

NOTICE

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2011 IL App (5th) 090589-U
NO. 5-09-0589
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Fayette County.
)	
v.)	No. 07-CF-174
)	
GLENDAL F. JACKSON,)	Honorable
)	James L. Roberts,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's plea agreement is void where an essential term of the agreement improperly required the defendant to serve 75% of his 10-year sentence under the truth-in-sentencing statute. The appellate court has jurisdiction to vacate the defendant's void sentence when the issue is raised for the first time on an appeal from the circuit court's dismissal of the defendant's postconviction petition. The proper remedy is to remand the matter to the circuit court to allow the defendant to withdraw his guilty plea.
- ¶ 2 The defendant, Glendal F. Jackson, was charged with aggravated participation in methamphetamine manufacturing in violation of section 15(b) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/15(b) (West 2006)). The original information alleged that the defendant "knowingly produced a substance containing more than 400 grams of a substance containing methamphetamine in a structure where a child under the age of 18 years was present."
- ¶ 3 On March 19, 2008, the parties appeared in court, and the defendant agreed to

plead guilty to the lesser charge of knowingly producing a substance containing more than 100 grams but less than 400 grams of a substance containing methamphetamine. The State amended the information to allege this reduced offense. In exchange for the defendant's plea, the State agreed to a sentence of 12 years in the Department of Corrections, the minimum sentence of imprisonment for the reduced offense. At the plea hearing, the parties also discussed their agreement with respect to the defendant's eligibility for good conduct credit.

¶ 4 Section 3-6-3(a)(2.1) of the Unified Code of Corrections (Code) provides that prisoners who are serving sentences for certain offenses are entitled to one day of good conduct credit for each day of his or her sentence of imprisonment and that each day of good conduct credit would reduce the prisoner's sentence by one day. 730 ILCS 5/3-6-3(a)(2.1) (West 2008). However, at the time of the plea agreement, the legislature had amended the Code to add a truth-in-sentencing provision that limited the good conduct credit for certain drug offenses, including aggravated participation in methamphetamine manufacturing, to "no more than 7.5 days good conduct credit for each month of his or her sentence of imprisonment" (75% truth-in-sentencing statute). 730 ILCS 5/3-6-3(a)(2)(v) (West 2008).

¶ 5 At the sentencing hearing, the State, the defendant, and the circuit court all incorrectly believed that the effective date for this 75% truth-in-sentencing statute was January 1, 2008. The information alleged that the defendant committed the offense on November 27, 2007. Therefore, as part of the plea agreement, the State stipulated that the offense "would be on the day-for-day good time statute rather than the 75 percent statute that came into effect on January 1st, since this is a case that began before the first of the year." However, the actual effective date of the 75% truth-in-sentencing statute was August 13, 2007.

¶ 6 The circuit court accepted the negotiated plea agreement and sentenced the defendant to 12 years of imprisonment. The court stated, "By agreement day-for-day good time credit will apply to that sentence." When the defendant asked for further confirmation that he was entitled to day-for-day credit, the court further advised the defendant as follows:

"[T]his case was a case that was alleged to have been committed prior to the beginning of the year. So if that statute changed after the first of the year, you can't be held accountable to something that was modified after you committed the offense. The parties are acknowledging here on the record if it is an issue, and I've noted on the docket, that you are entitled to day-for-day credit based on the statute as it stood when you committed this offense."

¶ 7 When the defendant reported to the Department of Corrections, however, he was informed that his offense occurred after the effective date of the 75% truth-in-sentencing statute and that he was, therefore, not entitled to day-for-day credit. The defendant subsequently filed a motion to enforce the plea agreement or, alternatively, to withdraw his guilty plea.

¶ 8 On September 29, 2008, the parties appeared in court on the defendant's motion and entered into a new negotiated plea agreement. The defendant agreed to plead guilty to a reduced charge of aggravated participation in methamphetamine manufacturing by knowingly producing a substance containing more than 15 grams but less than 100 grams of a substance containing methamphetamine. The State amended the information again to reflect the new reduced charge. The minimum sentence on the reduced charge was 9 years of imprisonment, and the State agreed to a 10-year sentence. With respect to good conduct credit, the prosecutor stated that the new amended charge "is anticipated a 75 percent crime."

¶ 9 The circuit court accepted the new plea agreement and sentenced the defendant to 10 years of imprisonment. With respect to good conduct credit, the court advised the defendant as follows:

"[I]n my original admonishments to you, it was clear that everyone thought they were operating on the 50 percent instead of the 75 percent or greater sentence that you would be serving. At any rate, what has happened now is the State has allowed you to withdraw your guilty plea, the original judgment has been vacated, and pursuant to your further negotiated plea reached between yourself, the State and your attorney, I have now amended the information. *** It alleges that you knowingly produced a substance containing more than 15 grams but less than 100 grams of a substance containing methamphetamine and reflects the new statutory cite. It is still a Class X felony, but the sentencing range is from 9 to 40 instead of 12 to 50. *** And then the understanding would be that you would be serving 75 percent of this sentence as outlined by statute."

The court sentenced the defendant to 10 years of imprisonment, and the judgment entered by the trial court ordered the defendant to serve 75% of his sentence.

¶ 10 On September 1, 2009, the defendant filed a *pro se* postconviction petition. The defendant raised several issues in his petition, including the following: that he was denied due process by the court's failure to enforce the original plea agreement and by the State's destruction of all physical evidence of the methamphetamine laboratory except for representative samples of liquids found in numerous jars in the defendant's home. On September 17, 2009, the circuit court entered a docket order that dismissed the defendant's postconviction petition, finding it to be frivolous and without merit. The defendant appeals the dismissal of his postconviction petition.

¶ 11 On appeal, the defendant does not raise any of the issues that were contained

in his postconviction petition. Instead, the defendant argues, for the first time, that the circuit court's 10-year sentence is void because it improperly required him to serve 75% of his sentence. The defendant maintains that the offense to which he pleaded guilty does not fall under the terms of the 75% truth-in-sentencing statute and, therefore, that the circuit court had no authority to order him to serve 75% of his sentence and deny him day-for-day good conduct credit. The State maintains that this court lacks jurisdiction to consider this issue because the defendant is raising it for the first time on appeal. Alternatively, the State argues that the defendant's conviction does fall under the 75% truth-in-sentencing statute. We agree with the defendant that the circuit court lacked statutory authority to require him to serve 75% of his sentence and that, therefore, the sentence is void. In addition, because the circuit court's dismissal of the defendant's postconviction petition is properly before this court, there is no jurisdictional impediment to the defendant's attack of the void order in this court.

¶ 12

I

¶ 13

Application of the 75% Truth-in-Sentencing Statute

¶ 14

The truth-in-sentencing statute that is at issue in this appeal provides as follows:

*"a person serving a sentence for gunrunning, narcotics racketeering, controlled substance trafficking, methamphetamine trafficking, drug-induced homicide, aggravated methamphetamine-related child endangerment, money laundering ***, or a Class X felony conviction for delivery of a controlled substance, possession of a controlled substance with intent to manufacture or deliver, calculated criminal drug conspiracy, criminal drug conspiracy, street gang criminal drug conspiracy, participation in methamphetamine manufacturing, aggravated participation in methamphetamine manufacturing, delivery of methamphetamine, possession with*

intent to deliver methamphetamine, aggravated delivery of methamphetamine, aggravated possession with intent to deliver methamphetamine, methamphetamine conspiracy *when the substance containing the controlled substance or methamphetamine is 100 grams or more shall receive no more than 7.5 days good conduct credit for each month of his or her sentence of imprisonment[.]*" (Emphasis added.) 730 ILCS 5/3-6-3(a)(2)(v) (West 2008).

¶ 15 The defendant argues that since his conviction involved less than 100 grams of a substance containing methamphetamine, his sentence does not fall under the purview of this statute. The State, however, maintains that the phrase "100 grams or more" only applies to sentences for methamphetamine conspiracy and that anyone convicted of any of the other enumerated Class X drug offenses, including aggravated participation in methamphetamine manufacturing, falls under the 75% truth-in-sentencing statute regardless of the amount of methamphetamine or controlled substance that is involved. We agree with the defendant's interpretation of the statute.

¶ 16 The principal objective of statutory construction is to determine and give effect to the legislature's intent. *In re Detention of Powell*, 217 Ill. 2d 123, 135, 839 N.E.2d 1008, 1015 (2005). "All other rules of statutory construction are subordinate to this cardinal principle." *In re Detention of Powell*, 217 Ill. 2d at 135, 839 N.E.2d at 1015. The best evidence of the legislative intent is the language of the statute itself, and the language should be "given its plain, ordinary and popularly understood meaning." *In re Detention of Powell*, 217 Ill. 2d at 135, 839 N.E.2d at 1015. If possible, we must give effect to every word, clause, and sentence and must not construe a statute in a way that renders any part inoperative, superfluous, or insignificant. *Bauer v. H.H. Hall Construction Co.*, 140 Ill. App. 3d 1025, 1028, 489 N.E.2d 31, 33 (1986). In addition to the statutory language, the courts may consider the purpose behind the law

and the evils sought to be remedied. *Williams v. Staples*, 208 Ill. 2d 480, 487, 804 N.E.2d 489, 493 (2004).

¶ 17 The General Assembly enacted Public Act 95-134 in 2007. Pub. Act 95-134, eff. Aug. 13, 2007. During the third reading of the bill in the House of Representatives, its chief sponsor, Representative Acevedo, stated that the legislation "would limit the amount of good time credit *** gunrunners, Class X felony drug violations, and Class X felony money laundering receive to 25 percent rather than 50 percent of their sentence." 95th Ill. Gen. Assem., House Proceedings, Apr. 27, 2007, at 84 (statements of Representative Acevedo). During the debate, Representative Molaro opposed the bill because he believed the bill punished nonviolent "kids" who were not the "big drug dealers." 95th Ill. Gen. Assem., House Proceedings, Apr. 27, 2007, at 85-86 (statements of Representative Molaro). In response, Representative Black noted that under the language of the bill, "minor street transactions" will still be eligible for day-to-day good time credit. 95th Ill. Gen. Assem., House Proceedings, Apr. 27, 2007, at 88-89 (statements of Representative Black). Representative Black added that the bill was "crafted" to address "the more serious offenders and offenses" and tells the serious offenders "if *** you're trafficking large amounts *** you're going to serve more of the time." 95th Ill. Gen. Assem., House Proceedings, Apr. 27, 2007, at 90 (statements of Representative Black).

¶ 18 During his closing remarks during the debate, Representative Acevedo added as follows:

"One of my colleagues spoke previously about this Bill. This legislation goes after the small-time drug dealers who are selling the dope to provide some for himself. This is not what we're trying to do. This is not the intent of the legislation. I believe Representative Black put it correctly, that we're going after the big-time drug dealers.

The individual who wants to transport between state lines kilos amongst kilos of heroin and cocaine. We're going after the big-time drug dealers who are pouring these illegal drugs into our neighborhoods, into the streets not only in the City of Chicago but throughout the State of Illinois. And these are the people we're trying to go after. We are not trying to get the individuals who are the small-time dope dealers. This does not have no [sic] impact on them whatsoever." 95th Ill. Gen. Assem., House Proceedings, Apr. 27, 2007, at 91 (statements of Representative Acevedo).

¶ 19 This legislative history supports the defendant's interpretation of the statute. The statute lists certain Class X methamphetamine and controlled substance offenses that are eligible for only 25% good conduct credit. We construe the phrase "when the substance containing the controlled substance or methamphetamine is 100 grams or more" to apply to all of the listed Class X drug offenses in accordance with the legislative intent to target the more serious drug offenders involved with larger amounts of drugs. We believe that the legislature clearly intended the language "100 grams or more" to apply to all of the listed Class X drug offenses, not just methamphetamine conspiracy. Furthermore, the legislature's use of the term "controlled substance" in defining the "100 grams or more" limitation also evidences its intent for the limitation to apply to all of the listed Class X drug offenses, including those that concern controlled substances other than methamphetamine conspiracy.

¶ 20 The defendant pleaded guilty to manufacturing less than 100 grams of methamphetamine. Therefore, his conviction for aggravated participation in methamphetamine manufacturing does not fall under the purview of the 75% truth-in-sentencing statute found in section 3-6-3(a)(2)(v) of the Code. Accordingly, the circuit court lacked statutory authority to order the defendant to serve 75% of his sentence.

¶ 21

II

¶ 22

Appellate Jurisdiction

¶ 23

The State argues that even if the defendant's sentence is improper, this court lacks jurisdiction to consider the defendant's argument because it was not properly raised in the circuit court. We disagree. The relevant procedural facts of the present case are substantially similar to those in *People v. Thompson*, 209 Ill. 2d 19, 805 N.E.2d 1200 (2004), where the supreme court held that a defendant can challenge a void sentencing order for the first time in an appeal from the dismissal of a postconviction petition.

¶ 24

In *Thompson*, the defendant entered into negotiated pleas of guilty to one count of aggravated battery and one count of violation of an order of protection. In exchange for the defendant's guilty pleas, the State agreed to dismiss two other counts in the indictment. The circuit court imposed an extended-term sentence for each conviction. The defendant did not file a direct appeal or move to withdraw his guilty plea. Instead, he filed a *pro se* postconviction petition and raised various general constitutional claims. He did not challenge his sentences. When the trial court dismissed his postconviction petition, he appealed and argued for the first time on appeal that his extended-term sentence for the violation of the order of protection was not authorized by statute and was, therefore, void.

¶ 25

The supreme court agreed with the defendant that his extended-term sentence for the violation of the order of protection was improper and void. The court stated, "The principle has often been stated that a sentence, or portion thereof, that is not authorized by statute is void." *Thompson*, 209 Ill. 2d at 23, 805 N.E.2d at 1203. The court also stated that it is a "well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally." *Thompson*, 209

Ill. 2d at 25, 805 N.E.2d at 1203. The court concluded that the defendant could raise the voidness issue on appeal, that the argument was not subject to waiver, and that it does not depend on the viability of his postconviction petition. *Thompson*, 209 Ill. 2d at 27, 805 N.E.2d at 1204-05. The supreme court emphasized that "courts have an independent duty to vacate void orders and may *sua sponte* declare an order void." *Thompson*, 209 Ill. 2d at 27, 805 N.E.2d at 1204-05.

¶ 26 Likewise, in the present case, the circuit court lacked statutory authority to order the defendant to serve 75% of his 10-year sentence and deny him day-for-day credit. Accordingly, that portion of the defendant's sentence is void and may be attacked directly or collaterally. His argument is not subject to waiver and is not dependent on the viability of his postconviction petition. The issue, therefore, is properly before this court.

¶ 27 The State cites *People v. Flowers*, 208 Ill. 2d 291, 802 N.E.2d 1174 (2003), in support of its argument that we lack jurisdiction to address the void sentence. *Flowers* is distinguishable from the present case for the reasons set forth by the supreme court in *Thompson*. In *Flowers*, the defendant argued that the portion of her sentencing order that required her to pay restitution was void. The supreme court held that the appellate court lacked jurisdiction over the appeal because the defendant's motion to reconsider her sentence was not filed within the time required by Supreme Court Rule 604(d) (eff. Nov. 1, 2000). The court acknowledged that a void order can be attacked at any time, but the court held that the issue must be raised in the context of a proceeding that is properly pending in the courts. Accordingly, in *Flowers*, the appellate court lacked the authority to grant the defendant relief from the alleged void order. *Flowers*, 208 Ill. 2d at 308, 802 N.E.2d at 1184-85.

¶ 28 The supreme court in *Thompson* distinguished *Flowers* as follows:

"In contrast to the situation in *Flowers*, defendant's postconviction petition was properly before the circuit court and his appeal to the appellate court from the dismissal of the petition was properly before that court. There is no jurisdictional impediment to the granting of relief from the void portion of the circuit court's sentencing order." *Thompson*, 209 Ill. 2d at 28-29, 805 N.E.2d at 1205-06.

¶ 29 Likewise, in the present case, the defendant's appeal from the circuit court's dismissal of his postconviction petition is properly before this court. The defendant has raised the issue of the void sentencing order in the context of a "proceeding that is properly pending in the courts" (*Thompson*, 209 Ill. 2d 28, 805 N.E.2d at 1205). Accordingly, similar to *Thompson*, there is no procedural impediment that prevents the defendant from challenging the void order in the present appeal.

¶ 30

III

¶ 31

Relief

¶ 32

The defendant requests that we vacate the portion of his sentence that orders him to serve 75% of his 10-year sentence and amend his sentence so that he can receive day-for-day credit for good conduct. The State, however, argues that if we find that the defendant's sentence is void, then the proper remedy is to allow the defendant to withdraw his second negotiated plea so he can plead anew.

¶ 33

In *People v. Hare*, 315 Ill. App. 3d 606, 610, 734 N.E.2d 515, 518 (2000), the court held that when a court "vacates an illegal sentence that it entered in accordance with a plea agreement, the illegality voids the entire agreement and not merely the sentence." The court based its holding on the contract-law principle that "[a]n agreement is not enforceable in part if the unenforceable aspect is an essential part of the agreed exchange." *Hare*, 315 Ill. App. 3d at 610, 734 N.E.2d at 519. In *Hare*, because the statutory mandatory minimum sentence for the defendant was six years,

not the four years to which the parties agreed, a large change would have been needed to bring the agreement in compliance with the statute. *Hare*, 315 Ill. App. 3d at 609-10, 734 N.E.2d at 518. The court, therefore, found that the entire plea agreement was void in that case because the voided sentence was an essential part of the plea agreement. *Hare*, 315 Ill. App. 3d at 610-11, 734 N.E.2d at 519.

¶ 34 In the present case, in order to determine the proper remedy, we must determine whether the agreement that the 75% truth-in-sentencing statute applied to the defendant's sentence was an essential term of the plea agreement. Whether a term is essential depends on the "'relative importance [of the voided term] in the light of the entire agreement between the parties.'" *People v. McNett*, 361 Ill. App. 3d 444, 448, 837 N.E.2d 461, 465 (2005) (quoting Restatement (Second) of Contracts § 184(1), Comment *a*, at 30 (1981)).

¶ 35 Considering the procedural history in the present case, we believe that the parties' understanding that the 75% truth-in-sentencing statute applied to the defendant's sentence was an essential term of the plea agreement. The parties originally agreed to a 12-year sentence with the express understanding that the defendant would be entitled to day-for-day credit. When the parties learned that the defendant was not entitled to day-for-day credit, they entered into a new plea agreement for a 10-year sentence with the stipulation that the defendant would have to serve 75% of his sentence. The amount of good conduct credit the defendant was entitled to earn while serving his sentence was clearly a central issue of negotiation between the parties and was an essential term of the plea agreement. We cannot find that the issue of good conduct credit was a minor aspect of the plea agreement.

¶ 36 The defendant cites *Thompson* as authority for this court to simply vacate the portion of the circuit court's sentence that required him to serve 75% of his prison

sentence. In *Thompson*, the supreme court vacated an improper, void extended-term sentence and reduced the sentence to the maximum nonextended term. *Thompson*, 209 Ill. 2d at 29, 805 N.E.2d at 1206. However, in that case, the parties' plea agreement did not include any agreement concerning sentencing. *Thompson*, 209 Ill. 2d at 21, 805 N.E.2d at 1201. Accordingly, the void portion of the defendant's sentence in *Thompson* was not an essential term of the parties' plea agreement.

¶ 37 The plea agreement in the present case is fatally defective because the 75% truth-in-sentencing statute does not apply to the charge to which the defendant pleaded guilty and the circuit court did not have statutory authority to apply that statute in its sentencing order. Because this essential term of the parties' plea agreement violates the Code, the entire plea agreement is void. We find that the appropriate remedy is to vacate the defendant's sentence and allow him to withdraw his guilty plea, if he so desires. Accordingly, we vacate the circuit court's sentencing order and remand this matter to the circuit court to allow the defendant to move to withdraw his guilty plea.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we vacate the circuit court's sentencing order and remand this matter to the circuit court for further proceedings consistent with this decision.

¶ 40 Vacated; cause remanded.