

No. 1-11-1525

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. 06 CR 17244
)	
DEMETRIOUS JONES,)	Honorable
)	Rosemary Grant-Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justice McBride concurred in the judgment.
Presiding Justice Gordon dissented.

O R D E R

- ¶ 1 *Held:* Trial court had jurisdiction to correct mittimus by making express finding of great bodily harm so that truth-in-sentencing applied. Court found defendant guilty of first degree murder and had already found that the victim's death occurred in course of defendant's other offenses, so finding of great bodily harm was ministerial.
- ¶ 2 Following a 2008 bench trial, defendant Demetrious Jones was convicted of first degree murder, home invasion, and armed robbery and sentenced to consecutive prison terms of 50, 6

and 6 years respectively. We affirmed on direct appeal, except for a correction of the mittimus regarding presentencing detention credit. *People v. Jones*, No. 1-08-1170 (2010) (unpublished order under Supreme Court Rule 23). Defendant now appeals from the trial court's 2011 reissue or correction of the mittimus to include a finding of great bodily harm so that the "truth-in-sentencing" law applies to his sentence. On appeal, he contends that the trial court lacked jurisdiction to make such a finding well over 30 days after sentencing.

¶ 3 The evidence at trial was that, on June 28, 2006, defendant and a co-offender entered the apartment of Peter Poole, where Poole also sold liquor, cigarettes, and snacks. The co-offender then brandished a gun and threatened Poole while defendant demanded that two witnesses in the apartment sit down and cover their faces. The witnesses heard a commotion, including screaming, moaning, and bottles breaking, in another room of the apartment; defendant repeatedly demanded money from Poole, who told defendant that he had given him all his money. After the co-offender joined defendant in the other room, the witnesses heard a gunshot muffled by a pillow, accompanied by defendant telling Poole to die. Defendant and the co-offender opened a refrigerator, removed bottles of liquor, and left. In addition to the witness identifications of defendant, one of the offenders had taken the wallet and mobile phone of one of the witnesses; that phone, and several bottles of liquor and packs of cigarettes, were found on the day of the incident in a home where defendant had just spent the night. On this evidence, the court found defendant guilty of all charges including armed robbery of one witness and attempted armed robbery of the other.

¶ 4 At sentencing, the court imposed sentence on one count each of murder, home invasion, and armed robbery -- all counts with Poole as the victim -- as stated above. The State argued that

consecutive sentencing applied to all three counts because Poole suffered severe bodily injury in the course of all three offenses, and the court imposed consecutive sentencing on all three counts. The court also sentenced defendant to concurrent prison terms of six years on the armed robbery and attempted armed robbery of the witnesses, though the mittimus does not so reflect. The court did not make an express finding of great bodily harm or severe bodily injury nor did it mention good conduct credit, and neither the original nor corrected mittimus (to reflect 662 days' presentencing credit) included such a finding or mention of good conduct credit at any rate.

¶ 5 On direct appeal, we rejected defendant's claims of insufficient evidence, that consecutive sentencing was inappropriate "where there was no evidence of severe bodily injury proximately caused by the home invasion and armed robbery offenses," and that his sentence was excessive and the result of a misapprehension of the evidence. Regarding consecutive sentencing, we noted that a victim's death during the commission of a Class X or Class 1 felony may constitute severe bodily injury requiring consecutive sentencing for that offense. We found that Poole's death was "sufficiently connected" to the offenses at issue and "reject[ed] defendant's contention that Poole's death was too far attenuated from the commission of the home invasion and armed robbery to justify consecutive sentencing" because liquor was taken from Poole's apartment after he was shot. We ordered correction of the mittimus to reflect 663 days' presentencing credit.

¶ 6 In January 2011, the Department of Corrections (Department) informed the trial court that the Department could not apply truth-in-sentencing, whereby defendant would have to serve at least 85% of his prison sentences for home invasion and armed robbery, absent a finding by the court that the conduct leading to those convictions resulted in great bodily harm. The Department therefore requested that the court amend the mittimus to include such a finding.

¶ 7 On March 30, 2011, the trial court acknowledged that this court had already corrected the mittimus regarding presentencing credit but itself ordered a corrected mittimus reflecting 663 days' credit "just to be sure." (A corrected mittimus to that effect was issued the same day.) When the court acknowledged the Department's message, defendant argued that the trial court had not made a trial or sentencing finding of great bodily harm and lacked jurisdiction to do so now as it would not be a mere correction of the mittimus. The State adopted the Department's request, and the court noted that it had found that Poole was murdered and thus implicitly found great bodily harm. Defendant argued that the victim must suffer great bodily harm in the course of the offense or offenses at issue; here, home invasion and armed robbery. The court ordered the parties to brief the issue of its jurisdiction to now make a great bodily harm finding.

¶ 8 Defendant's brief argued that the trial court generally loses jurisdiction 30 days after sentencing, that making a finding of great bodily harm for the first time is not merely the correction of a clerical error, and that this court's mandate on direct appeal authorized the trial court to address nothing more than presentencing credit. Defendant argued that the court would have to analyze the trial evidence to make such a finding. There is no State brief in the record.

¶ 9 On April 20, 2011, the court found that entering a great bodily harm finding when such harm is implicit in the first degree murder conviction is a correction of the mittimus for which the court had jurisdiction. After briefly reciting portions of the trial evidence, the court found that Poole's murder occurred in the course of the home invasion and armed robbery, and thus ordered correction of the mittimus to "reflect 85 percent time consecutive on the armed robbery and the home invasion to the murder." When defendant noted that "this was an accountability case," the court found that it was irrelevant whether defendant or codefendant actually fired the

fatal shot. The mittimus was reissued that day "to reflect 85% sentencing on arm[ed] robbery" with a finding of great bodily harm *nunc pro tunc* from the 2008 sentencing. Defendant timely filed a motion to reconsider; the court denied the motion, and this appeal timely followed.

¶ 10 On appeal, defendant contends that the trial court lacked jurisdiction on remand to make a finding of great bodily harm. He argues that the State has forfeited a truth-in-sentencing claim by not raising it at sentencing or on direct appeal, and that a finding of great bodily harm was not a ministerial correction but a substantive modification of the judgment.

¶ 11 Generally, once 30 days has passed from sentencing or the disposition of a timely post-sentencing motion, the trial court retains jurisdiction only to enforce the judgment or to correct clerical errors or matters of form so that the record conforms to the judgment actually rendered. *People v. Corredor*, 399 Ill. App. 3d 804, 808 (2010). This jurisdiction may be invoked by a motion for an order *nunc pro tunc* or a motion to correct the mittimus. *Id.* The correction of a mittimus is a ministerial act that does not change the underlying sentence. *People v. Thomas*, 402 Ill. App. 3d 1129, 1132 (2010).

¶ 12 Under our Code of Corrections (Code) (730 ILCS 5/1-1-1 *et seq.* (West 2010)), a prison sentence for first degree murder must be served in its entirety and receives no good-conduct credit. 730 ILCS 5/3-6-3(a)(2)(i) (West 2010). A prison sentence for armed robbery or home invasion "*shall* receive no more than 4.5 days of sentence credit for each month" of imprisonment -- that is, cannot be credited for more than 15% of the sentence -- "when the court has made and entered a finding *** that the conduct leading to conviction for the enumerated offense resulted in great bodily harm to a victim." (Emphasis added.) 730 ILCS 5/3-6-3(a)(2)(iii) (West 2010). Armed robbery and home invasion are otherwise eligible for day-for-

day or 50% credit. 730 ILCS 5/3-6-3(a)(2.1) (West 2010). Section 5-4-1 of the Code provides in relevant part that, in "imposing a sentence for the offense of *** home invasion [or] armed robbery *** the trial judge *shall* make a finding as to whether the conduct leading to conviction for the offense resulted in great bodily harm to a victim, and shall enter that finding and the basis for that finding in the record." (Emphasis added.) 730 ILCS 5/5-4-1(c-1) (West 2010). Great bodily harm has no precise legal definition, other than an injury greater and more serious than an ordinary battery, so that whether a victim's injuries rise to the level of great bodily harm is a question of fact. *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688, ¶¶ 13-14.

¶ 13 A "court shall impose consecutive sentences [where] [o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(d)(1) (West 2010). This provision requires consecutive sentencing for a specified felony only where a defendant inflicted severe bodily injury during the commission of that felony. *People v. Harris*, 2013 IL App (1st) 120498, ¶ 34, citing *People v. Whitney*, 188 Ill. 2d 91, 98–99 (1999). The death of a victim during the commission of a specified felony may provide the basis for a finding of severe bodily injury. *Harris*, ¶ 36.

¶ 14 Here, as a threshold matter, we did not remand this case to the trial court but instead affirmed defendant's convictions and sentence except to order the mittimus corrected regarding presentencing credit. Therefore, the trial court neither had jurisdiction vested by remand on one hand, nor on the other hand did the court act contrary to a mandate on remand. Thus, whether the reissue was a correction of the mittimus and thus issued with jurisdiction is a matter that does not stand or fall by reference to our earlier order.

¶ 15 We conclude that the reissued mittimus with the great bodily harm finding was indeed a correction of the mittimus; that is, the court did not make a new substantive decision but acted ministerially to rectify an oversight of form at sentencing. Despite the absence of an express finding of severe bodily injury at sentencing, it is clear from the imposition of consecutive sentencing that the trial court found that severe bodily injury -- death, the greatest harm and most severe injury possible -- was inflicted on Poole during the commission of the home invasion and armed robbery. In the earlier appeal, we affirmed that decision against defendant's challenge that the evidence did not support such a finding. In light of the implicit finding regarding severe bodily injury, the requirement of Code section 5-4-1(c-1) of a finding either way on great bodily harm, and the mandatory language of Code section 3-6-3(a)(2)(iii), we conclude that the court in 2008 did not decide to refrain from making a great bodily harm finding but merely failed to state explicitly what it had already found implicitly. Thus, the court in 2011 was merely correcting that oversight, the court at sentencing having made all the requisite factual determinations for a finding of great bodily harm except for uttering the words. Stated another way, we cannot see how, if the trial court in 2008 had been asked about good conduct credit or great bodily harm, it could have done anything different than what it actually did when finally so asked in 2011. For the same reasons -- the mandatory language of said Code provisions in light of the court's severe bodily injury finding -- we conclude that the application of truth-in-sentencing to defendant's home invasion and armed robbery sentences was mandatory under these circumstances and not subject to forfeiture by the State.

¶ 16 Accordingly, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.

¶ 18 PRESIDING JUSTICE GORDON, dissenting.

¶ 19 I must respectfully dissent.

¶ 20 In the case at bar, the majority concludes that the application of truth-in-sentencing to defendant's sentences was mandatory and thus not subject to forfeiture by the State. *Supra* ¶ 15. However, as the majority observes, it is mandatory only "when the [trial] court has made and entered a finding *** that the conduct leading to conviction for the enumerated offense resulted in great bodily harm to a victim." 730 ILCS 5/3-6-3(a)(2)(iii) (West 2010). In the case at bar, the trial court did not enter such a finding at sentencing.

¶ 21 The majority finds that the trial court implicitly "made" such a finding at sentencing. Even if such a finding were implicitly made at sentencing, it was still not formally entered at that time. Every word in a statute must be interpreted so that it is not superfluous. Our supreme court has stated: "Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 280 (2003). Thus, the word "made" must have a separate and independent meaning from the word "entered." In the case at bar, there is no dispute that the trial court never "entered" such a finding at sentencing. Therefore, the State forfeited this issue.