

NOTICE
Decision filed 10/31/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120451-U

NO. 5-12-0451

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Massac County.
)	
v.)	No. 11-CF-72
)	
CHARLES W. STEWART,)	Honorable
)	Joseph Jackson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Welch and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The record demonstrates that the additional 10-year term of imprisonment required by section 12-14(d)(1) of the Criminal Code of 1961 (720 ILCS 5/12-14(d)(1) (West 2010)) was imposed by the circuit court and not, as the defendant contends, by the Illinois Department of Corrections.

¶ 2 The defendant, Charles W. Stewart, appeals the sentences imposed on his aggravated criminal sexual assault convictions. He argues that the Illinois Department of Corrections (IDOC) lacked the constitutional authority to add 10-year terms to the sentences imposed by the circuit court. For the following reasons, we affirm.

¶ 3 Following a jury trial, Stewart was convicted of three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2010)) and one count of home

invasion (720 ILCS 5/12-11(a)(2) (West 2010)). Each aggravated criminal sexual assault count alleged that Stewart had committed the offense while armed with a knife. At the sentencing hearing, the court sentenced Stewart to 15 years' imprisonment for home invasion. With respect to his aggravated criminal sexual assault convictions, the court stated:

"The Court finds that on each of the Counts of Aggravated Criminal Sexual Assault, they should run consecutive to the Home Invasion charge and consecutive to each other, and that in each case, the Defendant should be sentenced to a period of 15 years in the Illinois Department of Corrections. There would be a period of mandatory supervised release of three years to life upon the expiration of any period of confinement in the Department of Corrections.

* * *

Now, by statute, which is not under control of the Court, the statute provides that whatever sentence the Court imposes on each of the Aggravated Criminal Sexual Assault Counts—and in this case, there was 15 years—the statute provides that in addition to that, there will be 10 years added to each of those charges. That's not something the Court does. That's a sentence that's added in addition to whatever sentence the Court imposes.

So that would be the sentence on that, on each of those. So that would be the sentence of the Court."

The court subsequently entered a written judgment order sentencing Stewart to 15 years' imprisonment for home invasion, and 15 years' imprisonment plus "an additional 10 years *** pursuant to section 12-14(d)(1)" of the Criminal Code of 1961 (720 ILCS 5/12-14(d)(1) (West 2010)) for each criminal sexual assault conviction.

¶ 4 On June 4, 2012, Stewart filed a motion to reconsider the sentence. At the hearing on the motion, defense counsel acknowledged that "the Court did apply the 10-year additional sentence based on the use of a weapon." In denying Stewart's motion, the court stated that "the jury verdict was what was required in this case to implicate the additional 10 years on each of those counts." Stewart appeals.

¶ 5 On appeal, Stewart argues that the circuit court sentenced him to four consecutive terms of 15 years' imprisonment, and that the IDOC lacked the constitutional authority to impose additional 10-year terms to his aggravated criminal assault convictions. The State contends that the additional 10-year terms were imposed by the circuit court, not the IDOC. We agree with the State.

¶ 6 The court's written judgment order specified the sentence for each of Stewart's four convictions. With respect to each aggravated criminal assault conviction, after providing that Stewart was to be confined to the IDOC for a term of 15 years, the order stated:

"IT IS FURTHER ORDERED that the Defendant shall serve an additional 10 years consecutively to the sentence imposed *** pursuant to 720 ILCS 12-14(d)(1) of Act 5 of Chapter 720 of the Illinois Compiled Statutes."

Thus, the written judgment order clearly demonstrates that the additional 10-year terms were imposed by the court and were part of the judicially imposed sentence.

¶ 7 Stewart argues that the written judgment order conflicts with the court's oral pronouncement of sentence, and that the oral pronouncement of sentence controls. It is well-settled that the oral pronouncement of the judge, rather than the written order, is the judgment of the court, and that where the oral pronouncement and the written judgment conflict, the oral pronouncement controls. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). However, apparent inconsistencies between the oral pronouncement of sentence and the written order can often be resolved by examining the record as a whole to determine whether the written order expresses the intent of the court's oral pronouncement, or conforms to the oral pronouncement's sense and meaning, but is set forth with greater specificity or clarity. See *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993). When viewing the record as a whole, if the written order is not inconsistent with the intent, sense and meaning of the oral pronouncement, the written order will be enforced. *Id.*

¶ 8 Viewing the record as a whole, we find that the written judgment order is not inconsistent with intent, sense and meaning of the oral pronouncement. At Stewart's first appearance, the court explained that aggravated criminal sexual assault was a Class X felony, the sentencing range for which was 6 to 30 years' imprisonment. The court further explained that by statute, an additional 10-year term would be added to whatever sentence was imposed in the 6- to 30-year range. In pronouncing sentence, the circuit court imposed 15-year terms of imprisonment on each aggravated criminal sexual assault

conviction, then explained that an additional 10-year term for each aggravated criminal sexual assault conviction was required by statute. Stewart argues that the court's statements that imposition of the additional 10-year term on the aggravated criminal sexual assault convictions was "not something the Court does" and that it was "a sentence that's added in addition to whatever sentence the Court imposes" demonstrate that the court did not impose the additional terms. We disagree. After making those statements, the court stated: "So that would be the sentence on that, on each of those. So that would be the sentence of the Court." These statements demonstrate that the additional 10-year terms were imposed by the court and were part of the judicially imposed sentence. In making the statements to which Stewart refers, the circuit court was explaining, albeit inartfully, that it was required by statute to add 10-year terms to whatever sentence the court otherwise imposed. Any ambiguity as to the court's meaning or intent is clarified by the written judgment order, wherein the court explicitly imposed a 15-year term and an additional 10-year term on each aggravated criminal sexual assault conviction.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Massac County is affirmed.

¶ 10 Affirmed.