

FOURTH DIVISION
January 29, 2015

No. 1-13-0118

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.)	Nos. 07 CR 10215-16
)	07 CR 10700
)	
JAMONTRELL BEGAY,)	The Honorable
)	Brian K. Flaherty,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE, JR. delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment .

ORDER

¶ 1 *HELD:* Where defendant's sentences violate the proportional penalties clause of the state constitution, the trial court erred in granting the State's motion to dismiss the postconviction petition. Reversed and remanded for resentencing.

¶ 2 Defendant Jamontrell Begay pleaded guilty to three separate counts of aggravated vehicular hijacking with a firearm and was sentenced to three concurrent terms of 22 years in prison. He appeals from the dismissal, on motion of the State, of his petition for relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2010)). On appeal, defendant contends that this court should strike the 15-year firearm enhancements from his sentences because they were unconstitutional at the time he committed the offenses at issue. For the reasons that follow, we reverse the dismissal of defendant's postconviction petition, grant his petition on the proportionate penalties issue, vacate his sentences, and remand for resentencing.

¶ 3 Defendant was charged with aggravated vehicular hijacking with a firearm, as well as other crimes, in three separate cases for offenses that occurred on April 7, 9, and 11, 2007. On August 6, 2008, defendant pleaded guilty to the charges of aggravated vehicular hijacking with a firearm in exchange for three concurrent sentences of 22 years' imprisonment. At the guilty plea hearing, the prosecutor specified that the State was offering defendant "the minimum sentence" of 22 years. The trial court admonished defendant that in each case, it could sentence him to anywhere from 7 to 30 years in prison, and that because he used a firearm during the commission of the offenses, it was required to add an additional 15 years to his sentence, for an actual sentencing range of 22 to 45 years. Defendant indicated that he understood. After the parties stipulated to the factual bases for the plea and presented aggravation and mitigation, the trial court sentenced defendant to three concurrent terms of 22 years in prison.

¶ 4 In 2011, defendant filed a postconviction petition alleging, in relevant part, that his 22-year sentences violated the proportionate penalties clause of the state constitution where aggravated vehicular hijacking with a firearm was composed of identical elements as armed violence predicated on vehicular hijacking, but faced a different sentencing range. Defendant

asked the court to strike the 15-year firearm enhancements and reduce his sentences to three concurrent terms of seven years' imprisonment. The trial court appointed counsel and the State filed a motion to dismiss. At the hearing on the motion, the State conceded that the 15-year firearm enhancement was unconstitutional at the time defendant committed his offenses, but argued that defendant's 22-year sentences did not violate the proportionate penalties clause because they fell within the 6-to-30 year range for Class X sentencing. The trial court agreed with the State and granted the motion to dismiss.

¶ 5 On appeal, defendant contends that the 15-year firearm enhancements must be struck from his sentences because they had been declared unconstitutional as violative of the proportionate penalties clause in *People v. Andrews*, 364 Ill. App. 3d 253, 272-77 (2006), which was decided before he committed the offenses at issue, and were not revived until after the offenses were committed, upon the passage of Public Act 95-688 (eff. Oct. 23, 2007). Defendant argues that because his postconviction petition made a substantial showing that his constitutional rights were violated as a result of the unconstitutional enhancements, the trial court erred in dismissing his petition. The State concedes that at the time defendant committed the underlying offenses, the 15-year mandatory firearm enhancements were unconstitutional and therefore should not have been imposed. However, the parties disagree with regard to the appropriate remedy. In his opening brief, defendant argued that this court should strike the 15-year enhancements and impose sentences of seven years for each offense. The State responded in its brief that the appropriate remedy would be to remand for resentencing or, in the alternative, to affirm the 22-year sentences, as they fall within the proper sentencing range of 7 to 30 years. See 720 ILCS 5/18-4(b) (West 2006). In his reply brief, defendant maintained that this court may simply strike the unconstitutional enhancements and impose sentences of seven years, but

allowed that he has "no objection" to leaving his guilty plea intact and remanding for resentencing.

¶ 6 Our supreme court has held that when a sentencing statute has been found to violate the proportionate penalties clause, "the proper remedy is to remand for resentencing in accordance with the statute as it existed prior to the amendment." *People v. Hauschild*, 226 Ill. 2d 63, 88-89 (2007). The purpose of remand is "to allow the trial court to reevaluate defendant's sentence in light of his cumulative sentence and to then resentence him" within the proper range. *Hauschild*, 226 Ill. 2d at 89. Even where a trial court distinguishes a sentencing enhancement from the proper portion of a sentence, remand is appropriate because the trial court is in a better position than an appellate court to impose a sentence, as it had the opportunity to view and weigh the significance of all the evidence. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 29; see also *People v. Gibson*, 403 Ill. App. 3d 942, 955 (2010) (although the trial court delineated between the proper portion of the sentence and the improper sentence enhancement, remand for resentencing was necessary).

¶ 7 Neither of the parties has given a compelling reason to depart from this precedent. Accordingly, we conclude that the appropriate remedy in the instant case is to remand for resentencing in order to allow the trial court to determine defendant's sentence for each offense while taking into account the totality of his sentence. See *People v. Toy*, 2013 IL App (1st) 120580, ¶ 30 (where the defendant's sentence enhancement violated the proportionate penalties clause, no factual dispute required an evidentiary hearing on the defendant's postconviction petition and the appropriate remedy was to reverse the dismissal of the petition, grant the petition on the proportionate penalties issue, vacate the sentences, and remand for resentencing).

¶ 8 In light of our holding, we need not address defendant's request for relief on the alternative ground that the 22-year concurrent sentences for his convictions should be reduced to 21-year sentences, where the parties and trial court fashioned those sentences under the mistaken belief that 22 years' imprisonment was the minimum sentence.

¶ 9 For the reasons explained above, we reverse the dismissal of defendant's postconviction petition, grant his petition on the proportionate penalties issue, vacate his sentences, and remand for resentencing.

¶ 10 Reversed and remanded.