

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).

2012 IL App (4th) 110633-U

NO. 4-11-0633

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 6, 2012

Carla Bender

4<sup>th</sup> District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macoupin County
JOHNNY TAYLOR,	)	No. 05-CF-191
Defendant-Appellant.	)	
	)	Honorable
	)	Kenneth R. Deihl,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Pope and Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where one of the essential elements of the State's plea negotiations was determined to be void, the entire plea agreement was void, and therefore, defendant's conviction is reversed and the case remanded with directions to allow defendant to withdraw his guilty plea and to plead anew or proceed to trial.

¶ 2 In October 2006, defendant, Johnny Taylor, pleaded guilty to one count of armed robbery while possessing a handgun in exchange for the State's agreement to dismiss the other three pending charges and to cap its sentencing recommendation at 30 years. Defendant was facing a potential range of punishment on this offense between 21 and 45 years, due to the mandatory 15-year sentencing enhancement for the use of a firearm during the commission of the armed robbery. In November 2006, the trial court sentenced defendant to a total of 24 years. In 2007, our supreme court determined the 15-year mandatory enhancement violated the proportionate-penalties clause and was unconstitutional. *People v. Hauschild*, 226 Ill. 2d 63, 86-89 (2007). Defendant now claims his

24-year sentence is void, and that this court should reverse his conviction and remand with directions to allow him to plead anew or, in the alternative, to reduce his sentence to 9 years, removing the 15-year enhancement. In the alternative, defendant claims the trial court erred in *sua sponte* dismissing his postconviction petition after appointing counsel to represent defendant. Because we agree with defendant's first contention of error, we need not address his second. As explained below, we reverse defendant's conviction and remand with directions.

¶ 3

### I. BACKGROUND

¶ 4 In August 2005, at approximately 11 p.m., defendant and Crystal Stephens drove in her vehicle to the Hardee's restaurant in Staunton. Stephens entered the restaurant through the employee entrance while defendant waited in the car. While armed with a .22-caliber handgun, Stephens demanded cash from the safe. She left the restaurant with \$366 cash, ran across the parking lot, and to the car being driven by defendant.

¶ 5 The manager at Hardee's called the police. An officer spotted Stephens's vehicle and activated his squad car's overhead lights and siren. Defendant did not pull over and a chase ensued. Stephens leaned out of the car and fired multiple shots, one of which hit the squad car. Defendant eventually crashed the car and both occupants were arrested.

¶ 6 The State charged defendant with four counts: two counts of armed robbery while possessing and firing a weapon (720 ILCS 5/18-2(a)(2), (a)(3) (West 2004)) (counts I and II, respectively), one count each of aggravated fleeing or attempting to elude (625 ILCS 5/11-204.1(a)(4) (West 2004)) (count III), and reckless driving (625 ILCS 5/11-503(a) (West 2004)) (count IV). In October 2006, defendant entered into a negotiated guilty plea agreement, wherein he agreed to plead guilty to one count of armed robbery in exchange for the State (1) dismissing the

remaining charges and (2) recommending a sentencing cap of no more than 30 years in prison. At the plea hearing, defendant's attorney told the trial court defendant maintained his innocence and only agreed to plead guilty because he understood "the likelihood of his being convicted is very great." The court appropriately admonished defendant and, after considering the stipulated factual basis, accepted defendant's plea.

¶ 7 In November 2006, the trial court considered the testimony of the Hardee's manager, the police officer who responded to the call, a police officer who was involved in the chase, a detective involved in the investigation, Stephens, and defendant. Stephens had changed her story about defendant's knowledge of her intent to commit the robbery. Initially, she said she and defendant had planned the robbery in advance. She changed her story at sentencing to state that defendant did not know about the robbery and was asleep in the car when she went inside Hardee's. Based on this change of testimony, defendant made a motion to withdraw his guilty plea. The court refused to consider defendant's motion at sentencing and sentenced him to 9 years in prison on the armed-robbery conviction and added 15 years for the automatic weapon enhancement. See 720 ILCS 5/18-2(b) (West 2004).

¶ 8 Defendant filed a *pro se* motion to withdraw his guilty plea. His attorney filed an amended motion, which the trial court denied. Defendant appealed, and this court vacated the trial court's order and remanded due to defense counsel's failure to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)). *People v. Taylor*, No. 4-07-0479 (September 5, 2007) (unpublished summary order under Supreme Court Rule 23(c)(1)).

¶ 9 In October 2008, the trial court denied defendant's second amended motion to withdraw his guilty plea and defendant appealed. *People v. Taylor*, No. 4-09-0189 (April 9, 2010)

(unpublished order under Supreme Court Rule 23). This court agreed with the trial court, finding Stephens's recantation of her initial statement was suspect, and affirmed the court's order denying defendant's motion to withdraw his guilty plea. *Taylor*, No. 4-09-0189, slip order at 14.

¶ 10 In March 2011, defendant filed a *pro se* postconviction petition, claiming (1) his counsel rendered ineffective assistance, (2) his due-process and equal-protection rights were violated, and (3) prosecutorial misconduct. The trial court appointed counsel to represent defendant and, after a continuance was granted, scheduled a motions hearing for June 13, 2011. On that day, defendant's counsel was unavailable, so the court rescheduled the hearing for July 19, 2011. On June 15, 2011, the following docket entry was included in the common law record:

"Cause called for status at the request of the attorneys. Present SA Watson and PD Verticchio. Statements made to the [c]ourt concerning the [p]ost[-c]onviction process. Matter taken under advisement. Clerk to forward copy of docket entry to the attorneys."

¶ 11 On June 20, 2011, the following docket entry was filed:

"Successive [p]etition for [p]ost[-c]onviction [r]elief as filed by the defendant has been reviewed and considered. In light of the [p]ost [c]onviction [p]rocess [s]ummary [d]ismissal is found to be appropriate. The prayer of the [p]etition is denied. The hearing set for July 19, 2011, at 1:30 p.m. is canceled. Writ for defendant's return is canceled. Clerk is directed to forward copy of docket entry to attorneys and to the defendant."

This appeal followed.

¶ 12

## II. ANALYSIS

¶ 13 Defendant first claims his 24-year sentence is void because the 15-year automatic add-on for the use of a weapon during the armed robbery was found to be unconstitutional in *Hauschild*, 226 Ill. 2d at 86-89, and therefore, he claims, either the case should be remanded for further proceedings related to the withdrawal of his plea or this court should reduce his sentence to 9 years. We first note that an issue related to a potentially void sentence may be challenged at any time, including for the first time on appeal from the dismissal of a postconviction petition. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004).

¶ 14 The armed-robbery statute (720 ILCS 5/18-2(a) (West 2004)) provides several alternative definitions of armed robbery, including a type of armed robbery of which defendant was convicted in this case, armed robbery while in possession of a firearm (720 ILCS 5/18-2(a)(2) (West 2004)). If, when committing a robbery, a person "carries on or about his or her person[,] or is otherwise armed with a firearm" (*id.*), the person commits "a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court" (emphasis added) (720 ILCS 5/18-2(b) (West 2004)). According to this language, the trial court should determine what prison sentence the defendant deserves within the normal Class X range, *i.e.*, imprisonment for no less than 6 years and no more than 30 years (730 ILCS 5/5-8-1(a)(3) (West 2004)), and "impose" that sentence. 720 ILCS 5/18-2(b) (West 2004). A court imposes a sentence by orally pronouncing it. *People v. Williams*, 97 Ill. 2d 252, 310 (1983). Then, after the court imposes its sentence, regardless of the number of years of imprisonment within the 6- to 30-year range that the court selects, the legislature was of the opinion that the defendant deserved 15 more years, which was to be "added to the term of

imprisonment imposed by the court." 720 ILCS 5/18-2(b) (West 2004).

¶ 15 At sentencing, it was apparent that the trial court specifically added 15 years "because of [defendant's] possession of a weapon" to the imposed 9-year sentence. That is, the court specifically bifurcated the sentence. As explained above, this 15-year enhancement is void per *Hauschild*. It was also apparent the State took the 15-year enhancement into account in the plea negotiations when it agreed to cap its sentencing recommendation at 30 years, since the prosecutor had informed the court at the plea hearing, and again at sentencing, that defendant faced a potential range of 21 to 45 years in prison.

¶ 16 Our supreme court has declared that plea agreements, in particular, negotiated agreements where the parties have agreed on the appropriate sentence, are generally governed by contract law. *People v. Absher*, 242 Ill. 2d 77, 89-90 (2011); *People v. Smith*, 406 Ill. App. 3d 879, 888-89 (2010). A plea agreement is between the State and the defendant, and the circuit court is not a party to the agreement. *Smith*, 406 Ill. App. 3d at 888-89. A defendant does not have an absolute right to withdraw his guilty plea and thus bears the burden of showing why withdrawal is necessary. *Smith*, 406 Ill. App. 3d at 885. While an illegal contract is generally void *ab initio*, a plea agreement is void when an essential part of the agreed exchange is unenforceable or illegal under the relevant statutes. *People v. Gregory*, 379 Ill. App. 3d 414, 419-20 (2008). Whether a void term or aspect of the sentence was essential is determined by its relative importance in light of the entire agreement. *Gregory*, 379 Ill. App. 3d at 420.

¶ 17 We consider the essential terms of the plea agreement here to be (1) the charge to which defendant agreed to plead guilty in exchange for the dismissal of the remaining charges *and* (2) the State's agreement to cap its recommendation at a sentence significantly less than the potential

maximum sentence of imprisonment for the offense to which defendant pleaded guilty. Because one of the essential terms of the agreed exchange (the potential maximum sentence) was illegal, the plea agreement as a whole is rendered void.

¶ 18 In *People v. White*, 2011 IL 109616, ¶ 31, our supreme court remanded the defendant's void sentence to the trial court with directions to allow the defendant to withdraw his guilty plea and proceed to trial. The object of the agreement in *White*—that the defendant pleaded guilty to first-degree murder and possession of contraband and received a total of 32 years' imprisonment—was contrary to statutory authority which mandated that he receive at least 35 years' imprisonment for the murder charge with the firearm enhancement of 15 years. Had the supreme court remanded only the sentence, the trial court would not have been able to impose the total number of years to which the defendant agreed. Under those circumstances, the *White* court concluded that the plea agreement itself was void. *White*, 2011 IL 109616, ¶ 31. Likewise, in the case before us, the terms of the plea agreement were based on unauthorized or illegal principles, resulting in a void sentence.

¶ 19 The State contends this case is similar to *People v. Linder*, 186 Ill. 2d 67 (1999), wherein the supreme court rejected defendant's claim that his sentence, imposed upon the acceptance of his guilty plea, was excessive. In *Linder*, the defendant pleaded guilty in exchange for the State's agreement to dismiss other pending charges and to recommend a sentencing cap. The trial court sentenced the defendant to a term below the recommended cap, but defendant claimed it was excessive. *Linder*, 186 Ill. 2d at 69. The supreme court held, "[b]y agreeing to plead guilty in exchange for a recommended sentencing cap, a defendant is, in effect, agreeing not to challenge any sentence imposed below that cap on the grounds that it is excessive." *Linder*, 186 Ill. 2d at 74.

