IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 2, 2019

STATE OF TENNESSEE v. BRANDON GARRARD

Appeal from the Circuit Court for Hardin County
No. 17-CR-126 Charles C. McGinley, Judge

No. W2018-01026-CCA-R3-CD

On April 2, 2018, the Defendant, Brandon Garrard, was found guilty of delivery of more than 0.5 grams of methamphetamine within 1,000 feet of a park and conspiring to introduce contraband into a penal facility. The trial court sentenced the Defendant as a Range III, career offender to concurrent terms of 60 years for the delivery charge and 12 years for the conspiracy charge. On appeal, the Defendant argues that the evidence is insufficient to sustain the delivery charge based on the jury verdict form and that the trial court erred in imposing a 60-year sentence. The State concedes that the Defendant was improperly sentenced. After thorough review, we remand for resentencing and affirm the trial court's judgments in all other aspects.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed in Part, Reversed in Part, and Remanded

ALAN E. GLENN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and TIMOTHY L. EASTER, J., joined.

Terry Lee Dicus, Jr., Savannah, Tennessee, for the appellant, Brandon Garrard.

Herbert H. Slatery III, Attorney General and Reporter; Andrew C. Coulam, Assistant Attorney General; Matthew F. Stowe, District Attorney General; and Vance Dennis and Jerald Campbell, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

In August 2017, the Tipton County Grand Jury indicted the Defendant for sale or delivery of more than 0.5 grams of methamphetamine within 1,000 feet of a park, conspiring to introduce contraband into a penal facility, and assault. At trial, the assault charge was dismissed because the victim passed away, and the methamphetamine charge was narrowed to include delivery only. Following a jury trial, the Defendant was convicted of delivery of more than 0.5 grams of methamphetamine within 1,000 feet of a park and conspiring to introduce contraband into a penal facility. We now review the facts relevant to this appeal.

At trial, Agent Jason Caldwell testified that he was a narcotics agent with the Hardin County Sheriff's Department and the Drug Task Force. He stated that on March 7, 2017, he was made aware that an inmate, Ms. Jacqueline Ballentine, had returned to jail from a medical furlough with "an orange spot on her shirt." Agent Caldwell testified that inmates were "notorious for trying to smuggle Subutex or Suboxone back into the jail," and jail personnel were concerned that she was attempting to smuggle drugs back into the jail. The orange spot testified positive for Buprenorphine. Jail personnel also noticed Ms. Ballentine "messing with her lower extremities" and subsequently discovered that "she had smuggled other items into the jail by inserting them into her vaginal cavity." Agent Caldwell testified that "approximately 36 yellow pills that were identified as Clonazepam" and "two bags of methamphetamine that [were] concealed as separate bullets" were extracted from her vaginal cavity.

After learning that Ms. Ballentine was smuggling drugs into the jail, Agent Caldwell testified that he began an investigation into where she had obtained the drugs. He began reviewing jail phone calls in order to identify other suspects and heard a call between the Defendant and inmate Ms. Melissa Cokley, the Defendant's girlfriend, which took place on March 7. Agent Caldwell heard the Defendant tell Ms. Cokley that he got five "oranges," which Agent Caldwell knew to be code for the orange drug, Suboxone, and four grams of another drug. Agent Caldwell also heard the Defendant tell Ms. Cokley that he had met with Ms. Cokley's "aunt" and helped with her "laundry." During the jail call, the Defendant also told Ms. Cokley that he had separated the items into separate bags and burned the "plastic laundry basket" to protect Ms. Cokley's "aunt" from "get[ting] f***** up."

When asked how he knew the Defendant was a party to the call with Ms. Cokley, Agent Caldwell stated that he "recognized the [Defendant's] voice" and "used [the Defendant's] phone number that [the Defendant] was using . . . for Ms. Cokley to contact him" as a "way to figure out [the Defendant's] location." During his testimony, Agent Caldwell also identified a surveillance video that depicted Ms. Ballentine picking up her Clonazepam prescription from a pharmacy around 11:36 a.m. on March 7, getting into the passenger side of a "black vehicle," exiting that vehicle, and returning to her own

vehicle. Agent Caldwell also verified that he had measured the distance between the pharmacy and the nearby Tennessee Street Park with a measuring wheel and found it to be "roughly 660 feet[.]"

Tennessee Bureau of Investigation ("TBI") Special Agent Forensic Scientist Carter Depew testified that he analyzed the samples from the evidence collected by Agent Caldwell. He stated that the methamphetamine was in two pieces, which respectively weighed 1.77 grams and 2.15 grams, totaling 3.92 grams of methamphetamine. Agent Depew also noted 37 Clonazepam pills in the evidence collected by Agent Caldwell. On cross-examination, Agent Depew conceded that the 3.92 grams of methamphetamine was not divided exactly "half [] in one package and half [] in another package[.]"

Ms. Ballentine testified that she was granted a medical furlough to see a doctor after developing a rash. She stated that after seeing the doctor, she went to a pharmacy to fill her prescriptions and met with the Defendant in the pharmacy parking lot. Ms. Ballentine stated that she "got some meth" from the Defendant, which she later placed in her vaginal cavity, along with her Clonazepam pills, in an attempt to smuggle the drugs back into the jail. Ms. Ballentine testified that she got the Defendant's cell phone number "from a girl in jail." She called the Defendant from the pharmacy, and she met with him inside a black car in the parking lot. Ms. Ballentine stated that the Defendant sat in the passenger seat, and there were also two women present in the car. She stated that the methamphetamine was not for personal consumption. On cross-examination, Ms. Ballentine affirmed that Agent Caldwell had told her she did not have to speak to defense counsel if counsel visited her. On redirect examination, Ms. Ballentine stated that she had not been offered anything in return for testifying at trial.

Mr. Rickey Garrard, the Defendant's father, testified that the Defendant was with him at his home giving a woman a tattoo on March 7, 2017, until "around 1 or 1:30[.]" He further testified that the Defendant did not have a working vehicle, that he never saw a black car come to his house on March 7, and that he never "overhear[d] [the Defendant] discussing a drug deal at any point that day[.]" On cross-examination, Mr. Garrard conceded that he never saw the woman's tattoo and that she and the Defendant remained in the Defendant's bedroom with the door closed while she was at their house. Mr. Garrard also stated that the woman arrived around 8:00 a.m. and left around 11:00 a.m. Mr. Garrard further stated that he saw the Defendant leave his house but did not know how he left or where he was going. Mr. Garrard affirmed that his home was only "about five minutes" from town, where the pharmacy was located.

Ms. Allison Todd testified that on March 7, 2017, she was released from jail and went to the Defendant's home to "try[] to fix" one of her tattoos. Ms. Todd stated that

she knew she left the Defendant's home at "11:35, 11:45, somewhere in there" because she was at her son's school by his 11:45 lunchtime. Ms. Todd testified that the Defendant did not mention a drug deal or having to meet with someone, and she did not think he owned a car.

Ms. Sarah Hoover testified that although she had been charged and pled guilty in the same conspiracy to introduce drugs into a penal facility as the Defendant, the Defendant was not involved in the conspiracy. Ms. Hoover stated that Ms. Ballentine told her she was going to attempt to smuggle drugs into the jail after her furlough but did not mention the Defendant. She affirmed that she also spoke with the Defendant while she was incarcerated on March 7, 2017, and had a conversation with him similar to Ms. Cokley's. When questioned about that call, Ms. Hoover stated that the Defendant "was actually talking about laundry being delivered" to Ms. Hoover's aunt. On cross-examination, Ms. Hoover affirmed that she lived with the Defendant for "a month before [she] went to jail," but she denied ever being romantically involved with the Defendant. She also denied giving Ms. Ballentine the Defendant's phone number.

The Defendant did not testify on his own behalf. Following the close of all proof, the Defendant was found guilty of delivery of more than 0.5 grams of methamphetamine within 1,000 feet of a park and conspiring to introduce contraband into a penal facility. The trial court sentenced the Defendant as a Range III, career offender to concurrent terms of 60 years for the delivery charge and 12 years for the conspiracy charge.

ANALYSIS

On appeal, the Defendant argues that the evidence is insufficient to support his delivery of methamphetamine conviction, specifically noting that the special jury verdict form "failed to indicate a finding that the transaction took place within 1,000 feet of a park." He further argues that he was incorrectly sentenced to a 60-year term of incarceration after the trial court incorrectly elevated his conviction for incarceration purposes to a Class A felony under Tennessee Code Annotated section 39-17-432(b)(3). The State concedes to this argument but notes that the trial court was correct in its observance that the Defendant must serve 100% of the statutorily-imposed minimum sentence. The State also argues that the Defendant waived the verdict form issue because he did not object to the jury form until his motion for new trial. We agree with the State.

I. Sufficiency of the Evidence

The Defendant argues that the evidence was insufficient to support his conviction for delivering methamphetamine in a drug-free zone. Specifically, he insists that "a reasonable jury [could] have rejected Agent Caldwell's testimony on the distance of the

park[.]" Because the verdict form did not contain a notation that the offense occurred within 1,000 feet of a park, the Defendant argues that "[w]hat we assume the jury would have found is irrelevant" to whether the jury actually accredited Agent Caldwell's testimony regarding the distance of the offense from the park. The Defendant also incorrectly states that "[e]ven if the jury found that the transaction occurred within 1,000 feet of a park, it nonetheless would have had the prerogative to assert that the crime was too remote and distant from the park" to warrant the enhanced punishment. The State responds that the evidence was "more than sufficient to support [the Defendant's] conviction" and argues that he has waived any issue related to the jury verdict form because he did not "raise[] his objection before the jury returned its verdicts" but instead only raised the issue for the first time in his motion for new trial.

When the sufficiency of the evidence is challenged, the relevant question of the reviewing court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court has stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing Carroll v. State, 370 S.W.2d 523 (1963)). "A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal a convicted defendant has the burden of demonstrating that the evidence is insufficient." State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A criminal offense may be established entirely by circumstantial evidence. State v. Majors, 318 S.W.3d 850, 857 (Tenn. 2010). In addition, the State does not have the duty to exclude every other reasonable hypothesis except that of the defendant's guilt in order to obtain a conviction based solely on circumstantial evidence. See State v. Dorantes, 331 S.W.3d 370, 380-81 (Tenn. 2011) (adopting the federal standard of review for cases in which the evidence is entirely circumstantial). The jury as the trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses' testimony, and reconcile all conflicts in the evidence. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008) (citing Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978)). Moreover, the jury determines the weight to be given to circumstantial evidence, the inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury. Dorantes, 331 S.W.3d at 379 (citing State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006)). The identification of the defendant as the perpetrator is a question of fact for the jury after considering all the relevant proof. State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993) (citing State v. Crawford, 635 S.W.2d 704, 705 (Tenn. Crim. App. 1982)). This court, when considering the sufficiency of the evidence, shall not reweigh the evidence or substitute its inferences for those drawn by the trier of fact. Dorantes, 331 S.W.3d at 379.

Tennessee Code Annotated sections 39-17-434(a)(2) states, "It is an offense for a defendant to knowingly: . . . (2) Deliver methamphetamine [.]" "Deliver" is defined as the actual, constructive, or attempted transfer from one person to another of a "controlled substance," which is defined as a drug, substance, or immediate precursor in Schedules I through VII of Tennessee Code Annotated sections 39-17-403 through 39-17-416. Tenn. Code Ann. §§ 39-17-402(6), -402(4). Methamphetamine is classified as a Schedule II substance. Id. § 39-17-408(d)(2). Per the Drug-Free School Zone Act ("DSZA"), when the foregoing offense is committed within 1,000 feet of a park, it "shall be punished one classification higher," Id. § 39-17-432(b)(1), and the offender "shall be required to serve at least the minimum sentence for the defendant's appropriate range of sentence[.]" Id. § 39-17-432(c). However, a violation "within the prohibited zone of a . . . park shall not be subject to additional incarceration . . . but shall be subject to the additional fines imposed by this section." Id. § 39-17-432(b)(3).

This court has repeatedly found that the DSZA "does not create a separate criminal offense for . . . delivering, selling, or possessing a controlled substance in a school zone" but "'merely imposes a harsher penalty for violations . . . occurring within a school zone.'" State v. Marvin Christopher Long, No. M2010-01491-CCA-R3-CD, 2012 WL 3611741, at *8 (Tenn. Crim. App. Aug. 22, 2012), perm. app. denied (Tenn. June 23, 2016) (quoting State v. Smith, 48 S.W.3d 159, 168 (Tenn. Crim. App. 2000)). This court has further stated that a DSZA violation "is not an essential element of the drug

offense[.]" State v. Michael Dewayne Hall, No. E2015-02173-CCA-R3-CD, 2017 WL 1828357, at *5 (Tenn. Crim. App. May 4, 2017) (citing State v. Tracy Dale Tate, No. E2014-01191-CCA-R3-CD, 2015 WL 2400718, at *6 (Tenn. Crim. App. May 20, 2015), perm. app. denied (Tenn. Aug. 12, 2015)); see also State v. Arturo Jaimes-Garcia, No. M2009-00891-CCA-R3-CD, 2010 WL 5343286, at *18 (Tenn. Crim. App. Dec. 22, 2010), perm. app. denied (Tenn. May 31, 2011) (noting that "proof that the drug crime was committed in a school zone is not an essential element" but instead "is an element that, if proven, merely imposes a harsher penalty[.]").

Viewed in the light most favorable to the State, the evidence shows that the Defendant delivered methamphetamine to Ms. Ballentine while she was on a medical furlough. Video evidence presented at trial showed Ms. Ballentine entering a black car outside of the pharmacy. Ms. Ballentine testified that she arranged by telephone to meet the Defendant outside of that pharmacy to obtain methamphetamine from him. Following her interaction with the Defendant in the black car, she tried to smuggle the methamphetamine into jail via her vaginal cavity. Agent Caldwell testified that he listened to recorded jail calls between the Defendant and Ms. Cokley, during which the Defendant informed her that he had obtained four grams of a drug and that he had met with Ms. Cokley's "aunt" and helped with her "laundry." During the jail call, the Defendant also told Ms. Cokley that he had separated the items into separate bags and burned the "plastic laundry basket" to protect Ms. Cokley's "aunt" from "get[ting] f***** up." The TBI confirmed that the drugs seized from Ms. Ballentine's vaginal cavity were actually methamphetamine, which weighed 3.92 grams and was contained in plastic bags with "ends [that] were burned[.]" Agent Caldwell also testified that he had measured the distance between the pharmacy and the nearby Tennessee Street Park with a measuring wheel and found it to be "roughly 660 feet[.]"

Despite the Defendant's argument that the jury could have chosen not to utilize the enhanced punishment because the methamphetamine delivery was "too remote and distant" from the park, our supreme court has specifically rejected a defendant's argument "that simply traveling through a school zone is not enough to apply the provisions of the Drug-Free School Zone Act." State v. Vasquez, 221 S.W.3d 514, 523 (Tenn. 2007). Thus, the Defendant's argument that the offense was not actually committed "near the park" because there was "a concrete wall, [a bank], and two wrought iron fences" between the location of the black car and the park is irrelevant. The jury heard uncontroverted testimony that the offense occurred within 1,000 feet of a park. Though the Defendant asserts that a "reasonable jury" could have "rejected" Agent Caldwell's testimony regarding the distance between the park and the offense, the jury obviously accredited Agent Caldwell's testimony by its verdict. This court is not to reweigh the evidence or substitute its own inferences for those drawn by the trier of fact. Dorantes, 331 S.W.3d at 379. Viewed in the light most favorable to the State, the record

demonstrates that the Defendant delivered methamphetamine to Ms. Ballentine within 1,000 feet of a park. A rational trier of fact could easily find as such. Therefore, the evidence is sufficient to support the conviction and the school zone enhancement, and the Defendant is not entitled to relief.

Jury Verdict Form

The Defendant contends, as part of his challenge to the sufficiency of the evidence, that the jury verdict form itself was invalid because it did not include language that the Defendant committed the methamphetamine offense "within 1,000 feet of a park." This court has previously noted that "[o]ur supreme court has specifically stated that failure to raise a contemporaneous objection to errors involving the verdict form results in waiver of the issue." State v. Joseph H. Adkins, No. E2012-02415-CCA-R3-CD, 2014 WL 1516331, at *13 (Tenn. Crim. App. Apr. 17, 2014) (citing State v. Davidson, 121 S.W.3d 600, 618 n.11 (Tenn. 2003)); see also State v. McKinney, 74 S.W.3d 291, 303 n.5 (Tenn. 2002) ("The State also correctly argues that the issue was waived because the defense did not object to the jury verdict form at trial and did not list the issue in his motion for a new trial."); State v. Branden Michael Toth, 2016 WL 909106, at *11 (Tenn. Crim. App. Mar. 9, 2016), perm. app. denied (Tenn. Aug. 18, 2016) (noting that Tenn. R. App. 36(a) puts this court under "no obligation to grant relief to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.") (internal citation omitted); State v. Travis Grover Richardson, No. E2013-02250-CCA-R3-CD, 2014 WL 5099585, at *15 n.10 (Tenn. Crim. App. Oct. 10, 2014).

The Defendant seemingly argues that the evidence is insufficient to sustain his delivery of methamphetamine with 1,000 feet of a park conviction because the jury verdict form did not state that the offense occurred "within 1,000 feet of a park." As argued by the State and as we have outlined above, the Defendant waived any issues with the jury verdict form because he did not object to the verdict form at trial and only raised the issue for the first time in his motion for new trial. However, even if the Defendant had objected to the verdict form at trial, we agree with the State's assertion that the Defendant cites no legal authority to support the argument that the verdict form must contain the "1,000 feet" notation, see Tenn. Ct. Crim. App. R. 10(b) ("Issues which are not supported by . . . citation to authorities . . . will be waived in this court."), and we are unable to find any law establishing such a requirement for verdict forms. We are therefore unable to consider the jury verdict form issue in the absence of plain error. The Defendant has failed to establish that a clear and unequivocal rule of law was breached and therefore has failed to establish that plain error relief is warranted. See State v. Minor, 546 S.W.3d 59, 67 (Tenn. 2018) (explaining that Tennessee appellate courts may consider unpreserved errors under the plain error doctrine and grant relief if the defendant

establishes that "(1) the record clearly establishes what occurred in the trial court; (2) a clear and unequivocal rule of law was breached; (3) a substantial right of the accused was adversely affected; (4) the issue was not waived for tactical reasons; and (5) consideration of the error is necessary to do substantial justice.").

Regardless of waiver, we conclude that the jury instructions as included in the record on appeal and the verdict form for Count 1, when read in context of the entire jury instructions, fairly submitted the legal issues and did not mislead the jury as to the applicable law. See, e.g., State v. Hardin, No. E2007-01171-CCA-R3-CD, 2009 WL 1704493, at *8 (Tenn. Crim. App. June 19, 2009) (concluding that "when reviewed in their entirety[,]" the verdict form at issue and corresponding instructions "fairly submitted the legal issues to the jury."). The written jury instructions were not included in the record on appeal, but the trial court's relevant oral instructions explained to the jury that "for [the jury] to find the [D]efendant guilty of this offense, the State must have proven beyond a reasonable doubt . . . [that] [t]his occurred within 1,000 feet of the real property that comprises a park." Further, this court has specifically stated that "where the trial court's instructions clearly and definitely set forth the elements upon which liability must be based, the failure to recite each element in the verdict form will not render the verdict invalid.'" State v. Roger Weems Harper, No. M2010-01626-CCA-R3-CD, 2012 WL 3731736, at *3 (Tenn. Crim. App. Aug. 29, 2012) (quoting Goodale v. Landenberg, 243 S.W.3d 575, 584 (Tenn. Ct. App. 2007)) (concluding that a verdict form that did not specifically state that the jury found the requisite aggravating circumstances to raise defendant's felony class was valid to enhance the felony class when trial court specifically instructed the jury on such).

We also note that the proof the offense occurred within 1,000 feet of a park was uncontroverted at trial, and the Defendant's defense strategy was that he was not the person who committed the offense because he had an alibi, not that the offense did not occur. As we have stated, the Defendant has waived any issue with the jury verdict form by failing to object to the form at trial. However, regardless of waiver, we conclude that there is nothing in the record before us to indicate that the jury was confused as to the jury instructions, and the verdict reflects that the jury convicted the Defendant of delivery of more than 0.5 grams of methamphetamine within 1,000 feet of a park as charged in the indictment and as instructed at trial. Any issue with the jury verdict form is without merit and is waived nevertheless.

II. Sentencing

The Defendant argues on appeal that the trial court erred by improperly sentencing him to 60 years imprisonment, the statutorily mandated sentence for a Range III, career offender committing a Class A felony. Tenn. Code Ann. § 40-35-112. The State

concedes that the Defendant was improperly sentenced under the DSZA. See id. § 39-17-432. We agree that the Defendant was improperly sentenced.

The trial court is granted broad discretion to impose a sentence anywhere within the applicable range, regardless of the presence or absence of enhancement or mitigating factors, and "sentences should be upheld so long as the statutory purposes and principles, along with any applicable enhancement and mitigating factors, have been properly addressed." State v. Bise, 380 S.W.3d 682, 706 (Tenn. 2012). Accordingly, we review a trial court's sentencing determinations under an abuse of discretion standard, "granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." Id. at 707.

The Defendant argues, and the State concedes, that although the trial court was correct in noting that the DSZA elevates the Defendant's conviction from a Class B to a Class A felony, the court abused its discretion in ordering the Defendant to serve the "additional incarceration" of a Class A felony that the DSZA specifically prohibits. As we have laid out, a violation "within the prohibited zone of a . . . park shall not be subject to additional incarceration . . . but shall be subject to the additional fines imposed by this section." Tenn. Code Ann. § 39-17-432(b)(3).

At the May 23, 2018 sentencing hearing, the trial court reviewed the Defendant's previous criminal history and found that he qualified as a Range III, career offender, based on at least six prior convictions for Class A, B, or C felonies and a current conviction of a Class A, B, or C felony. See id. § 40-35-108(a)(1). As a Range III, career offender, the statutorily-mandated sentence for delivery of more than 0.5 grams of methamphetamine, a Class B felony, was 30 years, the maximum sentence allowed under Range III. Id. §§ 40-35-108(c), -112(c)(2). As the trial court correctly noted, the Defendant was required to serve 100% of his sentence because the offense occurred within 1,000 feet of a drug-free zone. Id. 39-17-432(c). The trial court also noted that the DSZA elevated the offense from a Class B felony to a Class A felony, equaling a 60-year sentence. Id. §§ 39-17-432(b)(1), 40-35-112(c)(1). Because the DSZA heightened classification did not subject the Defendant to additional incarceration, this was an improper sentence. The trial court should have ordered the Defendant to serve 30 years at 100%, the statutorily-mandated sentence for a Class B felony committed by a Range III, career offender in violation of the DSZA. Id. §§ 39-17-432(c), 40-35-108(c), -112(c)(2). However, the Defendant is still subject to additional fines imposed by the DSZA, "a fine of not more than sixty thousand dollars ($60,000)[.]" Id. § 39-17-432(b)(2)(D), (b)(3).

Therefore, on remand, the Defendant must be sentenced as a career offender to the statutorily-mandated Class B sentence of 30 years, which must be served at one-hundred

percent. For purposes of the Uniform Judgment form, the Defendant's indicted and convicted classification in Count 1 shall be listed as a Class B felony, with the notation that the offense occurred in "DFZ-Park." The Defendant's offender status should be marked as "Career," and his release eligibility marked only as "Drug Free Zone."

CONCLUSION

Based on the foregoing authorities and reasoning, the Defendant's methamphetamine delivery conviction is remanded for resentencing in accordance with this opinion. Although resentencing of the Defendant is required, a new sentencing hearing is solely within the trial court's discretion. We affirm the trial court's judgments in all other aspects.

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ALAN E. GLENN, JUDGE