

No. 1-11-2874

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08 CR 17559
	)	
DEMARCO PHILLIPS,	)	
	)	Honorable Brian Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant's 15-year sentence for aggravated discharge of a firearm was not excessive. Defendant's Class 2 sentence for his UUW by a felon conviction did not constitute an impermissible double enhancement. Finally, defendant's Class 2 sentence for UUW by a felon was not an enhanced sentence that required notice in the charging instrument. We affirm the judgment of the circuit court.

¶ 2 Following a bench trial, defendant Demarco Phillips was convicted of aggravated discharge of a firearm and unlawful use of a weapon (UUW) by a felon. The circuit court sentenced him to concurrent terms of 15 years for aggravated discharge of a firearm and 7 years for UUW by a felon. On appeal, he contends that his 15-year sentence was excessive and that,

for his UUW by a felon conviction, the court improperly sentenced him to a Class 2 sentence because: (1) he was subjected to double enhancement; and (2) the State failed to give him proper notice of an enhanced sentence. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On September 11, 2008, defendant and codefendant Joshua Hewitt were indicted on 32 counts for various crimes including attempted first degree murder, aggravated discharge of a firearm, and multiple counts of UUW. Pertinent to this appeal, count III alleged that defendant and Hewitt “committed the offense of Aggravated Discharge of a Firearm in that they, knowingly discharged a firearm in the direction of a person they knew to be a peace officer, to wit: David Graham.” Count IV alleged that defendant “committed the offense of Unlawful Use of Weapon by a Felon in that he, knowingly carried or possessed on or about his person, a firearm, to wit: a handgun, after having been convicted of the felony offense of residential burglary case number 07 CR-1534.”

¶ 5 The following evidence was adduced at defendant’s bench trial, which began on August 17, 2010. Shortly after midnight on August 17, 2008, Dolton police detective Major Coleman responded to a dispatch of “shots fired” when he observed a gray Buick directly in front of him on Cottage Grove Avenue in Dolton. The driver of the Buick disobeyed a stop sign, skidded in the street, and swerved across lanes of traffic while turning onto Lincoln Avenue. Detective Coleman activated his emergency lights and sirens, pursued the vehicle, and radioed his position. Soon after, the vehicle jumped the curb onto a lawn. From a distance of 12 to 15 feet away, Detective Coleman observed someone exit the passenger side with a gun in his hand running through the adjacent homes and into a wooded area. Detective Coleman recognized the fleeing

individual as defendant. Detective Coleman arrested the driver of the vehicle and radioed his position to notify other responding officers of the armed passenger who had fled.

¶ 6 Dolton police detectives Graham and Griffin arrived on the scene and began a foot pursuit of defendant. Detective Graham began to search the wooded area beyond the houses abutting the south side of Lincoln Avenue, which was only illuminated by nearby buildings. As Detective Graham searched through the brush, he called out, “Dolton Police. Demarco Phillips, it is Graham. Come out now.” Detective Graham observed defendant on an opposite fence line just to the south of his location. As additional patrol units arrived, they illuminated Detective Graham, at which point, the detective saw two flashes and heard one gunshot. Detective Graham estimated he was 20 feet away from defendant when he saw the flashes. He immediately dove for cover for a few seconds and arose with his weapon drawn. Detective Graham called for assisting units, describing the offender as a black male, 5 feet 7 to 5 feet 8 inches in height, 140 to 160 pounds, and wearing dark clothing.

¶ 7 Detectives Graham and Griffin began searching a nearby apartment building. A resident told them she heard two gunshots. Detective Graham searched the laundry room and found defendant hunched over a pool of vomit. Defendant wore dark clothing and had a snub-nosed revolver within his reach. Detective Graham recovered the revolver, which had two live rounds and two spent shell casings, and took defendant into custody. Detective Coleman identified defendant as the subject who fled the vehicle.

¶ 8 Once in custody, defendant gave a written statement to Detective Coleman, which was read into the record. Defendant stated that Hewitt attempted to rob someone on the street, but failed. Defendant stated that the gun found on his person did not belong to him. Hewitt jumped into his car and defendant and another friend joined him. When the police pulled over Hewitt’s

car, Hewitt put the gun in defendant's lap and told defendant that he "can't go back to jail." Defendant fled with the gun and was caught a short time later.

¶ 9 After his arrest, defendant also surrendered his cellular telephone, which contained pictures of defendant posing with the same gun recovered by Dolton police. One of the photographs was the phone's background image.

¶ 10 The parties stipulated that an Illinois State Police firearms expert would testify that the recovered gun was in firing condition and that the empty casings found in the revolver had resulted from two bullets being fired from the same weapon. The State then offered a certified copy of conviction for defendant under case number 07 CR 1534 with a date of conviction of April 11, 2008.

¶ 11 Following closing argument, the circuit court found defendant not guilty of attempted first degree murder, but guilty of aggravated discharge of a firearm and UUV by a felon. The court denied defendant's posttrial motion to vacate the guilty findings.

¶ 12 At sentencing, the parties agreed that the aggravated discharge of a firearm conviction warranted a special Class X sentencing range of 10 to 45 years. The parties also agreed that defendant's UUV by a felon conviction was a Class 2 felony due to defendant's commission of a prior burglary and that the sentencing range for the crime fell between 3 and 14 years.

¶ 13 Defendant's mother, Christa Keeler, testified in mitigation regarding defendant's changed character. Keeler stated defendant was "a better person." She described how defendant went to church, helped around the house, assisted his grandmother, and took care of his autistic younger sister. Defendant testified before the court that he had made mistakes in his previous life and felt he had learned from those mistakes. Defendant apologized to the court and stated he was not a habitual criminal. Defense counsel requested that defendant receive a sentence of 15 years.

¶ 14 The State argued defendant acted brazenly and committed the offenses for which he was convicted while he was on probation for two felonies. The State sought a sentence of 20 years for the aggravated discharge of a firearm conviction. As to the UUW by a felon conviction, which the State reiterated was a Class 2 offense, the State sought the maximum 14-year penalty to run concurrent with the 20-year sentence for aggravated discharge of a firearm.

¶ 15 The circuit court imposed sentences of 15 years for aggravated discharge of a firearm and 7 years for UUW by a felon, to be served concurrently. Defendant timely appeals.

¶ 16 ANALYSIS

¶ 17 Defendant argues this court should vacate his sentences and remand for a new sentencing hearing because: (1) the 15-year sentence for aggravated discharge of a firearm was excessive where defendant presented mitigation demonstrating significant rehabilitative potential; (2) the 7-year sentence for UUW by a felon constituted improper double enhancement; and (3) the circuit court erred by sentencing him as a Class 2 offender for UUW by a felon because the State did not provide proper notice that it was charging him with an enhanced Class 2 offense. We address these arguments in turn.

¶ 18 Sentence for Aggravated Discharge of a Firearm

¶ 19 Defendant initially asserts that the 15-year sentence imposed for aggravated discharge of a firearm does not reflect adequate consideration of the significant rehabilitative potential defendant demonstrated. Defendant contends he has reformed himself and expressed remorse for the crime. Defendant points to his age—19 years old at the time of the offense—and that his young age alone serves as strong evidence of rehabilitative potential. He also argues that he earned a GED and has worked.

¶ 20 In imposing a sentence, the circuit court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The circuit court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a circuit court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 21 A sentence within statutory limits is reviewed for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that we cannot substitute our judgment simply because we might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 22 Here, the circuit court did not abuse its discretion. Aggravated discharge of a firearm in the direction of a peace officer (720 ILCS 5/24-1.2(a)(4) (West 2010)) is punishable as a Class X felony for imprisonment of "no less than 10 years and not more than 45 years." 720 ILCS 5/24-1.2(b) (West 2008). Since defendant's sentence falls within the sentencing range, we may only

disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. Neither exception applies in this case.

¶ 23 The circuit court expressly stated on the record during that it considered the presentence investigation and factors in mitigation and aggravation. See 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2008) (factors in mitigation and aggravation). The court specifically noted that it put defendant on Treatment Alternatives for Safe Communities (TASC) probation for residential burglary and possession of a controlled substance. The court stated that it saw defendant as “a young man that needs a chance.” Defendant was discharged from the TASC program because he failed to report. Instead of sentencing defendant at that point, the court took a second chance on defendant and did not incarcerate him. The court stated defendant chose to arm himself and purposefully shoot in the direction of a person he knew to be a police officer.

¶ 24 Based on these facts, and in light of defendant’s prior criminal history, we find defendant’s sentence was not manifestly disproportionate to the nature of the offense. We find the circuit court did not abuse its discretion in sentencing defendant to 15 years for aggravated discharge of a firearm, an amount near the low end of the statutory range.

¶ 25 Alleged Double Enhancement of the Sentence for UUW by a Felon

¶ 26 Defendant argues that the circuit court relied on a single factor—the same prior conviction—as both an element of the crime and as a factor to elevate the class of the offense and impose a harsher sentence for a UUW by a felon conviction. Defendant contends this alleged double enhancement is impermissible.

¶ 27 The State responds that defendant’s argument is wrongly premised upon the idea that a charge of UUW by a felon based on a prior forcible felony conviction can never be a Class 3

felony. The State argues a charge of UUW by a felon that is based on a prior forcible felony conviction, such as the prior felony burglary conviction here, can legally only be a Class 2 felony for sentencing purposes.

¶ 28 A circuit court may not use a factor implicit in the offense for which the defendant was convicted as an aggravating factor at sentencing for that offense. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004); *People v. Powell*, 2012 IL App (1st) 102363, ¶ 8. In other words, “a single factor cannot be used both as an element of the offense and as a basis for imposing ‘a harsher sentence than might otherwise have been imposed.’ ” *Phelps*, 211 Ill. 2d at 11-12 (quoting *People v. Gonzalez*, 151 Ill. 2d 79, 83-84 (1992)). An exception to the prohibition against double enhancement exists, however, where the legislature clearly intends to enhance the penalty based on some aspect of the crime and that intention is clearly expressed. *Powell*, 2012 IL App (1st) 102363, ¶ 8. “To determine whether the legislature intended such an enhancement, we look to the statute itself as the best indication of the legislature’s intent.” *Id.* As this issue involves statutory construction, the standard of review is *de novo*. *Phelps*, 211 Ill. 2d at 12; *Powell*, 2012 IL App (1st) 102363, ¶ 8.

¶ 29 Count 4 of the indictment charged defendant with UUW by a felon under section 24-1.1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1.1(a) (West 2008)), which provides:

“(a) It is unlawful for a person to knowingly possess on or about his person *** any weapon prohibited under section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction.” 720 ILCS 5/24-1.1(a) (West 2008).

¶ 30 The circuit court sentenced defendant as a Class 2 felon pursuant to section 24-1.1(e), which states:

“(e) Violation of this Section by a person not confined in a penal institution shall be a Class 3 felony for which the person *** shall be sentenced to no less than 2 years and no more than 10 years ***. Violation of this Section by a person not confined in a penal institution who has been convicted of a forcible felony *** is a Class 2 felony for which the person shall be sentenced to not less than 3 years and not more than 14 years.” 720 ILCS 5/24-1.1(e) (West 2008).

¶ 31 The prior felony used to convict defendant under section 24-1.1 was a prior conviction for burglary, which is a forcible felony pursuant to section 2-8 of the Code (720 ILCS 5/2-8 (West 2008)). Thus, defendant’s prior conviction satisfied the requirement under section 24-1.1(e) for sentencing him as a Class 2 felon. 720 ILCS 5/24-1.1(a), (e) (West 2008)).

¶ 32 Defendant nevertheless argues that three cases, *People v. Owens*, 377 Ill. App. 3d 302 (2007), *People v. Rankin*, 297 Ill. App. 3d 818 (1998), and *People v. Bahena*, 296 Ill. App. 3d 67 (1998), support his position that the circuit court was prohibited from using his prior felony conviction both to establish an element of the offense and to serve as a basis to apply a harsher sentencing range.

¶ 33 Defendant’s reliance on *Owens* is misplaced because there, the court held the defendant’s sentence constituted an improper double enhancement by using the same prior felony conviction to establish a Class 2 offense of aggravated UDW and to impose a Class X sentence. See *Owens*, 377 Ill. App. 3d at 305; see also *Powell*, 2012 IL App (1st) 102363, ¶¶ 14, 16-17 (discussing

Owens). Unlike *Owens*, this case does not involve the use of a prior felony conviction first to enhance the charged offense from a lower class felony to a Class 2 felony and then to make defendant eligible for a Class X sentence. Section 24-1.1(e) does not specifically provide an enhancement to Class X and instead only differentiates between a Class 3 conviction and a Class 2 conviction based on the nature of the accused's prior felony. 720 ILCS 5/24-1.1(e) (West 2008); see also *Powell*, 2012 IL App (1st) 102363, ¶ 17.

¶ 34 Defendant's reliance on *Rankin* and *Bahena* is similarly unavailing, as the defendants in those cases were sentenced under a prior version of the UUW by a felon statute. The UUW by a felon statute as it existed at the time of *Rankin* and *Bahena* provided for only one class of felony—a Class 3—regardless of the type of prior felony on which the UUW by a felon offense was based. See 720 ILCS 5/24-1.1(e) (West 1996) (“Violation of this Section by a person not confined in a penal institution shall be a Class 3 felony.”). The legislature amended the UUW by a felon statute in 1999 (see Pub. Act. 91-544, § 5 (eff. Jan. 1, 2000)) to reflect “the General Assembly's intent to enhance the class of felony, with its concomitant harsher sentencing range, for felons in possession of a weapon who have committed a *forcible* felony in the past.” (Emphasis in original.) *Powell*, 2012 IL App (1st) 102363, ¶ 17.

¶ 35 In *Powell*, our court addressed the very same issue defendant raises here. The defendant in *Powell* also was convicted under the UUW by a felon statute based on a prior burglary conviction and challenged his 4 1/2-year sentence by claiming an improper double enhancement. The *Powell* court found that, “[o]nce defendant was convicted of the Class 2 felony, no further enhancement occurred.” *Id.* ¶ 11.

¶ 36 Defendant was convicted of UUW by a felon predicated on his prior burglary conviction which, pursuant to section 24-1.1(e), constitutes a Class 2 felony with a sentencing range of 3 to

14 years in prison. 720 ILCS 5/24-1.1(e) (West 2008). Consistent with the statute, the circuit court sentenced defendant to seven years' imprisonment. "The language of the statute demonstrates that the legislature clearly expressed the intent to elevate the class of felony and the resulting penalty upon some aspect of the crime, as here ***, for a forcible felony." *Powell*, 2012 IL App (1st) 102363, ¶ 11 (citing *Phelps*, 211 Ill. 2d at 15). We decline to deviate from the reasoning in *Powell*, which, as applied to this case, reflects that defendant was not subjected to an impermissible double enhancement. *Powell*, 2012 IL App (1st) 102363, ¶¶ 13, 17.

¶ 37 Alleged Notice for a Class 2 Felony Sentence Under UUW by a Felon Statute

¶ 38 Defendant next argues that he was ineligible for Class 2 sentencing because the State failed to provide notice in the charging instrument that it intended to seek an enhanced Class 2 sentence based on a prior conviction. Defendant asserts the failure of the indictment to expressly provide the State would seek a Class 2 sentence meant the State charged defendant with only the Class 3 offense of UUW by a felon. He also contends the State was required to provide notice of its intention under section 111-3(c) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/111-3(c) (West 2008)). Defendant acknowledges this issue is not properly preserved for review, but argues the sentencing error is not subject to forfeiture because it affected his substantial rights. Defendant argues his sentence for UUW by a felon should be vacated and the cause remanded for resentencing as a Class 3 offense.

¶ 39 The State responds that it charged defendant with a Class 2 UUW by a felon offense by expressly premising the charge on his prior felony conviction for residential burglary. According to the State, a Class 2 conviction and sentence for UUW by a felon offense expressly based on a prior forcible felony is not an "enhanced" sentence; rather, it is the only class of felony statutorily authorized for such an offense. The State argues that, under the language of section

24-1.1(e), there is no enhancement of the sentence because the prior felony conviction is an element of the offense, which automatically determines at the outset whether a defendant can be convicted and sentenced as a Class 2 or Class 3 offender. The State asserts section 111-3(c) of the Code of Criminal Procedure does not apply when the “enhancing” prior conviction is already an element of the offense and was expressly included in the charging instrument.

¶ 40 We initially address whether this issue is forfeited on appeal. The plain error doctrine allows a reviewing court to bypass normal forfeiture principles and consider an otherwise unpreserved error affecting substantial rights when either: “(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.” *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Supreme Court Rule 615(a) states:

“Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” Ill. S. Ct. R. 615(a).

¶ 41 Defendant seeks to proceed under the second prong of the plain error doctrine. Under this prong, defendant must show that the error was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *Herron*, 215 Ill. 2d at 187. The threshold step in any plain error analysis, however, is to determine whether an error occurred in the first place. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). If there is no error, there can be no plain error. *People v. Johnson*, 218 Ill. 2d 125, 139 (2005); see also *People v. Keene*, 169 Ill. 2d 1, 17 (1995) (“[I]f in the end, the error is found not to rise to the level of a plain error as contemplated by Rule 615(a), the procedural default must be honored.”). Accordingly, before we can address defendant’s claim of plain error, we must decide whether any error occurred.

¶ 42 Our legislature is constitutionally empowered to define criminal conduct and determine the nature and extent of punishment thereof. *People v. Thomas*, 171 Ill. 2d 207, 223 (1996); *People v. Steppan*, 105 Ill. 2d 310, 319 (1985). “In the exercise of its duties, the legislature has the power to codify provisions which enhance a criminal offense *** or enhance the applicable range of punishment ***.” *Thomas*, 171 Ill. 2d at 223. Generally, a circuit court has discretion to impose a sentence (*Alexander*, 239 Ill. 2d at 212); however, we review this issue *de novo* because it involves a question of law (*People v. Harris*, 203 Ill. 2d 111, 116 (2003) (the construction of a statute is a question of law reviewed *de novo*)).

¶ 43 Recently, our supreme court resolved a split of authority in the First District regarding whether section 111-3(c) of the Code of Criminal Procedure requires the charging instrument to provide notice of an increased sentence for UUW by a felon. See *People v. Easley*, 2014 IL 115581. Section 111-3(c) provides:

“When the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction so as to give notice to the defendant. However, the fact of such prior conviction and the State’s intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial. For purposes of this Section, ‘enhanced sentence’ means a sentence which is increased by a prior conviction from one classification of offense to another higher level classification of offense set forth in Section 5-5-1 of the

‘Unified Code of Corrections,’ approved July 26, 1972, as amended; it does not include an increase in the sentence applied within the same level of classification of offense.” 725 ILCS 5/111-3(c) (West 2008).

¶ 44 The defendant in *Easley* argued that his Class 2 conviction under section 24-1.1 was “enhanced” from the Class 3 version of the offense found in the same statute and, therefore, the State was required to expressly provide notice of its intention to seek a harsher sentence. *Easley*, 2014 IL 115581, ¶ 15. The parties agreed that the State gave the defendant notice of the prior offense it was relying on to charge him with a Class 2 offense, but did not provide notice that it would seek an “enhanced” Class 2 sentence.

¶ 45 The supreme court determined that the section 111-3(c) notice provision did not apply because the State did not seek to enhance the defendant’s sentence with his prior conviction. *Easley*, 2014 IL 115581, ¶ 22. According to the court, “as alleged in the indictment, defendant’s Class 2 sentence was the only statutorily allowed sentence under section 24-1.1(e) of the Criminal Code (720 ILCS 5/24-1.1(e) (West 2008)). Defendant could not have been given a Class 3 sentence under the applicable sentencing statute.” *Id.*

¶ 46 We follow the holding in *Easley*. The portion of section 111-3(c) that provides, “the fact of such prior conviction and the State’s intention to seek an enhanced sentence are not elements of the offense,” implies that this statute applies when the prior conviction is not already an element of the offense. Illinois law makes clear that under section 24-1.1 of the Code, the prior conviction is an element of the offense. See *Easley*, 2014 IL 115581, ¶ 24; *People v. Walker*, 211 Ill. 2d 317, 337 (2004); *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 22. Notice under section 111-3(c) is not necessary when the prior conviction is an element of the offense to the

extent that only one class of felony conviction is possible for that offense as alleged in the charging instrument. *Easley*, 2014 IL 115581, ¶ 24; *Nowells*, 2013 IL App (1st) 113209, ¶ 26.

¶ 47 Simply put, defendant's Class 2 sentence here cannot be an "enhanced sentence" under section 111-3(c) because there was no increase applied within the same level of classification of offense – defendant was convicted of a Class 2 offense under section 24-1.1 and the circuit court imposed a Class 2 sentence pursuant to the same statute. In this case, as in *Easley*, the section 111-3(c) notice provision does not apply because the State did not seek to enhance defendant's sentence.

¶ 48 In sum, because the prior conviction in this case was for a prior forcible felony, the defendant could only be charged with a Class 2 offense. Once defendant was convicted of Class 2 UUW by a felon, keeping in mind the prior conviction was an element of the offense proved beyond a reasonable doubt, the only sentence defendant could and did receive was a Class 2 sentence. Sentencing defendant to a Class 3 sentence would have been contrary to section 24-1.1(e). 720 ILCS 5/24-1.1(e) (West 2008); *Easley*, 2014 IL 115581, ¶ 24. We find no error occurred.

¶ 49 CONCLUSION

¶ 50 We find defendant's 15-year sentence for aggravated discharge of a firearm was not excessive. We also find that defendant's Class 2 sentence for his UUW by a felon conviction did not constitute an impermissible double enhancement. Finally, we conclude that defendant's Class 2 sentence for UUW by a felon was not an enhanced sentence that required notice in the charging instrument.

¶ 51 Affirmed.