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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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 04 CR 23182
)	
BOBBY HARRIS,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant was properly subject to the truth-in-sentencing law because the offenses at issue were committed after June 18, 1998.

¶ 2 Following a remand for resentencing pursuant to *People v. Hauschild*, 226 Ill. 2d 63 (2007), defendant Bobby Harris was sentenced to two concurrent 20-year prison terms for aggravated kidnapping and armed robbery. On appeal, defendant contends that the trial court erred when it failed to specify at resentencing that defendant was being sentenced pursuant to a

law existing prior to January 1, 2000, and, consequently, was entitled to day-for-day sentencing credit. We affirm.

¶ 3 Following a jury trial, defendant was convicted of armed robbery and four counts of aggravated kidnapping while armed with a firearm arising out of the September 9, 2004 kidnapping and attempted ransom of the victim Ronald Whitney. He was sentenced to two concurrent terms of 20 years in prison. On appeal, this court vacated three convictions for aggravated kidnapping pursuant to the one-act, one-crime rule, while affirming one conviction for aggravated kidnapping and the armed robbery conviction. See *People v. Harris*, No. 1-06-2098, Order at 9 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 Defendant then filed a postconviction petition alleging, *inter alia*, that the aggravated kidnapping statute under which he was sentenced violated the proportionate penalties clause of the Illinois Constitution and challenging the application of truth-in-sentencing to his sentences.

¶ 5 After analyzing the statutes under which defendant was convicted and sentenced, this court determined that because the penalties for armed robbery while armed with a firearm and aggravated kidnapping were harsher than the penalty for armed violence, defendant's sentences for armed robbery while armed with a firearm and for aggravated kidnapping violated the proportionate penalties clause. See *People v. Harris*, 2012 IL App (1st) 092251, ¶¶ 12-15. Relying on *People v. Hauschild*, 226 Ill. 2d 63 (2007), we therefore remanded the cause to the trial court for resentencing. *Harris*, 2012 IL App (1st) 092251, ¶ 16. In so doing, we noted that before the armed robbery and aggravated kidnapping statutes were amended by Public Act 91-404 (Pub. Act 91-404 (eff. Jan. 1, 2000)), armed robbery while armed with a firearm and aggravated kidnapping were Class X felonies which carried a sentence of 6 to 30 years' imprisonment, which is not harsher than the penalty for armed violence. *Harris*, 2012 IL App

(1st) 092251, ¶ 16, citing 720 ILCS 5/18-2(b) (West 1998); 730 ILCS 5/5-8-1(a)(3) (West 1998).¹

¶ 6 We then addressed defendant's claim that the application of the truth-in-sentencing statute with regard to his conviction for aggravated kidnapping violated the proportionate penalties clause of the Illinois Constitution. We rejected defendant's claim, as although there was a difference in the rules for early release, that difference was not related to the applicable sentencing ranges for those offenses. *Harris*, 2012 IL App (1st) 092251, ¶¶ 23-25. In other words, penalties for offenses with identical elements violate the proportionate penalties clause only when they have different sentencing ranges, not when the sentences are carried out in different manners. *Harris*, 2012 IL App (1st) 092251, ¶ 23. We also rejected defendant's claim that truth-in-sentencing violated his right to equal protection under the United States Constitution. See *Harris*, 2012 IL App (1st) 092251, ¶¶ 26-32

¶ 7 Upon remand, defense counsel argued that because the cause was remanded for resentencing pursuant to the statutes as they existed prior to the addition of the firearm enhancement in 2000, defendant must be sentenced in accordance with versions in effect in 1994, *i.e.*, prior to the enactment of truth-in-sentencing. The trial court disagreed, as the offenses were committed in 2004 and the scope of remand was limited to resentencing defendant without consideration of the firearm enhancement. Defendant was then sentenced to two concurrent 20-year prison terms.

¹ Although we noted that the trial court in the instant case did not impose the 15-year add-on penalty to either of defendant's sentences, and, consequently, the sentences imposed by the trial court were proper, we concluded that the appropriate remedy was to remand the cause for sentencing in accordance with the statute as it existed before it was amended, in order to allow the trial court to determine defendant's sentence for each offense while taking into account the totality of his sentence. *Harris*, 2012 IL App (1st) 092251, ¶ 18.

¶ 8 On appeal, defendant contends that the trial court erred when it resentenced him without specifying that the truth-in-sentencing law did not apply. Specifically, defendant contends that he is entitled to day-for-day credit because he was resentenced pursuant to the law existing prior to January 1, 2000.

¶ 9 Section 3-6-3(a)(2) of the Unified Code of Corrections (Code), also known as the truth-in-sentencing law, limits the sentencing credit that certain prisoners are eligible to receive. 730 ILCS 5/3-6-3(a)(2) (West 2004). The truth-in-sentencing law requires a defendant convicted of, *inter alia*, aggravated kidnapping after June 19, 1998, to serve at least 85% of his court-imposed sentence. 730 ILCS 5/3-6-3(a)(2)(ii) (West 2004).

¶ 10 Truth-in-sentencing was first enacted in 1995, pursuant to Public Act 89-404, § 40 (eff. Aug. 20, 1995). Before this Act's passage, those defendants convicted of certain crimes were eligible to earn one day of good-conduct credit for each day in prison. See 730 ILCS 5/3-6-3(a)(2) (West 1994). In *People v. Reedy*, 295 Ill. App. 3d 34 (1998), the Second District held Public Act 89-404 unconstitutional because it violated the single-subject rule of the Illinois Constitution of 1970 (Ill. Const. 1970, art. IV, § 8(d)). While that case was pending before our supreme court, the Illinois General Assembly reenacted the truth-in-sentencing provision by passing Public Act 90-592 (eff. June 19, 1998) (deleting and recodifying the entire truth-in-sentencing provision originating from Public Act 89-404). Our supreme court subsequently affirmed the Second District, while also stating that Public Act 90-592 validly reenacted the truth-in-sentencing law and applied to crimes committed after its effective date, June 19, 1998. *People v. Reedy*, 186 Ill. 2d 1, 17-18 (1999).

¶ 11 Here, defendant's convictions for armed robbery and aggravated kidnapping arose out of events which occurred in September 2004. Therefore, he was subject to truth-in-sentencing

because the offenses occurred after June 19, 1998. See 730 ILCS 5/3-6-3(a)(2)(ii) (West 2004). In other words, he was not entitled to day-for-day credit. See *People v. Dean*, 303 Ill. App. 3d 758, 762 (1999) (an offense must have been committed before June 19, 1998, to be entitled to day-for-day credit under the prior sentencing rules).

¶ 12 We reject defendant's contention that he should have been sentenced under the good conduct statute as it existed in 1994. First, the truth-in-sentencing statute applies to any qualifying offense committed on or after June 19, 1998 (see 730 ILCS 5/3-6-3(a)(2) (West 2004)), and here, there is no dispute that the offenses at issue were committed in 2004. To the extent that defendant argues that errors in the aggravated kidnapping and armed robbery statutes somehow rendered the truth-in-sentencing statute invalid, he cites no authority for the proposition that a finding that one section of the Code is invalid renders other unrelated sections invalid as well.

¶ 13 *People v. Reedy*, 186 Ill. 2d 1 (1999), is instructive. In that case, although the truth-in-sentencing act was found to be unconstitutional as enacted because the legislature violated the single subject clause of the Illinois Constitution in enacting Public Act 89-404, our supreme court concluded that because the General Assembly passed curative legislation, effective June 19, 1998, truth-in-sentencing could be applied to offenses committed after June 19, 1998. *Id.* at 17-18. The court also rejected the argument that all sentences imposed under the invalidated truth-in-sentencing law were void and should be remanded for resentencing. Our supreme court concluded that although the good-conduct credit scheme which may have been considered by the sentencing courts was invalid, the sentences imposed were proper, and consequently, there was no justification for disturbing any statutorily sound sentence imposed against any defendant under the void truth-in-sentencing law. *Id.* at 16-17.

¶ 14 Applying similar logic to the case at bar, the fact that defendant was originally sentenced pursuant to a statutory scheme later determined to be invalid did not serve to render the truth-in-sentencing statute invalid. *Id.* at 16-17. Ultimately, here, as the offenses at issue were committed some six years after the truth-in-sentencing provision was validly reenacted, defendant has failed to show that he was improperly sentenced under the truth-in-sentencing law (see *id.* at 17-18), and his claim must fail.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 16 Affirmed.