THIRD DIVISION
June 30, 2015

No. 1-13-0025

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 20654
	)	
AHAID MUHAMMAD,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant was correctly sentenced as a Class X offender based in part on a prior robbery conviction in California where the offense of robbery had the same elements as the offense of robbery in Illinois.

¶ 2 After a bench trial, defendant Ahaid Muhammad was found guilty of burglary and sentenced as a Class X offender, based on his criminal background, to six years in prison and a mandatory supervised release term of three years. On appeal, Muhammad contends that: (1) the State failed to prove he had the requisite background to be sentenced as a Class X offender where the offense of robbery in California did not have the same elements as the offense of

robbery in Illinois; (2) if he was properly sentenced as a Class X offender, his mittimus must be corrected to reflect the proper term of mandatory supervised release associated with a Class 2 felony; and (3) he is entitled to an additional seven days of credit for presentence custody.

¶ 3 We affirm the trial court's sentence. While the wording of the California and Illinois robbery statutes differs, they are "equivalent" in content, and share the "same elements." Accordingly, Muhammad qualifies to be sentenced as a Class X offender and sentenced to a mandatory supervised release term of three, not two, years. We also order the clerk of the circuit court to correct Muhammad's mittimus to reflect 328 days of presentence custody credit.

¶ 4 Background

¶ 5 At trial, the State presented evidence that on November 9, 2011, at about 4:40 a.m., police received a call that someone was breaking into a car located at a Jiffy Lube near East 83rd Street and South Jeffery Boulevard, Chicago. The officer who responded to the call saw the car's front window smashed in and found Muhammad inside. The officer arrested Muhammad. When the officer performed a custodial search of Muhammad, he recovered a box cutter from Muhammad's pocket. The officer contacted the car's owner who stated he did not know Muhammad nor give him permission to enter his car. The trial court found Muhammad guilty of burglary. The State argued that Muhammad was subject to sentencing as a Class X offender based on a 1993 robbery conviction from California and a 2002 burglary conviction in Illinois.

¶ 6 At Muhammad's sentencing hearing, he asked to represent himself. The court admonished Muhammad as to his waiver of counsel, and Muhammad continued to represent himself. The State presented the court with certified copies of Muhammad's convictions in the

1993 robbery in California and 2002 burglary in Illinois. The State asked the court to sentence Muhammad as a Class X offender to the minimum sentence of six years in prison.

¶ 7 Muhammad stated that he was not a habitual criminal given that the convictions relied on in sentencing him as a Class X offender occurred nearly 20 years and 10 years before his current conviction, respectively.

¶ 8 The trial court agreed with the State that Muhammad was a Class X offender by criminal background and sentenced Muhammad to six years in prison and a mandatory supervised release term of three years.

¶ 9 Analysis

¶ 10 Class X Sentencing Issue

¶ 11 On appeal, Muhammad contends that he was not subject to Class X sentencing because the State failed to establish that the offense of robbery in California contained the same elements as the offense of robbery in Illinois. Muhammad argues that because his claim involves an allegedly void sentence, it may be challenged at any time. The State responds that Muhammad's claim has been forfeited and the court properly sentenced him as a Class X offender. Because Muhammad's claim involves statutory construction and ultimately a claim that his sentence is void, his claim may be raised for the first time on review, and we will review it *de novo*. See *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 41.

¶ 12 Section 5-4.5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2010)), states in relevant part "[w]hen a defendant *** 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 *** classified in Illinois as a Class 2 or greater Class felony

*** that defendant shall be sentenced as a Class X offender." The parties agree that Muhammad's 2002 burglary conviction would be a Class 2 felony today (see 720 ILCS 5/19-1(b) (West 2010)), and that his current conviction was also a Class 2 felony. See *id.* Furthermore, there is no question that robbery is a Class 2 felony. See 720 ILCS 5/18-1(b) (West 2010). Accordingly, the parties agree that if the offense of robbery in California has the same elements as the offense of robbery in Illinois that Muhammad would be a Class X offender by criminal background. Thus, the question comes down to whether robbery in California has the same elements as robbery in Illinois.

¶ 13 While section 5-4.5-95(b) requires a predicate offense from a sister jurisdiction to have the "same elements" as a current Class 1 or 2 felony in Illinois (730 ILCS 5/5-4.5-95(b) (West 2010)), our courts do not require the predicate offense to have "precisely" the same elements. *People v. Fernandez*, 2014 IL App (1st) 120508, ¶ 18. Rather, instead of a formalistic reading of the words "same elements," the predicate offense must be "equivalent" to a Class 1 or 2 felony in Illinois. *Id.* ¶¶ 17, 19; see 81st Ill. Gen. Assem., Senate Proceedings, June 27, 1980, at 27 (statements of Senator Sangmeister) (stating during discussion of amending the Habitual Criminal Act to include convictions from others jurisdictions that they would qualify provided "their elements were *** the same or close to the elements contained in the Illinois [s]tatutes").

¶ 14 Muhammad was convicted of robbery under section 211 of the California Penal Code (Cal. Pen. Code § 211 (West 1992)), which states:

> "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

¶ 15 In Illinois, section 18-1(a) of the Criminal Code of 1961 (720 ILCS 5/18-1(a) (West 2010)), states:

> "A person commits robbery when he or she takes property, except a motor vehicle covered by Section 18-3 or 18-4, from the person or presence of another by the use of force or by threatening the imminent use of force."

¶ 16 The first two elements of a robbery in both California and Illinois require an individual (1) take property in the possession of another person and (2) that the taking be from a person or immediate presence.

¶ 17 Muhammad argues the key distinction in the California robbery statute is in the third element where the California statute introduces a "subjective element," that robbery can occur when a victim feels "fear," something absent in Illinois's statute. But, a comparison of the case law reveals that the difference between California's wording of "accomplished by means of *** fear" (Cal. Pen. Code § 211 (West 1992)), and Illinois's wording of "by threatening the imminent use of force" (720 ILCS 5/18-1(a) (West 2010)), is nothing more than semantics.

¶ 18 As this court recently stated in *People v. Hicks*, "threatening the use of imminent force" equated to "putting [a victim] in such fear as to overpower his will." *People v. Hicks*, 2015 IL App (1st) 120035, ¶ 29 (internal quotations marks omitted). Additionally, we have stated the State proves fear when "the fear of the victim was of such a nature that reason and common experience would induce a person to part with his property for the sake of his person." *People v. Cooksey*, 309 Ill. App. 3d 839, 849 (1999). Meanwhile, California courts have described the "fear" element as being proven "when there is sufficient fear to cause the victim to comply with the unlawful demand for his property." *People v. Morehead*, 191 Cal. App. 4th 765, 774 (2011).

A defendant's conduct, words, or circumstances need only be "reasonably calculated to produce fear." *Id.* at 775. Accordingly, we find no meaningful difference between the third element of robbery in California and Illinois, as they are equivalent in meaning. See *Fernandez*, 2014 IL App (1st) 120508, ¶ 19.

¶ 19 Muhammad further argues the statutes have additional differences, in that California's statute requires the victim's property be "personal," "in the possession of another" and taken "against his will." We reject these arguments, again, as mere matters of semantics. First, while California's language requires the property taken to be "personal," (Cal. Pen. Code § 211 (West 1992)), that only means California has chosen to narrow what property can constitute robbed property. Illinois's statute is broader by not limiting what property constitutes robbed property. Thus, any property deemed robbed in California (*i.e.* personal property) would necessarily fall under Illinois's more broadly defined robbery statute, which encompasses all "property." The lone exception to the definition of "property" in Illinois is a motor vehicle. See 720 ILCS 5/18-1(a) (West 2010). But, we find that slight exclusion unimportant when comparing the elements of the two statutes. Second, California's wording that property must be taken "in the possession of another" (Cal. Pen. Code § 211 (West 1992)), is analogous to Illinois's version, which states property must be taken "from the person or presence of another" (720 ILCS 5/18-1(a) (West 2010)). Third, while Muhammad argues that California requires property be taken from a victim "against his will" (Cal. Pen. Code § 211 (West 1992)), the Illinois statute subsumes this element. See *People v. Klebanowski*, 221 Ill. 2d 538, 550 (2006) (stating "the offense of robbery is complete when force or threat of force causes the victim to part with possession or custody of property against his will"). We cannot expect two states under two different legislatures at two

different times to enact exact replica robbery statutes, nor need that be the case. Muhammad points are inconsequential subtleties which do not alter the elements of either state's robbery statute in any relevant way.

¶ 20 Accordingly, while the California and Illinois robbery statutes, though not verbatim copies of one another, nevertheless are "equivalent" in content, with the "same elements" for purposes of section 5-4.5-95(b) (730 ILCS 5/5-4.5-95(b) (West 2010)). See *Fernandez*, 2014 IL App (1st) 120508, ¶ 19. Because robbery in Illinois is a Class 2 felony (see 720 ILCS 5/18-1(b) (West 2010)), Muhammad's California robbery conviction may serve as a predicate felony to sentence Muhammad as a Class X offender under section 5-4.5-95(b). Therefore, we find no error in Muhammad's sentence of six years in prison based on his status as a Class X offender.

¶ 21 Mittimus Issues

¶ 22 Muhammad next contends that his mittimus must be corrected to reflect the proper mandatory supervised release term for a Class 2 felony of two years instead of three years. The parties agree, as do we, that Muhammad forfeited review of his claim by not properly preserving review of his claim. Muhammad argues, however, that we should still review his argument for plain error because his sentence exceeded the statutorily authorized term, and additionally, because the trial court failed to give Muhammad proper post-sentencing admonishments.

¶ 23 In the sentencing context, a defendant alleging the application of the plain-error doctrine must show either "the evidence at the sentencing hearing was closely balanced" or "the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The doctrine is narrow and limited, and only available when "a clear or obvious error occurs." *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The defendant bears the burden of

persuasion of both prongs. *Hillier*, 237 Ill. 2d at 545. And if he or she fails to meet this burden, we will honor the procedural default. *Id.* The first step in a plain-error review is to determine whether any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 24 The case law addressing Muhammad's argument is well settled. When a defendant qualifies to be sentenced as a Class X offender, he or she should be sentenced to a mandatory supervised release term of three years, not two years. See *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 60; see also *People v. Watkins*, 387 Ill. App. 3d 764, 766-67 (2009); *People v. Smart*, 311 Ill. App. 3d 415, 417-18 (2000). Therefore, we cannot find that the trial court erroneously sentenced Muhammad, and, because we do not find any error occurred, there cannot be plain error. See *Thompson*, 238 Ill. 2d at 613.

¶ 25 Finally, Muhammad contends that his mittimus should be corrected to reflect that he is entitled to an additional seven days of presentence custody credit. Muhammad argues, the State concedes, and we agree, that his mittimus must be corrected to accurately reflect his presentence custody credit from 321 days to 328 days.

¶ 26 A defendant held in custody for any part of a day should be given credit against his sentence for that day. *People v. Williams*, 2013 IL App (2d) 120094, ¶ 37; see 730 ILCS 5/5–4.5–100(b) (West 2010). Muhammad was arrested on November 9, 2011, and sentenced on October 2, 2012, which totals 328 days in custody before his sentencing date. His mittimus reflects credit for only 321 days in custody. Therefore, under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our ability to correct a mittimus without remand (see *People v. Hill*, 408 Ill. App. 3d 23, 31 (2011)), we order the clerk of the circuit court to correct Muhammad's mittimus to reflect 328 days of presentence custody credit.

¶ 27 We affirm the judgment of the circuit court of Cook County in all other respects.

¶ 28 Affirmed; mittimus corrected.