

No. 1-15-1242

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 09 CR 15598
)	
TORRANCE BARD,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* On remand for resentencing, the trial court erred when it increased the defendant's sentence from 15 years' to 18 years' imprisonment on his conviction for aggravated battery with a firearm.

¶ 2 The defendant, Torrance Bard, appeals from his sentence of 18 years' imprisonment for aggravated battery imposed by the trial court following our remand. See *People v. Bard*, 2013 IL App (1st) 120590-U (unpublished order under Supreme Court Rule 23). He contends that the 18-year sentence should be vacated because it is more severe than the original, 15-year sentence.

For the reasons that follow, we modify the defendant's sentence for aggravated battery to 15 years' imprisonment.

¶ 3 Following a 2011 bench trial, the defendant was convicted of aggravated battery with a firearm, aggravated discharge of a firearm, and aggravated assault of an officer with a firearm, in connection with a shooting incident that occurred on August 16, 2009. The trial court originally sentenced the defendant to consecutive terms of 15 years' imprisonment for the aggravated battery conviction and 3 years' imprisonment for the aggravated assault conviction. The defendant's conviction for aggravated discharge of a firearm was merged with his conviction for aggravated battery.

¶ 4 On direct appeal, this court affirmed the defendant's convictions, but vacated his sentences for aggravated battery and aggravated assault. *Bard*, 2013 IL App (1st) 120590-U, ¶ 62. We found that, in determining the defendant's sentences, the trial court misconstrued the evidence by finding that the defendant had shot at the police, and that it made no finding of severe bodily injury so as to mandate consecutive sentences. *Id.* ¶ 55. Accordingly, we remanded the cause for a new sentencing hearing.

¶ 5 A sentencing hearing was conducted pursuant to this court's remand order on February 13, 2015. The trial court imposed concurrent sentences of 18 years' imprisonment for the aggravated battery conviction and 3 years' imprisonment for the aggravated assault conviction. On March 12, 2015, the defendant filed a motion to reconsider his sentence, asserting that his 18-year sentence for aggravated battery was excessive. The court denied the motion and this appeal followed.

¶ 6 On appeal, the defendant argues, and the State concedes, that the trial court impermissibly increased his sentence for aggravated battery from 15 to 18 years' imprisonment.

See *People v. Kilpatrick*, 167 Ill. 2d 439 (1995); *North Carolina v. Pearce*, 395 U.S. 711 (1969).

The sole issue on which the parties disagree is how this court should rectify the sentencing error.

The defendant contends this court should reduce his aggravated battery sentence from 18 years to the original 15 years, while the State argues that the appropriate remedy is to remand for another sentencing hearing.

¶ 7 The record indicates that the trial court increased the defendant's aggravated battery sentence because it believed that an 18-year sentence was necessary to protect the public from further criminal conduct. Nevertheless, the court's ability to increase the sentence was precluded by *Kilpatrick* and *Pearce* and the increase in sentence by three years cannot stand. We agree with the defendant that a remand is unnecessary where a reduction of the 18-year sentence on the aggravated battery charge to 15 years' imprisonment comports with the trial court's original sentence on that charge. Under *Pearce* and *Kilpatrick*, 15 years' imprisonment is the maximum permissible sentence, and the defendant, without conceding that a 15-year sentence is warranted, does not request a reduction below that term. Pursuant to our authority under Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967), and for purposes of judicial economy, we reduce the defendant's sentence for aggravated battery with a firearm from 18 to 15 years' imprisonment; the 3-year sentence for aggravated assault shall stand.

¶ 8 Affirmed as modified.