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2015 IL App (3d) 140902-U

Order filed August 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Rock Island County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0902
v.	)	Circuit No. 94-CF-306
	)	
LYNN BROOKS, JR.,	)	Honorable
	)	Walter D. Braud,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Defendant's sentence is not void and therefore, the trial court properly dismissed defendant's petition for relief from judgment as untimely.
- ¶ 2 Defendant, Lynn Brooks, Jr., was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 1994)), aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 1994)), and aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West 1994)). Defendant appeals from the summary dismissal of his section 2-1401 petition for relief from judgment (735 ILCS 5/2-

1401(f) (West 2012)) contending the untimely filing of the petition is excused because the sentence he challenged is void. We affirm.

¶ 3

### FACTS

¶ 4

Defendant's convictions arise from a dispute between defendant and rival gang members. After a verbal altercation, defendant pulled a gun out of his shirt and began shooting. Defendant shot and killed Eric Harvard and wounded Vernon Orr. Defendant was a juvenile at the time of the offenses.

¶ 5

At defendant's sentencing hearing, defendant presented testimony of each of his immediate family members, including his parents and three sisters, who discussed defendant's character and family background. Six other friends and family members testified in mitigation as well. Defendant made a statement in allocution and the parties made arguments as to the appropriate sentence the trial court should impose. In sentencing, the trial court noted several findings as to mitigation. These include defendant's age (a juvenile), criminal history, social environment, and rehabilitative potential. The court referred to a note returned by the jury along with their verdict, stating the jurors were outraged by gang warfare in their neighborhoods. The court commented that this activity "smacks at the protection of society." The court went on:

"I am troubled very much by the fact that a semi-automatic pistol was fired not once, not twice, but somewhere around 20 times down the street. Shots were fired in the direction of other people and into a crowd, and the shots that were fired, a number of them ended up in a house.

\* \* \*

\*\*\* The court is concerned about the number of shots that were fired into a crowd of people. The wantonness of this firing, the type of weapon used, the fact that it was done while [defendant] was on probation.

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I have already mentioned the fact that besides Eric Harvard being shot, Vernon Orr being shot, a house being shot, a group of people was endangered. The problem is if the court doesn't try to do justice in this case, then the people are going to resort to more of this to get even.

The sentence has to be stiff enough that people turn to the courts when wrongs are done rather than pulling out a gun and going after somebody.

\* \* \*

In terms of the criminal activity as a minor, except for the drug sale, its fairly minor.

I note the relationship with his father. That's reinforced by what his father said in this case. I note he's never been married. He has a relationship with Tomica Robinson, and a child born in 1992. I note [defendant's] birth date and his age.

\* \* \*

I think deterrence is necessary—a sentence is necessary to deter him and others from shooting semi-automatic weapons into crowds of people. I think the activity was clearly gang related.

In terms of mitigating factors, I don't think there was any strong provocation. I don't think there's any evidence tending to justify firing 20 shots

into a crowd of people, killing one, wounding one, and hitting a house in the background.

Was his conduct facilitated or induced by someone? All I know is it was part of gang activity. I can't say this is a particular mitigating factor in this case. I can't say that he has no prior history of delinquency or that his life indicates that he's likely to lead a law abiding life.

Similarly, the eight and ninth mitigating factors, criminal conduct was a result of circumstances unlikely to recur. He's unlikely to commit another crime. I just have to guess at that. I don't think I should do that. He's violated the terms of his probation before. Even if we could give him probation, I don't think he would be likely to comply.

When a murder is committed the court has a factor that is very permanent. There's nothing I can do to uncommit a murder. If it's mere theft you can pay back monies. And maybe when you are dealing with murder I tend to look more at punishment than I do at some of the lesser crimes. On the lesser crimes I tend to look at rehabilitative potential. I tend to look at protecting the public. I tend to look at deterrence. But I tend also to look at the fourth factor in a murder case, punishment, as well as these other factors.

I think [defendant] has some degree of rehabilitative potential. I think the crime, however, is a horrible crime. I think the court has to say to other people likely to pull out guns and shoot them down the street, we aren't going to tolerate this nonsense. \*\*\* The public has to be protected."

¶ 6           Thereafter, the trial court pronounced its sentences for each conviction. For first degree murder, defendant was sentenced to 50 years' imprisonment to run consecutively with a 20-year sentence imposed for aggravated battery with a firearm. The court noted it believed the terms were mandated by statute to run consecutively. The court then noted that even if the terms were not mandated to run consecutively, the court would still impose consecutive terms under the statute as a matter of discretion because it felt the sentences were necessary to protect the public from further criminal conduct by defendant. As to aggravated discharge of a firearm conviction, the court sentenced defendant to 15 years' imprisonment running concurrently with the other sentences.

¶ 7           In addition, the court ordered three years' mandatory supervised release (MSR) for each the first degree murder conviction and the aggravated battery with a firearm conviction. The court also ordered a two-year MSR for aggravated discharge of a firearm.

¶ 8           Defendant filed a direct appeal raising various claims. Relevant to the instant appeal (from the denial of defendant's petition for relief from judgment), is defendant's argument that the trial court abused its discretion by imposing an excessive sentence. Defendant argued the trial court failed to consider defendant's youth and rehabilitative potential when sentencing defendant. This court affirmed the judgment of the lower court and found the sentence was not excessive. *People v. Brooks, Jr.*, No. 3-95-0027 (1997) (unpublished order under Supreme Court Rule 23).

¶ 9           Following direct appeal, defendant filed a petition for postconviction relief. The court summarily dismissed the petition as frivolous and patently without merit. This court affirmed on appeal. *People v. Brooks, Jr.*, No. 3-98-0353 (1999) (unpublished order under Supreme Court Rule 23).

¶ 10 Defendant then filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2012)) alleging *Apprendi v. New Jersey*, 530 U.S. 466 (2000) violations. The court summarily dismissed the petition and defendant appealed. On appeal, this court granted defendant's appointed counsel's motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987) and affirmed the judgment of the lower court. *People v. Brooks, Jr.*, No. 3-01-0815 (2002) (unpublished order under Supreme Court Rule 23).

¶ 11 Next, defendant filed a motion for leave to file a successive petition for postconviction relief. The motion was denied and, on appeal, this court affirmed. *People v. Brooks, Jr.*, 2011 IL App (3d) 090881-U.

¶ 12 On November 19, 2013, defendant filed a second section 2-1401 petition for relief from judgment. This is the operative petition relevant to the instant appeal. In the petition, defendant alleged his sentence was void because it was not mandated by statute and the trial court set forth an insufficient record to support a discretionary consecutive sentence to protect the public. Defendant also challenged the MSR terms imposed and requested a resentencing hearing in light of the Supreme Court's decision in *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012).

¶ 13 The State did not respond to defendant's petition and, on July 1, 2014, defendant filed a motion for summary judgment. The court dismissed defendant's petition, by written order, finding the petition, filed more than three years after judgment, was untimely because defendant failed to allege that the sentences imposed were void. Defendant's subsequent motion for reconsideration was denied.

¶ 14 ANALYSIS

¶ 15 On appeal, we consider whether defendant's sentences are void and therefore, the trial court erred in dismissing his section 2-1401 petition as untimely.<sup>1</sup> This requires a consideration of whether the trial court had jurisdiction to impose consecutive sentences and whether the sentences imposed comply with *Miller*. Because the sentences imposed were authorized by statute, we find the trial court had jurisdiction to impose consecutive sentences. We further find the sentences comply with *Miller*. Therefore, we hold defendant's sentences are not void, and defendant's untimely section 2-1401 petition was properly dismissed.

¶ 16 At the outset, defendant concedes that the petition was untimely filed and, therefore, he is only entitled to relief if he establishes, as he alleges, that his sentences are void.<sup>2</sup> See 735 ILCS 5/2-1401(c), (f) (West 2012). A section 2-1401 petition that raises a purely legal challenge to a judgment by alleging that it is void under subsection (f) of section 2-1401 is reviewed *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47 (citing *People v. Vincent*, 226 Ill. 2d 1, 5 (2007)).

¶ 17 A void judgment is one entered by a court which lacks jurisdiction over the parties or subject matter or lacks the inherent power to make or enter the order at issue. *People v. Wade*,

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<sup>1</sup> On appeal, defendant also argues that the MSR term in the sentencing order is incorrectly calculated. However, defendant acknowledges that the correct MSR term is reflected on the Illinois Department of Corrections (IDOC) website. In defendant's reply brief, defendant agrees with the State that "nothing needs to be done since the correct MSR is noted in his IDOC records." Therefore, we do not address this argument.

<sup>2</sup> We note, defendant does not argue that his untimely petition is excused because he was under legal disability or duress or the grounds for relief were fraudulently concealed. 735 ILCS 5/2-1401(c), (f) (West 2012).

116 Ill. 2d 1, 5 (1987). A sentence is void if it is not authorized by statute. *People v. Thompson*, 209 Ill. 2d 19, 23 (2004).

¶ 18 At the time defendant committed his crimes, the sentencing scheme in place mandated consecutive sentences for offenses which were part of a single course of conduct when one of the offenses was a Class X or Class 1 felony and the offense was accompanied by severe bodily injury. 730 ILCS 5/5-8-4(a) (West 1994). Alternatively, consecutive sentences were authorized as a matter of discretion where, after having regard for the nature and circumstances for the offense and the history of the defendant, it was the opinion of the court that consecutive sentences were required to protect the public from further criminal conduct by the defendant. 730 ILCS 5/5-8-4(b) (West 1994). If a trial court determines consecutive sentences are necessary as a matter of discretion, the statute requires the trial court set forth the basis for its determination. *Id.*

¶ 19 Here, the trial court considered the consecutive sentences were mandatory but went on to state that it would still impose consecutive sentences as a matter of discretion to protect the public. The record is clear the trial court set forth a sufficient basis for imposing consecutive sentences to protect the public from further criminal activity by defendant. The trial court considered the nature and circumstances of the offense, as well as the history and character of defendant. The court referred to a note returned by the jury along with their verdict, stating, the jurors were outraged by gang warfare in their neighborhoods. The court commented that this activity "smacks at the protection of society." The court noted its consideration of defendant's birth date and age. The court emphasized it was troubled by the nature and circumstances of the offense included firing a semi-automatic pistol down a street, into a crowd of people and into a home. The court noted defendant's history of juvenile delinquency and defendant's use of



alcohol and marijuana. After noting the degree of defendant's potential rehabilitation, the court considered the need to protect society from individuals likely to "pull out guns and shoot them down the street." Accordingly, we conclude that the trial court made the proper findings to impose statutorily authorized discretionary consecutive sentences and the sentences are not void. See 730 ILCS 5/5-8-4(b) (West 1994); *Thompson*, 209 Ill. 2d at 23.

¶ 20 Next, we consider whether defendant's sentences are rendered void in light of the Supreme Court decision in *Miller*. According to defendant, *Miller* entitles defendant to resentencing because *Miller* requires sentencing courts to consider a defendant's status as a juvenile during sentencing.<sup>3</sup> However, because the trial court imposed discretionary sentences after considering defendant's status as a juvenile, we find that the sentences imposed comply with *Miller* and are not void.

¶ 21 In *Miller*, the Supreme Court held that the eighth amendment prohibited "a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders," even those convicted of homicide offenses. (Emphasis added.) *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2469. Under *Miller*, sentences imposed pursuant to those statutes are unconstitutional. *Id.* Where the sentence itself is unconstitutional, the sentence is also void. *People v. Brown*, 225 Ill. 2d 188, 203 (2007). However, *Miller* does not preclude a sentencing court from imposing a discretionary sentence of life without parole to a juvenile offender, it only requires a sentencing court to take "into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2469.

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<sup>3</sup> We note defendant on appeal does not argue *Miller* renders his sentences void. Rather, defendant makes a general argument that he is entitled to resentencing because the trial court's consideration of his status as a minor was insufficient under *Miller*.

¶ 22 By contrast, the sentences here were imposed as a matter of discretion and were not mandated by statute. *Miller* on the other hand, dealt with mandatory sentences. *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2469. Although the sentences imposed in this case are significant in length, the sentences are unlike *Miller* in that the sentences here are not a natural life sentence. Moreover, the record belies defendant's claim that the trial court failed to sufficiently consider his status as a juvenile offender. As previously discussed, the court extensively reviewed defendant's age, potential for rehabilitation, as well as defendant's background at sentencing. Significantly, on direct appeal, this court previously rejected defendant's contention that the trial court failed to consider his youth and rehabilitative potential when it imposed defendant's sentences. *Brooks, Jr.*, No. 3-95-0027. In rejecting defendant's argument, this court found that "[i]n imposing [defendant's] sentence, the trial judge recognized the mitigating factors presented, including, the defendant's age, criminal history, and social environment \*\*\*." *Brooks, Jr.*, No. 3-95-0027, slip op. at 20. Based on the trial court's extensive discussion during sentencing, and the fact the trial court sentenced defendant as a matter of discretion, we find the the sentences imposed comply with *Miller* and are not void. Consequently, defendant is not excused for the untimely filing of his section 2-1401 petition.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Rock Island County is affirmed.

¶ 25 Affirmed.