NOTICE
Decision filed 11/29/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 190462-U

NO. 5-19-0462

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 19-CF-350
	)	
TARKUS A. HAMBLIN SR.,	)	Honorable
	)	John J. O'Gara,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Pursuant to the recent decision of the Illinois Supreme Court in *People v. Stewart*, 2022 IL 126116, we conclude that in this case, the trial judge erroneously sentenced the defendant as a Class X felony offender. Accordingly, we vacate the defendant's sentence and remand for resentencing as a Class 2 felony offender. We summarily affirm his unchallenged conviction.

¶ 2 The defendant, Tarkus A. Hamblin Sr., appeals his sentence following his conviction, after a stipulated bench trial in the circuit court of St. Clair County, for the offense of failure to register as a sex offender. He does not challenge his conviction, which we summarily affirm. His sole contention is that the trial judge erroneously sentenced the defendant as a Class X felony offender, because "one of only two potentially-qualifying prior convictions occurred when he was 17 years old, which, under current law, would not be a Class 2 or greater adult felony offense." Thus, according to the defendant, under the present statutory sentencing scheme, he should have been

sentenced as a Class 2 felony offender. For the following reasons, we vacate the defendant's sentence and remand for resentencing as a Class 2 felony offender.

¶ 3 I. BACKGROUND

¶ 4 On March 6, 2019, the defendant was charged, by criminal information, with one count of failure to register as a sex offender—subsequent, a Class 2 criminal felony. The information alleged that the defendant had, between October 2, 2016, and March 5, 2019, failed to renew his sex offender registration, and that he had a previous conviction for the offense of unlawful failure to inform change of address as a sex offender. On April 18, 2019, the defendant filed a motion to define sentencing range or to dismiss, in which he contended, *inter alia*, that the crime with which he was charged was a victimless one, and that therefore the Class X sentencing scheme he faced was violative of both the United States Constitution and the Illinois Constitution. On August 15, 2019, he filed an amended motion, in which he added another constitutional argument to his previous motion. None of the arguments in the motions are directly related to the arguments raised by the defendant in this appeal. Accordingly, we do not discuss the arguments in detail. Following a hearing, the amended motion was denied.

¶ 5 On September 12, 2019, a stipulated bench trial was held. At the outset of the proceeding, the defendant was thoroughly admonished as to his right to a trial by jury, and was admonished that he faced sentencing as a Class X offender, his previous objection to that sentencing scheme notwithstanding. Thus, the trial judge explained, the defendant faced a sentence of between 6 and 30 years, to be followed by 3 years of mandatory supervised release, and also faced a fine. The defendant acknowledged that he understood this. After the trial judge accepted the defendant's oral and written waivers of his right to a jury trial, a written stipulation was entered by the parties that police officer Nathan Adrian would testify, consistently with his police report, that on March 5, 2019, while conducting a routine check of a hotel guest registry, he discovered that the

defendant, who was registered at the hotel, was a sex offender who had been out of compliance with his sex offender registration requirements since October 2, 2016. Adrian would also testify that during an interview with the defendant, the defendant told Adrian that the defendant believed he was no longer required to register as a sex offender, because more than 20 years had passed since he was convicted of a sex offense. After additional evidence was presented, the trial judge found the defendant guilty of the charged offense, and, with the agreement of the State, released the defendant on a recognizance bond until the time of sentencing.

¶ 6 On October 28, 2019, a sentencing hearing was held. At the outset of the hearing, the trial judge noted that a presentence investigation (PSI) report dated October 22, 2019, was on file, and asked the parties if they had received the PSI report as well. Both parties represented that they had. The trial judge then asked each party if there were "any corrections, deletions, or additions" from that party. Both parties stated that they had no corrections, deletions, or additions to the PSI report. Thereafter, counsel for the State noted that the defendant had three previous convictions for failing to adhere to his sex offender registration requirements. The State argued that the defendant's criminal history—which was "attached here" (presumably meaning found within the PSI report)—showed that the defendant also had "two prior offenses that make him eligible for the Class X sentencing provision." The State cited the defendant's 1992 conviction and sentence for the Class 2 felony offense of burglary, and then stated that "in l993, he was convicted of a Class X offense—the Class X offenses of aggravated criminal sexual assault as well as aggravated—two counts—or two separate offenses of aggravated criminal sexual assault." The PSI report, which is included in the record on appeal, shows that the 1992 burglary conviction was entered in St. Clair County case No. 92-CF-220 on April 21, 1992. The PSI report also shows two convictions entered on April 20, 1995, for the Class X offense of aggravated criminal sexual assault: one conviction, with a sentence of 9 years and 11 months in the Illinois Department of Corrections, in St. Clair County

case No. 93-CF-814, count 1, and a second conviction, also listed with a sentence of 9 years and 11 months in the Illinois Department of Corrections, in St. Clair County case No. 93-CF-814, count 2. The PSI report further shows that count 3 in St. Clair County case No. 93-CF-814, which was for unlawful possession of a weapon by a felon, "was dismissed by prosecution motion" on April 20, 1995.

¶ 7 At the conclusion of its argument, the State requested the minimum sentence available pursuant to Class X sentencing: six years of imprisonment, followed by three years of mandatory supervised release. The defendant renewed his argument, made in his previous motions, that Class X sentencing in this case was violative of both the United States Constitution and the Illinois Constitution. The defendant was subsequently sentenced to six years imprisonment in the Illinois Department of Corrections, to be followed by three years of mandatory supervised release. When handing down this sentence, the trial judge stated, *inter alia*:

> "Unfortunately, the People's argument has to prevail here. And it's with no glee that I think—I've considered the factors in mitigation and aggravation and carefully, you know, considered the arguments of counsel. But I am guided by the law. I can't sentence you to any less than six years in the Illinois Department of Corrections. And that's what I'm going to sentence you to, what I do believe to be the minimum here, which is six years in the Illinois Department of Corrections, to be followed by three years mandatory supervised release after you're released from prison."

Thereafter, when admonishing the defendant "to absolutely be very, very, very proactive about figuring out how to comply with this law" once the defendant again was released from prison, the trial judge told the defendant, *inter alia*, "You haven't harmed anybody. You haven't—You haven't harmed society other than you just haven't done what's expected of you, and that is to register in the way that you're supposed to do it." The defendant subsequently filed a motion to

reconsider sentence, in which he restated his previous constitutional arguments. The motion was denied, and this timely appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, the defendant's sole contention is that the trial judge erroneously sentenced the defendant as a Class X offender, because "one of only two potentially-qualifying prior convictions occurred when he was 17 years old, which, under current law, would not be a Class 2 or greater adult felony offense." Thus, according to the defendant, under the present statutory sentencing scheme, he should have been sentenced as a Class 2 felony offender. The defendant does not persist in the constitutional arguments he raised in the trial court, which, he aptly notes on appeal, were not well developed in the trial court and amounted to little more than unsupported legal conclusions. He also concedes that the issue he presently raises was not preserved in the trial court, but argues that it may be reviewed as plain error, or as ineffective assistance of trial counsel. His specific argument on appeal is that because his 1992 conviction for the Class 2 felony of burglary, which purportedly provided one of the two necessary convictions to require Class X sentencing in this case, occurred when he was only 17 years old (the defendant was born on August 7, 1974), it does not in fact qualify as such a conviction under existing law, and he therefore should not have been sentenced as a Class X offender.

¶ 10 In support of this argument, the defendant in his opening brief on appeal pointed to *People v. Miles*, 2020 IL App (1st) 180736.[1] In a motion to cite additional authority filed soon after the filing of his initial brief on appeal, the defendant asked this court for permission to cite *People v. Williams*, 2020 IL App (1st) 190414, in which the court followed the reasoning in *Miles*. We

[1]As the parties noted, the Illinois Supreme Court granted the State's petition for leave to appeal in *Miles*, but then dismissed the appeal when the defendant/appellee died. However, the Illinois Supreme Court denied the State's request to vacate the appellate court opinion in *Miles*, which still stands.

granted the motion to cite additional authority. The defendant subsequently filed a second motion to cite additional authority, in which the defendant asked this court for permission to cite *People v. Reed*, 2020 IL App (4th) 180533, in which our colleagues in the Fourth District disagreed with the reasoning in *Miles* and declined to follow it. We granted this motion to cite additional authority as well.

¶ 11 Thereafter, the State filed its brief on appeal in this case. Therein, the State argued, in essence, that this court should follow *Reed*, not *Miles* or *Williams*. The States characterized the *Reed* decision as "better-reasoned." The State did not dispute that this type of issue is reviewable as plain error, but contended that because, under the State's theory, there was no error at all in this case, there could be no plain error either.

¶ 12 In his reply brief, the defendant acknowledged that *Reed* "held that a criminal conviction as a juvenile may serve as a predicate offense for the purpose of mandatory Class X sentencing in accordance with 730 ILCS 5/5-4.5-95(b)," but contended that *Miles* "more faithfully follows the clear language of the mandatory Class X sentencing statute, the Juvenile Court Act, and the rule of lenity."

¶ 13 On October 20, 2022, the Illinois Supreme Court issued its decision in *People v. Stewart*, 2022 IL 126116. Therein, a majority of the court ruled that this type of issue is reviewable as plain error. *Id.* ¶ 12. The *Stewart* majority stated that "the precise question" before it was "whether the legislature intended a prior felony conviction to be a qualifying offense for Class X sentencing if the same offense would have resulted in a juvenile adjudication had it been committed on the date of the present offense." *Id.* ¶ 16. The *Stewart* majority thereafter stated that "[l]egislation enacted after the appellate court rendered its conflicting decisions in *Miles* and *Reed* clarified that the General Assembly did not intend for convictions of juveniles in adult court to be considered qualifying offenses for Class X sentencing." *Id.* ¶ 18. Ultimately, in alignment with the ruling of

the *Miles* court, the *Stewart* majority held that the defendant's "conviction for an offense committed when he was 17 years old was not a qualifying offense for Class X sentencing under the [relevant] version of section 5-4.5-95(b) of the Code." *Id.* ¶ 22. Accordingly, the *Stewart* majority affirmed the decision of the appellate court to vacate the defendant's Class X sentence and to remand for resentencing as a Class 2 felony offender. *Id.* ¶ 25.

¶ 14 Pursuant to the holding of the *Stewart* majority, the defendant in this case is correct that the trial judge erred when he sentenced the defendant as a Class X offender, because the defendant's 1992 conviction for the Class 2 felony of burglary, which purportedly provided one of the two necessary convictions to require Class X sentencing in this case, occurred when he was only 17 years old and thus is not a qualifying offense under the relevant version of section 5-4.5-95(b).

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we affirm the defendant's unchallenged conviction, vacate his sentence, and remand for resentencing as a Class 2 felony offender.

¶ 17 Conviction affirmed; sentence vacated; cause remanded for resentencing.