2014 IL App (5th) 110074-U

NOS 5-11-0074 & 5-11-0113 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 82-CH-79
	)	
WILLIAM T. JONES,	)	Honorable
	)	Terry H. Gamber,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed the defendant's section 2-1401 petition and motion for leave to file a fourth postconviction petition as the defendant's felony-murder conviction is not void.

¶ 2 BACKGROUND

¶ 3 On the night of January 25, 1982, the defendant, William T. Jones, burglarized the home of James and Margaret Dare in rural Jefferson County. During the incident, the defendant stabbed Margaret to death and stabbed and severely injured James. In August 1985, following a retrial, the defendant was convicted on charges of knowing murder (Ill. Rev. Stat. 1981, ch. 38, ¶ 9-1(a)(2)), felony murder (Ill. Rev. Stat. 1981, ch. 38,

¶ 9-1(a)(3)), attempted murder (Ill. Rev. Stat. 1981, ch. 38, ¶¶ 8-4(a), 9-1(a)(1)), residential burglary (Ill. Rev. Stat. 1981, ch. 38, ¶ 19-3(a)), aggravated battery (Ill. Rev. Stat. 1981, ch. 38, ¶ 12-4(b)(1)), and armed robbery (Ill. Rev. Stat. 1981, ch. 38, ¶ 18-2).

¶ 4 In October 1985, the trial court sentenced the defendant to death on its findings that he had knowingly killed Margaret in the course of an armed robbery, that he was over the age of 18 when the murder was committed, and that there were no mitigating factors sufficient to preclude the imposition of the death penalty. See Ill. Rev. Stat. 1981, ch. 38, ¶¶ 9-1(b)(6), (h); see also *People v. Jackson*, 182 Ill. 2d 30, 66-67 (1998) (noting that pursuant to section 9-1(b)(6), a defendant convicted of first-degree murder could be found eligible for the death penalty "where the defendant was 18 years or older at the time of the offense [citation], and where the victim was killed in the course of another felony [citation]; [the victim] was killed by the defendant *** [citation]; the defendant acted with intent to kill or the knowledge that his acts created a strong probability of death or great bodily harm [citation]; and the other felony was one of the group listed in the statute [citation]"). In its sentencing order and mittimus, the trial court indicated that it had imposed the death sentence on the defendant's felony-murder conviction. The trial court entered judgment on the defendant's convictions for knowing murder, attempted murder, residential burglary, aggravated battery, and armed robbery but did not impose sentence on those convictions. In May 1988, the defendant's convictions and sentence were affirmed on direct appeal to the supreme court. *People v. Jones*, 123 Ill. 2d 387 (1988).

¶ 5 In July 1989, the defendant filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Ill. Rev. Stat. 1989, ch. 38, ¶ 122-1 *et seq*.), and in January 1991, appointed counsel filed an amended petition on the defendant's behalf. In June 1992, the trial court entered an order granting the State's motion to dismiss, and in May 1993, the supreme court affirmed the trial court's judgment. *People v. Jones*, 155 Ill. 2d 357 (1993).

¶ 6 In August 1996, the defendant filed a second postconviction petition that the trial court dismissed on the State's motion in April 1998. In April 2000, the supreme court again affirmed the trial court's judgment. *People v. Jones*, 191 Ill. 2d 194 (2000).

¶ 7 In January 2003, former Governor George Ryan commuted the defendant's death sentence to natural life imprisonment. In January 2007, the defendant filed a third postconviction petition. In April 2007, the trial court summarily dismissed the petition, and in April 2008, this court affirmed the trial court's judgment. *People v. Jones*, 379 Ill. App. 3d 1095 (2008).

¶ 8 In December 2010, the defendant filed a motion for leave to file a fourth postconviction petition (see 725 ILCS 5/122-1(f) (West 2010)) and a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). In January 2011, the trial court dismissed the defendant's section 2-1401 petition, and in March 2011, the court denied his motion for leave to file his fourth postconviction petition. The defendant filed a timely notice of appeal with respect to each pleading, and the cases were subsequently consolidated for decision.

¶ 9 DISCUSSION

¶ 10 On appeal, the defendant argues that the trial court violated the one-act, one-crime rule by entering judgment on his conviction for felony murder. He thus maintains that the conviction and its attendant sentence are void. In response to the State's contention that he has waived his present argument by raising it for the first time on appeal, the defendant correctly notes that a void judgment " 'may be attacked at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)); *cf. J.P. Morgan Mortgage Acquisition Corp. v. Straus*, 2012 IL App (1st) 112401, ¶ 11 ("A voidable order is not subject to collateral attack, but only to direct appeal."). Its waiver argument aside, the State concedes that the trial court should have entered judgment on the defendant's knowing-murder conviction rather than his felony-murder conviction. The State maintains, however, that the error merely rendered the latter conviction voidable, not void. We agree with the State.

¶ 11 Under the one-act, one-crime rule, "a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Accordingly, if a defendant is convicted on multiple counts of murder involving a single victim, "only the conviction for the most serious murder offense charged will be upheld, with convictions on the less serious murder charges vacated." *People v. Guest*, 115 Ill. 2d 72, 103-04 (1986); see also *People v. Mack*, 105 Ill. 2d 103, 136-37 (1984). The one-act, one-crime rule is a judicially adopted tool used to enforce the double-jeopardy principle that a person should not suffer multiple

punishments for the same act. *People v. Angarola*, 387 Ill. App. 3d 732, 737 (2009); *People v. Morgan*, 385 Ill. App. 3d 771, 774-75 (2008). "A defendant is prejudiced 'where more than one offense is carved from the same physical act.' " *People v. Donaldson*, 91 Ill. 2d 164, 170 (1982) (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). "The application of the one-act, one-crime rule is a question of law, which we review *de novo*." *Johnson*, 237 Ill. 2d at 97.

¶ 12 "A judgment is void, rather than merely voidable, only where the court entering the judgment lacked jurisdiction over the parties, over the subject matter, or exceeded its statutory authority to act." *People v. Smith*, 406 Ill. App. 3d 879, 887 (2010). "Once a court has obtained jurisdiction, it will not lose jurisdiction due to a mistake of the law, the facts or both." *Id*. "Even an error of constitutional magnitude does not automatically divest the court of jurisdiction or render a judgment void." *Id*. "Whether a judgment is void presents a legal question, which we review *de novo*." *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 41.

¶ 13 Knowing murder is considered a more serious offense than felony murder. *People v. Kuntu*, 196 Ill. 2d 105, 130 (2001). Here, as previously indicated, it is undisputed that the trial court should have entered judgment and sentence on the defendant's knowing-murder conviction and should have vacated the defendant's felony-murder conviction as the less serious offense. See *People v. Jones*, 105 Ill. 2d 342, 359 (1985); *People v. Waldron*, 219 Ill. App. 3d 1017, 1037-39 (1991); *People v. Martin*, 112 Ill. App. 3d 486, 504-05 (1983). As the State notes, however, our supreme court has consistently held that convictions imposed in violation of the one-act, one-crime rule are merely voidable, not

void. See *People v. Coady*, 156 Ill. 2d 531, 537-38 (1993); *People v. Davis*, 156 Ill. 2d 149, 155-58 (1993). As a result, the rule that a void judgment may be attacked at any time does not apply here; the trial court's error is not subject to collateral attack, and the defendant's present argument is waived. *Id.*

¶ 14 We note that the cases the defendant cites in support of his contentions on appeal are distinguishable in that each involved the imposition of a sentence that was not authorized by statute. See *People v. Whitfield*, 228 Ill. 2d 502, 506, 510-11 (2007); *People v. Thompson*, 209 Ill. 2d 19, 21-25 (2004); *People v. Pinkonsly*, 207 Ill. 2d 555, 558, 568-69 (2003); *People v. Harris*, 203 Ill. 2d 111, 113-14, 118-19 (2003); *People v. Pullen*, 192 Ill. 2d 36, 39-40, 46 (2000); *City of Chicago v. Roman*, 184 Ill. 2d 504, 510 (1998); *People v. Arna*, 168 Ill. 2d 107, 112-13 (1995); *People v. Wade*, 116 Ill. 2d 1, 4-7 (1987). In those cases, it was thus determined that the trial court had either exceeded its statutory authority or rightfully vacated its previously-entered void order. See *id.* Here, however, the court had authority to enter conviction and sentence on either of the defendant's murder convictions, and entering judgment on the felony-murder count was merely an error that rendered the judgment voidable, not void. *Davis*, 156 Ill. 2d at 157-58.

¶ 15 Lastly, we reject the defendant's suggestion that he would not have been sentenced to death had the trial court entered judgment on his conviction for knowing murder. As previously noted, the trial court sentenced the defendant to death on its findings that he had knowingly killed Margaret in the course of an armed robbery, that he was over the age of 18 when the murder was committed, and that there were no mitigating factors

sufficient to preclude the imposition of the death penalty. Under the circumstances, those findings were equally applicable to both of the defendant's murder convictions, and the defendant's contrary intimations are without merit. See *People v. Harris*, 182 Ill. 2d 114, 152-53 (1998); *People v. Smith*, 176 Ill. 2d 217, 229-30 (1997); *People v. Shatner*, 174 Ill. 2d 133, 149-50 (1996); *People v. Lego*, 116 Ill. 2d 323, 344-45 (1987).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the trial court's judgment dismissing the defendant's section 2-1401 petition and denying his motion for leave to file a fourth postconviction petition is hereby affirmed.

¶ 18 Affirmed.