

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) 110837-U  
NO. 4-11-0837  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
November 21, 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.	)	Vermilion County
STEVEN MILLER,	)	No. 05CF520
Defendant-Appellant.	)	
	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

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PRESIDING JUSTICE TURNER delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant's 35-year sentence did not include the mandatory sentencing enhancement, which was compelled by statute and the factual basis for his guilty plea, the sentence is void and defendant must be given the opportunity to withdraw his guilty plea and plead anew or proceed to trial.
- ¶ 2 Where defendant's claim of error as to his fines and fees is moot, we need not address it.
- ¶ 3 In January 2006, defendant, Steven Miller, pleaded guilty to one count of first degree murder. In April 2006, the trial court sentenced him to 35 years in prison. In July 2009, defendant filed a postconviction petition, which the court dismissed as frivolous and patently without merit. On appeal, this court reversed the dismissal, finding defendant had not been properly admonished. On remand, defendant filed a motion to withdraw his guilty plea, which the court denied.

¶ 4 On appeal, defendant argues (1) his prison sentence is void requiring remandment to the trial court and (2) his assessed fees and fines must be offset or recalculated. We reverse and remand for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 In September 2005, the State charged defendant by information with four counts of first degree murder and three different aggravating factors. In count I, the State alleged defendant committed the offense of first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) in that he, without lawful justification and with the intent to kill, performed the acts that caused the death of Eva Miller. Counts II, III, and IV alleged similar offenses pertaining to Eva Miller. The aggravating factors centered on defendant's use of a firearm during the commission of the offense (counts V, VI, and VII) (730 ILCS 5/5-8-1(a)(1)(d) (West 2004)).

¶ 7 In January 2006, defendant pleaded guilty to count I, and the State agreed to dismiss the remaining counts. There was no agreement as to sentencing. The trial court admonished defendant that he could receive a sentence of 20 to 60 years in prison. The State's factual basis indicated defendant shot his wife in the face during an argument. A forensic pathologist determined the victim sustained a single gunshot wound to the head. Thereafter, the court accepted defendant's plea of guilty on count I.

¶ 8 In April 2006, the trial court conducted the sentencing hearing and sentenced defendant to 35 years in prison. The court gave defendant credit for 217 days spent in custody. Defendant did not file a postplea motion or a direct appeal.

¶ 9 In July 2009, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2008)), alleging his constitu-

tional rights were violated in part because his attorney did not move to withdraw his plea after hearing the trial court's admonishments. Defendant also filed a motion for reduction of sentence.

¶ 10 In September 2009, the trial court dismissed the postconviction petition, finding it frivolous and patently without merit. The court also dismissed the motion for reduction of sentence as untimely. On appeal, defendant argued he was not admonished in compliance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). This court agreed, reversed the trial court's dismissal, and remanded for proper admonitions regarding appeal. *People v. Miller*, No. 4-09-0758 (Feb. 16, 2011) (unpublished order under Supreme Court Rule 23).

¶ 11 On remand in May 2011, defendant filed a motion to withdraw his guilty plea. In September 2011, the trial court denied the motion. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Void Sentence

¶ 14 Defendant argues his 35-year sentence failed to include the mandatory firearm enhancement, which was compelled by the factual basis for his plea, and thus his sentence is void and his case must be remanded to allow him to withdraw his guilty plea and plead anew or proceed to trial. We agree, and the State concedes.

¶ 15 Our supreme court has noted "a sentence which does not conform to a statutory requirement is void." *People v. Jackson*, 2011 IL 110615, ¶ 10, 955 N.E.2d 1164, 1168. "It is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally." *People v. Thompson*, 209 Ill. 2d 19, 25, 805 N.E.2d 1200, 1203 (2004).

¶ 16 Both parties agree defendant's conviction must be vacated in light of our supreme court's decision in *People v. White*, 2011 IL 109616, 953 N.E.2d 398. In that case, the State

charged the defendant with first degree murder, armed robbery, and attempt (armed robbery) in connection with the shooting of a taxi driver. *White*, 2011 IL 109616, ¶ 3, 953 N.E.2d at 399. The defendant entered into a negotiated plea of guilty, whereby he would receive a 28-year sentence on the first-degree-murder charge and a consecutive 4-year sentence on the charge of possession of contraband while in a penal institution. *White*, 2011 IL 109616, ¶ 4, 953 N.E.2d at 400. The court accepted the plea and sentenced the defendant according to the plea agreement. *White*, 2011 IL 109616, ¶ 7, 953 N.E.2d at 401.

¶ 17 During admonishments, the trial court advised the defendant the sentencing range for first degree murder was 20 to 60 years in prison. *White*, 2011 IL 109616, ¶ 5, 953 N.E.2d at 400. The State's factual basis indicated the defendant and his codefendant planned to rob the taxi driver, who was shot in the temple with a handgun. *White*, 2011 IL 109616, ¶ 6, 953 N.E.2d at 400. After the murder, the defendant took the handgun from his codefendant and put it in his back pocket. *White*, 2011 IL 109616, ¶ 6, 953 N.E.2d at 400.

¶ 18 The defendant later filed a motion to vacate his guilty plea, arguing, *inter alia*, he was not properly admonished about the sentencing range. *White*, 2011 IL 109616, ¶ 9, 953 N.E.2d at 401. Defendant argued he was subject to the 15-year mandatory firearm enhancement provision (730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2004)) for being armed with a firearm, thereby making the actual sentencing range 35 to 75 years, not 20 to 60 years. *White*, 2011 IL 109616, ¶ 9, 953 N.E.2d at 401. The trial court denied the motion.

¶ 19 The appellate court reversed, finding the 15-year enhancement provision applied to the defendant. *White*, 2011 IL 109616, ¶ 12, 953 N.E.2d at 402. Because the defendant's sentence fell below the permissible minimum 35 years mandated by statute, the appellate court

found the sentence was void and remanded the cause so the defendant could withdraw his plea and proceed to trial, if he chose to do so. *White*, 2011 IL 109616, ¶¶ 13-14, 953 N.E.2d at 402.

¶ 20 On appeal, the supreme court found a sentencing "court does not have authority to impose a sentence that does not conform with statutory guidelines." *White*, 2011 IL 109616, ¶ 20, 953 N.E.2d at 403. Further, a sentence that is below that which is mandated by statute is illegal and void. *White*, 2011 IL 109616, ¶ 20, 953 N.E.2d at 403. Given the first-degree-murder charge and the State's factual basis indicating the use of a firearm, the enhancement statute applied and "the legislature took away any discretion the State and trial court had to fashion a sentence that does not include this mandatory enhancement." *White*, 2011 IL 109616, ¶ 26, 953 N.E.2d at 404.

¶ 21 Because the defendant's sentence did not conform to the enhanced sentence requirement when firearms are used in the commission of first degree murder, his sentence and plea agreement were void. *White*, 2011 IL 109616, ¶ 21, 953 N.E.2d at 403-04. The court affirmed and remanded to the trial court with directions to allow the defendant to withdraw his guilty plea and proceed to trial, if he chose to do so. *White*, 2011 IL 109616, ¶ 31, 953 N.E.2d at 405.

¶ 22 In this case, the State charged defendant with seven counts of murder. The first four counts alleged he performed the acts that caused the victim's death but did not refer to the use of a gun. The remaining three counts alleged the aggravating factors that he was armed with a firearm (count V), personally discharged a firearm during the commission of the offense (count VI), and discharged a firearm proximately causing the victim's death (count VII).

¶ 23 Defendant pleaded guilty to count I. The trial court admonished defendant that

the sentencing range for counts I through IV was from 20 to 60 years. The court also admonished defendant as to the firearms enhancement of 15 years for count V, 20 years for count VI, and 25 years for count VII. The State's factual basis indicated defendant killed his wife using a gun during an argument and the cause of death was a gunshot to the head. The court sentenced defendant to 35 years in prison.

¶ 24 Here, defendant was not admonished as to the enhancement term applicable to the count for which he pleaded guilty. Moreover, the factual basis referred to defendant's use of a gun that caused the victim's death. As the trial court had no discretion to impose a sentence without the 25-year-to-life mandatory firearm enhancement for discharging a firearm that caused death to another person, the court was required to impose at least a 45-year sentence. Because the court's 35-year sentence did not include the 25-year-to-life mandatory enhancement, it is void and must be vacated. Accordingly, the cause must be remanded to the trial court with directions to allow defendant to withdraw his guilty plea and proceed to trial, if he chooses.

¶ 25 B. Fines, Fees, and Assessments

¶ 26 Defendant argues he is entitled to a *per diem* offset of his \$4 youth-diversion fee and a reduction of his violent-crime-victims assessment. The State argues we need not address the issue because it is moot. We agree with the State.

¶ 27 "A case becomes moot when the issues involved in the trial court have ceased to exist because intervening events have made it impossible for the reviewing court to render effectual relief to the complaining party." *People v. Ousley*, 235 Ill. 2d 299, 305, 919 N.E.2d 875, 880 (2009). In the case *sub judice*, we have vacated defendant's conviction based on the sentencing error. As defendant's sentence has been vacated, so have the fines, fees, and assess-

ments that go along with it. Thus, the issue is moot and we need not address it.

¶ 28

### III. CONCLUSION

¶ 29 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 30 Reversed and remanded for further proceedings.