2016 IL App (1st) 140254-U

FOURTH DIVISION
January 28, 2016

No. 1-14-0254

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. 13 CR 11523
	)	
JAMAL JONES,	)	Honorable
	)	Thomas Byrne,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for aggravated unlawful use of weapon vacated as less serious offense under one-act, one-crime doctrine; defendant was properly assessed $25 court services assessment fee.

¶ 2 Following a jury trial, defendant Jamal Jones was found guilty of two counts of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2012)) and one count of

aggravated unlawful use of a weapon (AUUW), the aggravation based on the fact that defendant did not possess a Firearm Owner's Identification Card (FOID card). 720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012). The trial court merged the two counts of defendant's UUWF conviction, sentenced him to two concurrent six-year terms of imprisonment, and assessed various fines and fees, including a $25 court services assessment. On appeal, defendant contends his convictions violate the one-act, one-crime doctrine (*People v. King*, 66 Ill. 2d 551 (1977)) because they arose from the same physical act, and that he was improperly assessed a $25 court services fee because he was not convicted of a qualifying offense. The State concedes that defendant's convictions violate the one-act, one-crime doctrine but maintains that his fines and fees were properly assessed.

¶ 3 The evidence at trial established that on May 18, 2013, Chicago police officers saw defendant in possession of a .38-caliber handgun and arrested him. Defendant was not licensed to carry the handgun and had never been issued a Firearm Owner's Identification card. The parties stipulated that defendant was previously convicted of felony robbery, and that defendant was serving a term of mandatory supervised release (MSR) the day he was taken into custody for possessing the handgun. The jury found defendant guilty of two counts of UUWF and one count of AUUW.

¶ 4 On appeal, defendant first contends, and the State concedes, that his convictions for AUUW and UUWF violate the one-act, one-crime doctrine because they are based upon the same physical act—defendant's possession of a single firearm. Although defendant initially argues *People v. Johnson*, 237 Ill. 2d 81 (2010), mandates vacatur of his conviction for UUWF

as the lesser of his two convictions, he concedes in his reply brief that, under the facts of this case, his conviction for UUWF is the more serious offense. For the reasons that follow, we accept the State's concession, agree with the parties that defendant's UUWF conviction is the more serious offense, and vacate defendant's AUUW conviction.

¶ 5 Although defendant did not raise this claim at trial or in a post-trial motion, our supreme court has determined that alleged violations of the one-act, one-crime doctrine are reviewable as plain error. See *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). We review this issue *de novo*. *Id.*

¶ 6 Under the one-act, one-crime doctrine, a defendant may not be convicted of multiple offenses that arise from a single physical act. *Id.* at 493-94. Here, defendant was found guilty of UUWF and AUUW based on one act: his possession of a single firearm. Thus, we must vacate defendant's conviction for the less serious offense and impose sentence on only the more serious conviction. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004).

¶ 7 To determine which offense is more serious, we look to the plain language of the relevant statutes and compare the relative punishments prescribed by the legislature for each offense. See *id*. at 228; *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Other factors to consider when comparing the seriousness of multiple offenses include the classification of the offense, the maximum possible sentence, the mental state required for each offense, and the specificity with which each offense is defined in the statute. See *Johnson*, 237 Ill. 2d at 98-99.

¶ 8 While a first conviction for UUWF is typically a Class 3 felony, the offense is a Class 2 felony with a sentencing range of 3 to 14 years where, as here, it was committed while a defendant was on mandatory supervised release at the time of the offense. 720 ILCS 5/24-1.1(e)

(West 2012). Defendant's conviction for AUUW, likewise, is a Class 2 felony, but its sentencing range is 3 to 7 years. 720 ILCS 5/24-1.6(d)(3) (West 2012). The mental state of each offense requires proof that the defendant committed the offense "knowingly." 720 ILCS 5/24-1.1(a) (West 2012) (UUWF statute); 720 ILCS 5/24-1.6(a) (West 2012) (AUUW statute). Thus, the two offense share the same classification (class 2), minimum sentence (3 years), and mental state (knowledge), but the UUWF statute carries twice the maximum penalty of the AUUW conviction. Under these circumstances, we agree with the parties' assessment that defendant's UUWF conviction was more the more serious offense, requiring vacatur of the AUUW conviction. See *People v. Anthony*, 2011 IL App (1st) 091528, ¶ 6 (concluding UUWF was more serious offense than AUUW based on applicable sentencing range).

¶ 9 We recognize that, in *Johnson*, 237 Ill. 2d at 99, our supreme court found the AUUW conviction to be the greater offense. But in *Johnson*, the UUWF offense was a probationable, class 3 felony with a two-year term of MSR, while the AUUW offense was a non-probationable class 2 felony with a higher minimum sentence and a longer MSR period. *Id*. As in *Anthony*, "[t]he parties and this court now agree that unlawful use of a weapon by a felon is the greater offense in this case." *Anthony*, 2011 IL App (1st) 091528, ¶ 6. Thus, we vacate defendant's AUUW conviction.[1]

[1] As we noted at the outset of this Order, defendant's AUUW conviction was based on the aggravating factor found in subsection (a)(3)(C) of the AUUW statute, that defendant did not possess a valid FOID card at the time of the offense. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(C). Our supreme court recently found facially unconstitutional subsection (a)(3)(A), the provision concerning the aggravated factor of the weapon being uncased, loaded and readily accessible. See *People v. Burns*, 2015 IL 117387, ¶¶ 10, 32 (construing 720 ILCS 5/24-1.6(a)(1), (a)(3)(A)). *Burns* was decided after briefing in this case was completed, and thus the parties had no

¶ 10 Defendant next argues that he was improperly assessed a $25 court services fee because he was not convicted of a qualifying offense, arguing that when a fine imposed does not conform to a statutory requirement, the fine is void and such issue may not be forfeited. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 26. But in light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, defendant may no longer challenge the propriety of his fines and fees on the basis that his sentence is void because it does not comply with a statute. Although abrogation of the void-sentence rule now raises the question whether this court may exercise its plenary power to amend the mittimus under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999) or whether we may review the issue as plain error (see Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)), we need not reach those questions in the instant case, because we find no error. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (whether issue has been preserved or may be considered under plain error, first question in either analysis is whether error has occurred).

¶ 11 The $25 court services fee must be assessed when a criminal proceeding results in a judgment of conviction. See 55 ILCS 5/5-1103 (West 2012). The relevant statute reads, in part:

> "In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to Section 10 of the Cannabis

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opportunity to brief the issue of whether *Burns* would affect the constitutionality of the statutory provision before this court. Because we have already vacated defendant's AUUW for the reasons given above, we need not consider the question.

> Control Act, Section 410 of the Illinois Controlled Substances Act, Section 70 of the Methamphetamine Control and Community Protection Act, Section 12-4.3 or subdivision (b)(1) of Section 12-3.05 of the Criminal Code of 1961 or the Criminal Code of 2012, Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act, Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act, or Section 10 of the Steroid Control Act." 55 ILCS 5/5-1103.

¶ 12 Defendant, pointing to the list of enumerated statutes at the end of this provision, argues this list modifies every phrase that precedes it, including "plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction." *Id*. Thus, defendant claims, fees may be assessed only for convictions of those specified criminal statutes. The State, on the other hand, argues that the plain language of the statute dictates that the court services fee may be imposed in *all* criminal cases, upon *any* judgment of conviction, but that this law *additionally* provides for fees for any "order of supervision, or sentence of probation without entry of judgment" pursuant to these enumerated drug statutes. *Id*.

¶ 13 We have previously considered this argument and consistently agreed with the State that this fee may be imposed upon any judgment of conviction. See *People v. Akins*, 2014 IL App (1st) 093418-B, ¶¶ 23-24; *People v. Kornegay*, 2014 IL App (1st) 122573, ¶ 53; *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 18. Defendant offers no reason to depart from this precedent, other than to say that the Illinois Supreme Court has yet to rule on this issue. We adhere to these decisions and reject defendant's argument.

¶ 14 Accordingly, we vacate defendant's conviction for aggravated unlawful use of a weapon, direct the circuit clerk to amend the mittimus to reflect a single conviction for unlawful use of a weapon by a felon, and affirm the fines and fees order.

¶ 15 Affirmed in part; vacated in part; mittimus amended.