

NOTICE

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2016 IL App (5th) 130495-U

NO. 5-13-0495

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 11-CF-1282
)	
RONALD T. LEWIS,)	Honorable
)	Richard L. Tognarelli,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Schwarm and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of defendant's motion to suppress is affirmed where the warrant sufficiently described the address of the place to be searched. The trial court did not err in noting compensation as an aggravating factor at defendant's sentencing where improper consideration of that factor did not lead to a greater sentence.

¶ 2 Defendant, Ronald T. Lewis, appeals from a final judgment of conviction for unlawful possession, with intent to deliver, 1 gram or more but less than 15 grams of heroin, a Class 1 felony (720 ILCS 570/401(c)(1) (West 2012)). Defendant was sentenced as a Class X offender due to his prior convictions and was sentenced to a 12-year prison term in the Department of Corrections. We affirm.

¶ 3

BACKGROUND

¶ 4 Defendant's girlfriend, Nancy Zawec, was arrested on February 18, 2011, for possession of a controlled substance with intent to deliver after a Maryville police officer discovered heroin capsules in her purse. Zawec cooperated with police after her arrest and informed them that she lived with defendant at 2306 South Center Street, Apartment D, in Maryville, Illinois. She further informed police that defendant was processing and packaging heroin at the apartment, signed a consent form permitting police to search the residence, and provided police with a key to the apartment.

¶ 5 Police officers went to the apartment and knocked on the door. After defendant answered the door, the officers entered the foyer area of the apartment and informed defendant that Zawec had been arrested for possession of heroin. The officers further informed defendant that Zawec made statements indicating defendant was in possession of heroin inside the apartment. Special Agent Chris Lutz of the Metropolitan Enforcement Group of Southwestern Illinois, who helped assist in the investigation, testified that defendant told the officers "he did not know Za wec very well, and that he had no idea why she would say that she lived at the apartment."

¶ 6 While standing in the foyer, an officer located a bottle of Dormin sleeping pills, an ingredient commonly associated with heroin. After defendant denied the officers' request to search the apartment, the officers informed defendant that they were going to secure the apartment and apply for a search warrant. Defendant then left the apartment on foot.

¶ 7 Special Agent Lutz applied for the search warrant and requested a search of the property and premises located at the following address:

"2306 South St., Apartment D, Maryville, Madison County, Illinois 62062; Apartment D is located in a red brick multi-family apartment complex with '2306' clearly marked in black and gold on the west side of the multi-family apartment complex; Apartment 'C' and 'D' face to the east; the front door of Apartment D is white in color and the letter 'D' is in the middle of the door and clearly marked[.]"

¶ 8 After securing the search warrant later that same day, police officers searched the apartment and discovered 3.3 grams of a substance that was determined to contain heroin. The officers also found digital scales, several hundred empty pill capsules, and a coffee can containing over \$3,300 in cash. An indictment charged defendant with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(1) (West 2012)), and the matter was set for a jury trial.

¶ 9 Defendant filed a motion to quash the search warrant and suppress evidence on February 5, 2013, asserting law enforcement officers searched a private residence located at 2306 South Center St., Apartment D, Maryville, Illinois, on February 18, 2011, and seized items from that residence which in part formed the basis for the offenses charged against defendant. The motion further asserted the search was "in direct contradiction to the search warrant issued by this Honorable Court which unequivocally directed law enforcement to search the premises at 2306 South St., Maryville, Illinois," and requested that the evidence be suppressed.

¶ 10 Citing to section 108-14 of the Illinois Code of Criminal Procedure of 1963, which states "[n]o warrant shall be quashed nor evidence suppressed because of technical irregularities not affecting the substantial rights of the accused" (725 ILCS 5/108-14 (West 2008)), the trial court found "the error stating the address of the residence to be searched as '2306 South Street' amounts to a technical deficiency which created no reasonable probability of confusion." For this reason, the trial court denied defendant's motion to quash the search warrant and suppress evidence.

¶ 11 The jury convicted defendant of unlawful possession, with intent to deliver, 1 gram or more but less than 15 grams of heroin, a Class 1 felony. 720 ILCS 570/401(c)(1) (West 2012). Defendant was sentenced as a Class X offender due to his prior convictions and was sentenced to 12 years in the Department of Corrections. Specifically, the trial court found five statutory factors in aggravation were applicable to defendant: (1) defendant's conduct caused or threatened serious harm; (2) defendant received compensation for committing the offense; (3) defendant had a history of prior delinquency or criminal activity; (4) the sentence was necessary to deter others from committing the same crime; and (5) defendant was convicted of a felony committed while he was released on bail or his own recognizance pending trial for a prior felony and was convicted of such prior felony, or the defendant was convicted of a felony committed while he was serving a period of probation, conditional discharge, or mandatory supervised release under subsection (d) of section 5-8-1 for a prior felony. 730 ILCS 5/5-5-3.2(a)(1), (2), (3), (7), (12) (West 2012). Defendant did not file a motion to reconsider his sentence. This appeal followed.

¶ 12

ANALYSIS

¶ 13

I. Particularity Requirement

¶ 14 Defendant alleges the trial court's denial of his motion to suppress should be reversed because the search warrant failed to indicate the address to be searched with reasonable particularity as required by the fourth amendment. For this reason, defendant further alleges his conviction should be reversed and remanded for a new trial. As we indicate above, it is undisputed the warrant incorrectly states Zawec's apartment address as "2306 South St., Apartment D" in Maryville, rather than Zawec's actual address, 2306 South Center St., Apartment D, in Maryville.

¶ 15 Review of a trial court's ruling on a motion to suppress evidence involves both questions of fact and law. *People v. Moss*, 217 Ill. 2d 511, 517, 842 N.E.2d 699, 704 (2005). A reviewing court will uphold findings of fact made by the trial court unless such findings are against the manifest weight of the evidence. *Moss*, 217 Ill. 2d at 517-18, 842 N.E.2d at 704. However, the ultimate question of whether the evidence must be suppressed is reviewed *de novo*, "undertaking our own assessment of the facts in relation to the issues presented." *Moss*, 217 Ill. 2d at 518, 842 N.E.2d at 704.

¶ 16 The United States Supreme Court has indicated the fourth amendment specifies only two matters that must be particularly described in a warrant: "the place to be searched" and "the persons or things to be seized." *United States v. Grubbs*, 547 U.S. 90, 97 (2006). The purpose of the particularity requirement is to safeguard against broad exploratory searches and to ensure the scope of a search is narrowly tailored. *People v.*

Bui, 381 Ill. App. 3d 397, 411, 885 N.E.2d 506, 519 (2008). Accordingly, the test for the sufficiency of a description in a warrant is whether it leaves the executing officer no doubt and no discretion as to the person or premises to be searched. *People v. Mabry*, 304 Ill. App. 3d 61, 64, 710 N.E.2d 454, 457 (1999).

¶ 17 Illinois courts have been asked to rule on the validity of warrants with imperfect descriptions. Generally, an otherwise valid warrant will not be quashed due to technical errors that do not affect a defendant's substantial rights. *Mabry*, 304 Ill. App. 3d at 64, 710 N.E.2d at 457. It is well settled that errors or omissions in addresses are not *per se* fatal to the validity of a search warrant. *Mabry*, 304 Ill. App. 3d at 65, 710 N.E.2d at 457. Rather, a "warrant must simply identify the place to be searched to the exclusion of all others." *Mabry*, 304 Ill. App. 3d at 65, 710 N.E.2d at 457. If nothing else, the warrant must enable the police to identify the place intended with reasonable effort. *Mabry*, 304 Ill. App. 3d at 65, 710 N.E.2d at 457. The defendant bears the burden of establishing that the lack of particularity in the description of the premises operated to cause ambiguity or confusion. *People v. Bauer*, 102 Ill. App. 3d 31, 34, 429 N.E.2d 568, 571 (1981).

¶ 18 After careful review, we cannot say the warrant failed to describe Zawec's apartment with reasonable particularity. The only omission in the address stated in the warrant in comparison to Zawec's apartment address is the word "Center"—2306 South St. versus 2306 South Center St. Other than that single omission, every other detail of the address stated in the warrant corresponds with Zawec's address, including that it is located in a red brick multi-family apartment complex with "2306" clearly marked in

black and gold on the west side of the complex, and the letter "D" clearly marked in the middle of the apartment door facing east.

¶ 19 Defendant has failed to introduce evidence regarding the existence of another apartment complex in Maryville that has "2306" marked in black and gold on the west side of the complex with an apartment clearly marked with the letter "D" in the middle of the door facing east. Moreover, defendant concedes there is no "South St." in Maryville and further concedes the second page of the supporting affidavit to the warrant makes reference to Zawec's apartment address as "2306 South Center St. Apartment D in Maryville, IL." "[R]eference to the affidavit attached to the warrant is permissible in determining the validity of the warrant." *Bauer*, 102 Ill. App. 3d at 34, 429 N.E.2d at 571.

¶ 20 Further, we find it important to acknowledge that the officer who applied for and helped execute the search warrant, Special Agent Lutz, was one of the officers at the apartment when defendant denied the officers' request to search the apartment. Thus, Lutz knew precisely where the apartment to be searched was located when he applied for the search warrant. For this reason, "[t]here was no danger of a search of the wrong apartment or of infringement upon the rights of any party." *People v. Redmond*, 43 Ill. App. 3d 682, 684, 357 N.E.2d 204, 206 (1976).

¶ 21 It is important to reiterate that errors or omissions in addresses are not *per se* fatal to the validity of a search warrant, as a warrant must simply identify the place to be searched to the exclusion of all others. *Mabry*, 304 Ill. App. 3d at 65, 710 N.E.2d at 457.

Further, the defendant has the burden of establishing that, in view of all the relevant facts, the lack of particularity in the description of the premises operated to cause ambiguity or confusion. *Bauer*, 102 Ill. App. 3d at 34, 429 N.E.2d at 571. Here, the warrant identified Zawec's apartment as the place to be searched to the exclusion of all other possibilities in Maryville. Considering the warrant's description of Zawec's apartment failed to cause ambiguity or confusion, defendant has failed to meet his burden. Accordingly, we reject defendant's argument.

¶ 22 Defendant argues that because there is no "South Street" listed in Maryville, coupled with the fact there are other streets in Maryville with the word "South" in the address such as "South Donk Street," the description in the warrant does not leave the executing officer with "no doubt and no discretion as to the person or premises to be searched." *Mabry*, 304 Ill. App. 3d at 64, 710 N.E.2d at 457. Defendant further argues the supporting affidavit attached to the warrant is fraught with error and confusion because it refers to the apartment's address as "2306 South St." several times and only once lists Zawec's actual address, "2306 South Center St." We disagree.

¶ 23 Defendant ignores the fact that he has failed to present evidence regarding the existence of another apartment in Maryville that corresponds to the details of the address described in the warrant. Further, the officer who helped execute the warrant was physically present at the apartment immediately prior to applying for the warrant. Accordingly, defendant fails to meet his burden of establishing the warrant's description created confusion or ambiguity. Regarding the supporting affidavit which lists the address as both "2306 South St." and "2306 South Center St.," such evidence is not *per se*

fatal in determining the validity of a warrant. *Bauer*, 102 Ill. App. 3d at 34, 429 N.E.2d at 571. It is not the deciding factor. For these reasons, we reject defendant's argument.

¶ 24 Before advancing to the next issue on appeal, we acknowledge the State has presented other arguments in support of its assertion that the trial court's denial of defendant's motion to suppress should be affirmed. These arguments include: (1) the drugs in the apartment would have inevitably been found even if the search warrant was deemed invalid, and (2) Zawec's consent was sufficient for police to search the apartment. In light of our finding the warrant satisfied the particularity requirement under the fourth amendment, we need not address these issues.

¶ 25 II. Aggravating Factor

¶ 26 Defendant next alleges the trial court improperly considered compensation as an aggravating factor at his sentencing because it is inherent in the offense of unlawful possession with intent to deliver heroin. Therefore, defendant argues his sentence should be vacated and remanded for a new sentencing hearing.

¶ 27 We initially observe that defendant has failed to preserve this issue on appeal. Consequently, we may ordinarily review this claim of error only if defendant has established plain error. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). However, defendant argues, and the State concedes, that he was not properly admonished by the trial court. Because he was given incomplete Rule 605(a) admonishments regarding the preservation of sentencing issues

for appeal, defendant argues his sentencing claim has not been waived and should be addressed by this court. Ill. S. Ct. R. 605(a) (eff. Oct. 1, 2001).

¶ 28 Before we begin our analysis, we note that a reviewing court applies a *de novo* standard of review to questions regarding the application of supreme court rules. *People v. Stewart*, 365 Ill. App. 3d 744, 751, 851 N.E.2d 162, 169 (2006).

¶ 29 Generally, a trial court's imposition of a sentence is subject to review for an abuse of discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27, 978 N.E.2d 1061. "The sentence imposed is presumed to be proper, and only where such presumption has been rebutted by an affirmative showing of error will a reviewing court find the sentence to be an abuse of discretion." *People v. Waln*, 169 Ill. App. 3d 264, 276 523 N.E.2d 1318, 1327 (1988). An abuse of discretion will be found where the sentence is profoundly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Geiger*, 2012 IL 113181, ¶ 27, 978 N.E.2d 1061. Where a sentence is based on improper factors, the sentence will not be affirmed unless the reviewing court can determine from the record that the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence. *People v. Heider*, 231 Ill.2d 1, 21, 896 N.E.2d 239, 251 (2008).

¶ 30 Applying the above principles to this case, we cannot say the 12-year sentence imposed on defendant was an abuse of discretion despite the fact the court improperly considered an aggravating factor. In considering the statutory factors in aggravation, the trial court found factors 1, 2, 3, 7, and 12 applied. 730 ILCS 5/5-5-3.2(a)(1), (2), (3), (7),

(12) (West 2012). One of the factors in aggravation the trial court considered was factor 2 regarding defendant's compensation received in committing the offense. While we acknowledge it is generally improper to consider compensation as an aggravating factor for the offense committed in this case, remandment for resentencing is not required where a "review of the record shows the trial court merely noted this factor and placed little, if any, weight on it in determining defendant's sentence." *People v. Rivera*, 307 Ill. App. 3d 821, 834, 719 N.E.2d 154, 165 (1999). As our supreme court has stated, "where a defendant has received incomplete Rule 605(a) admonishments regarding the steps necessary to preserve sentencing issues for appeal, remand is required only if the defendant was prejudiced or denied real justice as a result of the trial court's inadequate admonishments." *People v. Henderson*, 217 Ill. 2d 449, 470, 841 N.E.2d 872, 883 (2005).

¶ 31 Here, the trial court's only reference to compensation at defendant's sentencing occurred when the court stated: "In reviewing this matter the Court finds that factors 1, 2, 3, and 7 as well as 12 apply." The court instead focused on the recent epidemic of heroin overdoses in the area, defendant's threat of harm to others, and the fact that defendant committed crimes while he was out on bond. Further, defendant received a 12-year sentence when he was eligible for a 30-year sentence. 730 ILCS 5/5-4.5-25(a) (West 2014) (sentencing range of 6 to 30 years for Class X felony).

¶ 32 Since the trial court only noted the compensation factor once and placed little weight on it in determining defendant's sentence, we find the court's consideration of the improper aggravating factor did not cause defendant to receive a greater sentence.

Defendant was not prejudiced or denied real justice as a result of the trial court's inadequate admonishments at sentencing. Accordingly, we reject defendant's invitation to vacate the sentence imposed by the trial court and remand for a new sentencing hearing.

¶ 33 Defendant argues the trial court mirrored the State's emphasis on defendant's receipt of compensation at sentencing, and such mirroring indicates the court improperly relied on the implicit factor of compensation in determining its sentence. Defendant relies on *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 12, 973 N.E.2d 459, which found that the trial court's recitation of aggravating factors argued by the State, including a factor inherent in the offense, showed the trial court improperly considered an inherent factor in imposing its sentence.

¶ 34 After careful review, we are unpersuaded by *Abdelhadi*. In *Abdelhadi*, the State requested a maximum sentence of 14 years and argued three factors in aggravation, including a factor inherent in the offense. In sentencing the defendant to 10 years, the trial court found the three factors argued by the State applied. Since the trial court failed to elaborate or describe the inherent factor it found applied, the appellate court remanded the cause for a new sentencing hearing. Specifically, the appellate court found the mirroring between the factors in aggravation argued by the State and the factors used by the trial court indicated there was reliance by the trial court on the implicit factor. *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 14, 973 N.E.2d 459.

¶ 35 In contrast, the trial court in this case did not recite the aggravating factors argued by the State. While the trial court mentioned that factor 2 applied, it did not discuss compensation as an aggravating factor. Rather, as we discuss above, the trial court focused on the ongoing heroin epidemic and the threat of defendant's actions to others, including defendant's commission of a crime while out on bond for a separate crime. For this reason, we find the trial court only mentioned factor 2 at sentencing and placed little, if any, weight on it in determining defendant's sentence. Accordingly, we reject defendant's argument.

¶ 36 CONCLUSION

¶ 37 For the reasons stated herein, the judgment of the circuit court of Madison County is affirmed.

¶ 38 Affirmed.