

No. 1-10-3289

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).

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. 09 CR 311
)	
JOSHUA BARFIELD,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant's sentence of impact incarceration was not permitted by statute for offense of aggravated discharge of a firearm, the parties' plea agreement was void from its inception; cause remanded to allow defendant to withdraw his plea should he so choose.
- ¶ 2 Defendant Joshua Barfield pled guilty in 2009 to aggravated discharge of a firearm in exchange for a sentence of impact incarceration. On appeal, defendant contends his negotiated guilty plea was void *ab initio* because impact incarceration was not an authorized sentence for

the Class 1 felony to which he pled. We vacate defendant's conviction and sentence and remand to allow defendant the opportunity to withdraw his plea if he so chooses.

¶ 3 In connection with a September 13, 2008 incident, defendant was charged with a combined 20 counts of attempted murder, aggravated vehicular hijacking, armed robbery, aggravated discharge of a firearm and aggravated unlawful use of a weapon. Those counts allege that defendant fired a weapon at two victims and took their vehicle. Defendant was arrested several days after the September 13 crimes for possession of a firearm after Evanston police observed him and another individual in an area known for drug activity.

¶ 4 On March 12, 2009, defendant appeared in open court after the trial judge participated in a plea agreement conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). The trial court indicated the State presented a factual basis for defendant's plea. Defendant agreed to plead guilty to Count 13 of the indictment, which alleged aggravated discharge of a firearm. The court informed defendant that offense was a Class 1 felony with a sentencing range of between 4 and 15 years in prison. The trial court sentenced defendant to "sheriff's boot camp."

¶ 5 During defendant's post-camp release period, defendant was charged with and pled guilty to possession of cannabis. Based on defendant's failure to successfully complete his sentence of impact incarceration, defendant was subject to re-sentencing on the original conviction of aggravated discharge of a firearm. On September 17, 2010, the trial court imposed a sentence of 12 years in prison for that offense. Defendant filed a motion for reconsideration of his sentence, which the trial court denied. Defendant now appeals that ruling.

¶ 6 On appeal, defendant contends his guilty plea was void *ab initio* because the sentence of impact incarceration entered in exchange for his plea could not be imposed for the crime of aggravated discharge of a firearm. The State concedes the trial court erred in imposing impact incarceration. The State further agrees the subsequent 12-year sentence imposed by the trial

court also was void because defendant was not eligible for impact incarceration at the outset of this case and defendant therefore could not properly have been re-sentenced on the original offense when he was arrested in 2010.

¶ 7 Whether a sentence is void is a question of law subject to *de novo* review on appeal. *People v. Hauschild*, 226 Ill. 2d 63, 72 (2007). "A trial court does not have the authority to accept and enter judgment on a plea agreement that contained a sentencing provision that was not provided by statute." *People v. Gregory*, 379 Ill. App. 3d 414, 422 (2008); see also *People v. Caban*, 318 Ill. App. 3d 1082, 1088 (2001). A court exceeds its authority when it orders a lesser or greater sentence than that mandated by statute, and when that occurs, the defendant's sentence is illegal and void. *People v. White*, 2011 IL 109616, ¶ 20.

¶ 8 In the case at bar, to be eligible for sentencing to a county impact incarceration program, the person must be "convicted of an offense that is a Class 2, 3, or 4 felony that is not a forcible felony as defined in Section 2-8 of the Criminal Code of 1961," among other statutory requirements listed. See 730 ILCS 5/5-8-1.2(c)(4) (West 2008). Defendant correctly points out on appeal that he was not eligible for impact incarceration under those requirements because aggravated discharge of a firearm is a Class 1 felony (720 ILCS 5/24-1.2 (a)(2), (b) (2008)). In addition, as defendant points out, this court has found aggravated discharge of a firearm can be a forcible felony to serve as the predicate felony for felony murder. See *People v. Toney*, 337 Ill. App. 3d 122, 132 (2003).

¶ 9 A void sentence may be attacked at any time. *People v. Hillier*, 237 Ill. 2d 539, 546 (2010); see also *People v. Arna*, 168 Ill. 2d 107, 114 (1995). Accordingly, defendant's conviction for aggravated discharge of a firearm and his sentence for that offense are void. Consistent with the authority cited above, this case is remanded to the trial court to allow defendant the opportunity to withdraw his guilty plea and proceed to trial, if he so chooses. See *White* at ¶ 31.

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¶ 10 Conviction and sentence vacated; cause remanded with directions.