2017 IL App (1st) 151733-U

SIXTH DIVISION
April 28, 2017

No. 1-15-1733

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. RUSSELL WILLIAMS, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 90 CR 24048 Honorable Kenneth J. Wadas, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** Petitioner's sentence does not violate either the federal or state constitutions. Petitioner is not entitled to a new sentencing hearing under section 5-4.5-105(a) of the Unified Code of Corrections. Affirmed.

¶ 2 Following a jury trial, petitioner Russell Williams was convicted of first degree murder and attempted first degree murder. The circuit court of Cook County subsequently granted his petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)) in part and imposed consecutive sentences of 60 years' and 30 years' imprisonment, respectively. We vacated that sentence, however, and remanded the matter with instructions.

People v. Williams, 2012 IL App (1st) 100775-U (*Williams II*). On remand, the trial court imposed concurrent sentences of 60 years' imprisonment for the first degree murder conviction and 30 years' imprisonment for the attempted murder conviction. Petitioner now appeals from that sentence and contends that (1) his sentence violates the eighth amendment to the federal constitution and the proportionate penalties clause of the Illinois constitution; and (2) he is entitled to a new sentencing hearing pursuant to section 5-4.5-105 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-105 (West 2016)). We affirm.

¶ 3 BACKGROUND

¶ 4 This court has detailed the underlying facts of this case in *Williams II*. Therefore, we will summarize only those facts pertinent to our discussion of the particular issue on appeal.

¶ 5 Petitioner was convicted of murder and attempted murder in two separate shootings about one month apart: one in July 1990 (case number 90 CR 24048, the case before us) and another in August 1990 (case number 91 CR 5945, which is unrelated to the July 1990 incident). Petitioner's conviction for the August 1990 incident, however, was entered *prior to* his conviction for the July 1990 incident, and the August 1990 conviction was a determining factor in petitioner's initial sentence for the July 1990 shooting.

¶ 6 In the case before us, the State charged Williams with first degree murder and attempted murder in connection with the shooting death of Luz Fernandez and the nonfatal shooting injury to Frank Hernandez. The evidence at trial indicated that, on July 12, 1990, Frank Hernandez, a member of the Latin Saints street gang, was in front of a grocery store with his friends and his eighteen-month-old son. A black vehicle drove by and Hernandez saw a passenger "thr[o]w up a pitchfork," signifying a rival gang, the Gangster Disciples. Hernandez gave the car "the finger," and turned to walk away with his son. The passenger fired several shots at Hernandez.

Hernandez covered his son and fell to the ground. While on the ground, he was shot in the right buttock. Luz Fernandez was shot in the head and killed while she was walking on the nearby sidewalk with her baby. Fernandez was pregnant at the time. Five other individuals who saw the shooting provided testimony that was consistent with Hernandez's. The jury convicted Williams of the first degree murder of Fernandez and the attempted murder of Hernandez. The trial court sentenced petitioner to life imprisonment for the murder of Fernandez because he had been found guilty of the first degree murder and attempted murder in August 1990 (case no. 91 CR 5945). With respect to the attempted murder of Hernandez, the trial court imposed a concurrent 30-year sentence of imprisonment. We affirmed his convictions and sentences on direct appeal. *People v. Williams*, No. 1-93-2396 (1996) (unpublished order pursuant to Supreme Court Rule 23) (*Williams I*).

¶ 7 On February 18, 2005, Williams filed a postconviction petition alleging that he was no longer subject to a mandatory life sentence because the prior first degree murder conviction on which his life sentence was based (the August 1990 murder, 91 CR 5945) had been reversed. He later pled guilty to second degree murder regarding that incident, for which he received a 20-year sentence. On August 16, 2005, the trial court granted Williams's postconviction petition and vacated his life sentence. The trial court continued the matter for resentencing.

¶ 8 A new presentence investigation report (PSI) was prepared for the resentencing hearing. The PSI indicated that petitioner was born on October 18, 1973, and that he had two prior juvenile adjudications. The first adjudication was in August 1989 for unlawful use of a weapon (UUW) and unlawful possession of ammunition, resulting on a 30-day term in the juvenile detention center and one year of probation. The second, in February 1990 for UUW, possession of ammunition, aggravated assault, criminal trespass to a vehicle, and theft, resulted in another

30-day term in the juvenile detention center and one year of probation. With respect to his home environment, the PSI noted that petitioner considered his mother his "best friend" but characterized his relationship with his father as only "okay." Petitioner also stated that, although he had no complaints during his childhood, "his life changed after his parents divorced." In addition, petitioner reported having been sexually abused by an "older aunt and a cousin" at the ages of five and ten. These instances of abuse caused a "family fight" but were not reported to authorities. Petitioner, however, did not feel abandoned or neglected, was not involved with the Department of Children and Family Services, and he further confirmed that no one in his immediate family was incarcerated. In addition, petitioner denied that he or anyone in his immediate family suffered from substance abuse problems. Petitioner reported that he had been a member of the Gangster Disciples beginning at age 14, but he left the gang at 21 and denied having a "rank or role" in the gang or any gang-related tattoos.

¶ 9 On January 15, 2010, the trial court held the resentencing hearing. The State filed a motion to seek discretionary consecutive sentences. In aggravation, the State presented three victim impact statements from Fernandez's relatives. Cynthia Chavez, Fernandez's daughter, explained how hard it was for her to grow up without a mother and how, because she was so young when her mother was murdered, she had no memories of her. Hector Chavez, Cynthia's father and Fernandez's boyfriend at the time, stated that petitioner killed the love of his life as well as their unborn child, and that he has experienced hurt and anger since her death. Sonya Mojica, Fernandez's mother, recalled the trauma of seeing her daughter's body lying on the ground. Since her daughter's murder, her family had experienced a lot of sadness and illness. In addition to the victim impact statements, the State also presented the transcripts of the trial and sentencing hearing as well as a certified copy of petitioner's conviction in 91 CR 5945.

¶ 10 In mitigation, petitioner presented evidence of his accomplishments while in prison. Petitioner obtained his General Educational Development test credential in 1991 and took courses toward an associate's degree. He became a law clerk in the prison library in 2005 and earned his law clerk certificate in 2007 after attending a training program. Lorie Haves, a paralegal assistant in the prison, supervised petitioner and said that petitioner's work was "excellent." Crystal Mason, another paralegal assistant in the prison law library, also supervised Williams and said petitioner took initiative, was a good worker, and was respectful, responsible, trustworthy and honest. Karen Rabidea, petitioner's former prison counselor, often saw petitioner at the prison law library and commented that petitioner had a good work ethic and was intelligent. Joe Hosselton, another of petitioner's former prison counselors, confirmed that petitioner worked a variety of jobs around the prison. Patricia Soung, an attorney for the Bluhm Legal Clinic at Northwestern University School of Law, submitted a letter stating that she met with petitioner, and cited studies indicating that a juvenile's capacity for judgment, impulse control, and risk assessment are less developed than in adults and that juvenile offenders have the capacity for rehabilitation. Petitioner also submitted letters from family members and inmates whom petitioner mentored and encouraged to improve themselves while in prison.

¶ 11 Defense counsel argued in mitigation that a 40-year sentence was appropriate. Defense counsel noted several times that petitioner was 16 years old at the time of the offenses but pointed out that, during his time in prison, petitioner had transformed from a "16-year-old punk to someone who is growing up." Finally, petitioner spoke in allocution and presented the court with a 19-page statement detailing his background and his accomplishments while in prison. Petitioner told the court that he accepted responsibility for his actions and his poor decisions, and apologized to the victim's family members.

¶ 12 After hearing arguments in aggravation and mitigation, the circuit court stated that it had reviewed the PSI and considered "the arguments of counsel on both sides." The court further stated that it "reviewed all these letters and the documentation from the Bluhm Clinic, the victim impact statements, and I have read the transcripts of the jury trial to familiarize myself with the facts of the case as laid out back in 1993, a number of years before I even became a judge." The court then reviewed each statutory aggravating and mitigating factor and stated whether each was "applicable" or "not applicable," and which included petitioner's prior history of "delinquency or criminal activity," as well as whether there were "substantial grounds tending to excuse" his conduct but not establishing a valid defense. The court also considered as a factor whether petitioner's "character and attitudes *** indicate that he is unlikely to commit another crime." As to this factor, the court stated, "I give him the benefit of the doubt, but I don't believe that [petitioner] is unlikely to commit another crime[,] considering the type of premeditation involved and the complete reckless disregard for the safety of multiple people as he fired a handgun at all these people." The court also said that it considered petitioner's potential for rehabilitation but would not give it "great weight," adding, "I'm not going out there and making that statement that he's ready to join society." The court then imposed a 60-year sentence for the first degree murder conviction. The trial court further ordered that petitioner serve the sentence consecutively to the 30-year sentence for attempted first degree murder in this case and consecutively to the 20-year sentence for second degree murder in case number 91 CR 5945.

¶ 13 Petitioner appealed, arguing in pertinent part that the trial court erred in imposing consecutive sentences for his first degree murder and attempted murder convictions. *Williams II*, 2012 IL App (1st) 100775-U, ¶ 2. We agreed, vacated petitioner's sentence, and remanded the cause to the trial court to determine: (1) whether the murder of Fernandez and the attempted

murder of Hernandez were part of a single course of conduct, and (2) if so, whether petitioner inflicted severe bodily injury on Hernandez. *Id.* ¶ 25. We held that, if both of those factors were present, then the trial court was required to make the attempted murder sentence consecutive to the first degree murder sentence. *Id.*

¶ 14 On May 1, 2015, the trial court held a resentencing hearing in accordance with our mandate. The trial court stated that it had read the transcript of Hernandez's testimony, and asked if there was any other testimony or evidence that it had missed, and defense counsel stated that there was nothing else, only adding that Hernandez testified that "at first he didn't realize he was shot" and that "[h]e didn't feel anything."

¶ 15 At the conclusion of the hearing, the trial court found that the murder of Fernandez and the attempted murder of Hernandez were part of a single course of conduct, but that petitioner did not inflict severe bodily injury on Hernandez. As such, the trial court ordered that the sentence for the attempted murder of Hernandez run concurrent with the sentence for the first degree murder of Fernandez.

¶ 16 Petitioner filed a motion to reconsider sentence, arguing in part that the sentence was excessive in light of petitioner's "background." The trial court made the following comments:

> "THE COURT: I have extensively reviewed the whole file in the course of my reanalysis of the facts and circumstances and the factors in aggravation and mitigation which I've considered before today."

Petitioner declined to make any additional statement in allocution. The trial court then denied petitioner's motion to reconsider. This appeal followed.

¶ 17 ANALYSIS

¶ 18 Whether Petitioner's Sentence is Unconstitutional

¶ 19 Petitioner first contends that his "aggregate 80-year sentence," which comprises both his 60-year sentence in this case (no. 90 CR 24048, regarding the July 1990 shooting) and the 20-year consecutive sentence imposed in an unrelated case (no. 91 CR 5945, regarding the August 1990 shooting), is unconstitutional under the eighth amendment to the federal constitution and the proportionate penalties clause of the Illinois constitution. Petitioner argues that he was only 16 years old at the time of the offenses and the aggregate sentence imposed constitutes a "*de facto* or near-*de facto*" life sentence that reflected neither his youth nor his subsequent rehabilitation. He asks that we vacate his sentence and remand this cause for resentencing. We review *de novo* whether a sentence is constitutional. *People v. Taylor*, 2015 IL 117267, ¶ 11.

¶ 20 At the outset, we reject petitioner's attempt to challenge an 80-year sentence that is the aggregate of a 60-year sentence in this case and a 20-year consecutive sentence in an unrelated case. Although in *People v. Reyes*, 2016 IL 119271, our supreme court determined that an aggregate 97-year sentence—comprising two 26-year consecutive sentences and a 45-year consecutive sentence—constituted an unconstitutional *de facto* life sentence, those sentences were all part of the same course of conduct: namely, the defendant's shooting at three individuals in a car. *Id.* ¶¶ 1-2; see also *People v. Gipson*, 2015 IL App (1st) 122451, ¶¶ 1-4 (explaining that the defendant's 52-year sentence comprised convictions for offenses "arising from a shooting on June 14, 2006"); *People v. Harris*, 2016 IL App (1st) 141744, ¶¶ 1-2 (observing that the defendant's aggregate 76-year sentence resulted from the shooting of two individuals "[o]n June 7, 2011"). Here, by contrast, petitioner's sentences were imposed for completely separate shootings that were one month apart. Plainly, that is not a single course of

conduct. We will therefore examine only whether petitioner's 60-year sentence is unconstitutional, but we note that our resolution would not change even if we analyzed the aggregate of the two unrelated sentences.

¶ 21 The eighth amendment, applicable to the states through the fourteenth amendment, (*Robinson v. California*, 370 U.S. 660 (1962)), prohibits, *inter alia*, the imposition of "cruel and unusual punishments" (U.S. Const., amends. VIII, XIV), which include those that are disproportionate to the offense (*Graham v. Florida*, 560 U.S. 48, 59 (2010)). With respect to juveniles, the United States Supreme Court has held that the eighth amendment prohibits imposing on juvenile offenders both sentences of death (*Roper v. Simmons*, 543 U.S. 551 (2005)) and also sentences of life without parole for nonhomicide offenses (*Graham*, 560 U.S. 48 (2010)). More recently, in *Miller v. Alabama*, 567 U.S. 460, ——, 132 S. Ct. 2455, 2469 (2012), the Supreme Court held that the eighth amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." The Court based this holding on the "great difficulty *** distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' " *Id.* (quoting *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at ---, 130 S. Ct. at 2026-27). In *People v. Reyes*, 2016 IL 119271, our supreme court interpreted *Miller* as further prohibiting mandatory term-of-years sentences imposed on juveniles that cannot be served in one lifetime, *i.e.*, "*de facto*" life sentences. *Id.* ¶¶ 9-10. The *Reyes* court, however, stated that a juvenile's 32-year sentence does not constitute a *de facto* life sentence. *Id.* ¶ 12.

¶ 22 Here, although petitioner received a 60-year sentence for the murder of Fernandez, petitioner is eligible to receive day-for-day good conduct credit.[1] See Ill. Rev. Stat., 1993, ch. 38, ¶ 1003-6-3. Therefore, petitioner must serve a minimum of 30 years of his sentence, and he will have served this sentence by age 46. On this basis, petitioner cannot reasonably claim that this is a *de facto* life sentence. See *Reyes*, 2016 IL 119271, ¶ 12. For this reason, petitioner's reliance upon both *People v. Ortiz*, 2016 IL App (1st) 133294, and *People v. Nieto*, 2016 IL App (1st) 121604, is unavailing. Both cases involve sentences that are considerably longer than petitioner's sentence. See *Ortiz*, 2016 IL App (1st) 133294 at ¶ 24 (noting that the defendant's 60-year sentence had to be served "at 100%" and was a *de facto* life sentence), and *Nieto*, 2016 IL App (1st) 121604 at ¶ 42 (holding that the defendant's release from prison at age 94 was effectively a sentence of natural life without parole.).

¶ 23 In addition, the *Reyes* and *Miller* rationales only apply to *mandatory* life sentences. See *id.* ¶ 9; *Miller*, 567 U.S. at ---, 132 S. Ct. at 2464. In the case before us, petitioner was convicted of first degree murder, which carried a sentencing range of 20 to 60 years in prison. Ill. Rev. Stat., 1993, ch. 38, ¶ 1005-8-1(a)(1). A trial court may still sentence a juvenile to natural life imprisonment without parole "so long as the sentence is at the trial court's *discretion* rather than mandatory." (Emphasis added.) *People v. Davis*, 2014 IL 115595, ¶ 43. Here, the trial court's sentence resulted from a hearing at which the parties presented the testimony of numerous witnesses (including multiple witnesses testifying to petitioner's rehabilitation), documentary

[1] Petitioner was originally sentenced on June 14, 1993, prior to the effective date of the "truth-in-sentencing" provisions, *i.e.*, the statutory change in the method the Department of Corrections uses to calculate good-conduct credit pursuant to section 3-6-3 of the Unified Code of Corrections. See 730 ILCS 5/3-6-3(a)(2) (West 2016) (no good-conduct credit for first-degree murder offenses occurring "on or after June 19, 1998"); *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 556 (2002).

evidence (such as petitioner's PSI, which provided petitioner's age as well as the circumstances of his upbringing), and arguments in favor of their respective sentencing recommendations. Upon reviewing the record, it is clear that the trial court did not impose a 60-year sentence that was consecutive to the 20-year sentence because it was mandatory; rather, the trial court's sentence reflects a thoughtful exercise of its discretion. Petitioner's claim is thus without merit.

¶ 24 Petitioner next argues his sentence violates the proportionate penalties clause of the Illinois constitution. Specifically, petitioner claims that his sentence "is shocking to moral standards" because it "expressly discounted consideration" of both his juvenile status and his "demonstrated rehabilitation" while incarcerated.

¶ 25 Article I, section 11, of the Illinois Constitution of 1970, commonly referred to as the proportionate penalties clause, provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. In other words, penalties must be proportionate to the offenses committed. *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 41 (quoting *People v. Hawkins*, 409 Ill. App. 3d 564, 567 (2011)). A sentence violates the proportionate penalties clause if it is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005) (citing *People v. Moss*, 206 Ill. 2d 503, 522 (2003)). We may determine whether a sentence shocks the moral sense of the community by considering both objective evidence and also "the community's changing standard of moral decency." *People v. Hernandez*, 382 Ill. App. 3d 726, 727 (2008).

¶ 26 The evidence in this case revealed that petitioner saw Hernandez, a member of a rival street gang, amongst his friends and his eighteen-month-old son in front of a grocery store. Petitioner made a "pitchfork" gesture indicating his gang, and when Hernandez gave petitioner

"the finger," petitioner shot several times into the crowd of people, killing Fernandez, a pregnant woman who was pushing her young daughter in a stroller, and injuring Hernandez. Scarcely one month later, petitioner was found guilty of a second unrelated first degree murder and attempted murder charge. On these facts and even in light of petitioner's argument about the community's changing standard of moral decency with respect to juvenile sentences, we cannot hold that petitioner's 60-year sentence, for which he must serve a minimum of 30 years, shocks the moral sense of the community. We maintain this holding even in light of the fact that petitioner's sentence must be served consecutive to the 20-year sentence in the unrelated August 1990 murder. Petitioner's contention of error is therefore unavailing.

¶ 27 Furthermore, petitioner's citation to various cases does not alter our holding. In *People v. Aikens*, 2016 IL App (1st) 133578, although the court held that the defendant's 40-year sentence violated the proportionate penalties clause, it further noted, "While the crime was indeed serious, no one was injured in this particular instance." *Id.* ¶¶ 1, 37. In *People v. Gipson*, 2015 IL App (1st) 122451, *appeal allowed*, No. 119594 (Nov. 23, 2016), the court held that the defendant's 52-year sentence was unconstitutionally disproportionate because it was imposed "for a crime in which no one died." *Id.* ¶¶ 74-75, 78. Finally, the court in *People v. Brown*, 2015 IL App (1st) 130048, invalidated the defendant's 50-year sentence for aggravated battery with a firearm based in part upon the defendant's "limited criminal history." *Id.* ¶¶ 1, 45. Here, a pregnant woman was murdered and another individual was shot, and petitioner's criminal history cannot be reasonably described as "limited." *Aikens*, *Gipson*, and *Brown* are thus distinguishable.

¶ 28 Whether Petitioner Is Entitled To a New Sentencing Hearing

¶ 29 Finally, petitioner contends that he is entitled to a new sentencing hearing pursuant to section 5-4.5-105(a) of the Code. Petitioner notes that, 10 days after his resentencing, the

General Assembly passed a bill that added section 5-4.5-105 to the Code and became effective on January 1, 2016. Petitioner states that this new law requires trial courts to take into account certain factors when sentencing an individual who was under 18 at the time of the offenses, but that the trial court failed to do so. The State argues that section 5-4.5-105, although procedural in nature, only operates prospectively because it indicates that the trial court must consider the various factors "[o]n or after the effective date" of the amendment.

¶ 30 The question presented to us is one of statutory interpretation. The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature, "the surest and most reliable indicator of which is the statutory language statute itself, given its plain and ordinary meaning." *People v. Perry*, 224 Ill. 2d 312, 323 (2007). If the statutory language is clear and unambiguous, we must apply it as written without using extrinsic aids to statutory construction. *Id.* In addition, we may not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. *Id.* at 323-24. The construction of a statute is a question of law that we review *de novo*. *Id.* at 324.

¶ 31 Our supreme court has explained that the retroactive application of a statute is determined under the test set forth in *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994). *Hayashi v. v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 23. Under the first part of the test, "if the legislature has clearly prescribed the temporal reach of the statute, the legislative intent must be given effect absent a constitutional prohibition." *Id.* The second part of the test provides that if the new law contains no "express provision regarding the temporal reach, the court must determine whether applying the statute would have a 'retroactive' or 'retrospective' impact; that is, 'whether it would *impair rights a party possessed* when he acted.' " (Emphasis added.) *Id*. (quoting *Landgraf*, 511 U.S. at 280). If "applying the statute

would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied." *Id.* (citing *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001)); see also *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 30 (applying same analysis).

¶ 32 Illinois courts, however, will "rarely, if ever," need to go beyond step one of the *Landgraf* analysis because of section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)). *Einoder*, 2015 IL 117193, ¶ 31 (citing *Caveney v. Bower*, 207 Ill.2d 82, 94 (2003)). Section 4 is a general savings clause that the court has interpreted to mean that procedural changes to statutes are applied retroactively, while substantive changes are applied prospectively only. *Caveney*, 207 Ill. 2d at 92. In essence, the legislature has clearly set forth the temporal reach of *every* amended statute: either expressly in the amendment itself, or by default in section 4. *Id.* at 95.

¶ 33 Turning to the issue before us, section 5-4.5-105(a) of the Code, as amended, provides in pertinent part:

> "On or after the effective date of this amendatory Act ***, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing ***, shall consider the following additional factors in mitigation in determining the appropriate sentence[.]" 730 ILCS 5/5-4.5-105(a) (West 2016).

The amended section 5-4.5-105(a) then sets forth various mitigating factors, including the person's age, impetuosity, and level of maturity at the time of the offense; the presence of negative influences, such as peer or familial pressure; and the juvenile's potential for rehabilitation. 730 ILCS 5/5-4.5-105(a) (West 2016).

¶ 34 This court has repeatedly held that the language of the amendment to section 5-4.5-105(a) indicates that the legislature intended that the amended provisions apply prospectively only. In *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 44, *appeal allowed*, No. 121306 (Nov. 23, 2016), this court held that the amendment to section 5-4.5-105(a) begins with the phrase "on or after the effective date," and therefore the provisions apply to sentencing hearings taking place on or after the effective date of January 1, 2016. Accord *People v. Morris*, 2017 IL App (1st) 141117, ¶ 43. In *People v. Wilson*, 2016 IL App (1st) 141500, ¶¶ 15-16, *appeal allowed*, No. 121345 (Nov. 23, 2016) (consolidated appeal with *Hunter*), another division of this court also held that the provisions apply prospectively for offenses occurring on or after the effective date.

¶ 35 We agree with the holdings in *Hunter*, *Wilson*, and *Morris*.[2] We note that *Hunter* indicated that the amendment applies to sentencing hearings on or after the effective date, whereas *Wilson* held that the amendment applies to offenses committed on or after that date. Here, however, both the offense and petitioner's sentencing hearing occurred prior to the amendment's effective date of January 1, 2016. Accordingly, the statute applies prospectively only, and petitioner is not entitled to a sentencing hearing under the new provision. We therefore reject petitioner's final contention of error.

¶ 36 CONCLUSION

¶ 37 Petitioner's sentence does not violate the federal or state constitutions, nor is petitioner entitled to a new sentencing hearing under section 5-4.5-105(a) of the Code.

¶ 38 Affirmed.

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[2] Although our supreme court has allowed leave to appeal in both *Hunter* and *Wilson*, we note that the issue framed in the petitions for leave to appeal concern in part the retroactivity of subsection (b), whereas in this case subsection (a) is at issue. We may take judicial notice of public documents included in the records of other courts. See *Metropolitan Life Insurance Co. v. American National Bank and Trust Co.*, 288 Ill. App. 3d 760, 764 (1997).