people in the purple Grand Am when sentencing defendant; and although defendant was found not guilty of attempted murder, the trial court believed that it could consider those facts in sentencing.

¶ 38 After reviewing the transcript, it is clear to us that, in sentencing defendant, the trial court did not merely mention that defendant had discharged the weapon in the direction of others in summarizing the circumstances present in this case. Instead, like *Abdelhadi*, we believe that the trial court improperly relied on defendant discharging his weapon in the direction of other people, which is an inherent element of the offense of aggravated discharge of a firearm (see *Leach*, 2011 IL App (1st) 090339, ¶ 22), when sentencing him to the maximum extended term for each count. *Abdelhadi*, 2012 IL App (2d) 111053, ¶¶ 12, 14.

¶ 39 Having determined that the trial court improperly relied on defendant discharging his weapon in the direction of others as an aggravating factor during sentencing, we further consider whether remand is necessary. “When a trial court considers an improper factor in aggravation, the case must be remanded unless it appears from the record that the weight placed upon the improper factor was so significant that it did not lead to a greater sentence.” *Dowding*, 388 Ill. App. 3d at 945. Here, while the trial court made a passing reference at sentencing to defendant’s criminal past and the need to protect the public, its comments overwhelming focused on how

defendant was lucky to have missed hitting Jones with gunfire. The trial court reemphasized that factor at defendant's motion to reconsider his sentence, where the trial court noted that it had considered that factor and also remarked that the court was permitted to consider that defendant discharging his weapon could have resulted in murder. That, in essence, was the aggravating factor relied on. See *People v. Saldivar*, 113 Ill. 2d 256, 272 (1986). Therefore, we find that remand is unnecessary and pursuant to our authority under Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967), we reduce defendant's sentence to concurrent 20 years terms of imprisonment for each count. See *id.*

¶ 40 Finally, because we have determined that defendant was subjected to an improper double enhancement and are modifying his sentence, it is unnecessary for us to address his remaining arguments on appeal regarding his sentence. See *In re John Doe Investigation*, 2011 IL App (2d) 091355, ¶ 9 (noting that a reviewing court will not issue advisory opinions to set precedent or guide future litigation).

¶ 41 For the foregoing reasons, we affirm defendant's convictions, vacate his sentence, and pursuant to Rule 615(b)(4), reduce his sentence for each conviction to a 20 year term of imprisonment, to run concurrently.

¶ 42 Affirmed as modified.