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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 11 CR 17951 |
| |) | |
| DARRYL SMITH, |) | Honorable |
| |) | Angela M. Petrone, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Section 5-4.5-105 of the Unified Code of Corrections does not apply retroactively.

Therefore, defendant is not entitled to a new sentencing hearing.

¶ 2 On April 24, 2015, following a bench trial, the defendant, Darryl Smith, was found guilty of one count of attempted murder and sentenced to 30 years' imprisonment: 10 years on the attempted murder conviction and a 20-year enhancement for his personal discharge of a firearm during the commission of the attempted murder. The defendant appeals, contending that he

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should receive a new sentencing hearing under 730 ILCS 5/5-4.5-105 (West 2016), including the provision giving the sentencing court discretion to decline to impose the firearm enhancement.

¶ 3 The sole issue on appeal is whether section 5-4.5-105 of the Unified Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)) applies retroactively. Section 5-4.5-105 provides that in sentencing an individual who was under the age of 18 at the time of the commission of the offense, the court must consider the factors set forth in 5-4.5-105(a). Section 5-4.5-105(b) provides that the court has the discretion to decline to impose the applicable sentencing enhancement based on the possession of a firearm. 730 ILCS 5/5-4.5-105(a), (b) (West 2016).

¶ 4 At the time he committed the offense in this case, defendant was 17 years-of-age. Defendant contends that because his case was pending on appeal at the time the new section was enacted, he is entitled to receive a new sentencing hearing under the new law. Additionally, defendant contends that, even if subsection (a) is prospective, the fact that subsection (b) does not contain the effective date language indicates that the legislature intended subsection (b) to apply retroactively.

¶ 5 Our supreme court has expressly rejected the argument that section 5/5-4.5-105 applies retroactively. See *People v. Hunter*, 2017 IL 121306. The court noted that the language of subsection (a) limited its temporal reach, and the trial court's obligation set forth in that subsection to consider additional factors in mitigation at sentencing is controlled by the limiting language of the same subsection. *Hunter*, 2017 IL 121306, ¶ 48.

¶ 6 With respect to subsection (b), the supreme court stated "under section 4 [of the Statute on Statutes], subsection (b) of the new statute cannot apply to [defendants], who were sentenced before the statute took effect. *Hunter*, 2017 IL 121306, ¶ 52. The court also noted that

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defendants made no claim that error occurred in the trial court that would require vacatur of their sentences and remand for resentencing, thus giving them the option to be sentenced under subsection (b). *Hunter*, 2017 IL 121306, ¶ 55.

¶ 7 There is no dispute that the defendant's commission of the attempted murder and his sentencing in this case took place prior to the effective date of January 1, 2016. Defendant makes no claim of error that would entitle him to a new sentencing hearing. Therefore, defendant is not entitled to a new sentencing hearing, and we affirm the judgment of the trial court.

¶ 8 Affirmed.