

SECOND DIVISION
March 31, 2015

No. 1-13-0918

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 DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	07 CR 1867
)	
LATRICE MILLER,)	
)	Honorable Frank G. Zelezinski,
Defendant-Appellant.)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

Held: The Illinois Supreme Court's holding in *People v. Smith*, 2015 IL 116572, that the decision in *People v. White*, 2011 IL 109689, announced a new rule of law and only applies prospectively requires denial of defendant's argument that her sentence is void for the trial court's failure to impose the statutory firearm enhancement to her sentence for first degree murder where the factual basis supporting her guilty plea indicated that she discharged a handgun in killing the victim.

¶ 1 On August 17, 2009, defendant Latrice Miller pled guilty to first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) related to the shooting death of Deandre Slaughter with a handgun. On January 4, 2010, the trial court sentenced defendant to 37 years' imprisonment pursuant to defendant's plea agreement with the State. On December 31, 2012, defendant filed a *pro se*

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postconviction petition asserting various violations of her rights associated with her guilty plea and due to ineffective assistance of counsel. On February 19, 2013, the trial court dismissed the postconviction petition as frivolous and without merit and this appeal followed.

¶ 2 On appeal, defendant does not challenge the dismissal of the claims raised in her postconviction petition, but claims that her sentence is void because it did not include the mandatory firearm enhancement and, pursuant to *People v. White*, 2011 IL 109616, her sentence is void and she should now be allowed to withdraw her guilty plea. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with eight counts of first degree murder on April 25, 2007. On August 17, 2009, defendant pled guilty to count 13 of the indictment that stated that on April 25, 2007, defendant and Dennis Franklin committed the offense of first degree murder by intentionally or knowingly without lawful justification shot and killed the victim, Deandre Slaughter, with a handgun. The trial court admonished defendant of this charge against her and defense counsel noted that the count did not contain language that defendant personally discharged a handgun. The trial court informed defendant that the charge of first degree murder carried a sentencing range of 20 to 60 years' imprisonment with three years of mandatory supervised release and any sentence less than that minimum was unavailable as a matter of law and there was no possibility of good time credit. The trial court further admonished defendant of her rights to a jury trial and a defense that she was waiving.

¶ 5 Defendant acknowledged that she understood her rights and that she desired to waive her right to a jury trial in entering her plea of guilty. Defendant stated that no one threatened, forced, or

coerced her or made her any promises for her to enter the guilty plea. Defendant also confirmed that she was not under the influence of any medications, substances, narcotics, or alcohol that would affect her decision making.

¶ 6 The parties stipulated to the following factual basis for defendant's guilty plea that was read into the record:

"On April 25th, 2007, in the late afternoon Aaron Shirley would testify that he was standing in front of his home at 15522 Turlington in Harvey when he observed the victim Deandre Slaughter, aka Munchie, standing a house or two south of his own. With the victim were also two other teenagers, Marquell Belazar and a male named Chris.

Shirley saw the boys having an altercation. The altercation had started out as horseplay, but then had turned serious and ended with the victim punching Marquell in the face and giving him a fat lip.

After the fight Marquell and Chris walked north down the block and Shirley saw and heard him talking loudly on his cell phone. Marquell and Chris then walked west through the alley and left the block. Ten to fifteen minutes later Marquell and Chris returned to the block in the company of Darnell McHerron. When the threesome walked near the spot where Slaughter sat in a parked car, the victim and Marquell started to argue again. After that argument, Shirley observed Marquell to make another cell phone call and then he and Chris left the block again. Darnell then walked north towards the apartment building at the corner of 155th and Turlington. The victim walked through a gangway west towards Lexington.

A few minutes later Shirley observed Dennis Franklin and Latrice Miller come onto the block. He had known these two individuals for several years and knew Miller's nickname to be Tweety. Franklin and Miller walked east from the direction of Lexington and then turned and walked north on Turlington. The defendant and Franklin walked right past him as he stood on the sidewalk in front of his house. Subsequently, the couple turned west through the alley and left his sight.

Within seconds Shirley heard shots ring out from behind his home. He heard four shots followed by two more shots. The gunshots sounded like they had come from two different pistols. After hearing the shots, Shirley tried to look for the source but was unable to see who had fired the shots.

At the same time Shirley was standing in front of his house Darnell McHerron would testify that he was climbing up an outside staircase of an apartment building which overlooked the backyard at 15522 Turlington. As he reached the third floor landing, he heard a shot. Looking right he saw Dennis Franklin and Latrice Miller shooting in the direction of the back of Aaron Shirley's home. The couple was running towards the back of the house from the direction of the alley. He heard at least four shots. Miller and Franklin were standing side by side as they each fired a weapon. After shooting, Miller and Franklin fled down the alley.

McHerron then ran down the stairs. As he went he hollered to Shirley telling him he had seen who had done it. Together then he and Shirley went to the backyard of Shirley's residence. At first they did not observe the victim until a

young girl in a nearby apartment building directed them to Slaughter's location. There they observed the victim lying face down breathing hard and bleeding from bullet wounds in the head and body.

Napolean Darden would testify that he also rushed to the victim's side. He had been sitting on a fence several doors away from Aaron Shirley's house when he observed the second confrontation between the victim and Marquell and Chris. After that argument he observed Marquell make a cell phone call and he could hear a female voice on the other end of the call. Subsequently, Marquell and Chris left the block.

A few moments after they left the block Dennis Franklin and Latrice Miller came through a gangway walking east coming from the direction of Lexington. The two walked past him and headed north on Turlington and then they went westbound through the alley and out of sight.

Seconds later he heard gunshots and ran to the backyard of a nearby house to see what was happening. When he got to the backyard, he crouched by a porch and watched as Dennis Franklin and Latrice Miller shot at the victim with handguns. The victim lay on the ground. Darden initially heard four to six shots before arriving in the yard where he then witnessed at least two more shots fired at the victim.

After they had shot the victim, Miller and Franklin fled through the alley and then westbound through an open field towards Lexington.

When Harvey police detectives Harris and Lewis arrived on the scene, McHerron and Darden identified the defendants, Latrice Miler and Dennis Franklin, as the shooters and accompanied the officers to 154th and Loomis in an attempt to locate the defendant and Franklin.

The next day Darden returned to Aaron Shirley's house where he and Shirley located a pair of keys with a Tweety key chain in the backyard. He and Shirley also located Latrice Miller's car on Lexington Avenue. That the police were subsequently called and the evidence was turned over to them. Darden and Shirley then observed the police officers use the Tweety keys to unlock the steering column of Miller's vehicle.

On June 12, 2007, Shirley and McHerron viewed a lineup where each identified Franklin as one of the killers.

Deborah Lee would testify that while the car is registered to her, the car was in the possession of girlfriend Latrice Miller on April 25th, 2007.

Monique Jones would testify she was at home in Indiana on April 25, 2007, in the early evening when she received a call from her child's father, Cecil Brown, Latrice Miller's brother. He told her to open the door to her home for Latrice and Marquell and Chris. That when she did so the three entered and she noticed that Marquell had a swollen lip and Latrice was acting strange and jittery. She would state that Latrice Miller stayed at her home for three days before Miller's family drove the defendant to Minnesota where she remained.

Jones would further state that after Miller was arrested Miller called her and told her that she told her lawyer that she, Miller, was with Jones at the time of the murder. Jones initially agreed to give the defendant an alibi, but later realized that that decision was wrong and she would not lie in court.

On April 27, 2007, Dr. Michelle Jordan would testify that she was employed as an Assistant Medical Examiner by the Cook County Medical Examiner's Office and was a licensed doctor in the State of Illinois. On April 27th, 2007, she performed an autopsy on Deandre Slaughter under case no. 412 April 2007. She observed that the victim had suffered multiple gunshot wounds to the back, hip, head, and arm. She would also state that she recovered three bullets from the victim's body which she turned over to Detective Escalante of the Harvey Police Department. It would be Dr. Jordan's opinion to a reasonable degree of medical certainty that the victim died of multiple gunshot wounds and that the manner of death was homicide.

Robert Hunton would testify on December 4, 2007, he was employed as a forensic scientist with the Illinois State Police in the ballistics section of the Joliet Crime Lab. He would be qualified as an expert in the field of ballistic analysis. On December 4, 2007, he analyzed the three bullets which were recovered from the victim's body. That based on his analysis, it would be his opinion to a reasonable degree of scientific certainty that two of the three bullets were 32 class caliber bullets and one of the three was a 25 class caliber bullet. He would further state the two 32 class caliber bullets were fired from the same handgun and that the 25 class

caliber bullet was fired from a separate handgun. Thus, he would testify that only two handguns were used to fire the three bullets and that a bullet or bullets from each handgun struck the victim.

That at the time the defendant, Latrice Miller, committed the offense of first degree murder she did not suffer from any mental illness which would have rendered her unable to appreciate the wrongfulness of her behavior.

It would be stipulated the defendant is presently fit to stand trial in that she is cognizant of her charges, understands the nature and purpose of the legal proceedings, and is able to assist counsel in her defense."

¶ 7 The trial court accepted the stipulation as a sufficient factual basis in support of the charge. The court found that defendant understood and willfully waived her rights and continued the matter for sentencing. However, on September 26, 2009, prior to the sentencing hearing, defendant filed a *pro se* motion to withdraw her guilty plea alleging that her plea should be vacated because she was misled regarding the number of years' incarceration she was agreeing to and failing to argue her precarious medical condition as a mitigating factor. Defendant also alleged ineffective assistance of counsel for counsel's failure to meet with defendant in a Rule 402 conference.

¶ 8 However, defendant withdrew her *pro se* motion to withdraw her guilty plea on January 14, 2010, and after confirming defendant's desire to withdraw her motion, the trial court sentenced defendant to 37 years' imprisonment. On March 3, 2010, defendant filed a *pro se* motion to reduce sentence that was denied on April 5, 2010, as untimely. On December 31, 2012, defendant filed the underlying *pro se* postconviction petition alleging that she suffered ineffective assistance of

counsel on various grounds. On February 19, 2013, defendant's postconviction petition was summarily dismissed. This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant does not argue that the trial court erred in dismissing her postconviction petition claims, but asserts that the sentence imposed by the trial court is void and, therefore, her sentence may be challenged at any time and she must be allowed to withdraw her guilty plea. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). Specifically, defendant states that the minimum sentence for first degree murder is 20 years' imprisonment and because the facts accepted by the court demonstrate that defendant personally discharged a firearm in causing the victim's death, a period of 25 years' imprisonment was statutorily required to be added to her sentence under the firearm enhancement. 730 ILCS 5/5-8-1(d)(iii) (West 2008); 720 ILCS 5/9-1(a) (West 2008). Accordingly, defendant argues, pursuant to our supreme court's opinion in *People v. White*, 2011 IL 109689, her sentence is void for the trial court's failure to include the statutorily required enhancement in imposing a 37 year sentence.

¶ 11 Similar to the instant case, the defendant in *White* pled guilty to first degree murder, as well as possession of contraband, and the factual basis accepted by the trial court established that the victim was shot with a handgun. *Id.* at ¶ 6. The defendant was sentenced to 28 years for first degree murder and 4 years for possession, but the mandatory firearm enhancement was not included. The *White* court noted that the trial court does not have authority to enter a sentence that does not conform to statutory requirements and in such a case, the sentence imposed is void. *Id.* at ¶¶ 20-21. The court held that the statute does not provide any discretion regarding the firearm enhancement and where the facts establish that a firearm was utilized, the sentence is void and the defendant

may withdraw his guilty plea and proceed to trial. *Id.* at ¶¶ 25-29.

¶ 12 Defendant recognized that, at the time of briefing, there was a split among the districts of this court regarding whether the holding in *White* applied retroactively. Defendant argued that the proper interpretation of the applicability of *White* was made in *People v. Cortez*, 2012 IL App (1st) 102184 and *People v. Smith*, 2013 IL App (3d) 110738, *appeal allowed* No. 116572 (November 27, 2013). The *Cortez* and *Smith* appellate courts concluded that the supreme court relied on existing precedent, did not announce a new rule of law, and should have retroactive application. The State countered that the reasoning followed in *People v. Avery*, 2012 IL App (1st) 110298, *People v. Young*, 2013 IL App (1st) 111733, and *People v. Greco*, 2014 IL App (1st) 112582, that the *White* court had announced a new rule of law that may only be applied prospectively, should control this case.

¶ 13 Subsequent to the briefing of this appeal, our supreme court filed its decision in *People v. Smith*, 2015 IL 116572, resolving the split on this issue and the dispute in this case. In *Smith*, the court summarized the holding in *White* and the obvious uncertainty in the law before that decision whether the circuit court was required to give effect to a fact contained in the factual basis that would require a sentencing enhancement. *Id.* at ¶ 29. *White* specifically rejected the view that the circuit court could ignore a fact once the factual basis is accepted and made of record, because to do so would ignore the legislature's intent in enacting the mandatory sentencing enhancement. *Id.* at ¶ 29. Because numerous courts had assumed a sentence could be imposed without the statutory enhancement even though the factual basis included the use of a firearm, the *Smith* court found that *White* clearly announced a new rule. *Id.* at ¶ 30.

¶ 14 Therefore, under *Teague v. Lane*, 489 U.S. 288 (1989), the ruling in *White* does not apply

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retroactively because the decision does not place " 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.' " and does not announce a procedure "implicit in the concept of ordered liberty" such that it is a " 'watershed rule[] of criminal procedure' " or would diminish the likelihood of an accurate conviction. *Smith*, 2015 IL 116572, ¶¶ 31-32, quoting *Teague*, 489 U.S. at 307, 311, 313. Accordingly, the appellate court decisions in *Smith* and *Cortez* were overruled and we do not retroactively apply the rule in *White* and affirm the judgment of the trial court.

¶ 15

III. CONCLUSION

¶ 16 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 17 Affirmed.