



appeal, defendant raises the issue of whether the trial court erred by not allowing him to withdraw his guilty plea. We reverse and remand with instruction.

¶ 3

### FACTS

¶ 4 This case reaches this court for a second time. Defendant was indicted with four counts of first-degree murder, one count of residential burglary, and one count of robbery in connection with the same incident. Later, defendant and the State presented a negotiated plea to the court whereby defendant pled guilty to one count of first-degree murder in return for the State's agreement to dismiss the other charges and recommend a sentence of 50 years' imprisonment.

¶ 5 Defendant's first appeal was a motion for summary relief filed pursuant to Supreme Court Rule 23(c)(2) (eff. May 30, 2008) (*People v. Gary*, No. 5-08-0311 (2009) (unpublished order under Rule 23)). In his previous appeal, defendant did not attack his guilty plea. Instead, defendant asserted that the circuit court had improperly entered a sentence without first apprising him of his history of criminality as required by section 5-3-1 of the Unified Code of Corrections (730 ILCS 5/5-3-1 (West 2006)). On appeal, defendant requested this court to vacate his sentence and remand to the circuit court for resentencing. This court ruled in defendant's favor and granted the motion and requested relief. Ill. S. Ct. R. 23(c)(2) (eff. May 30, 2008). Defendant's sentence was vacated and the matter was remanded to the circuit court for a new sentencing hearing (*People v. Gary*, No. 5-08-0311 (2009) (unpublished order under Rule 23)).

¶ 6 On April 28, 2009, the circuit court entered a "resentencing order," sentencing defendant to 50 years' imprisonment with credit for time served. On May 22, 2009, defendant, through counsel, filed a motion to withdraw guilty plea. Defendant alleged that his counsel had "failed to adequately inform him of evidence against him and the nature of the sentence to be imposed."

¶ 7 On August 27, 2009, the court heard argument on defendant's motion to withdraw guilty plea. After the hearing, the court entered an order denying the motion and directing the clerk to file a notice of appeal on behalf of defendant. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Illinois mandates that a defendant who is convicted of a third Class X felony within 20 years of judgment on the initial offense must be judged a "habitual criminal" and sentenced to natural life imprisonment. At the time of the alleged offense and entering of plea the Criminal Code of 1961 stated:

"§ 33B-1. (a) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnapping or first[-]degree murder, and is thereafter convicted of a Class X felony, criminal sexual assault or first[-]degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.

\* \* \*

(e) Except when the death penalty is imposed, anyone adjudged an habitual criminal shall be sentenced to life imprisonment." 720 ILCS 5/33B-1(a), (e) (West 2006) (superseded by 730 ILCS 5/5-4.5-95, effective date July 1, 2009).

¶ 10 A sentence of 50 years' imprisonment was not an option. Given that the finding of guilt would make defendant a habitual criminal, imposition of a natural life sentence was mandatory upon an entry of a guilty finding. See *People v. Curry*, 384 Ill. App. 3d 315, 318, 893 N.E.2d 295, 297 (2008).

¶ 11 The sentence defendant received was void and unenforceable. A court cannot be bound by the parties to impose a sentence that is unauthorized by law. *People v. Hare*, 315 Ill. App. 3d 606, 609, 734 N.E.2d 515, 518 (2000). Even in instances where a court agrees

with the parties on a sentence, the court lacks authority to give the sentence effect if it is not authorized by law. *People v. White*, 2011 IL 109616, ¶ 20, 953 N.E.2d 398, 403.

¶ 12 The Illinois Supreme Court recently addressed whether a plea agreement was void for failure to follow mandatory sentencing enhancements in *White*. *White*, 2011 IL 109616, ¶ 19, 953 N.E.2d at 403. In *White*, the parties negotiated a plea of guilt to first-degree murder in return for a sentence that did not contain a statutory enhancement for use of a firearm during commission of the offense. *White* found that the sentence was void:

"Once a trial court accepts a plea of guilty, it is the duty of the court to fix punishment. [Citations.] We have 'repeatedly recognized that the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary's discretion in imposing sentences.' [Citation.] A court does not have authority to impose a sentence that does not confirm with statutory guidelines [citations] and a court exceeds its authority when it orders a lesser or greater sentence than that which the statute mandates. [Citations.] In such a case, the defendant's sentence is illegal and void. [Citations.]" *White*, 2011 IL 109616, ¶ 20, 953 N.E.2d at 403.

¶ 13 Defendant's plea is void and cannot be enforced. This is not an instance in which a revision of the sentence would remedy any injustice. See *People v. Brown*, 225 Ill. 2d 188, 205, 866 N.E.2d 1163, 1173 (2007). The only available remedy is to allow defendant to withdraw his plea. As was stated in *Hudson*:

"There are, however, circumstances where an illegal sentence can be fixed only by allowing a defendant to withdraw his plea. For example, when a court accepts a plea agreement that provides that a defendant will receive a sentence *less* severe than is legally possible, due process considerations may leave no option but to allow the

defendant to withdraw his plea. See *People v. White*, 2011 IL 109616." (Emphasis in original.) *People v. Hudson*, 2012 IL App (2d) 100484, ¶ 17, \_\_\_ N.E.2d \_\_\_.

¶ 14 The State does not contest the impropriety of the sentence. Instead, the State asserts defendant failed to properly raise the issue of the voluntariness of his plea and his status as a habitual criminal before the circuit court. The plea at hand falls under a narrow definition of the term "void," and in such instances the plea may be attacked at any time. *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995). This court follows the directions in *White* and remands the matter to the circuit court with instruction to allow defendant to withdraw the guilty plea. *White*, 2011 IL 109616, ¶ 31, 953 N.E.2d at 405.

¶ 15 Accordingly, the order sentencing defendant is vacated and the matter is remanded with instructions to allow defendant to withdraw the guilty plea.

¶ 16 Reversed and remanded with directions.