2012 IL App (2d) 111207-U
No. 2-11-1207
Order filed July 6, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KENNETH D. ALLEN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 10-CF-192 Honorable John J. Kinsella, Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: (1) The trial court properly denied defendant's motion to withdraw his guilty plea to aggravated DUI: contrary to defendant's contention, his sixth DUI offense was properly a Class X felony, even though it was only his fourth aggravated DUI offense; (2) we reduced defendant's trauma-center fee to the statutory maximum of $100.

¶ 1 Defendant, Kenneth D. Allen, pleaded guilty to aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 2010)). The trial court found that, because this was defendant's sixth DUI offense, defendant was subject to sentencing as a Class X felon (625 ILCS 5/11-501(d)(2)(E) (West 2010)) and sentenced defendant to eight years' imprisonment.

Subsequently, defendant moved to withdraw his plea, arguing that the present DUI offense should have been classified as a Class 2 felony, because defendant had been convicted of only three prior aggravated DUIs. Defendant argued that his two prior nonaggravated DUIs could not be considered to increase the present offense to a Class X felony under section 11-501(d)(2)(E) of the Illinois Vehicle Code (the DUI statute) (625 ILCS 5/11-501(d)(2)(E) (West 2010)). The trial court denied defendant's motion, and defendant timely appealed.

¶ 2 The question presented is whether section 11-501(d)(2)(E) of the DUI statute, which provides that a "sixth or subsequent violation of *this Section* or similar provision is a Class X felony" (emphasis added) (625 ILCS 5/11-501(d)(2)(E) (West 2010)), includes (for purposes of counting the number of prior violations) only aggravated DUIs under subsection (d) of the DUI statute or whether it also includes nonaggravated DUIs under subsection (a) of the DUI statute. Because the resolution of this issue requires the interpretation of a statute, our review is *de novo*. *People v. LaPointe*, 227 Ill. 2d 39, 43 (2007).

¶ 3 The primary goal in statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Pullen*, 192 Ill. 2d 36, 42 (2000). The first step is to examine the language of the statute—"the surest and most reliable indicator of legislative intent." *Pullen*, 192 Ill. 2d at 42. If the statute does not provide a definition indicating a contrary legislative intent, words in the statute are given their ordinary and commonly understood meanings. *People v. Liberman*, 228 Ill. App. 3d 639, 648 (1992). Where the language is clear, the statute may not be revised to include exceptions, limitations, or conditions that the legislature did not express. *People v. Goins*, 119 Ill. 2d 259, 265 (1988). However, we must assume that the legislature did not intend an absurd or unjust result. *Pullen*, 192 Ill. 2d at 42.

¶ 4 The DUI statute provides in relevant part as follows:

"§11-501. Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

***

(2) under the influence of alcohol;

***

(c) Penalties.

(1) Except as otherwise provided in this Section, any person convicted of violating subsection (a) of this Section is guilty of a Class A misdemeanor.

(2) A person who violates subsection (a) or a similar provision a second time shall be sentenced to a mandatory minimum term of either 5 days of imprisonment or 240 hours of community service ***.

(3) A person who violates subsection (a) is subject to 6 months of imprisonment, an additional mandatory minimum fine of $1,000, and 25 days of community service in a program benefiting children if the person was transporting a person under the age of 16 at the time of the violation.

(4) A person who violates subsection (a) a first time, if the alcohol concentration in his or her blood, breath, or urine was 0.16 or more ***, shall be subject, in addition to any other penalty that may be imposed, to a mandatory

minimum of 100 hours of community service and a mandatory minimum fine of $500.

(5) A person who violates subsection (a) a second time, if at the time of the second violation the alcohol concentration in his or her blood, breath, or urine was 0.16 or more ***, shall be subject, in addition to any other penalty that may be imposed, to a mandatory minimum of 2 days of imprisonment and a mandatory minimum fine of $1,250.

(d) Aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof.

(1) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol *** if:

(A) the person committed a violation of subsection (a) or a similar provision for the third or subsequent time;

* * *

(2)(A) Except as provided otherwise, a person convicted of aggravated driving under the influence of alcohol *** is guilty of a Class 4 felony.

(B) A third violation of this Section or a similar provision is a Class 2 felony. ***

(C) A fourth violation of this Section or a similar provision is a Class 2 felony, for which a sentence of probation or conditional discharge may not be imposed. ***

(D) A fifth violation of this Section or a similar provision is a Class 1 felony, for which a sentence of probation or conditional discharge may not be imposed. ***

(E) A sixth or subsequent violation of this Section or similar provision is a Class X felony. ***"

¶ 5 Defendant argues that the phrase "this Section" contained in section 11-501(d)(2)(E) refers to only subsection (d). 625 ILCS 5/11-501(d)(2)(E) (West 2010). However, contrary to defendant's argument, at no time does the DUI statute refer to subsection (d) as a "section." Indeed, it specifically refers to the provision as "subsection (d)." See 625 ILCS 5/11-501(d)(2)(F), (d)(2)(G), (d)(2)(H), (d)(2)(I), (d)(2)(J), (d)(3) (West 2010). The delineation of this provision as "subsection (d)" is appropriate, as a subsection is a smaller section contained within a section. Certainly, had the legislature intended to include only aggravated DUIs in determining whether a defendant should be sentenced for a Class X felony, it would have expressed its intent by using the words "violation of this subsection (d)" rather than the words "violation of this Section." Thus, under the plain language of section 11-501(d)(2)(E) of the DUI statute, defendant was clearly subject to Class X sentencing.

¶ 6 Further, we disagree with defendant's argument that interpreting the words "this Section" to include all violations of the DUI statute leads to an "absurd" progression of penalties under the DUI statute and also punishes defendant's conduct more harshly than other "much worse conduct" such as committing a DUI while driving a school bus, a Class 4 felony (see 625 ILCS 5/11-501(d)(1)(B), (d)(2)(A) (West 2010)). Currently, if a defendant drives under the influence, and there are no aggravating factors, he is sentenced for a Class A misdemeanor. See 625 ILCS 5/11-501(c)(1) (West 2010). If he commits a second DUI violation, he is still sentenced for a Class A misdemeanor;

however, on his third DUI offense, the classification is enhanced to a Class 2 felony. See 625 ILCS 5/11-501(c)(1), (d)(2)(B) (West 2010). Defendant argues that this enhanced sentencing classification makes no sense because the penalty jumps from a Class A misdemeanor to a Class 2 felony when a defendant commits a third DUI offense. He also maintains that committing a DUI offense while driving a school bus is "much worse conduct" than committing a sixth DUI offense yet is only a Class 4 felony. However, defendant fails to acknowledge that the escalating penalty system is used to penalize repeat offenders who do not learn from past mistakes. "It is clear that drunk driving is one of society's gravest problems because drunk drivers pose a serious threat to human life." *People v. Cronin*, 163 Ill. App. 3d 911, 913 (1987). A "statute which imposes additional punishment upon conviction for a second or subsequent conviction is highly penal and must be strictly construed and that such 'enhanced penalty' statutes are enacted as a warning to a first offender of the consequences of a second conviction." *People v. Harrison*, 225 Ill. App. 3d 1018, 1022 (1992). We see nothing "absurd" about the progression of penalties.

¶ 7 The State moved to cite *People ex rel. Glasgow v. Kinney*, 2012 IL 113197, as additional authority, and we grant that motion. In *Kinney*, we note that our supreme court held that a defendant's prior uncounseled misdemeanor DUI conviction could be used to enhance the defendant's fourth DUI offense to a nonprobationable Class 2 felony under section 11-501(d)(2)(C) of the DUI statute. Thus, the supreme court has interpreted subsection (d) of the DUI statute as including both aggravated and nonaggravated DUIs in determining whether a defendant is subject to a sentencing enhancement.

¶ 8 Accordingly, defendant was subject to sentencing as a Class X felon under section 11-501(d)(2)(E) of the DUI statute (625 ILCS 5/11-501(d)(2)(E) (West 2010)) and thus it follows that his motion to withdraw his guilty plea was properly denied.

¶ 9 Last, defendant argues that $5 of his $105 Trauma Center Fund fee should be vacated because it exceeds that statutorily authorized amount of $100. See 730 ILCS 5/5-9-1(c-5) (West 2010). The State agrees, as do we. Although defendant did not raise this issue in the trial court, it is not forfeited, because a sentence that does not conform to a statutory requirement is void and may be corrected at any time. *People v. Arna*, 168 Ill. 2d 107, 113 (1995); *People v. Muntaner*, 339 Ill. App. 3d 887, 889 (2003). Since the statute permits a total fee of $100, the court lacked the authority to assess a greater amount. Accordingly, we modify the judgment to reflect a $100 Trauma Center Fund fee.

¶ 10 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed as modified.

¶ 11 Affirmed as modified.