OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,	)	No. ED92145
	)	
vs.	)	Appeal from the Circuit Court
	)	of the City of St. Louis
LANCE DRUDGE, Appellant.	)	Filed: October 27, 2009

Lance Drudge ("Defendant") appeals from the judgment upon his convictions by a jury for forcible sodomy, Section 566.060, RSMo Cum. Supp. 2007, and domestic assault in the third degree, Section 565.074, RSMo 2000, for which the trial court sentenced him, as a prior offender pursuant to Section 558.021, RSMo 2000, to twenty years' imprisonment in the Missouri Department of Corrections on the forcible sodomy count and a consecutive one-year term in the City of St. Louis Medium Security Institution on the third-degree domestic assault count. On appeal, Defendant contends the trial court plainly erred in classifying Defendant as a prior offender where there was no indictment or information setting forth the essential facts warranting a finding that Defendant was a prior offender. Defendant also asserts the trial court plainly erred in failing to dismiss the charges against Defendant in violation of Defendant's rights to a speedy trial.

AFFIRMED AS MODIFIED.

Division Two holds: Although the procedures for finding Defendant a prior offender set forth in Section 558.021, RSMo 2000 were not followed, this did not rise to the level of plain error. However, because there are other possible ramifications from being improperly classified as a prior offender, such as the possibility of it affecting future parole eligibility, we correct the judgment and sentence to remove the prior offender classification pursuant to Rule 30.23. Further, we find the trial court did not plainly err in failing to *sua sponte* dismiss the charges of this case for a violation of Defendant's rights to a speedy trial.

Opinion by: Robert J. Dowd, Jr., J.
Sherri B. Sullivan, P.J. and Patricia L. Cohen, J., concur.

Attorney for Appellant: Lisa M. Stroup

Attorneys for Respondent: Chris Koster, Terrence M. Messonnier

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.