2026 IL App (4th) 250636

NO. 4-25-0636

FILED
November 3, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
JOSHUA J. KRUTSCH,	)	No. 23CF1114
Defendant-Appellant.	)	
	)	Honorable
	)	Brendan A. Maher,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justices Cavanagh and Harris concurred in the judgment and opinion.

OPINION

¶ 1 After a trial, a jury found defendant, Joshua J. Krutsch, guilty of three counts of aggravated battery (720 ILCS 5/12-3.05(b)(2) (West 2022)) (counts I-III) and one count of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2022)) (count IV). Pursuant to section 5-5-3.2(b)(1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-3.2(b)(1) (West 2024)), the trial court found defendant eligible to receive extended-term sentences on all four counts. The court sentenced defendant to four concurrent six-year terms of imprisonment in the Illinois Department of Corrections.

¶ 2 On appeal, defendant argues (1) posttrial counsel provided ineffective assistance during the sentencing hearing by not arguing defendant was not extended-term eligible because the United States Supreme Court's decision in *Erlinger v. United States*, 602 U.S. 821 (2024), required the jury to find the elements of section 5-5-3.2(b)(1) of the Code beyond a reasonable

doubt and (2) the trial court erred in imposing an extended-term sentence for count IV, which was a lesser-class offense than counts I through III.

¶ 3 I. BACKGROUND

¶ 4 On May 26, 2023, the State charged defendant with three counts of aggravated battery, a Class 3 felony, and one count of domestic battery, a Class 4 felony. The State filed an amended indictment, asserting counts I through III carried an extended-term sentencing range of 2 to 10 years' imprisonment, while count IV's extended-term sentencing range was 1 to 6 years' imprisonment. The matter proceeded to a jury trial on January 13, 2025, after which the jury found defendant guilty on all four counts.

¶ 5 The presentence investigation report (PSI) showed defendant's extensive criminal history included a conviction for harassing a witness (720 ILCS 5/32-4a(a) (West 2012)), a Class 2 felony, in Winnebago County case No. 13-CF-785. Defendant initially received probation, but his probation was subsequently revoked, and he was resentenced to three years' imprisonment in December 2015.

¶ 6 During the sentencing hearing, the trial court found defendant was eligible to receive extended-term sentences for each of his convictions due to his criminal history. The court imposed concurrent six-year-imprisonment terms on each count. Pursuant to Illinois Supreme Court Rule 605(a) (eff. Apr. 15, 2024), the court admonished defendant regarding his right to appeal, as well as the requirement that he file a postsentencing motion to preserve arguments challenging his sentence for appeal. Defendant did not file any postsentencing motions.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues (1) he received ineffective assistance when posttrial counsel did

not challenge the trial court's imposition of extended-term sentences because the jury did not find the State proved all the elements of section 5-5-3.2(b)(1) beyond a reasonable doubt, and (2) the court committed plain error by imposing an extended-term sentence for count IV.

¶ 10 A. Counsel's Performance Was Not Deficient

¶ 11 Defendant relies on the United States Supreme Court's ruling in *Erlinger* to argue that the trial court violated his fifth and sixth amendment (U.S. Const., amends. V, VI) rights to due process and a jury determination regarding whether his prior conviction for harassing a witness satisfied section 5-5-3.2(b)(1)'s requirements. See 730 ILCS 5/5-5-3.2(b)(1) (West 2024). Specifically, defendant argues that, under *Erlinger*, the jury needed to find that his prior conviction and sentence occurred within 10 years of his convictions in the present case and that the prior conviction arose from a different series of acts in order for his current convictions to be extended-term eligible. See 730 ILCS 5/5-5-3.2(b)(1) (West 2024). Defendant asserts posttrial counsel rendered ineffective assistance by not objecting to his sentences on those grounds.

¶ 12 1. *Ineffective Assistance of Counsel*

¶ 13 We review ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Enis*, 194 Ill. 2d 361, 376 (2000). "[A] defendant must allege facts which demonstrate that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." *Enis*, 194 Ill. 2d at 376. "A defendant bears the burden of proof on both elements of this test." *People v. Burks*, 343 Ill. App. 3d 765, 775 (2003). "Because a defendant must satisfy both prongs of the test, the failure to satisfy either prong precludes a finding of ineffective assistance of counsel under *Strickland*." *People v. Wilson*, 191 Ill. 2d 363, 370 (2000). We review ineffective assistance claims *de novo* if they were

not raised in the trial court. See *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24. There can be no ineffective assistance if there is no error. See *People v. Jones*, 2020 IL App (4th) 190909, ¶ 179.

¶ 14 2. Erlinger

¶ 15 In *Erlinger*, the United States Supreme Court addressed the Armed Career Criminal Act of 1984 (ACCA) (18 U.S.C. § 924 (2012)), a federal law imposing "lengthy mandatory prison terms on certain defendants who have previously committed three violent felonies or serious drug offenses on separate occasions." *Erlinger*, 602 U.S. at 825. The defendant pleaded guilty to being a felon unlawfully possessing a firearm (18 U.S.C. § 922(g) (2012)), and the government pursued a 15-year sentence under the ACCA. *Erlinger*, 602 U.S. at 826. The defendant insisted he did not qualify for an ACCA sentence because "his decades-old burglaries had not occurred on four separate occasions but during a single criminal episode." *Erlinger*, 602 U.S. at 827. The trial court "found it more likely than not that [the defendant's] past included three ACCA-qualifying offenses committed on three different occasions." *Erlinger*, 602 U.S. at 826. Based on this finding, the trial court imposed a 15-year sentence in accordance with the ACCA. *Erlinger*, 602 U.S. at 827. The defendant appealed, arguing "the Fifth and Sixth Amendments entitled him to have a jury decide whether his [prior convictions] occurred on different occasions." *Erlinger*, 602 U.S. at 827.

¶ 16 On direct appeal, the government conceded that a jury needed to resolve the "intensely factual" inquiries required by the ACCA, "including whether the defendant's past offenses were committed close in time, whether they were committed near to or far from one another, and whether the offenses were similar or intertwined in purpose and character." (Internal quotation marks omitted.) *Erlinger*, 602 U.S. at 828. However, the Seventh Circuit "refused to disturb" the defendant's sentence. *Erlinger*, 602 U.S. at 828. The defendant petitioned for *certiorari*, and the government filed a brief in support. *Erlinger*, 602 U.S. at 828. The United States

Supreme Court took up the case "to decide whether ACCA's occasions inquiry must be resolved by a jury." *Erlinger*, 602 U.S. at 828.

¶ 17 In taking the case, the Supreme Court considered "whether a judge may decide that a defendant's past offenses were committed on separate occasions under a preponderance-of-the-evidence standard, or whether the Fifth and Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt." *Erlinger*, 602 U.S. at 825. The Court found that "deciding whether [the defendant's] past offenses occurred on three or more different occasions is a fact-laden task." *Erlinger*, 602 U.S. at 834. Accordingly, the Court held the defendant "was entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt." *Erlinger*, 602 U.S. at 835. However, the Court asserted, "[W]e decide no more than that." *Erlinger*, 602 U.S. at 835. The Court emphasized,

> "[The parties] disagree vigorously about whether [the defendant's prior convictions] took place on an at least three different occasions (so that ACCA's enhanced sentences would apply) or during a single criminal episode (so that they would not). Presented with evidence about the times, locations, purpose, and character of those crimes, a jury might have concluded that some or all occurred on different occasions. Or it might not have done so. All we can say for certain is that the sentencing court erred in taking that decision from a jury of [the defendant's] peers." *Erlinger*, 602 U.S. at 835.

¶ 18 3. *Illinois Jurisprudence*

¶ 19 On several occasions, the Illinois Appellate Court has considered the *Erlinger* holding and its impact on section 5-5-3.2(b)(1) of the Code. See, *e.g.*, *People v. Holman*, 2025 IL App (2d) 240513, ¶¶ 42-48; *People v. Coopwood*, 2025 IL App (3d) 240579-U, ¶¶ 15-20; *People*

v. Cooper, 2026 IL App (5th) 250282, ¶¶ 55-62, 73; *People v. Steward*, 2026 IL App (2d) 240558-U, ¶¶ 55-58. We review some of those cases here.

¶ 20 a. *Holman*

¶ 21 In *Holman*, the defendant was found guilty of theft from a person (720 ILCS 5/16-1(b)(4) (West 2022)) at the conclusion of a jury trial in May 2023. *Holman*, 2025 IL App (2d) 240513, ¶¶ 5-27. The trial court imposed an extended-term sentence pursuant to section 5-5-3.2(b)(1) because the defendant was previously convicted of aggravated driving under the influence (625 ILCS 5/11-501(d) (West 2016)), and he was released from custody in July 2017. *Holman*, 2025 IL App (2d) 240513, ¶¶ 5-6, 30-34. On appeal, the defendant relied on *Erlinger* to argue that "the question of whether [his] prior conviction occurred within the last 10 years [was] a question of fact beyond the mere fact of a prior conviction and, therefore, needed to be proven to a jury beyond a reasonable doubt." *Holman*, 2025 IL App (2d) 240513, ¶ 43.

¶ 22 The Appellate Court, Second District, disagreed, finding the Code's requirements "present a much simpler inquiry than those presented by the [ACCA] and can be readily discerned by review of public records or the presentence investigation." *Holman*, 2025 IL App (2d) 240513, ¶ 46. The Second District observed that the United States Supreme Court explicitly stated that its *Erlinger* decision did not overturn or narrow its holdings in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and "Illinois courts have repeatedly held that section 5-5-3.2(b)(1) is constitutional under *Apprendi*." *Holman*, 2025 IL App (2d) 240513, ¶ 46. The Second District concluded that "the date of [a] defendant's release from custody is not a fact that must be submitted to a jury but is 'intrinsic to the conviction' and can be properly determined by the court." *Holman*, 2025 IL App (2d) 240513, ¶ 47 (quoting *People v. Yancy*, 368 Ill. App. 3d 381, 393 (2005)). The Second District revisited and reinforced its *Holman*

decision in *Steward*, where it found the following:

> "In *Holman*, we held that *Erlinger* did not apply when considering section 5-5-3.2(b)(1) and the 10-year analysis. [Citation.] We found that the 10-year inquiry was much simpler in *Holman* and that it could be readily discernible from public records. [Citation.] Moreover, we noted that section 5-5-3.2(b)(1) has repeatedly been held constitutional under *Apprendi*. [Citation.] We will not depart from the analysis of *Holman*." *Steward*, 2026 IL App (2d) 240558-U, ¶ 57.

¶ 23 b. *Coopwood*

¶ 24 In *Coopwood*, the defendant was convicted of one count of aggravated battery (720 ILCS 5/12-3.3(a-5) (West 2024)) and two counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2024)). *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 4. According to the PSI, the defendant was previously convicted of aggravated domestic battery in February 2016. *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 5. The defendant was discharged from mandatory supervised release in January 2024. *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 5. The trial court imposed extended-term sentences pursuant to section 5-5-3.2(b)(1). *Coopwood*, 2025 IL App (3d) 240579-U, ¶¶ 8, 17.

¶ 25 On appeal, the defendant relied on *Erlinger* to argue he received ineffective assistance when his trial counsel did not challenge his extended-term sentences. *Coopwood*, 2025 IL App (3d) 240579-U, ¶¶ 15, 19. The Appellate Court, Third District, found the sentences were proper because the trial court "used the PSI in finding that [the] defendant was previously convicted of a Class 2 felony in 2015, which would subject him to extended-term sentences as aggravated domestic battery was also a Class 2 felony, and he was convicted within the previous 10 years." *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18; see *People v. Johnson*, 372 Ill. App. 3d

772, 781 (2007) ("[R]eliance by the trial court on a PSI to establish the existence of a prior conviction for purposes of imposing an extended-term sentence under section 5-5-3.2(b)(1) does not violate [a] defendant's constitutional rights."). The Third District distinguished *Erlinger*, observing that the Supreme Court's decision in *Erlinger* "was concerned with the 'factual finding that [the defendant's] offenses occurred on at least three separate occasions.' " *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 19 (quoting *Erlinger*, 602 U.S. at 835). Conversely, the Third District concluded that, in *Coopwood*, "[t]here was no fact for the fact finder to resolve" because the trial court relied on the PSI. *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18.

¶ 26 c. *Cooper*

¶ 27 In *Cooper*, the defendant pleaded guilty to aggravated driving while his license was revoked and possession of a stolen vehicle. *Cooper*, 2026 IL App (5th) 250282, ¶ 5. The defendant was previously convicted of second degree murder in October 2009 (720 ILCS 5/9-2(d) (West 2008)), and his discharge date was February 28, 2020. *Cooper*, 2026 IL App (5th) 250282, ¶ 56. The trial court imposed extended-term sentences, pursuant to section 5-5-3.2(b)(1). *Cooper*, 2026 IL App (5th) 250282, ¶¶ 14-16. On appeal, the defendant argued, *inter alia*, that *Erlinger* rendered section 5-5-3.2(b)(1) facially unconstitutional and his plea counsel and postplea counsel were ineffective for not challenging the imposition of extended-term sentences. *Cooper*, 2026 IL App (5th) 250282, ¶ 22.

¶ 28 The Appellate Court, Fifth District, determined that section 5-5-3.2(b)(1) remained facially constitutional after *Erlinger*. *Cooper*, 2026 IL App (5th) 250282, ¶ 60. The Fifth District distinguished *Erlinger* by finding that the ACCA "required a number of fact-intensive questions to be asked and answered," only one of which could be asked in the context of section 5-5-3.2(b)(1). *Cooper*, 2026 IL App (5th) 250282, ¶ 59. The reviewing court concluded that the

defendant did not receive ineffective assistance because "Illinois courts both before and after *Erlinger* have determined that section 5-5-3.2(b)(1) is facially constitutional," and, therefore, the defendant's plea counsel's and postplea counsel's respective performances were not deficient when they did not challenge section 5-5-3.2(b)(1)'s constitutionality. *Cooper*, 2026 IL App (5th) 250282, ¶ 62.

¶ 29 4. *This Case*

¶ 30 As detailed *supra*, Illinois reviewing courts have found section 5-5-3.2(b)(1) remains good law after *Erlinger*. The Fifth District found section 5-5-3.2(b)(1) was not facially unconstitutional. *Cooper*, 2026 IL App (5th) 250282, ¶ 60. The Second District found *Erlinger*'s analysis of the ACCA was not applicable to section 5-5-3.2(b)(1) because the latter "present[s] a much simpler inquiry" and "the date of [a] defendant's release from custody is not a fact that must be submitted to a jury but is intrinsic to the conviction and can be properly determined by the court." (Internal quotation marks omitted.) *Holman*, 2025 IL App (2d) 240513, ¶¶ 46-47. The Third District determined that a defendant did not receive ineffective assistance when counsel did not challenge the imposition of extended-term sentences because a trial court may rely on the PSI to determine whether a defendant is extended-term eligible under section 5-5-3.2(b)(1). *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18. Defendant does not point to any Illinois case law supporting his position regarding *Erlinger*'s impact on section 5-5-3.2(b)(1). Instead, he insists that *Holman*, *Coopwood*, and other such cases distinguishing the ACCA from section 5-5-3.2(b)(1) were wrongly decided. We disagree.

¶ 31 In choosing to hear *Erlinger*, the United States Supreme Court set out "to decide whether [the] ACCA's occasions inquiry must be resolved by a jury." *Erlinger*, 602 U.S. at 828. After concluding the defendant "was entitled to have a jury resolve ACCA's occasions inquiry

unanimously and beyond a reasonable doubt," the Court emphasized, "[W]e decide no more than that." *Erlinger*, 602 U.S. at 835. While the ACCA necessitated a fact finder to make "intensely factual" inquires (*Erlinger*, 602 U.S. at 828), the same is not true of section 5-5-3.2(b)(1). See *Holman*, 2025 IL App (2d) 240513, ¶ 46 ("[Section 5-5-3.2(b)(1)'s requirements] present a much simpler inquiry than those presented by the [ACCA] and can be readily discerned by review of public records or the presentence investigation."); *Steward*, 2026 IL App (2d) 240558-U, ¶ 57 ("We found that the 10-year inquiry was much simpler *** and that it could be readily discernible from public records."). Indeed, "a judge can use appropriate judicial documents and records to enhance a sentence based on prior convictions" pursuant to section 5-5-3.2(b)(1). *Johnson*, 372 Ill. App. 3d at 781. Accordingly, section 5-5-3.2(b)(1)'s elements are distinguishable from the inquiries required by the ACCA. We agree with the Third District that, where a trial court can rely on a PSI to establish the elements of section 5-5-3.2(b)(1), "[t]here [is] no fact for the fact finder to resolve." *Coopwood*, 2025 IL App (3d) 240579-U, ¶ 18.

¶ 32 Here, defendant was convicted of, *inter alia*, aggravated battery as a Class 3 felony. The PSI showed defendant's Class 2 felony conviction for harassing a witness was entered in August 2013, and he was resentenced to three years' imprisonment in December 2015. Section 5-5-3.2(b)(1) permits the imposition of an extended-term sentence when a defendant is convicted of a felony after he was previously convicted of an equal or greater class felony within the past 10 years, excluding time spent in custody. See 730 ILCS 5/5-5-3.2(b)(1) (West 2024). "[R]eliance by the trial court on a PSI to establish the existence of a prior conviction for purposes of imposing an extended-term sentence under section 5-5-3.2(b)(1) does not violate [a] defendant's constitutional rights." *Johnson*, 372 Ill. App. 3d at 781. The trial court could rely on the PSI to find the elements of section 5-5-3.2(b)(1) and determine that defendant was extended-term eligible. Thus, we cannot

say posttrial counsel rendered deficient performance by not arguing that *Erlinger* required the jury to find the elements of section 5-5-3.2(b)(1) beyond a reasonable doubt. See *People v. Webb*, 2023 IL 128957, ¶ 22 ("[A] defendant must prove that counsel's performance, judged by an objective standard of competence under prevailing professional norms, was so deficient that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment."). Because defendant has failed to establish posttrial counsel's performance was deficient, we need not address the prejudice prong of the *Strickland* test. See *Wilson*, 191 Ill. 2d at 370.

¶ 33 B. The Trial Court Erred in Imposing an Extended-Term Sentence for Count IV

¶ 34 Defendant also argues the trial court erred in imposing an extended-term sentence on count IV because it was a lesser-class offense than counts I through III. Defendant acknowledges he failed to preserve this issue for appellate review, but he asks us to review it for plain error. Under the plain error rule, we may consider an unpreserved error when "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The misapplication of an extended-term sentence constitutes second-prong plain error. See *People v. Palen*, 2016 IL App (4th) 140228, ¶¶ 74-78.

¶ 35 A trial court "shall not sentence an offender to a term of imprisonment in excess of the maximum sentence *** for an offense *** within the class of the most serious offense of which the offender was convicted unless the factors set forth in Section 5-5-3.2 *** were found to be present." 730 ILCS 5/5-8-2(a) (West 2024). "[W]hen a defendant has been convicted of multiple offenses of differing classes, an extended-term sentence may only be imposed for the conviction within the most serious class." *People v. Jordan*, 103 Ill. 2d 192, 206 (1984); see *Palen*, 2016 IL App (4th) 140228, ¶ 77 ("The court was only statutorily authorized to impose an extended term

[sentence] on the conviction with the most serious class.").

¶ 36 Defendant was convicted of three counts of aggravated battery, a Class 3 felony, and one count of domestic battery, a Class 4 felony. The trial court imposed extended-term sentences on all four counts. The court was not statutorily permitted to impose an extended-term sentence on count IV because it was a lesser-class offense than counts I through III. See 730 ILCS 5/5-8-2(a) (West 2024); *Jordan*, 103 Ill. 2d at 206. The State concedes error occurred. We conclude second-prong plain error occurred because the court improperly imposed an extended-term sentence for count IV, which was a lesser-class offense than counts I through III. See 730 ILCS 5/5-8-2(a) (West 2024); *Palen*, 2016 IL App (4th) 140228, ¶¶ 77-78. The State suggests we modify the sentence to a concurrent three-year term. We believe the better course is to allow the court to resentence defendant in light of our ruling. Accordingly, we vacate the sentence imposed on count IV and remand the cause for resentencing on that count.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm defendant's four convictions and his sentences on counts I through III, vacate his sentence on count IV, and remand for resentencing on count IV.

¶ 39 Affirmed in part and vacated in part; cause remanded.

***People v. Krutsch*, 2026 IL App (4th) 250636**

Decision Under Review:	Appeal from the Circuit Court of Winnebago County, No. 23 CF-1114, the Hon. Brendan A. Maher, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Christopher McCoy, and Fletcher P. Hamill, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	J. Hanley, State's Attorney, of Rockford (Patrick Delfino, David J. Robinson, and Jaylen Windham, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.