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2012 IL App (3d) 110195-U

Order filed August 14, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Whiteside County, Illinois,
)	
v.)	Appeal No. 3-11-0195
)	Circuit No. 03-CF-387
)	
ANDREW L. ELGIN,)	Honorable
)	Stanley B. Steines,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's sentence under a plea agreement was void as a violation of applicable statutory sentencing mandates. The proper remedy is to affirm defendant's guilty plea, vacate the sentence, and remand for resentencing consistent with the plea agreement and applicable sentencing statutes, as a legal sentence could be implemented within the terms of the plea agreement.

¶ 2 Pursuant to plea negotiations, defendant, Andrew L. Elgin, pled guilty to the Class X felonies of home invasion (720 ILCS 5/12-11(a)(2) (West 2002)) and aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4) (West 2002)). He was sentenced to concurrent terms of 15 years

of imprisonment. On appeal, defendant argues that both his guilty plea and sentence should be vacated as void because the trial court failed to admonish him that his guilty plea would result in mandatory consecutive sentences, even though consecutive sentences were not imposed. We affirm in part as to defendant's guilty pleas, vacate in part as to defendant's sentence, and remand with directions for resentencing consistent with the parties' plea agreement and applicable sentencing statutes.

¶ 3

FACTS

¶ 4 On October 7, 2003, the 14-year-old defendant was charged with a six-count indictment. The indictment included a charge of home invasion as a Class X felony (720 ILCS 5/12-11(a)(2) (West 2002)), alleging that on April 11, 2003, defendant, who was not a peace officer in the line of duty, knowingly and without authority entered the dwelling place of K.H., knowing K.H. to be present, and intentionally injured K.H. by stabbing her with a knife. The indictment also charged defendant with aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4) (West 2002)), alleging that during the commission of a burglary defendant knowingly committed criminal sexual assault against K.H. in that, by the use of force, he placed his penis inside her vagina. Defendant's case was transferred out of juvenile court to criminal court.

¶ 5 On February 25, 2004, in accordance with the parties' negotiated plea agreement, defendant pled guilty to home invasion and aggravated criminal sexual assault in exchange for a 15-year prison sentence and the dismissal of the remaining four charges. On May 11, 2004, the trial court sentenced defendant to concurrent terms of 15 years of imprisonment for the home invasion and aggravated criminal sexual assault convictions.

¶ 6 On June 24, 2008, defendant filed a *pro se* postconviction petition. The court appointed

defendant an attorney, who filed an amended postconviction petition. Defendant elected not to proceed and withdrew the petition on April 8, 2009.

¶ 7 On December 1, 2010, defendant filed a motion for leave to file a successive postconviction petition. The trial court denied defendant's motion, noting that defendant set forth a claim of actual innocence by arguing involuntary intoxication as the result of unexpected and unwarned side effects of prescription medication but knowingly and voluntarily waived the affirmative defense when he withdrew his original postconviction petition. Defendant appealed.

¶ 8 ANALYSIS

¶ 9 For the first time on appeal, defendant argues that his guilty plea and sentence should be vacated because the trial court failed to admonish him that an aggravated criminal sexual assault conviction would result in mandatory consecutive sentences pursuant to section 5-8-4 of the Unified Code of Corrections. See 730 ILCS 5/5-8-4(a)(ii) (West 2002). Whether a sentence is void is a question of law that we review *de novo*. *People v. Donelson*, 2011 IL App (1st) 092594.

¶ 10 Here, the State concedes that a trial court has no authority to impose a sentence that does not conform to statutory guidelines. See *People v. Whitfield*, 228 Ill. 2d 502 (2007). The State acknowledges that defendant's sentence is void because the trial court did not abide by the statutory mandate to impose consecutive sentences on defendant's conviction for aggravated criminal sexual assault. See *Donelson*, 2011 IL App (1st) 092594 (a void sentence can be attacked at any time and is not subject to waiver or forfeiture). However, the State argues that the proper remedy for the void sentence is to modify the sentence to conform to statutory guidelines so that the benefit of defendant's original plea bargain is secured.

¶ 11 Generally, when the parties agree to a sentence that is unauthorized by statute, the entire plea agreement is void. *People v. White*, 2011 IL 109616. Because defendant's sentence and plea agreement are void based on an unauthorized agreement, the proper remedy is either for the promise to be fulfilled or defendant to be given the opportunity to withdraw his plea. *Whitfield*, 228 Ill. 2d 502. However, a plea agreement is only void when an essential term of the agreement is unenforceable or illegal under the relevant statutes. *Donelson*, 2011 IL App (1st) 092594. The essential terms of the plea agreement, in light of an overall plea agreement, may include the charges to which the defendant pled guilty and the total term of imprisonment for those offenses. *Id.*

¶ 12 Under the circumstances of this case, the essential terms of the plea agreement are enforceable, and the proper remedy is to find the sentence void and remand for resentencing. In this case, the benefit of defendant's bargain to a total prison term of 15 years of imprisonment can be fulfilled. Each of defendant's convictions in this case were Class X felonies that carried a sentence of 6 to 30 years of imprisonment. See 730 ILCS 5/5-8-1(a)(3) (West 2002). Defendant can be sentenced to a total of 15 years of imprisonment under the sentencing ranges for the offenses. Consequently, neither defendant's guilty plea nor the agreed upon total prison time of 15 years is void, and the plea agreement can be enforced.

¶ 13 Therefore, we conclude that the proper remedy in this case is to affirm the overall plea agreement by vacating the void sentence and remanding this matter for resentencing to consecutive terms that total 15 years of imprisonment.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Whiteside

County as to defendant's guilty plea, vacate defendant's sentence, and remand with directions for resentencing consistent with the plea agreement and applicable sentencing statutes.

¶ 16 Affirmed in part, vacated in part, and remanded with directions.