2012 IL App (5th) 110021-U

NO. 5-11-0021

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Monroe County.
	)	
v.	)	No. 09-CF-129
	)	
FRANKIE W. HOOK,	)	Honorable
	)	Dennis B. Doyle,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court improperly imposed an extended-term sentence on the defendant's conviction for aggravated fleeing or attempting to elude a police officer.

¶ 2 On appeal from his convictions for burglary (720 ILCS 5/19-1(a) (West 2008)) and aggravated fleeing or attempting to elude a police officer (625 ILCS 5/11-204.1(a) (West 2008)), the defendant, Frankie W. Hook, argues that the trial court erred in sentencing him to an extended term of imprisonment on the aggravated-fleeing conviction. For the reasons that follow, we agree and accordingly vacate the extended-term portion of the sentence imposed on that conviction.

¶ 3 FACTS

¶ 4 On the night of December 2, 2009, Justin Cruse, Jessica Ridgeway, Tiffany Miller, and the defendant drove from Collinsville to Columbia in a friend's Ford Escape and parked in parking lot near the Ace Hardware store on North Main Street. Jessica later recalled that

they were all "high on drugs" at the time. While Jessica and Tiffany waited in the car, Justin and the defendant forced entry into the hardware store by shattering its glass front doors with a "landscaping type brick." Once inside, Justin and the defendant broke into two cash registers and took approximately $300 of the store's money. The store's security cameras recorded the events, and the shattered doors activated the store's silent alarm system.

¶ 5 "Less than two minutes" after being notified that the store's silent alarm had been activated, Officer Josh Bayer of the Columbia police department arrived at the scene. When he arrived, Bayer observed the defendant walk across the store's parking lot and get into the driver's seat of a Ford Escape that was parked in an adjacent lot. When Bayer subsequently positioned his squad car behind the Escape and shined a spotlight through the vehicle's rear window, the defendant "[d]rove off, [at a] high rate of speed *** with no lights on." A chase ensued, during which the defendant disobeyed several traffic control devices and, at times, drove "in the wrong lane." After driving through several yards in a residential area, the defendant abandoned the Escape "in a yard off of Ritter Road," and "everybody scattered."

¶ 6 Following an investigation into the incident, the defendant and Justin were arrested and charged with burglarizing the Ace Hardware store. Thereafter, Justin entered a negotiated plea of guilty to the charge against him, and the defendant was further charged with one count of aggravated fleeing or attempting to elude a police officer.

¶ 7 In September 2010, the defendant's cause proceeded to a bench trial, where he was convicted of burglary, a Class 2 felony with a sentencing range of three to seven years (720 ILCS 5/19-1(b) (West 2008); 730 ILCS 5/5-4.5-35(a) (West 2008) (eff. July 1, 2009)), and aggravated fleeing or attempting to elude a police officer, a Class 4 felony with a sentencing range of one to three years and an extended-term-sentencing range of three to six years (625 ILCS 5/11-204.1(b) (West 2008); 730 ILCS 5/5-4.5-45(a) (West 2008) (eff. July 1, 2009)). At the defendant's sentencing hearing, the State asked that the court impose a six-year

sentence on the burglary count and a six-year extended-term sentence on the aggravated-fleeing count. Arguing that the defendant was a threat to the public, the State further asked that the court use its discretionary authority to order that the sentences be served consecutively. See 730 ILCS 5/5-8-4(c)(1) (West 2008) (eff. July 1, 2009). Finding that the defendant's criminal history made him eligible to receive an extended-term sentence on his aggravated-fleeing conviction (see 730 ILCS 5/5-5-3.2(b)(1), 5-8-2(a) (West 2008) (eff. July 1, 2009)) but that consecutive sentences were not warranted under the circumstances, the trial court sentenced the defendant to serve concurrent six-year sentences on his convictions. Notably, when imposing sentence, the trial court specifically stated that the defendant's "two crimes occurred in such close proximity that in fact the fleeing was in effect completing the crime of burglary by leaving the scene." The present appeal followed.

¶ 8 DISCUSSION

¶ 9 The defendant argues that the trial court erred in imposing an extended-term sentence on his conviction for aggravated fleeing or attempting to elude a police officer because the court determined that his "two illegal acts were part of a single course of conduct." We agree.

¶ 10 "We initially note that the trial court is vested with broad discretion in imposing an appropriate sentence upon a defendant, and this court will not reverse unless the sentence imposed by the trial court constitutes an abuse of discretion." *People v. Britt*, 265 Ill. App. 3d 129, 151 (1994). "The decision to impose an extended-term sentence also rests with the trial court's discretion." *Id.* Nevertheless, "[i]n imposing sentences, trial courts must adhere to statutory requirements." *People v. Harvey*, 196 Ill. 2d 444, 448 (2001). "If a trial court imposes a sentence greater than that permitted by statute, the excess portion of the sentence is void." *Id.* "Accordingly, the extended-term portion of a criminal sentence is subject to challenge and cannot stand where the requirements of the extended-term sentencing statute

have not been met." *Id.*

¶ 11 "In general, a sentencing court may impose an extended-term sentence pursuant to section 5-8-2(a) of the Unified Code of Corrections *** only on the offense with the most serious class." *People v. Collins*, 366 Ill. App. 3d 885, 900 (2006). "However, an exception to this rule applies where differing class offenses are separately charged and arise from 'unrelated courses of conduct.' " *Id.* (quoting *People v. Coleman*, 166 Ill. 2d 247, 257 (1995)). "Stated another way, 'where lesser and greater class offenses are not committed as part of a single course of conduct, an extended term may be imposed on a lesser offense.' " *People v. Radford*, 359 Ill. App. 3d 411, 420 (2005) (quoting *People v. Hummel*, 352 Ill. App. 3d 269, 271 (2004)).

> "[I]n determining whether a defendant's multiple offenses are part of an 'unrelated course of conduct' for the purpose of his eligibility for an extended-term sentence under section 5-8-2(a), courts must consider whether there was a substantial change in the nature of the defendant's criminal objective. If there was a substantial change in the nature of the criminal objective, the defendant's offenses are part of an 'unrelated course of conduct' and an extended-term sentence may be imposed on differing class offenses. If, however, there was no substantial change in the nature of the criminal objective, the defendant's offenses are not part of an unrelated course of conduct, and an extended-term sentence may be imposed only on those offenses within the most serious class." *People v. Bell*, 196 Ill. 2d 343, 354-55 (2001).

¶ 12 Here, as previously noted, when imposing sentence, the trial court determined that the defendant's "two crimes occurred in such close proximity that in fact the fleeing was in effect completing the crime of burglary by leaving the scene." We thus agree with the defendant's contention that because the trial court found that the defendant's offenses were part of a single course of conduct, the trial court erred in imposing an extended-term sentence on the

lesser-class offense of aggravated fleeing or attempting to elude a police officer. Because the extended-term portion of the sentence imposed on the defendant's aggravated fleeing conviction was thus unauthorized and is therefore void, we accordingly vacate the unauthorized portion and reduce the sentence to a three-year term, the maximum nonextended term available for a Class 4 felony. See *People v. Pittman*, 316 Ill. App. 3d 245, 253 (2000); *People v. Linwood*, 243 Ill. App. 3d 744, 745 (1993).

¶ 13 On appeal, suggesting that the trial court erroneously concluded that the defendant's offenses were part of a single course of conduct, the State argues that we should determine *de novo* whether the crimes were related for extended-term-sentencing purposes. Because the State did not challenge the trial court's finding below, however, for the purpose of this appeal, "[w]e accept the court's finding even though we may have ruled differently." *People v. George*, 326 Ill. App. 3d 1096, 1103-04 (2002); see also *Bell*, 196 Ill. 2d at 355. Moreover, "[t]he determination of whether a defendant's actions constituted a single course of conduct is a question of fact for the trial court to determine," and "[t]herefore, we defer to the trial court's conclusion unless that conclusion is against the manifest weight of the evidence." *People v. Sergeant*, 326 Ill. App. 3d 974, 988 (2001). Lastly, we note that the cases the State cites to support its contention that the defendant's crimes were part of an unrelated course of conduct are readily distinguishable from the present case in that they involved instances where a defendant employed violence against another to avoid apprehension after the commission of his initial offense. See *Hummel*, 352 Ill. App. 3d at 273 (finding that where the burglary defendant drove his car into a store employee who was attempting to prevent his escape, "the defendant's course of conduct in committing the battery was unrelated to the objective in committing a burglary against the store"); *People v. Harris*, 39 Ill. App. 3d 1043, 1052 (1976) (finding that where the theft defendant battered a security guard who was attempting to prevent his escape, the battery "resulted from a 'substantial

change in the nature of the criminal objective' and was a departure from a 'single course of conduct' "); but see *People v. Arrington*, 297 Ill. App. 3d 1, 6 (1998) ("After reviewing all of the attendant facts, we are unable to agree with the trial court's conclusion that the attempted robbery and the battery were separately motivated crimes. Instead, we believe that the record supports only the conclusion that the attempted robbery and the battery were part of the same course of conduct and that no substantial change in the nature of the criminal objective occurred.").

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we hereby reduce the six-year extended-term sentence that the trial court imposed on the defendant's conviction for aggravated fleeing or attempting to elude a police officer to a nonextended three-year term. See *Pittman*, 316 Ill. App. 3d at 253; *Linwood*, 243 Ill. App. 3d at 745.

¶ 16 Affirmed as modified.