No. 1-09-2111

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SECOND DIVISION
FEBRUARY 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 15039
	)	
LEE RADCLIFF,	)	Honorable
	)	John A. Wasilewski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

Held: Where this court remanded defendant's cause for resentencing only, the trial court on remand did not have the authority to order a new trial or hold a retrospective fitness hearing as asserted by defendant on appeal; the trial court's judgment was affirmed.

This case comes before us a second time after we remanded the matter to the trial court for resentencing. *People v.*

Radcliff, No. 1-06-2724 (2008) (unpublished order pursuant to Supreme Court Rule 23). In the present appeal, defendant asserts that the court on remand erred in failing to conduct a fitness hearing where the record on remand indicated he may have been an unmedicated schizophrenic at the time of his original trial, creating a *bona fide* doubt concerning his fitness to stand trial. We affirm.

Following a bench trial in 2006, defendant was convicted of three counts of aggravated battery with a firearm and one count of aggravated discharge of a firearm. The evidence at trial showed that on April 17, 2004, four deaf friends, Jovan Harris, Brandon Lee, Anthony Webster Teat, and Deandre Clark were sitting on a stoop outside Lee's building when defendant shot Harris, Lee, and Teat. Identifications of defendant were made by the victims in May and June 2004.

As relevant to this appeal, the record showed that at defendant's arraignment, defendant stated that he did not have money to hire an attorney and that he wished to have the court appoint a lawyer to represent him. Defendant also stated that he understood the trial court's admonition regarding trial *in abstentia*. At later dates, defendant told the court that he understood that his counsel had requested a continuance outside of his presence.

Defendant filed a motion to quash arrest and suppress evidence, seeking the suppression of the photo array and lineup identifications. At the hearing on defendant's motion, defendant testified that he was arrested on May 19, 2004, and placed in three lineups conducted by police the following day. Three individuals viewed the lineups, and police told him that if all three identified him, he would be held at that station, but if less than three identified him, he would be released. Defendant was released two hours after the lineup, but was again arrested in June 2004 and placed in another lineup. Following the June 2004 lineup, defendant was told he had been identified and remained in custody. After hearing all the evidence, the trial court denied defendant's motion.

At the commencement of the trial, defendant indicated his awareness as to the potential minimum sentence he faced. When the court questioned defendant about his jury waiver, he answered those questions to the court's satisfaction. Defendant expressly agreed to a stipulation entered into by his attorney, and chose not to testify after he stated that he had no questions about the court's admonishments regarding his right to testify.

The trial court found defendant guilty on the evidence presented by the State and ordered a pre-sentence investigation report (PSI). The PSI showed that defendant was 22 years of age and the father of one child. It also showed that he had asthma,

which he treated with an inhaler, and summer allergies, which he treated with various over the counter medications. Defendant's educational background showed that he was enrolled in special education classes, and that he was diagnosed as dyslexic. Defendant's psychological health history, as set forth in the PSI, indicated that he had no mental health issues and he had never been treated by a psychologist or psychiatrist. One of his half-siblings, however, was institutionalized within the Elgin Mental Health Center. Defendant revealed that he was using alcohol three times a week and used marijuana prior to his incarceration, but denied having a drug or alcohol problem.

At the sentencing hearing, the parties presented aggravating and mitigating factors for the court's consideration. In allocution, defendant simply stated "God bless you" to the judge. The trial court sentenced defendant to three 30-year terms of imprisonment for the three counts of aggravated battery with a firearm, and one 15-year term for aggravated discharge of a firearm, all to be served concurrently.

On direct appeal, this court *affirmed* defendant's convictions, but remanded the cause solely for resentencing pursuant to the mandatory consecutive sentencing statute (730 ILCS 5/5-8-4(a)(1) (West 2008)). Specifically, this court "vacate[d] defendant's sentences and remand[ed] for the trial court to clarify which counts were triggering offenses and

resentence defendant in compliance with section 5-8-4(a)(1) and its progeny." *Radcliff*, No. 1-06-2724, order at 15. The judgment was affirmed in all other respects. *Radcliff*, No. 1-06-2724, order at 15-16. The record on direct appeal was devoid of any evidence regarding defendant's fitness.

On remand, the court ordered a new PSI which contained additional information indicating that defendant began a series of suspensions from school in third grade for academic and "anger" reasons. The new PSI also revealed that defendant met with a psychiatrist beginning in third grade, and he continued these meetings through high school until his arrest.

At the hearing on remand, defense counsel related that defendant told him that he had been examined by a doctor while in custody and had been placed on psychotropic medication. In light of this information, defense counsel requested that defendant undergo a behavioral clinical examination (BCX) to determine whether he was fit for sentencing. The court then entered an order to that effect, specifically stating that the referral was to evaluate defendant's fitness for resentencing.

On May 27, 2009, the court received a report from Dawna Gutzmann, a staff psychiatrist with Forensic Clinical Services, indicating that defendant was fit for resentencing with medication. The report also stated that defendant demonstrated understanding of the charges against him, as well as courtroom

proceedings. Defendant was prescribed Remeron, an antidepressant, and Risperdal, a mood stabilizer and antipsychotic medication. Gutzmann stated that defendant needed to continue to take these medications, along with appropriate psychiatric monitoring, in order to maintain his fitness. Defense counsel did not request a fitness hearing or another fitness evaluation.

At the next court date, the parties presented arguments in aggravation and mitigation. In allocution, defendant expressed remorse for the victims and his family, and informed the court he was trying to get his life together. The court then resentenced defendant to 15 years' imprisonment for each of the three counts of aggravated battery with a firearm, and the one count of aggravated discharge of a firearm. Because defendant inflicted severe bodily injury on one of the victims, the court ordered that sentence to run consecutive to the other three concurrent terms, so that defendant's aggregate sentence was 30 years.

In this appeal from that judgment, defendant contends that the record created a *bona fide* doubt regarding whether he was an unmedicated schizophrenic who was unfit at the time of his original trial, and, therefore, this court should reverse his convictions and remand for a fitness hearing and a new trial. In the alternative, defendant maintains that this court should remand the cause for a retrospective fitness hearing.

Defendant's argument on appeal fails because the circuit court on remand did not have jurisdiction to consider defendant's fitness at the time of trial. A trial court must obey the clear and unambiguous directions in a mandate issued by a reviewing court. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982). When a reviewing court issues a mandate, the trial court is vested with jurisdiction to take only such action which conforms to the mandate, and any other order issued by the trial court is outside the scope of its authority and void for lack of jurisdiction. *Schreier*, 92 Ill. 2d at 276-77; *People v. Harrison*, 225 Ill. App. 3d 1059, 1060 (1992).

Here, this court entered a very specific mandate affirming defendant's convictions, and remanding the cause to the trial court to "clarify which counts were triggering offenses and resentence defendant in compliance with section 5-8-4(a)(1) and its progeny." If the trial court issued any other order, it would be outside the scope of its authority and void for lack of jurisdiction. *Schreier*, 92 Ill. 2d at 276-77.

In *Schrier*, the trial court found the defendants guilty of delivering more than 30 grams of cocaine (a Class X offense), but sentenced them as Class 3 offenders based on the court's ruling that the classification of cocaine as a narcotic was unconstitutional. The supreme court upheld the constitutionality of the statute and remanded for the trial court to impose Class X

sentences. Instead, the court granted defendants' motion for a new trial on the basis that, because the court believed they could only be guilty of a Class 3 offense, it failed to give them a fair trial. The State appealed, and the supreme court reversed, holding that its mandate was for resentencing only and did not vest the trial court with jurisdiction to rule upon defendants' motion for a new trial. *Schreier*, 92 Ill. 2d at 279.

In *People v. Craig*, 313 Ill. App. 3d 104 (2000), this court affirmed defendant's convictions for attempted murder and aggravated battery with a firearm, but vacated the sentence for attempted murder and remanded for resentencing on that offense. On remand, the trial court resentenced defendant for attempted murder, but also vacated the aggravated battery with a firearm conviction. This court stated:

> "On remand a trial court may only do those things directed by the reviewing court in the mandate; it has no authority to act beyond the dictates of the mandate. [Citation.] The mandate in this case vacated defendant's sentence for attempted murder only and remanded the cause for resentencing on that issue. By vacating defendant's conviction of aggravated battery with a

> firearm, the trial court exceeded its jurisdiction and acted beyond the mandate. *** Defendant must seek any further relief via a postconviction petition." *Craig*, 313 Ill. App. 3d at 106.

In *People v. Pugh*, 325 Ill. App. 3d 336 (2001), this court rejected defendant's argument that the trial court erred in limiting its resentencing hearing, stating, "The mandate in this case affirms defendant's convictions and unambiguously states that defendant's murder sentence is vacated; it does not vacate the other sentences. Therefore, the trial court was without authority to hold a sentencing hearing on those sentences that had been upheld by the supreme court." *Pugh*, 325 Ill. App. 3d at 342.

Based on this case law, if the trial court in this case had ordered a new trial, or a retrospective fitness hearing, it would have acted outside the scope of its authority. Defendant must seek any further relief regarding his fitness to stand trial via a post-conviction petition. See *Craig*, 313 Ill. App. 3d at 106. We also note that "[w]hen an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate." *Quincy School District No. 172 v. The*

Illinois Educational Labor Relations Board, 366 Ill. App. 3d 1205, 1210 (2006); citing *Foster v. Kanuri*, 288 Ill. App. 3d 796, 799 (1997). Therefore, the only issue here that would be properly before this court involves resentencing defendant in compliance with section 5-8-4(a)(1) and its progeny, not defendant's fitness at his original trial.

Furthermore, even if we had jurisdiction to entertain defendant's contention on appeal, we would find no abuse of discretion by the court on remand in failing to order a new trial or a retrospective fitness hearing *sua sponte* because no *bona fide* doubt of defendant's fitness to stand trial had arisen. At trial, defense counsel did not request a fitness hearing or refer to any facts that would lead him to suspect there was a *bona fide* doubt of defendant's fitness. Moreover, the interactions between defendant and the court, and the trial proceedings as a whole, show that defendant was aware of the nature and purpose of the proceedings, and was able to assist in his own defense. Defendant's claim in this appeal that he may have been an unmedicated schizophrenic at the time of trial is based on nothing more than speculation.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.