

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).

FILED

November 28, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150630-U

NO. 4-15-0630

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CEDRICK ANTHONY LEE,)	No. 13CF1003
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court rejected defendant's argument that the trial court's acceptance of an insufficient factual basis rendered the judgment void, and therefore dismissed for lack of jurisdiction because defendant failed to file a motion to withdraw his guilty plea prior to challenging his plea on direct appeal.

¶ 2 In October 2014, defendant, Cedrick Anthony Lee, pleaded guilty to three counts of armed robbery. 720 ILCS 5/18-2(a)(1) (West 2012). Defendant did not file a motion to withdraw his guilty plea, but he challenges the plea on direct appeal.

¶ 3 On appeal, defendant asserts the trial court's acceptance of an insufficient factual basis in support of his plea rendered the judgment void. We disagree and dismiss for lack of jurisdiction.

¶ 4 I. BACKGROUND

¶ 5 In October 2013, a grand jury indicted defendant on six counts of armed robbery. 720 ILCS 5/18-2(a) (West 2012). Because counts I through III were dismissed when defendant entered his plea of guilty, we will not address them.

¶ 6 Count IV alleged defendant, on July 27, 2013, committed the offense of armed robbery in that he knowingly, while armed with a dangerous weapon—a bludgeon resembling a handgun—took property from the presence of Kimberly H., an employee of Circle K, by threatening the imminent use of force. 720 ILCS 5/18-2(a)(1) (West 2012). This robbery occurred at a Circle K in Bloomington, Illinois.

¶ 7 Counts V and VI are related to a separate armed robbery in Normal, Illinois. Those counts alleged defendant, on July 27, 2013, committed the offense of armed robbery in that he knowingly, while armed with a dangerous weapon—a bludgeon resembling a handgun—took property from the presence of Michelle D. (count V) and Gwendolyn M. (count VI), employees of Circle K, by threatening the imminent use of force. *Id.* Only counts V and VI are relevant to this appeal.

¶ 8 The case proceeded to a bench trial in September 2014. However, before the State finished presenting its evidence, defendant, *pro se*, expressed his desire to accept a plea agreement. The following month, defendant pleaded guilty to counts IV, V, and VI.

¶ 9 During the guilty-plea hearing, the trial court admonished defendant regarding his rights and determined the plea was knowingly and voluntarily made. As the factual basis, the trial court considered evidence presented during the trial and additional information offered by the State. We will briefly outline the evidence relating to counts V and VI only to the extent necessary to resolve this appeal.

¶ 10 Michelle D. testified, on July 27, 2013, around 2 a.m., she was working at the Circle K gas station when a man, later identified by Michelle D. in open court as defendant, entered the store. Defendant walked around for a few minutes, and then approached employee Gwendolyn M., who was still in training, and demanded that she give him money. Gwendolyn M. called Michelle D. over for assistance. Defendant brandished what appeared to be a firearm. Michelle D. testified she emptied the contents of two cash registers into a bag held by Gwendolyn M. Defendant then ordered the women to lie on the floor, at which time he fled. The incident was caught on the Circle K's surveillance camera and defendant was later apprehended.

¶ 11 After considering the factual basis, the trial court accepted defendant's plea of guilty and sentenced him to 25 years' imprisonment on each count. Defendant did not file a motion to withdraw his plea.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues the trial court erred in determining the State presented a sufficient factual basis for finding him guilty of both counts V and VI. Before we reach the merits of the appeal, the State asserts we lack jurisdiction due to defendant's failure to file a motion to withdraw his guilty plea.

¶ 15 Whether we have jurisdiction over a case is a threshold issue we must address before reaching the merits of the appeal. *People v. Lewis*, 234 Ill. 2d 32, 37, 912 N.E.2d 1220, 1223 (2009). Under Supreme Court Rule 604(d) (eff. Feb. 1, 2005), a defendant who wishes to appeal from a judgment entered on a negotiated guilty plea must first file a motion with the trial court to withdraw the guilty plea and vacate the judgment. *People v. Claudin*, 369 Ill. App. 3d

532, 533, 861 N.E.2d 227, 229 (2006). "Compliance with Rule 604(d) is a condition precedent to an appeal, and if defendant fails to meet this requirement, the appellate court must dismiss the appeal." *Id.*

¶ 16 Defendant argues he was not required to file a motion to withdraw his guilty plea prior to taking this appeal because the trial court's order was void, and a void order may be attacked at any time. The supreme court recognizes two circumstances in which a judgment will be deemed void: (1) if it is entered by a court lacking personal or subject-matter jurisdiction, or (2) where the judgment was based on a facially unconstitutional statute. *People v. Price*, 2016 IL 118613, ¶ 31, 76 N.E.3d 1240. Defendant relies on the first of those here by arguing the trial court lacked personal or subject-matter jurisdiction. We review *de novo* whether an order is void. *People v. Hubbard*, 2012 IL App (2d) 120060, ¶ 16, 978 N.E.2d 719.

¶ 17 Defendant first asserts counts V and VI fail to adequately charge an offense, and the trial court therefore lacked jurisdiction over the charges. We disagree the counts were improperly charged. Counts V and VI both track the statutory language of the armed-robbery statute (720 ILCS 5/18-2(a)(1) (West 2012)) and allege different facts—that defendant, while armed with a bludgeon, committed armed robberies against two different victims by taking money from each of them by threatening the imminent use of force. See *People v. Wright*, 2013 IL App (3d) 100522, ¶ 17, 992 N.E.2d 622 (an indictment is not void where the language in the indictment tracks the statutory language for the offense). Moreover, the charges provided (1) the name of the offense, (2) the statutory provision allegedly violated, (3) the nature and elements of the offense, (4) the date and county of the offense, and (5) the name of the accused, as required by section 111-3(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(a) (West 2012)). Because the offense was committed in Normal, the indictment was properly filed in

McLean County, thus giving the trial court jurisdiction over the claim. *People v. Devine*, 295 Ill. App. 3d 537, 543, 692 N.E.2d 785, 789 (1998) (the trial court is vested with jurisdiction when the charging instrument charges the accused with a crime).

¶ 18 Defendant next challenges the factual basis, arguing the State failed to present evidence that he took property from both victims; rather, defendant asserts the factual basis only establishes that Michelle D. removed the money from the registers and placed the money in a bag held by Gwendolyn M. Thus, according to defendant, without a factual basis to support both counts included in the plea agreement, the trial court lacked the jurisdiction to accept his guilty plea.

¶ 19 Illinois Supreme Court Rule 402(c) (eff. Jul 1, 2012) requires the trial court to determine a sufficient factual basis exists to support the plea of guilty. However, "[e]ven an error of constitutional magnitude does not automatically divest the court of jurisdiction or render a judgment void." *People v. Smith*, 406 Ill. App. 3d 879, 887, 941 N.E.2d 975, 983 (2010). "[A] violation of Rule 402, a procedural rule, does not defeat the trial court's jurisdiction to enter convictions based on a defendant's pleas and such a violation, even if constitutional in dimension, renders a conviction merely voidable." *Id.*; see also *People v. Speed*, 318 Ill. App. 3d 910, 916, 743 N.E.2d 1084, 1088 (2001). Because any errors with respect to the factual basis are voidable rather than void, defendant was obligated to file a motion to withdraw his guilty plea before challenging his plea on appeal.

¶ 20 Because defendant failed to file a motion to withdraw his guilty plea prior to initiating this appeal, we dismiss the appeal.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, we dismiss this appeal for lack of appellate jurisdiction. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 23 Dismissed.