

No. 1-11-3346

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. 96 CR 30092
)	
MARK ZELAZEK,)	Honorable
)	Brian Flaherty,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant was found guilty but mentally ill of two counts of first degree murder, but the mittimus incorrectly reflects four convictions of first degree murder, we correct the mittimus to reflect two convictions.

¶ 2 Defendant Mark Zelazek appeals the circuit court's order denying leave to file a successive petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). On appeal, defendant asserts that the mittimus mistakenly reflects convictions for four murders where there were only two victims. He then argues that two of his four murder

convictions are void because they violate the one-act, one crime doctrine and the double jeopardy clause. We affirm as modified.

¶ 3 The record shows that defendant was indicted on charges of first degree murder for the February 6, 1994, murders of Connie Nagel and Ray Wolendowski. In particular, defendant was charged with two counts of first degree murder for the intentional murders of Nagel and Wolendowski under section 9-1(a)(1) of the Criminal Code (Code) (720 ILCS 5/9-1(a)(1) (West 1994)), and two counts of first degree murder for the knowing murders of Nagel and Wolendowski under section 9-1(a)(2) of the Code (720 ILCS 5/9-1(a)(2) (West 1994)).

¶ 4 Following a 1996 jury trial, defendant was found guilty but mentally ill of two counts of first degree murder. Specifically, the jury signed two verdict forms. One signed verdict form stated that the jury found defendant guilty but mentally ill of the first degree murder of Connie Nagel. The other signed verdict form stated that the jury found defendant guilty but mentally ill of the first degree murder of Ray Wolendowski. After the jury returned the verdicts, the trial court advised defendant that the jury found him guilty of two counts of first degree murder, and the court adjudged him guilty but mentally ill of the first degree murders of Nagel and Wolendowski. At sentencing, the court stated, "the defendant will be sentenced to a term of natural life, without the possibility of parole as to the offenses charged." The mittimus states that defendant was sentenced to "2 concurrent natural life sentences." In listing the offenses for which defendant received these sentences, however, the mittimus includes two murder convictions under section 9-1(a)(1) and two murder convictions under section 9-1(a)(2) of the Code (720 ILCS 5/9-1(a)(1),(2) (West 1994)).

¶ 5 On direct appeal, defendant claimed that the trial court erred in denying his motions to suppress evidence, giving the jury a guilty but mentally ill instruction, refusing to give the jury a second degree murder instruction, allowing the State to engage in allegedly improper and

prejudicial arguments, and refusing to find that defendant proved by a preponderance of the evidence that he was insane. We rejected defendant's arguments and affirmed his convictions and sentences on direct appeal. *People v. Zelazek*, No. 1-97-0878 (1998) (unpublished order under Supreme Court Rule 23).

¶ 6 On November 30, 1999, defendant filed a *pro se* post-conviction petition, alleging various claims of ineffective assistance of counsel and that his waiver of his right to testify at trial was not voluntary. Defendant's petition was advanced to the second stage of proceedings where appointed counsel filed a supplemental post-conviction petition, which restated the claims in defendant's *pro se* petition. The State filed a motion to dismiss defendant's petitions, which the circuit court granted. We affirmed that dismissal after granting appellate counsel leave to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). *People v. Zelazek*, No. 1-09-1194 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 On September 20, 2011, defendant filed a motion seeking leave to file a successive post-conviction petition under the Act. In his motion, defendant asserted that if granted leave to file his successive petition, he would contend that the police refused to treat his injuries until he made incriminating statements, he was subjected to an unreasonable search and seizure, the jury should have been made aware of his mental blackouts and injuries, he was denied his right to testify, the State's experts were unable to refute the defense experts, he was not permitted to present evidence to show he was not guilty by reason of insanity, the State's arguments were prejudicial, and his sentence was contrary to the jury's intent. On September 30, 2011, the circuit court denied defendant leave to file the successive petition.

¶ 8 On appeal, defendant has abandoned the claims in his petition and instead contends that he was convicted of four murders for the death of two people in violation of the one-act, one-crime doctrine and the prohibition on double jeopardy. He thus requests that two of his

convictions be vacated. Defendant acknowledges that he never raised this claim in his motion seeking leave to file a successive post-conviction petition. In order to circumvent his failure to raise his claim below, defendant argues that two of the four murder convictions listed in his mittimus are void.

¶ 9 In response, the State asserts that defendant's claim is forfeited because the court's error in entering four murder convictions was merely voidable. Alternatively, the State contends that if this court reviews defendant's claim despite his failure to raise it in the circuit court, we need only amend the mittimus to reflect two murder convictions under section 9-1(a)(1) of the Code. We agree that the mittimus needs to be corrected.

¶ 10 Both parties correctly acknowledge that defendant never raised the aforementioned issue in his petition. However, a reviewing court may correct the mittimus at any time. *People v. Latona*, 184 Ill. 2d 260, 278 (1998); *People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002).

¶ 11 Here, despite the parties' contentions that defendant was convicted of four counts of first degree murder, the record clearly reveals that defendant was convicted of only two counts of murder. The two signed jury verdict forms show that defendant was found guilty but mentally ill of the first degree murders of Nagel and Wolendowski. Moreover, the trial court acknowledged, in open court, that defendant was convicted of two counts of murder and sentenced him to two concurrent life terms in prison. Only the mittimus lists four counts of murder, and, where the mittimus does not correctly reflect the defendant's conviction and sentence, it should be amended to conform to the judgment. See *People v. Pryor*, 372 Ill. App. 3d 442, 438 (2007).

¶ 12 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), this court has the authority to order corrections to the mittimus to reflect two murder convictions under section 9-1(a)(1) of the Code (720 ILCS 5/9-1(a)(1) (West 1994)). See *People v. Cardona*, 158 Ill. 2d 403, 411-12 (1994) (where charges of intentional, knowing, and felony murder have been proved, only

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the most serious charge will be upheld, and intentional murder is deemed to be the most serious offense). Because we are ordering the mittimus to be corrected to reflect that defendant was convicted of only two counts of murder, we need not address defendant's one-act, one-crime or double jeopardy concerns.

¶ 13 For the foregoing reasons, we order that the mittimus be corrected to reflect that he was convicted of two counts of intentional murder, and affirm the judgment of the circuit court in all other respects.

¶ 14 Affirmed; mittimus corrected.