

FIRST DIVISION
AUGUST 11, 2014

No. 1-12-2572

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. 11 CR 11736
)	
MICHAEL WOODS,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's sentence is not void where his prior Class 2 felony convictions subjected him to mandatory Class X sentencing.
- ¶ 2 Following a bench trial, defendant Michael Woods was convicted of Class 1 felony robbery of a person over 60 years old pursuant to section 18-1(a) of the Criminal Code of 1961 (720 ILCS 5/18-1(a) (West 2010)) and sentenced as a Class X offender to 10 years in prison. On appeal, defendant contends that his sentence is void because the court lacked the authority to sentence him as a Class X offender when he did not have the qualifying prior offenses because his second qualifying felony was not committed after his conviction for the first. We affirm.

¶ 3 According to eyewitness testimony of Timothy Paulsen, on July 12, 2011, around 3 p.m. defendant was standing outside of a pharmacy located at Lawrence and Kenmore Avenues in Chicago. Defendant asked the victim, Peter Siakavelis for money. Siakavelis took out his wallet and gave defendant a couple of bills. Defendant walked away, and then came back to Siakavelis to ask him for more money. Siakavelis pulled his wallet out, and defendant snatched the wallet out of his hands and called him a "stupid ass." Defendant then knocked Siakavelis to the ground. Paulsen called the police, and followed defendant until he was arrested.

¶ 4 Defendant testified that he "snatched" \$20 from Siakavelis, but only because Siakavelis asked him for help finding a cab. He denied that he pushed Siakavelis to the ground or threatened him; stating "[w]hat I want to hurt an old man for?" However, defendant admitted that he never got Siakavelis a cab, although he pocketed the \$20. Defendant said that he then went to the pharmacy to pick up medication. Upon leaving the pharmacy, he was "jumped" by Paulsen and another man. The police arrived and also joined in beating him, but he did not know why he was being attacked.

¶ 5 At sentencing, the State commented that defendant had a "very extensive criminal history," which included "ten prior felony convictions, 40 prior misdemeanor convictions." The State maintained that defendant was subject to mandatory Class X sentencing based on "the multiple burglaries from the 1980s, then a burglary from the 1990s." Defense counsel agreed that defendant was subject to mandatory Class X sentencing based on prior burglary convictions from 1987, 1988, and 1999. The court found that "I do believe a sentence of ten years *** is appropriate for [defendant] based on his background and things in mitigation and aggravation."

¶ 6 On appeal, defendant contends that the trial court erred in sentencing him as a Class X offender because the first conviction relied upon to justify the sentence was not entered until his

probation was revoked and he was resentenced, which occurred after the second offense was committed; and that the court incorrectly relied on the 1999 offense to justify his sentence.

¶ 7 Initially, we note that we agree with defendant that his 1999 conviction was incorrectly relied on to justify his sentence. According to the sentencing order for the offense, which defendant has attached to his brief, the contents of which we may take judicial notice (see *People v. Davis*, 65 Ill. 2d 157, 165 (1976)), the conviction was for attempted burglary; a Class 3 offense. Nonetheless, because defendant only needs two prior Class 2 or greater felony convictions to be subject to mandatory Class X sentencing, the sole question on review is whether defendant was subject to Class X sentencing based on the 1987 and 1988 Class 2 felony convictions.

¶ 8 Defendant acknowledges that he failed to raise this issue in the trial court, but maintains that a void sentence may be challenged at any time. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). The State responds that defendant's claim has been forfeited and he was properly sentenced as a Class X offender. We agree with defendant that a voidness claim can be raised for the first time on appeal, and thus his claim will be reviewed. *Id.* at 27. Whether a judgment is void is a legal question that we review *de novo*. *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 41.

¶ 9 The Unified Code of Corrections requires that in order to be sentenced as a Class X offender; a Class 1 defendant must be "convicted" of two qualifying offenses before committing the instant offense:

"(b) When a defendant, over the age of 21 years, is
convicted of a Class 1 or Class 2 felony, after having twice been
convicted in any state or federal court of an offense that contains

the same elements as an offense now (the date of the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.

This subsection does not apply unless:

(1) The first felony was committed after February 1, 1978

***;

(2) The second felony was committed after conviction on the first; and

(3) The third felony was committed after conviction on the second." 730 ILCS 5/5-4.5-95(b) (West 2010).

¶ 10 Here, defendant was convicted of burglary, a Class 2 felony, on October 27, 1987, and sentenced to six months in prison and two years probation. While on probation, he was again convicted of burglary, a Class 2 felony, on September 30, 1988, and sentenced to three years in prison. On that same day, the court revoked defendant's probation and resentenced him to three years in prison for the 1987 burglary conviction to run concurrently with his sentence for the 1988 case. Under the Class X statute, defendant had two prior Class 2 felonies, and was subject to mandatory Class X sentencing in the present case. Nevertheless, defendant maintains that he was not subject to Class X sentencing because his first conviction was not entered until after he committed the second offense. Essentially, defendant is arguing that a second conviction on the same offense resets the clock within the meaning of the Class X sentencing statute. We disagree.

¶ 11 Although the parties' arguments suggest that there is some ambiguity in the meaning of

the word "conviction," we find that there is none. Section 5-1-5 of the Unified Code (730 ILCS 5/5-1-5 (West 2010)) defines a "conviction" as "a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury." In other words, a conviction, for purposes of the statute, means a finding of guilt combined with a sentence. According to this definition, although defendant was resentenced for the 1987 crime after he was convicted of the second burglary offense in 1988, defendant was convicted for purposes of the statute when the court first found him guilty of the offense at the 1987 proceedings and imposed his initial sentence of probation. Thus, defendant was convicted of the first offense before he committed the second offense under the plain language of the statute; it makes no difference that he was resentenced for a probation violation on that offense the same day he was convicted of his second offense.

¶ 12 Defendant relies on *People v. Holmes*, 405 Ill. App. 3d 179 (2010) and *People v. Lemons*, 191 Ill. 2d 155 (2000) to assert that a second conviction on the same offense resets the clock within the meaning of the Class X sentencing statute. In *Holmes*, the court found defendant's sentence was void because defendant's guilty plea was not a "conviction" as contemplated by the habitual offender statute. Furthermore, the court found that defendant was not convicted for the first offense until his sentence was imposed, which occurred after defendant committed his second offense. *Id.* at 187. Thus, *Holmes* has limited value here because its holding indicates that the court was following the same definition of "conviction" as we do in the instant case — a finding of guilt combined with a sentence.

¶ 13 In *Lemons*, the supreme court addressed the effect of resentencing for probation violations on extended-term sentencing under section 5-3.2(b)(1) of the Unified Code (730 ILCS

5/5-3.2(b)(1) (West 2010)). The court held that a second conviction entered following a probation violation on the same offense does reset the clock for purposes of the extended term provision. *Lemons*, 191 Ill. 2d at 161. However, the holding in *Lemons* is inapplicable in this case because it deals with an entirely different sentencing statute. Thus, we hold under the plain language of the Class X statute, defendant was subject to Class X sentencing because of his two prior Class 2 felony convictions and his sentence is not void. See 730 ILCS 5/5-4.5-95(b) (West 2010).

¶ 14 Finally, we note that defendant argues that our interpretation of the Code is contrary to the rule of leniency, *i.e.*, "[c]riminal statutes are to be strictly construed, and any ambiguity must be resolved in favor of the criminal defendants." *People v. Jamison*, 162 Ill. 2d 282, 296 (1994). Although we agree that our holding viewed in conjunction with the holding in *Lemons* reflect interpretations of the Code that resolve the issue of whether a second conviction on the same offense "resets the clock" in different manners such that under either section of the Code a criminal defendant may be subject to more onerous penalties, this does not run afoul of the rule of leniency because we find no ambiguity in the Code. We hold that the result reached is that intended by the legislature. Therefore, we conclude that defendant's sentence is not void and his procedural default must be honored.

¶ 15 For the foregoing reasons, we affirm defendant's conviction by the circuit court of Cook County.

¶ 16 Affirmed.