

2019 IL App (1st) 160464-U  
No. 1-16-0464  
February 25, 2019

FIRST DIVISION

**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
Plaintiff-Appellee, )	Of Cook County.
v. )	No. 14 CR 14049
MARCUS WHITE, )	The Honorable
Defendant-Appellant. )	Joseph M. Claps,
	Judge Presiding.

---

JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court erred by denying the defendant's motion for sentencing as a juvenile, this court must vacate the sentence and remand to permit the State to file a motion for sentencing the defendant as an adult.

¶ 2 In a bench trial, the trial court found Marcus White guilty of armed robbery. Although White was only 17 years old at the time of the offense, he was sentenced as an adult to 12 years in prison. The State admits the trial court erred when it denied White's motion for sentencing as a juvenile. We find our supreme court's opinion in *People v. Fort*, 2017 IL

118966, mandates that we vacate the sentence and remand to the trial court to permit the State to file a motion for adult sentencing. If the State fails to file a timely motion, or if the State does not meet its burden of showing that the court should sentence White as an adult, the trial court must discharge the proceedings against White because he is now more than 21 years old.

¶ 3

### BACKGROUND

¶ 4

Renne Holmquist returned home from work around 3:30 a.m. on July 16, 2014. He stayed outside to smoke a cigarette. After one man walked past, a second man walked up to Holmquist, pointed a gun at him, and said, "give me all you got." Holmquist gave the man his wallet, his cell phone, and a bag. The man with the gun and the man who walked past both got into the back seat of an SUV, where two others sat in front. The SUV drove away. Holmquist went into his home and called police.

¶ 5

An officer heard the radio dispatch describing the SUV shortly before he saw an SUV matching the description heading north on Ashland Avenue, a few miles from the scene of the robbery. The officer followed the SUV, which took a circuitous route around the area, using Paulina Street and turning onto Grand Avenue before the officer lost track of the SUV. An officer in another police car stopped the SUV around 4 a.m. Police found a bag with medications labeled as prescribed to Holmquist in the SUV. Police brought Holmquist to the scene, where he identified one passenger as the man who walked past him and got into the SUV with the robber. Holmquist identified a second passenger, White, as the man who robbed him.

¶ 6           Around 8:15 a.m. on July 16, 2014, police received a call from a concerned citizen, who said he found a gun on the ground near the intersection of Paulina and Grand. Police retrieved the gun from the citizen. An officer found a clip holding several live rounds of ammunition on the ground near Paulina and Grand.

¶ 7           Detective Robert Smith spoke with White at the police station after 12 noon on July 16, 2014. White admitted that he brought a gun with him in the SUV. He threw the gun out of the SUV's window when he noticed police following the SUV. White said he had not personally robbed anyone. Smith showed White a picture of the gun the concerned citizen gave to police. White said it was the gun he brought that night. Prosecutors charged White with armed robbery.

¶ 8           The automatic transfer provisions of the Juvenile Court Act (Act) in effect at that time required prosecution of White as an adult, although he was only 17 years old at the time of the robbery. See 705 ILCS 405/5-130(1)(a)(iv) (West 2014); *People v. Patterson*, 2014 IL 115102, ¶ 91. The trial court found White guilty of armed robbery. An amendment to the Act took effect before sentencing. When amended, the Act removed armed robbery from the list of offenses subject to transfer from juvenile court to criminal court when committed by a minor. See 705 ILCS 405/5-130(1)(a) (West 2016). Defense counsel argued at the sentencing hearing that the amendment applied and directed the court to sentence White as a juvenile. The trial court held that the amendment did not apply to the case. The court sentenced White as an adult to 12 years in prison. The court denied White's prompt motion to reconsider the sentence. White now appeals.

¶ 9

ANALYSIS

¶ 10

Our supreme court clarified that the amendment at issue here applies to all cases pending when the amendment went into effect on January 1, 2016. *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 28. The trial court erred when it held that the amendment did not apply and denied White's request for sentencing as a juvenile. We must determine the appropriate remedy for the trial court's error.

¶ 11

The amended Act provides:

"(1)(a) The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 16 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, or (iii) aggravated battery with a firearm \*\*\*.

(c) \*\*\*

(ii) If after trial or plea the court finds that the minor committed an offense not covered by paragraph (a) of this subsection (1), that finding shall not invalidate the verdict or the prosecution of the minor under the criminal laws of the State; however, unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict." 705 ILCS 405/5-130(1)(a), (c) (West 2016).

¶ 12 At the time of the robbery, section 5-130(1)(a) included armed robbery as an offense requiring criminal prosecution. However, the amendment to the Act made armed robbery "an offense not covered by paragraph (a) of this subsection (1)." 705 ILCS 405/5-130(1)(c)(ii) (West 2016). Thus, subsection (c)(ii) applies, and establishes that the amendment does not invalidate the finding that White committed armed robbery. Subsection (c)(ii) establishes that if the State wants the court to sentence the juvenile offender as an adult, the State must request a hearing on whether to so sentence the juvenile. The Act states, "unless the State requests a hearing for the purpose of sentencing the minor under Chapter V of the Unified Code of Corrections, the Court must proceed under Sections 5-705 and 5-710 of this Article. To request a hearing, the State must file a written motion within 10 days following the entry of a finding or the return of a verdict." 705 ILCS 405/5-130(1)(c)(ii) (West 2016).

¶ 13 The State admits that it did not file a request for the requisite hearing within 10 days of the entry of the finding of guilt. Thus, on its face, the Act appears to direct the trial court to "proceed under Sections 5-705 and 5-710 of this Article." 705 ILCS 405/5-130(1)(c)(ii) (West 2016). Sections 5-705 and 5-710 of the Act set the parameters for sentencing juveniles found delinquent. 705 ILCS 405/5-705, 405/5-710 (West 2016).

¶ 14 However, *People v. Fort*, 2017 IL 118966, demands a different result. In *Fort*, as here, the trial court tried a juvenile as an adult and found him guilty of a crime not covered by section 5-130(1)(a) of the Act. Although the State did not request a hearing regarding adult sentencing, as required by section 5-130(1)(c)(ii), the trial court sentenced Fort as an adult. Our supreme court found that the trial court erred by sentencing Fort as an adult when the

State had not filed a motion for adult sentencing. *Fort*, 2017 IL 118966, ¶ 31. The *Fort* court held:

"Having determined that the trial court erred in imposing an adult sentence in violation of the statute and that this error was so serious that it affected the fairness of defendant's sentence and challenged the integrity of the judicial process (citation), we must decide the appropriate remedy. The record demonstrates that, immediately following the verdict, the trial court ordered a presentence investigation and scheduled a date for sentencing. \*\*\* At no time after the guilty verdict did the trial court suggest to the parties that defendant was subject to juvenile sentencing. The State thus had no reason to request a hearing for the purpose of sentencing defendant under the Unified Code of Corrections. Accordingly, we find that the proper resolution is to remand the cause to the trial court with directions to vacate defendant's sentence and allow the State to file a petition requesting a hearing for adult sentencing pursuant to section 5-130(1)(c)(ii). Should the trial court find after the hearing that defendant is not subject to adult sentencing, the proper remedy is to discharge the proceedings against defendant since he is now over 21 years of age and is no longer eligible to be committed as a juvenile under the Act." *Fort*, 2017 IL 118966, ¶ 41.

¶ 15 Here, the trial court's action of denying the request for juvenile sentencing, like the actions in *Fort*, left the State with no reason to make a motion for adult sentencing. Following *Fort*, we find that we must vacate the sentence and remand the case to the trial

court so that court may permit the State to file a request for a hearing on whether to sentence White as an adult. If the State does not file a timely request, or if the court finds that the State has not met its burden of proof on the statutory factors relevant to the determination of whether to sentence White as an adult, "the proper remedy is to discharge the proceedings against defendant since he is now over 21 years of age and is no longer eligible to be committed as a juvenile under the Act." *Fort*, 2017 IL 118966, ¶ 41.

¶ 16

#### CONCLUSION

¶ 17

The trial court erred when it denied White's motion for sentencing as a juvenile. Following *Fort*, we vacate the sentence and remand to permit the State to file a belated motion for adult sentencing.

¶ 18

Sentence vacated; cause remanded.