

NOTICE
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2017 IL App (5th) 130556-U

NO. 5-13-0556

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,)	St. Clair County.
)	
v.)	No. 12-CF-848
)	
DARRIUS CRUMP,)	Honorable
)	Robert B. Haida,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Barberis* concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the State's motion, and remand this matter to the circuit court for entry of a final judgment on the remaining three counts for which the defendant has been convicted.

¶ 2 Following a jury trial, the defendant, Darrius Crump, was found guilty of five counts of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)), for discharging a firearm five times into the victim, Cortez Mason. All of the convictions were Class X

*Justice Stewart was originally assigned to participate in this case. Justice Barberis was substituted on the panel subsequent to Justice Stewart's retirement and has read the briefs and listened to the recording of oral argument.

felonies. The defendant was sentenced to consecutive terms of eight years' imprisonment on the first two counts. The circuit court, however, withheld sentencing on the remaining three counts. The defendant appeals from all five of his convictions, claiming that: (1) the State failed to prove that he was guilty of count V, (2) during closing arguments, the State misstated facts and applicable law, which denied him a fair trial, and (3) he was denied the effective assistance of counsel because his attorney submitted an incomplete self-defense instruction for the jury's consideration. For the reasons that follow, we remand this cause of action to the trial court to enter a final judgment.

¶ 3

FACTS

¶ 4 The defendant was charged by information in the circuit court of St. Clair County with five counts of aggravated battery with a firearm, all Class X felonies. The information alleged that on June 5, 2012, the defendant discharged a .38-caliber Smith & Wesson revolver handgun into the victim's chest (count I), right leg (count IV), right arm (count V), and twice in his abdomen (counts II and III). Following a jury trial, the defendant was found guilty of all five of the charged offenses.

¶ 5 On August 28, 2013, the defendant appeared for sentencing. During the hearing, the State requested that the trial court make a finding of severe bodily injury on all five counts of aggravated battery with a firearm pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2014)). By making such a finding, the State posited that the court was mandated to impose consecutive sentences where one of the offenses for which the defendant was convicted was a Class X felony, and the defendant inflicted severe bodily injury. The State noted that a single count of

aggravated battery with a firearm mandated a sentence of not less than 6 years, and not more than 30 years (730 ILCS 5/5-4.5-25(a) (West 2014)). The State also pointed out that under section 5-8-4(f)(2) of the Unified Code of Corrections (730 ILCS 5/5-8-4(f)(2) (West 2014)), the aggregate of consecutive sentences for offenses that were committed as part of a single course of conduct could not exceed the sum of the maximum terms for the two most serious felonies involved. According to the State, the court was required to sentence the defendant consecutively on all five counts of aggravated battery with a firearm, where the victim suffered severe bodily injury. As a result, the State argued that the minimum aggregate sentence the defendant could receive was 30 years' imprisonment, *i.e.*, a 6-year sentence on each conviction that would run consecutively. The State also argued that the aggregate maximum sentence could not exceed a term of 60 years' imprisonment. Put simply, it was the State's position that the minimum aggregate sentence the defendant could receive was 30 years, and the maximum aggregate sentence could not exceed 60 years. Based upon that range, the State requested that the defendant receive a 10-year sentence for each of the five counts that the defendant had been convicted of, and that each sentence run consecutively, for a total of 50 years' imprisonment.

¶ 6 The defendant disagreed with the State's interpretation of the statutory scheme for determining the appropriate sentence. According to the defendant, under section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2014)), sentences are required to run consecutively, but under section 5-8-4(f)(2) of the Unified Code of Corrections (730 ILCS 5/5-8-4(f)(2) (West 2014)), consecutive sentencing is not

required after imposing a sentence on two counts. The defendant also disagreed that the victim had suffered severe bodily injury. As a result, the defendant requested a sentence of six years in the Department of Corrections. Alternatively, in the event that the court made a finding of severe bodily injury, the defendant requested that he be sentenced to the minimum of 12 years' imprisonment.

¶ 7 During the sentencing hearing, while considering the opposing views from the State and the defendant on the proper application of the statutes at issue, the court stated, "I'm looking for guidance on whether I impose sentence on all five counts or only two of five counts." The State responded by informing the court that it was required to sentence the defendant on all counts, but the issue was whether or not the sentences were to run consecutively.

¶ 8 Toward the end of the hearing, the trial court made a finding of severe bodily injury as to counts I and II, and sentenced the defendant to consecutive terms of 8 years' imprisonment on each of those two counts, for a total of 16 years. The trial court then stated that it was withholding sentencing on counts III, IV, and V due to some level of confusion about what the appropriate sentence should be in the defendant's case. Specifically, the court mentioned, "I'm not imposing judgment on the other three counts at this time pending further direction from the appellate court." Before adjourning, the State sought clarification from the court regarding the defendant's sentence. The following colloquy ensued:

"The State: Your Honor, so we've got a conviction on all five counts.

The Court: Right.

The State: You're withholding sentence on three of them.

The Court: Right.

The State: And I'm still asking that you make a finding on all five counts of severe bodily injury. And I think that's what then gets us to the answer–

The Court: The only other count I would find severe bodily injury on would be Count 3, I think...

Ms. Hodel: So there was one in the chest and two in the abdomen.

The Court: Right. I would find severe bodily injury on those three."

The court concluded that it would not find severe bodily injury on counts IV and V, and then adjourned the sentencing hearing. On November 18, 2013, the defendant filed his notice of appeal.

¶ 9 Following the notice of appeal, the State filed a *mandamus* action with our Illinois Supreme Court requesting that the trial court impose consecutive sentences where required to by statute, and to impose sentence on each conviction returned by the jury. Alternatively, the State filed a motion for supervisory order seeking to compel the trial court to sentence the defendant in conformity with the Unified Code of Corrections. Both motions were denied. See *People ex rel. Kelly v. Haida*, No. 117245 (order entered Mar. 4, 2014); *People ex rel. Kelly v. Haida*, No. 117250 (order entered Mar. 18, 2014).

¶ 10 While this appeal was pending, but prior to oral argument, the State filed a motion for remand for imposition of complete judgment. In its motion, the State maintained that under section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2014)), consecutive sentences must be imposed on counts I, II, and III, because the

circuit court made a finding of severe bodily injury. Furthermore, the State also argued that this cause must be remanded for the circuit court to impose a sentence on all of the defendant's convictions. In response, the defendant asserted that the State is not allowed to appeal his sentence, or seek to have it increased. In the exercise of judicial economy, we examine the issue raised by the State, as it is dispositive of the outcome of this appeal.

¶ 11

ANALYSIS

¶ 12 The final judgment in a criminal case is the imposition of sentence. *People v. Robinson*, 267 Ill. App. 3d 900, 907, 642 N.E.2d 1317, 1322 (1994). The sentence is a necessary part of a complete judgment of guilt. *Robinson*, 267 Ill. App. 3d at 907, 642 N.E.2d at 1322. In the absence of the imposition of a sentence, an appeal cannot be entertained. *People v. Caballero*, 102 Ill. 2d 23, 51, 464 N.E.2d 223, 237-38 (1984). Indeed, the proper remedy for a failure to enter a final judgment is to remand the case back to the circuit court for entry of a final judgment. *Robinson*, 267 Ill. App. 3d at 907, 642 N.E.2d at 1322.

¶ 13 In this case, it is clear that the circuit court intentionally withheld sentencing on three of the five counts of aggravated battery with a firearm, despite the fact that the defendant had been convicted on all five counts. From our review of the record, it appears that the circuit court intentionally withheld sentencing on counts III, IV, and V in order to receive guidance from this court because of the trial court's uncertainty regarding how the sentences should be imposed, if at all. By doing so, the trial court has, in essence, sought an advisory opinion from this court prior to the completion of sentencing on all counts for which the defendant has been convicted. Appellate courts cannot render

advisory opinions or give legal advice, as requested by the trial court. Therefore, it would be improper for us to impose sentence on the defendant, as this court has a different role than the trial court. In the absence of the imposition of a sentence, a court of review cannot entertain an appeal (*Caballero*, 102 Ill. 2d at 51, 464 N.E.2d at 237-38), and the proper remedy is to remand the case to the circuit court for entry of a final judgment (*Robinson*, 267 Ill. App. 3d at 907, 642 N.E.2d at 1322). Accordingly, we grant the State's motion, and remand this cause of action back to the circuit court for entry of a final judgment on the remaining counts for which the defendant has been convicted. In doing so, we do not reach the merits of defendant's appeal, in light of our finding that the judgment is not final and this court has no authority to act until after such time as the judgment becomes final.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we grant the State's motion to remand this cause of action to the circuit court for entry of a final judgment.

¶ 16 Remanded.