NOTICE
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2017 IL App (5th) 140208-U

NO. 5-14-0208

NOTICE
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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	Nos. 90-CF-17 & 90-CF-18
	)	
STEVEN CRUMP,	)	Honorable
	)	Kimberly G. Koester,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's plea agreement was valid and enforceable, and the convictions based on his plea were neither void nor voidable, where the defendant's sentence of natural life for armed robbery was reduced to 60 years while his natural life sentence for murder remained intact because the modification did not impact an essential term of the plea agreement.

¶ 2 In 1990, the defendant, Steven Crump, pled guilty to first-degree murder, aggravated kidnapping, and armed robbery. In exchange for his plea, the State dropped additional charges and agreed not to pursue the death penalty. Pursuant to the plea agreement, the defendant was sentenced to concurrent sentences of natural life on the charges of murder and armed robbery and 20 years on the kidnapping charge. In 2002,

however, this court reduced the defendant's armed robbery sentence to 60 years, finding that the sentence was not authorized by law and, therefore, void. In 2013, the defendant filed a petition for relief from judgment, arguing that because his plea bargain was based, in part, on a sentence later found to be void, his guilty plea and the convictions based on his plea were likewise void. He appeals an order of the trial court dismissing his petition for relief from judgment, arguing that his conviction was void *ab initio* and could therefore be challenged at any time. We affirm.

¶ 3 The charges at issue in this appeal stem from two separate incidents that occurred in April 1989. In case No. 90-CF-17, the defendant was charged with armed robbery. In No. 90-CF-18, he was charged with first-degree murder, armed robbery, aggravated kidnapping, and concealment of a homicidal death. As noted, the defendant entered into a negotiated plea agreement involving both cases. Pursuant to that agreement, the defendant pled guilty to the charges of murder and aggravated kidnapping in No. 90-CF-18 and the armed robbery charge in No. 90-CF-17, and he agreed to the imposition of concurrent sentences of natural life on both the murder and armed robbery charges and 20 years on the aggravated kidnapping charge. The defendant's eligibility for a natural life sentence for armed robbery was premised on the habitual offender statute. See Ill. Rev. Stat. 1987, ch. 38, ¶ 33B-1 (now at 730 ILCS 5/5-4.5-95 (West 2016)). In exchange for the defendant's plea, the State dropped the two remaining charges and agreed not to seek the death penalty. The court accepted the defendant's plea and sentenced him in accordance with the agreement. The defendant did not file a direct appeal.

¶ 4 In March 2001, the defendant filed a postconviction petition, challenging the natural life sentence for armed robbery in No. 90-CF-17 on the basis of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The postconviction court dismissed the petition, finding it to be frivolous and patently without merit.

¶ 5 The defendant appealed, arguing only that the sentence was not authorized under the habitual offender statute. This court agreed. We noted that the habitual offender statute provided that if a defendant who was previously convicted two times of first-degree murder, criminal sexual assault, or any Class X felony was convicted of a third such offense, the defendant must be adjudged a habitual offender and sentenced to natural life in prison. However, the statute only applies if (1) the second offense is committed after the conviction for the first offense, and (2) the third offense is committed after the conviction for the second offense. *People v. Crump*, No. 5-01-0430, order at 4 (July 2, 2002) (unpublished order under Supreme Court Rule 23) (quoting Ill. Rev. Stat. 1987, ch. 38, ¶ 33B-1(d)(3) & (d)(4)). We explained that this provision was not applicable to the defendant due to the timing of his other convictions. *Id.* at 4. The defendant was convicted of armed robbery in 1983. *Id.* at 2-3. In April 1989, he committed the offenses at issue in this case. In the same month, he committed another armed robbery, to which he pled guilty in August 1989. *Id.* at 3. The defendant committed the armed robbery in No. 90-CF-17 after he was convicted of the first armed robbery in 1983; however, this offense was committed *prior to* his convictions for murder in No. 90-CF-18 and the armed robbery in the unrelated 1989 case. *Id.* at 4. Thus, we explained, the requirement

that the third offense be committed after the conviction for the second offense was not met. *Id*.

¶ 6 We went on to explain that "[a] sentence that does not conform to a statutory requirement is void, and this court is authorized to correct a [void] sentence at any time." *Id*. at 5 (citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995), *overruled in relevant part by People v. Castleberry*, 2015 IL 116916). We therefore modified that sentence by reducing it to 60 years, the statutory maximum extended sentence. We affirmed the defendant's convictions in both cases. *Id*.

¶ 7 In finding the unauthorized natural life sentence to be void, rather than merely voidable, this court relied on the "void sentence rule." Under then-controlling Illinois Supreme Court precedent, courts treated any sentence that did not conform to statutory requirements as void. See *Arna*, 168 Ill. 2d at 113. As we will discuss in more detail later in this decision, however, our supreme court subsequently abolished the void sentence rule. *Castleberry*, 2015 IL 116916, ¶ 19. A central issue in this case is what if any impact the abolishment of the void sentence rule has on the defendant's related claim concerning the validity of his plea agreement.

¶ 8 In November 2013, the defendant filed the petition for relief from judgment at issue in this appeal pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). He argued, for the first time, that because his sentence for armed robbery was void, the entire plea agreement and his convictions in both cases were also void. See *People v. White*, 2011 IL 109616, ¶ 31; *People v. Hare*, 315 Ill. App. 3d 606, 610 (2000). The trial court dismissed the defendant's petition, finding that (1) the petition

was not timely filed within two years after the date of his convictions (735 ILCS 5/2-1401(c) (West 2012)); (2) the defendant failed to set forth a meritorious claim or defense (*Ligon v. Williams*, 264 Ill. App. 3d 701, 706 (1994) (citing *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986))); and (3) he did not exercise due diligence in presenting his defense to the court (*id.*). The defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 9 The defendant argues that his armed robbery sentence was an essential part of his plea agreement. He further argues that because that sentence was subsequently found to be void, the plea agreement and the convictions based on his plea were likewise void. As such, he contends, he may challenge the void judgments of conviction at any time, and the usual requirements of showing due diligence and a meritorious defense do not apply. See *Ligon*, 264 Ill. App. 3d at 706. We disagree. The defendant correctly contends that if a judgment of conviction is void, the usual requirements of section 2-1401, including the two-year limitation period, do not apply. *Id.* However, we do not agree with his contention that the judgments of conviction were void.

¶ 10 The defendant correctly notes that when a sentence that is an essential part of a plea agreement is later modified because the sentence does not conform to statutory requirements, the plea agreement ordinarily becomes unenforceable, and the defendant must therefore be given an opportunity to withdraw his plea. See, *e.g.*, *White*, 2011 IL 109616, ¶ 31; *Hare*, 315 Ill. App. 3d at 610. This rule is premised largely on principles of contract law. As the Second District explained, plea agreements are governed by "principles of contract law, subject to considerations of constitutional due process."

Hare, 315 Ill. App. 3d at 609 (citing *People v. Evans*, 174 Ill. 2d 320, 326-27 (1996)). We find its discussion instructive.

¶ 11 In *Hare*, the defendant pled guilty to residential burglary in a negotiated plea agreement. *Id.* at 607. In exchange for his plea, the State agreed to recommend a sentence of four years. *Id.* at 607-08. Ordinarily, four years is the minimum sentence prescribed by statute for the offense. *Id.* at 607 (citing 720 ILCS 5/19-3(b) (West 1996)). However, due to the applicability of recidivism provisions, the court was required to sentence the defendant as a Class X offender. *Id.* (citing 730 ILCS 5/5-5-3(c)(8) (West 1996)). As such, the minimum sentence authorized was six years. *Id.* at 608 (citing 730 ILCS 5/5-8-1(a)(3) (West 1996)).

¶ 12 The trial court initially accepted the plea agreement and sentenced the defendant to four years in prison in accordance with its terms. A few days later, however, the court entered a *sua sponte* order vacating the judgment. *Id.* In its order, the court noted that because the defendant was subject to sentencing as a Class X offender, the minimum sentence it could impose was six years. The court gave the defendant three options–he could negotiate a new plea agreement, plead guilty in an open plea, or withdraw his guilty plea. *Id.*

¶ 13 The defendant filed a motion requesting "specific performance" of the plea agreement. *Id.* He asserted that when the parties agreed to a four-year sentence, they did so erroneously believing this to be the minimum authorized sentence. He argued that the agreement thus obligated the State to offer the actual minimum sentence of six years. *Id.*

The court denied the motion, noting that the parties agreed to a specific term of four years. *Id.*

¶ 14 The defendant appealed. The Second District agreed with the trial court that the agreement reached by the defendant and the State included a specific sentence of four years, not "the minimum authorized sentence, whatever that might be." *Id.* at 609. The court then applied general principles of contract law to the plea agreement. The court noted that, under contract law, when an essential term of a contract is found to be unenforceable, it renders the entire agreement unenforceable. *Id.* at 610 (citing Restatement (Second) of Contracts § 184(1) (1981)). This rule exists because a contract requires consideration from both parties. *Id.* (citing *Moehling v. W.E. O'Neil Construction Co.*, 20 Ill. 2d 255, 265 (1960)). The *Hare* court found the sentence concession offered by the State to be an essential part of the plea agreement because it was "a major element of the consideration for [the] defendant's guilty plea." *Id.* The court therefore concluded that the plea agreement could not be enforced. *Id.*

¶ 15 Other Illinois courts have likewise relied on contract principles in finding plea agreements unenforceable under circumstances involving agreed-upon sentences that were less than the minimum sentence authorized by law. See, *e.g.*, *People v. Gregory*, 379 Ill. App. 3d 414, 420-21 (2008) (following *Hare*, finding that an agreed sentence cap of three years was an essential part of a plea agreement, and concluding that because this cap was three years less than the minimum sentence, the plea agreement was unenforceable and void); *People v. Johnson*, 338 Ill. App. 3d 213, 216 (2003) (finding that the State and the defendant "now necessarily lack agreement" where the defendant

pled guilty in exchange for a promise that he would be sentenced to probation, but he was not eligible for probation).

¶ 16 Prior to our supreme court's recent decision in *Castleberry*, courts found additional support for this conclusion in the void sentence rule. The *Hare* court, for example, stated that "the illegality [of the unauthorized sentence] voids the entire agreement and not merely the sentence." *Hare*, 315 Ill. App. 3d at 610. In *People v. Caban*, the First District followed the Second District's ruling in *Hare*. *People v. Caban*, 318 Ill. App. 3d 1082, 1087-88 (2001). In explaining why it found *Hare* persuasive, the *Caban* court emphasized "our supreme court's repeated finding that the trial court generally has no authority to impose punishment other than that provided by statute." *Id*. at 1088. The court noted that plea agreements are governed "largely by contract law," and then explained that "[o]ne of the most elementary principles of contract law is that an illegal contract is void *ab initio*." *Id*. at 1089.

¶ 17 As noted previously, however, the void sentence rule has since been abolished. In *Castleberry*, the supreme court explained that " '[w]hether a judgment is void or voidable presents a question of jurisdiction.' " *Castleberry*, 2015 IL 116916, ¶ 11 (quoting *People v. Davis*, 156 Ill. 2d 149, 155 (1993)). A judgment entered without jurisdiction is void and may be challenged at any time. *Id*. By contrast, a judgment " 'entered erroneously by a court having jurisdiction' " is merely voidable and is not generally subject to collateral attack. *Id*. (quoting *Davis*, 156 Ill. 2d at 155-56).

¶ 18 Jurisdiction, the court explained, consists of two elements–subject matter jurisdiction and personal jurisdiction. *Id.* ¶ 12. Subject matter jurisdiction refers to the

court's power–or inherent authority–to hear a certain type of case. *Id.* ¶¶ 12-13. Personal jurisdiction refers to the court's authority to " ' "bring a person into its adjudicative process." ' " *Id.* ¶ 12 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009), quoting Black's Law Dictionary 870 (8th ed. 2004)). The void sentence rule was premised on the notion that because trial courts are not authorized to impose sentences that do not conform to applicable statutes, they exceed their jurisdiction when they do impose such sentences. *Id.* ¶ 13 (quoting *Davis*, 156 Ill. 2d at 156, and *Arna*, 168 Ill. 2d at 113). The court further explained, however, that this notion is at odds with the Illinois Constitution, which grants trial courts jurisdiction–that is, inherent power or authority–over "all justiciable matters." *Id.* ¶ 18 (citing Ill. Const. 1970, art. VI, § 9). The court thus concluded that the void sentence rule is "constitutionally unsound" and must be abolished. *Id.* ¶ 19.

¶ 19 The defendant acknowledges that the holding of *Castleberry* applies retroactively. See *People v. Price*, 2016 IL 118613, ¶ 26 (holding that *Castleberry* applies to cases pending when it was decided); *People v. Wallace*, 2016 IL App (1st) 142758, ¶ 19 (holding that *Castleberry* applies retroactively). He contends, however, that because this court previously found his sentence to be void, that sentence remains void, and we should thus find the plea agreement and convictions based upon it to be void as well. We are not persuaded.

¶ 20 We note that *Castleberry*, while relevant, is not directly on point. Here, the defendant's natural life sentence for armed robbery has already been modified, and neither party is arguing that the original sentence should be reinstated. The question,

then, is not whether this court correctly determined that the original sentence was void as opposed to voidable. Rather, the questions we must answer are (1) what if any impact our previous modification of the defendant's armed robbery sentence had on the enforceability of the plea agreement and (2) whether any resulting defects render the defendant's plea and convictions void or voidable. It is worth noting that in *Castleberry*, the supreme court emphasized that void judgments occupy a "unique place" in the judicial system and, as such, only the most fundamental defects render a judgment void. *Castleberry*, 2015 IL 116916, ¶ 15. For this reason, the court "narrow[ed] the universe of judgments" that were considered to be void. *Price*, 2016 IL 118613, ¶ 31. Nevertheless, for the reasons that follow, we conclude that the reduction in the defendant's armed robbery sentence does not make the plea agreement unenforceable or give the defendant grounds to vacate his plea. As such, the plea agreement and resulting convictions are neither void nor voidable.

¶ 21 We reach this conclusion for three reasons. First, as stated previously, courts have found plea agreements to be unenforceable where a sentence that was an essential part of the agreement is subsequently found to be improper and is vacated or modified. *Hare*, 315 Ill. App. 3d at 610. However, plea agreements do *not* become unenforceable *unless* the modified sentence is an essential part of the agreement. *Gregory*, 379 Ill. App. 3d at 419. In the instant case, we find that the sentence was not an essential part of the agreement.

¶ 22 Whether an agreed-upon sentence is an "essential" part of the agreement depends on its "relative importance" to the agreement as a whole. *Id*. at 420. The Second District

addressed this question in *People v. Montiel*, 365 Ill. App. 3d 601 (2006), and *People v. McNett*, 361 Ill. App. 3d 444 (2005). Although neither case is precisely analogous to the case before us, we find both cases instructive.

¶ 23 In *Montiel*, the defendant pled guilty to a drug offense in exchange for a sentence cap and a recommendation of impact incarceration (boot camp). There was no mention of fees or fines during the plea proceedings. *Montiel*, 365 Ill. App. 3d at 603. The trial court accepted the plea and imposed the agreed-upon sentence and recommended the defendant for the boot camp program. *Id.* The court also imposed fines; however, they were lower than the fine that was mandated by statute. The defendant appealed, arguing that he was entitled to a $5-per-day credit against the fines that were imposed. *Id.* at 604 (citing 725 ILCS 5/110-14 (West 2002)). The appellate court agreed; but the court also held that the trial court must correct the defendant's sentence to include all nondiscretionary fines. *Id.*

¶ 24 The court went on to note that the plea agreement did not become void or unenforceable because of this modification to the defendant's sentence. *Id.* at 606. This was so, the court explained, because "fines and fees are a minor issue" and the addition of the required fines did not "disturb the essential terms of the plea agreement." *Id.* at 607. Here, we acknowledge that the term of the defendant's armed robbery sentence is not an inherently "minor issue" as are fines and fees. Nevertheless, for reasons we will explain in more detail later in this decision, we do not believe the modification of that sentence in light of the circumstances in this case disturbs the essential terms of the agreement.

¶ 25 In *McNett*, the defendant pled guilty in three cases to multiple charges of driving under the influence of alcohol and driving while his license was revoked. *McNett*, 361 Ill. App. 3d at 445. In exchange for the defendant's plea, the State dropped a charge of aggravated driving under the influence and recommended concurrent 30-month prison sentences in two of the cases and a consecutive sentence of 30 months of probation in the third case. One condition of probation was that the defendant was required to serve 18 months of periodic imprisonment. *Id.*

¶ 26 After the defendant's release from prison, he filed a "Motion to Vacate Sentence of Periodic Imprisonment." *Id.* at 446. He argued that periodic imprisonment in a work release program was limited by statute to 12 months. *Id.* (citing 730 ILCS 5/5-7-1 (West 1998)). The trial court agreed, and reduced the requirement of periodic imprisonment from 18 months to 12 months. *Id.* The defendant then filed a "Petition for Post-Conviction Relief and Motion to Vacate Illegal and Void Plea Agreement," which the trial court denied. The defendant appealed. *Id.*

¶ 27 On appeal, the defendant argued that, under *Hare*, his entire plea agreement as well as the convictions and sentences based upon it were void. The Second District rejected this argument, finding that "the void terms of the sentence were too small a part of the agreement as a whole to constitute essential terms." *Id.* at 447. The court framed the question before it as "whether [the court] should deem the six months of periodic imprisonment cut from [the] defendant's sentence to be an essential part of the agreement." *Id.* at 448. In concluding that the 6 months were not essential, the court noted that only 6 months of a 60-month sentence were impacted. As such, the

modification was a significantly smaller change than the two years that had to be added to the defendant's four-year sentence in *Hare*. *Id*. at 448-49. The appellate court also emphasized that the trial court "did not cut those six months from the sentence, but merely converted them from probation conditioned on work release to regular probation. *Id*. at 449.

¶ 28 Here, as in *McNett*, and unlike the other cases we have discussed, one of the defendant's sentences was reduced. Unlike *McNett*, it is impossible to determine precisely how much less time the defendant will spend serving the 60-year modified sentence for armed robbery than he would have spent serving the original natural life sentence. However, as a practical matter, once the armed robbery sentence is discharged, the defendant will remain in prison serving his natural life sentence for murder. The fact that the defendant may serve an undetermined number of years serving one sentence, rather than two concurrent sentences, does not alter the essential terms of the bargain–the defendant avoided the possibility of the death penalty, while the State was able to protect the public from the defendant for the remainder of his life without incurring the expense of a trial.

¶ 29 The defendant nevertheless argues that the natural life sentence for armed robbery was an essential part of the plea agreement because the State relied on the "insurance policy" of a second life sentence. He points out that at his plea hearing, the State indicated that it would otherwise seek the death penalty, and the trial court indicated that the defendant would likely have been found eligible for the death penalty. He also points to language in this court's 2002 decision modifying his armed robbery sentence. In

determining that it was appropriate to modify the sentence to 60 years, the statutory maximum, we explained that "it was obvious, based on [the] defendant's history of criminality, that the court wanted [the] defendant to serve the maximum possible sentence to protect the public from further criminal conduct by [the] defendant." *Crump*, No. 5-01-0430, order at 5. None of this leads us to conclude that the "insurance policy" of a second concurrent life sentence was a crucial consideration in the State's decision to enter into the plea agreement. We conclude that the difference between the 60-year modified armed robbery sentence and the original natural life sentence was not an essential part of the bargain.

¶ 30 The second reason for our decision is the fact that one of the defendant's sentences was reduced, not increased. As we mentioned earlier, plea agreements are governed by contract law "*subject to considerations of constitutional due process*." (Emphasis added.) *Hare*, 315 Ill. App. 3d at 609; see also *Caban*, 318 Ill. App. 3d at 1089. When a defendant pleads guilty in exchange for sentence concessions or other promises from prosecutors, the defendant is waiving his important trial rights and is deprived of liberty as a result. *Caban*, 318 Ill. App. 3d at 1087 (quoting *Mabry v. Johnson*, 467 U.S. 504, 507-08 (1984)). For this reason, plea agreements must be judicially enforced to provide adequate safeguards to defendants who give up these important rights based on the promise of concessions from the State. *Id.*; see also *People v. Hudson*, 2012 IL App (2d) 100484, ¶ 17 (noting that due process concerns require that a defendant be allowed to withdraw his guilty plea where "a court accepts a plea agreement that provides that a defendant will receive a sentence *less* severe than is legally possible" (emphasis in

original) (citing *White*, 2011 IL 109616)). The constitutional concerns raised in circumstances in which a court is unable to enforce a plea agreement because it provides for an illegally low sentence are not implicated when the opposite occurs, as it did in this case. In cases like this, the reduction in the defendant's sentence does not deprive the defendant of the benefit of the plea bargain; instead, the necessary reduction of his sentence results in a "windfall to the defendant." *Hudson*, 2012 IL App (2d) 100484, ¶ 16.

¶ 31 Third, even under the void sentence rule, the defendant could not have prevailed. In *People v. Hudson*, the Second District explained that a sentence that exceeds the statutorily-prescribed maximum " 'is void only to the extent that it exceeds what the law permits. The legally authorized portion of the sentence remains valid.' " *Id.* (quoting *People v. Brown*, 225 Ill. 2d 188, 205 (2007)). The court went on to explain that once the sentence was reduced to the authorized length, it was a lawful sentence and "no problems remain[ed]" that needed to be addressed by allowing the defendant to withdraw his plea. *Id.* ¶ 20.

¶ 32 The defendant argues, however, that he did not get what he bargained for in the plea agreement due to the subsequent repeal of the death penalty. He points out that, although the death penalty was repealed in 2011, 21 years after he pled guilty, a moratorium on its imposition went into effect in 2000. Thus, he asserts, had he not pled guilty, he almost certainly would not have been put to death before the moratorium went into effect. He contends that this renders the State's promise not to seek the death penalty meaningless.

¶ 33 We cannot accept the defendant's contention that the subsequent moratorium and repeal of the death penalty rendered his plea agreement unenforceable. At the time he pled guilty, it was likely that he would face the death penalty if he did not enter into the plea agreement. It was not until 2000, 10 years after the defendant pled guilty in this case, that the moratorium went into effect. While we agree with the defendant that it is unlikely that he would have been put to death within this time period had he not pled guilty, it is not out of the realm of possibility. Moreover, accepting this argument would mean that *any* plea agreement involving a prosecutorial agreement not to seek the death penalty is unenforceable, assuming the defendants are not procedurally foreclosed from raising the claim. This result is untenable.

¶ 34 Because we have concluded that the reduction of the defendant's sentence for armed robbery did not render his convictions void, we turn to the requirements of section 2-1401. In pertinent part, that statute provides that a petition for relief from judgment must be filed within two years after entry of the judgment. 735 ILCS 5/2-1401(c) (West 2012). In addition, a petitioner must demonstrate that he has a meritorious claim or defense, and that he exercised due diligence in attempting to present that claim or defense to the trial court. *Ligon*, 264 Ill. App. 3d at 706 (citing *Smith*, 114 Ill. 2d at 220-21). Here, the defendant filed his petition for relief from judgment 23 years after the judgments of conviction were entered against him and 11 years after this court modified his armed robbery sentence. He has alleged no reason he could not have attempted to present this question to the court sooner. Thus, the petition was not timely filed and the defendant has not shown that he exercised due diligence. In addition, because the

reduction in the defendant's sentence did not give him grounds to seek to vacate his plea, his petition does not assert a meritorious claim or defense. Because the defendant's petition was not timely filed within two years of entry of the judgments of conviction and fails to comply with the other requirements of section 2-1401, the trial court properly dismissed his petition.

¶ 35 For the foregoing reasons, we affirm the judgment of the trial court dismissing the defendant's petition for relief from judgment.

¶ 36 Affirmed.