

No. 1-08-2816

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).

SIXTH DIVISION

Order filed June 11, 2010

Modified upon denial of petition for rehearing March 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Appellee,)	Cook County, Illinois
)	
v.)	89 CR 6690 (02)
)	
ALNORAINDUS BURTON,)	Honorable
)	Joseph G. Kazmierski,
Appellant.)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the Court.
JUSTICES CAHILL and MCBRIDE concurred in the judgment.

ORDER

Held: A sentence pursuant to 730 ILCS 5/5-8-4 is lawful when a defendant receives natural life for first degree murder and a consecutive term-of-years sentence for a Class 1 felony.

Defendant Alnoraindus Burton appeals from an order of the circuit court of Cook County denying him leave to file his third successive pro se postconviction petition under the Post-

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Conviction Hearing Act. 725 ILCS 5/122-1 et seq. (West 2008)).

He contends that his sentence for a term of years consecutive to natural life is void and requests that we modify his sentences to run concurrently.

Following a jury trial, Defendant was convicted of first degree murder and aggravated kidnapping. He was sentenced to natural life imprisonment for first degree murder, with a consecutive sentence of 15 years for aggravated kidnapping. We affirmed Defendant's conviction and sentences on direct appeal. People v. Burton, No. 1-91-2811 (1994) (unpublished order under Supreme Court Rule 23).

While his direct appeal was pending, Defendant filed an initial pro se postconviction petition, followed by numerous supplemental petitions. The petition was ultimately dismissed at the second stage of the proceedings in 1997, and this court affirmed that decision on appeal. People v. Burton, No. 1-97-4134 (2000) (unpublished order under Supreme Court Rule 23). In 2006, Defendant filed a motion for leave to file a successive pro se postconviction petition, which the circuit court denied. This court affirmed the decision on appeal after granting counsel's motion to withdraw pursuant to Pennsylvania v. Finley, 481 U.S. 551, 95 L. Ed. 2d 539, 107 S. Ct. 1990 (1987). People v. Burton,

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No. 1-07-0012 (2008) (unpublished order under Supreme Court Rule 23).

On May 5, 2008, defendant filed a motion for leave to file a third successive pro se postconviction petition, which the circuit court denied. Defendant appealed.

Defendant contends for the first time that his sentence is void under People v. Palmer, 218 Ill. 2d 148 (2006), because the trial court imposed his 15-year sentence for aggravated kidnapping consecutive to his natural life sentence for first degree murder. Defendant argues that, in accordance with Palmer, this court must modify his sentence to run concurrently.

In Palmer, the defendant received seven natural life sentences, to run consecutively. 218 Ill. 2d at 153. The Palmer court recognized the impossibility of serving consecutive natural life sentences under both natural law and the plain meaning of the consecutive sentencing statute. 730 ILCS 5/5-8-4(a) (West 2002); Palmer, 218 Ill. 2d at 164. The court held that it is impossible to serve or enforce sentences consecutive to life without parole, and there is only one way a defendant can serve a natural life sentence, with his one life. Palmer, 218 Ill. 2d at 164, 167-68. "Therefore, the sentences may not be consecutive, but must be concurrent because concurrent sentences are sentences

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which operate simultaneously." Palmer, 218 Ill. 2d at 168.

This court has repeatedly held that the reasoning in Palmer applies to a case such as the present and renders a term of years consecutive to a life sentence void. People v. Wuebbels, 396 Ill. App. 3d 763, 767-69 (2009); People v. Ramey, 393 Ill. App. 3d 661, 670 (2009); People v. Reeves, 385 Ill. App. 3d 716, 735 (2008); People v. Hernandez, 382 Ill. App. 3d 726, 730 (2008); People v. Spears, 371 Ill. App. 3d 1000, 1008 (2007); People v. Dixon, 366 Ill. App. 3d 848, 856 (2006). Void sentences can be attacked at any time, even when raised for the first time in a successive postconviction petition without demonstrating an objective "cause" for defendant's failure to raise the issue earlier. See Ramey, 393 Ill. App. 3d at 670; see also Spears, 371 Ill. App. 3d at 1007 (citing People v. Thompson, 209 Ill. 2d 19, 27 (2004)).

The State urges us on their petition for rehearing, however, to follow People v. Petrenko, 237 Ill. 2d 490, 506 (2010), which was recently decided by our Illinois Supreme Court. Our Supreme Court noted that the defendant in Palmer had been sentenced pursuant to the Habitual Criminal Act. Petrenko, 237 Ill. 2d at 504. The court then stated that the Habitual Criminal Act is a "separate sentencing scheme" from that set forth in Illinois'

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Unified Code of Corrections. Petrenko, 237 Ill. 2d at 504. The court found that Palmer "stands simply for the proposition that defendants sentenced to natural life in prison under the Habitual Criminal Act are not subject to the consecutive-sentencing provisions of the Unified Code of Corrections." Petrenko, 237 Ill. 2d at 505. The court further stated, "[W]e therefore overrule the portion of Palmer holding that the imposition of consecutive natural life sentences is impermissible both under [730 ILCS 5/5-8-4] and under natural law." Petrenko, 237 Ill. 2d at 506. The court concluded by stating, "From this point forward, the courts of this state are to enforce [730 ILCS 5/5-8-4] as written and without regard to the practical impossibility of serving the sentences it yields." Petrenko, 237 Ill. 2d at 506.

Petrenko is instructive in this case. Here, as in Petrenko, Defendant's sentences were not imposed under the Habitual Criminal Act. Rather, defendant's sentences were imposed under 730 ILCS 5/5-8-4 of the Unified Code of Corrections. Further, Defendant here does not dispute that he falls squarely within the class of defendants for whom 730 ILCS 5/5-8-4 requires consecutive sentencing. Section 730 ILCS 5/5-8-4 states:

(d) Consecutive terms; mandatory. The court shall

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impose consecutive sentences in each of the following circumstances:

(1) One of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury. 730 ILCS 5/5-8-4(d)(1).

The defendant here caused severe bodily injury to his victim and was convicted of both a Class 1 felony and first degree murder.

Therefore, the statute mandates that the trial court impose consecutive sentences for his crimes.

Based on the foregoing, we cannot say that the trial court erred in enforcing section 730 ILCS 5/-5-8-4 "as written" by sentencing defendant to natural life for first degree murder and a consecutive 15 years for aggravated kidnapping. See Petrenko, 237 Ill. 2d at 506.

We therefore affirm defendant's sentence of natural life imprisonment for first degree murder with a consecutive sentence of 15 years for aggravated kidnapping.

Affirmed.