

No. 1-09-1725

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 5993
	)	
WILLIE SMITH,	)	Honorable
	)	Marcus R. Salone,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Sterba concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where trial court imposed sentence pursuant to plea agreement and sentence was outside of the applicable statutory range, sentence was void; defendant's guilty plea was vacated and the cause remanded.
- ¶ 2 Pursuant to a negotiated guilty plea, defendant Willie Smith was sentenced to 22 years in prison for first degree murder. Defendant was subject to a minimum sentence of 35 years due to the application of a mandatory 15-year sentence enhancement for the use of a handgun in the commission of the offense. On appeal, defendant's sole contention was that the trial court did not adequately admonish him that he was required to serve a three-year period of mandatory supervised release (MSR) following his agreed sentence. On August 21, 2012, this court ordered

the parties to submit supplemental briefs addressing the applicability of *People v. White*, 2011 IL 109616, in which the Illinois Supreme Court held that the trial court may not enter a judgment imposing a sentence that excludes a mandatory sentencing enhancement. *White*, 2011 IL 109616, ¶ 29. We conclude that defendant's negotiated plea is void under *White*.

¶ 3 On August 20, 2007, defendant's counsel informed the court that defendant was willing to accept the plea agreement offered by the State. The State then presented a factual basis for defendant's plea, specifically that on or about July 22, 2003, defendant retrieved a gun from his residence and rode in a vehicle with a group of people, one of whom exited the car and shot Lavelle Garrett.

¶ 4 The court found that a factual basis existed for the plea and that the plea was voluntary. The court then addressed defendant as to the sentencing range for the offense:

"This matter is punishable by not less than 20, but not more than 60 years in the Illinois Department of Corrections. With an additional 15 years because a handgun was used. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: So, the practical reality is 35 to 75, with a three-year period of parole. Do you understand that?

DEFENDANT: Yes, sir."

¶ 5 The court proceeded to sentence defendant to 22 years in prison.

¶ 6 Defendant was convicted of first degree murder, which carries a sentence of between 20 and 60 years in prison. 730 ILCS 5/5-8-1 (West 2002). Because defendant committed the offense while armed with a firearm, a mandatory 15-year enhancement applies to his sentence. 730 ILCS 5/5-8-1(a)(1)(d)(I) (West 2006). Therefore, the applicable sentencing range in this

case was 35 to 75 years. However, the court accepted a negotiated plea of 22 years, a sentence clearly lower than the minimum term permitted by statute.

¶ 7 Because defendant's 22-year sentence did not fall within the applicable sentencing range, defendant's plea agreement is void. *White*, 2011 IL 109616, ¶ 29 (parties could not agree to, nor could trial court impose, defendant's 28-year sentence when the applicable range was 35 to 75 years, including mandatory firearm enhancement). The ability of this court to address defendant's void sentence is not limited by the failure of either the defendant or the State to raise the issue, because a void sentence may be attacked at any time. *People v. Hillier*, 237 Ill. 2d 539, 546 (2010).

¶ 8 Accordingly, defendant's sentence is vacated, and this case is remanded to the trial court to allow defendant to withdraw his guilty plea and proceed to trial, if he so chooses, or to engage in further plea negotiations with the State. See *People v. Cortez*, 2012 IL App (1st) 102184, ¶¶ 18-19. Because defendant will be resentenced on remand, we need not address his original contention that he was not adequately admonished as to the MSR period that would follow his agreed sentence.

¶ 9 Sentence vacated; case remanded with instructions.