OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

STATE OF MISSOURI,	)	No. ED108967
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the Cape Girardeau County
vs.	)	19BO-CR00019-02
	)	
SHAWN W. YOUNT,	)	Honorable Benjamin F. Lewis
	)	
Appellant.	)	Filed: September 28, 2021

Shawn W. Yount ("Defendant") appeals the judgment, following a jury trial, convicting him of four counts of the class D felony of second-degree burglary (Counts I, IV, Counts V, and VI).[1] *See* section 569.170 RSMo 2016.[2] The trial court sentenced Defendant to a total of thirty years of imprisonment.

The trial court's sentence was based on, (1) the court's finding that Defendant was a dangerous offender, and therefore, Defendant should receive an enhanced sentence on each count; (2) the court's finding that Defendant's enhanced sentence for each count should be a term of imprisonment of fifteen years, which is the maximum level of punishment for a class B felony[3]; and (3) the court's decision to order Defendant's fifteen-year sentences for Counts I and IV to run concurrently with each other, Defendant's fifteen-year sentences for Counts V and VI to run concurrently with each other, and the fifteen-year period for Counts I and IV to run consecutively with the fifteen-year period for Counts V and VI.

Defendant raises a total of four points on appeal, which this Court considers in the following order. In his third and fourth points, Defendant challenges the trial court's admission of Detective Garry Brady's testimony pertaining to text messages implicating Defendant in the burglaries. In his first and second points, Defendant raises two arguments pertaining to his sentence. Specifically, Defendant asserts, (1) the trial court improperly found Defendant was a dangerous offender under sections 558.016 and 558.021, and, (2) alternatively, if this Court holds the trial court properly sentenced Defendant as a dangerous offender under sections 558.016 and 558.021, the trial court nevertheless improperly enhanced Defendant's sentence to the punishment level for a class B felony instead of a class C felony for each of his second-degree burglary convictions.

TRANSFERRED TO THE MISSOURI SUPREME COURT.

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[1] Defendant was charged with a total of six counts of second-degree burglary, but the jury found him not guilty of Counts II and III.

[2] All further statutory references are to RSMo 2016.

[3] *See* section 558.011.1(2) (providing the range of punishment for a class B felony is five to fifteen years of imprisonment).

Division One holds:

(1) Because we would hold that the trial court did not err in admitting Detective Brady's testimony pertaining to text messages implicating Defendant in the burglaries, we would deny Defendant's third and fourth points on appeal and affirm the portion of the trial court's judgment convicting Defendant of four counts of second-degree burglary.

(2) Because this Court would find merit to Defendant's argument in his first point on appeal that the trial court improperly sentenced Defendant as a dangerous offender under sections 558.016 and 558.021, we would reverse the portion of the trial court's judgment sentencing Defendant as a dangerous offender and remand for resentencing with instructions to the trial court to impose a sentence on Defendant for each second-degree burglary count in Counts I, IV, V, and VI consistent with the range of punishment for a class D felony set out in section 558.011.1(4), which is "a term of years not to exceed seven years."[4] However, due to the general interest and importance of the issue involved in Defendant's first point on appeal – specifically the existence of a conflict between the plain meaning of section 558.016.4 and the language in Note on Use No. 4 to Missouri Approved Charges-Criminal 2d 2.30 with respect to what is required to establish dangerous-offender status – we transfer this case to the Supreme Court of Missouri pursuant to Missouri Supreme Court Rule 83.02 (2021).

Opinion by: Robert M. Clayton III, J.
Colleen Dolan, P.J., and Kelly C. Broniec, J., concur.

Attorney for Appellant: Katharine P. Curry

Attorney for Respondent: Eric S. Schmitt, Evan J. Buchheim

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.

[4] We would dismiss Defendant's second point on appeal as moot because we would grant his first point on appeal and hold the trial court erred in finding Defendant was a dangerous offender.