

FOURTH DIVISION  
September 11, 2014

No. 1-12-1432

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 88 CR 8544
	)	
ANTHONY MITROS,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

**O R D E R**

¶ 1 *Held:* This case is remanded for resentencing because the defendant's sentence of natural life imprisonment was not authorized by statute.

¶ 2 In 1989, defendant Anthony Mitros pled guilty to intentional murder (Ill. Rev. Stat.

1987, ch. 38, ¶ 9-1(a)(1)) and residential burglary (Ill. Rev. Stat. 1987, ch. 38, ¶ 19-3(a)). The trial court entered respective sentences of natural life imprisonment and 15 years in prison, to be

served concurrently. On appeal, defendant contends his sentence of natural life imprisonment was not authorized by statute because the court relied on a predicate felony that was not included in the murder statute as it existed at the time of his offense. Because we agree that defendant's sentence is void, we remand for resentencing.

¶ 3 Based on events that occurred on May 24, 1988, defendant was charged with three counts of first-degree murder, two counts of residential burglary, one count of armed robbery and several other counts relating to the stabbing death of Helen McCasland in the course of a home burglary. As to the murder counts, Count I charged defendant with intentional murder (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(1)). Count II charged defendant with knowing murder (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(2)). Count III charged defendant with felony murder, specifically murder during the commission of the forcible felony of armed robbery (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(a)(3)). Count IV charged defendant with residential burglary (Ill. Rev. Stat. 1987, ch. 38, ¶ 19-3(a)).

¶ 4 On May 26, 1989, defendant entered an open plea of guilty to intentional murder (count I) and residential burglary (count IV). All of the remaining charges against defendant, including armed robbery, were noll-prossed.

¶ 5 As a factual basis for the plea, the prosecutor stated that defendant confessed to killing McCasland, and defendant's fingerprints were found inside the home and on "burglary proceeds which were found at the rear of the house at the garage." The prosecutor also said phone records indicated defendant made a phone call from inside the residence. The trial court stated that as to the murder counts, defendant was subject to "a variety of sentences" including a prison term of between 20 and 60 years, natural life without parole, or the death penalty. Defendant stipulated

to the presence of an aggravating factor that would qualify him to receive the death penalty; that aggravating factor is not identified in the record.

¶ 6 The case was continued to June 16, 1989, for the second stage of sentencing. The court noted: "[o]n the last court date the defendant agreed that, in fact, a qualification factor was present whereby the defendant would be subject to the death penalty; that being the commission of the offense of residential burglary and felony murder."

¶ 7 In aggravation, Chicago police officer Charles Parrillo testified he arrested defendant on July 3, 1986, for auto theft. Defendant was later separately charged with theft after police discovered the car contained stolen property that, coincidentally, had been taken from the McCasland home, making that family the victims of that crime in 1986 as well as the instant offense in 1988. After that testimony, the court held the death penalty would not be imposed due to a "sufficient amount of mitigation present." The court did not elaborate on the presence of mitigating factors. The court sentenced defendant to natural life without the possibility of parole on count I and to 15 years in prison on count III, which the court called "the less serious of the murder allegations." The mittimus establishes that the court imposed a natural life sentence on count I for intentional murder and 15 years on count IV for residential burglary.

¶ 8 Defendant did not move to vacate his guilty plea and, therefore, no direct appeal was taken. In 2003, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2002)), which was dismissed at the second stage of review. On appeal, this court affirmed. *People v. Mitros*, No. 1-07-2686 (2009) (unpublished order under Supreme Court Rule 23).

¶ 9 On December 19, 2011, defendant filed a *pro se* petition for relief from a void judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). On March 23, 2012, the circuit court, acting *sua sponte*, dismissed defendant's section 2-1401 petition, stating defendant had not presented a claim entitling him to relief. Defendant now appeals that ruling.

¶ 10 Before addressing the parties' arguments on appeal, we note that, as defendant observes, the trial court on June 16, 1989, stated that it was sentencing defendant on the intentional murder and felony murder counts. Although the court's oral order generally controls where the report of proceedings and the common law record conflict (see *People v. Peebles*, 155 Ill. 2d 422, 496 (1993)), the trial court could not sentence defendant on two murder counts in this case, because the crimes involved a single murder victim. See *People v. Miller*, 238 Ill. 2d 161, 165 (2010) (a defendant cannot be convicted for more than one offense arising out of the same physical act). Instead, the colloquy of defendant's plea, the remainder of the report of proceedings, and the mittimus all indicate defendant was convicted on count I (intentional murder), for which the court imposed a natural life sentence, and count IV (residential burglary), for which the court sentenced defendant to a concurrent term of 15 years in prison. The State does not dispute those convictions and sentences were entered in this case.

¶ 11 On appeal, defendant contends the trial court erroneously sentenced him to natural life imprisonment. He argues the court could not impose that term for his first degree murder conviction in this case. We agree.

¶ 12 A court lacks the authority to impose a sentence that does not conform with statutory guidelines. *People v. White*, 2011 IL 109616, ¶ 20. A sentence that does not conform to a

statutory requirement is void, and a void order can be attacked at any time, either directly or collaterally. *People v. Thompson*, 209 Ill. 2d 19, 24-25 (2004); *People v. Pinkonsly*, 207 Ill. 2d 555, 569 (2003).

¶ 13 When defendant committed these crimes in 1988, the first degree murder statute (Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1) provided, in pertinent part:

"(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) He either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another[.]"

¶ 14 A term of natural life imprisonment could be imposed upon a finding of an aggravating factor listed in subsection 9-1(b) of the murder statute. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)(b); Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(b). One such factor was if the victim was killed in the course of a forcible felony listed in the statute. Ill. Rev. Stat. 1987, ch. 38, ¶ 9-1(b)(6)(c). At the time of defendant's offense, residential burglary was not listed among those felonies. *Id.* Therefore, defendant could not have been sentenced to natural life imprisonment for committing murder in the course of a residential burglary. The statute was subsequently amended by Public Act 86-1012 (eff. July 1, 1990) to include residential burglary among the enumerated felonies in section 9-1(b).

¶ 15 The State's arguments in favor of affirming defendant's sentence are unpersuasive and are not grounded in law. The State contends defense counsel stipulated to defendant's death penalty eligibility and that the stipulation was valid because armed robbery was an enumerated felony in the statute.

¶ 16 Counsel cannot stipulate to a sentence that is not allowable under the relevant statute. See *People v. Caban*, 318 Ill. App. 3d 1082, 1087-89 (2001) (plea agreement was void where sentence stipulated to in agreement was not authorized by statute). Defendant was charged in count III with murder during the commission of armed robbery. Although armed robbery was an enumerated felony in section 9-1(b) that would permit a natural life sentence, defendant was not convicted under count III; in fact, that count was nolle prossed. Defendant was convicted of intentional murder and a separate count of residential burglary, but those two offenses could not combine to allow a sentence of natural life imprisonment.

¶ 17 Because defendant's natural life sentence was not authorized by statute, we vacate that sentence and remand this case for resentencing on the first degree murder count within the applicable statutory range. In 1988, the sentencing range for first-degree murder was between 20 and 60 years in prison. Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(a)(1)(a).

¶ 18 Convictions affirmed; sentence vacated and cause remanded for resentencing with directions.