

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

December 19, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170876-U

NO. 4-17-0876

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
ONTARIO L. WALLS,)	No. 03CF1232
Defendant-Appellant.)	
)	The Honorable
)	Ryan M. Cadagin,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court holds that section 5-8-4(b) of the Unified Code of Corrections is constitutional.

¶ 2 Pursuant to section 5-8-4(b) of the Unified Code of Corrections (Unified Code), the trial court sentenced defendant, Ontario L. Walls, to consecutive, rather than concurrent, sentences “to protect the public from further criminal conduct.” 730 ILCS 5/5-8-4(b) (West 2004) (“Except in cases where consecutive sentences are mandated, the court shall impose concurrent sentences unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant[.]”).

¶ 3 In April 2010, defendant *pro se* filed a petition to vacate a void sentence, arguing that his consecutive sentences were unlawful. In May 2010, the State filed a motion to dismiss

in which it argued that defendant's claim was untimely. In June 2017, when represented by counsel, defendant filed an amended petition. In August 2017, the State filed an amended motion to dismiss in which it argued that (1) defendant was lawfully sentenced and (2) his claim was untimely. In October 2017, the trial court concluded that defendant's petition was untimely and granted the State's motion to dismiss.

¶ 4 Defendant appeals, arguing (1) his consecutive sentences are unconstitutional pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt") and (2) his petition is not time barred. Because we reject defendant's first argument on the merits, we need not consider whether his petition is time barred. We therefore affirm the trial court's order.

¶ 5 I. BACKGROUND

¶ 6 In June 2005, a jury convicted defendant of two counts of second degree murder (720 ILCS 5/9-2 (West 2002)) and one count of aggravated battery with a firearm (*id.* § 12-4.2). In August 2005, the trial court sentenced defendant to 15 years in prison for each of the second-degree-murder convictions and 15 years for the aggravated battery with a firearm conviction. Pursuant to section 5-8-4(b) of the Unified Code (730 ILCS 5/5-8-4(b) (West 2004)), the court ordered all of the sentences to run consecutively "to protect the public from further criminal conduct." In November 2006, this court affirmed defendant's conviction on direct appeal. *People v. Walls*, 368 Ill. App. 3d 1171, 1176, 859 N.E.2d 1059, 1062 (2006).

¶ 7 In April 2010, defendant *pro se* filed a petition to vacate a void sentence, arguing that his consecutive sentences were unlawful. 735 ILCS 5/2-1401 (West 2010). In May 2010, the State filed a motion to dismiss in which it argued that defendant's claim was untimely. *Id.*

§ 2-1401(c) (“The petition must be filed not later than 2 years after the entry of the order or judgment.”).

¶ 8 Also in May 2010, the trial court appointed counsel to represent defendant. Counsel then filed a motion to remove a copy of defendant’s court file and to view sealed documents so that she could ascertain what amendments, if any, would be required to ensure that the pleadings are full and complete as required by supreme court rules. The court granted this motion, and no other activity in this case occurred until June 2017.

¶ 9 In June 2017, when represented by counsel, defendant filed an amended petition in which he argued that (1) his consecutive sentences were unconstitutional and (2) his claim was not time barred. In August 2017, the State filed an amended motion to dismiss in which it argued that (1) defendant was lawfully sentenced and (2) his claim was untimely. In October 2017, the trial court concluded that defendant’s petition was untimely and granted the State’s motion to dismiss.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant appeals, arguing (1) his consecutive sentences are unconstitutional and (2) his petition is not time barred. Regarding his first argument, defendant argues that section 5-8-4(b) of the Unified Code is unconstitutional pursuant to *Apprendi*, 530 U.S. at 490. We conclude that this argument is without merit because it has already been rejected by the Illinois Supreme Court in *People v. Wagener*, 196 Ill. 2d 269, 286, 752 N.E.2d 430, 441-42 (2001), and the United States Supreme Court in *Oregon v. Ice*, 555 U.S. 160, 170 (2009). Because we reject defendant’s argument on the merits, we need not consider whether his petition is time barred. We therefore affirm the trial court’s order.

¶ 13

A. The Applicable Law

¶ 14 The sixth amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State *** wherein the crime shall have been committed[.]” U.S. Const., amend. VI. The constitutionality of a statute is a question of law reviewed *de novo*. *People v. Hasselbring*, 2014 IL App (4th) 131128, ¶ 40, 21 N.E.3d 762. “A facial challenge to the constitutionality of a statute is the most difficult challenge to mount.” *People v. Davis*, 2014 IL 115595, ¶ 25, 6 N.E.3d 709. “All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation.” *People v. Greco*, 204 Ill. 2d 400, 406, 790 N.E.2d 846, 851 (2003).

¶ 15 At the time of defendant’s sentencing, section 5-8-4(b) of the Unified Code provided as follows:

“Except in cases where consecutive sentences are mandated, the court shall impose concurrent sentences unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record.” 730 ILCS 5/5-8-4(b) (West 2004).

¶ 16 In *Apprendi*, 530 U.S. at 469-70, the defendant pleaded guilty to possession of a firearm for an unlawful purpose and unlawful possession of a prohibited weapon. After his plea, the prosecutor filed a motion for an extended-term prison sentence, arguing that the defendant committed a hate crime. *Id.* at 470. The trial judge, based on the preponderance of the evidence,

found that the hate-crime enhancement applied, which increased the maximum sentence that could be imposed. *Id.* at 471. The New Jersey Supreme Court affirmed the defendant’s conviction. *Id.* at 472. On appeal, the United States Supreme Court reversed and concluded that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Id.* at 490.

¶ 17 In *Wagener*, 196 Ill. 2d at 278-79, the defendant argued that his consecutive sentences imposed pursuant to section 5-8-4(b) of the Unified Code were unconstitutional because they violated *Apprendi*. The Illinois Supreme Court distinguished *Apprendi*, rejected this argument, and concluded as follows:

“We find that *Apprendi* concerns are not implicated by consecutive sentencing. It is a settled rule in this state that sentences which run consecutively to each other are not transmuted thereby into a single sentence. [Citations.] Because consecutive sentences remain discrete, a determination that sentences are to be served consecutively cannot run afoul of *Apprendi*, which only addresses sentences for individual crimes. Accordingly, section 5-8-4(b) of the Code passes constitutional muster.” *Id.* at 286.

¶ 18 In *Ice*, 555 U.S. at 165, the defendant was convicted of multiple crimes arising from two sexual assaults. Oregon law required that sentences run concurrently, rather than consecutively, unless the judge found that certain facts were present. *Id.* The trial court imposed consecutive sentences after finding that certain facts existed. *Id.* at 165-66. On appeal, the United States Supreme Court considered the following issue: “[w]hen a defendant has been tried and convicted of multiple offenses, *** does the Sixth Amendment mandate jury determination of

any fact declared necessary to the imposition of consecutive, in lieu of concurrent, sentences?” *Id.* at 163. The Court noted that “application of *Apprendi*’s rule must honor the ‘longstanding common-law practice’ in which the rule is rooted.” *Id.* at 167. The Court concluded that the “historical record demonstrates that the jury played no role in the decision to impose sentences consecutively or concurrently. Rather, the choice rested exclusively with the judge.” *Id.* at 168. Accordingly, the Court concluded that *Apprendi* did not require that a jury determine the existence of a fact necessary for the imposition of consecutive sentences. *Id.* at 170.

¶ 19 B. This Case

¶ 20 In this case, pursuant to *Apprendi*, defendant argues that imposing a consecutive sentence “to protect the public from further criminal conduct” is a question of fact that must be submitted to the jury, rather than the judge, and proven beyond a reasonable doubt. Based upon this argument, defendant contends that section 5-8-4(b) of the Unified Code is unconstitutional.

¶ 21 This argument is without merit. As earlier noted, in *Wagener*, 196 Ill. 2d at 286, the Illinois Supreme Court distinguished *Apprendi* and concluded that section 5-8-4(b) of the Unified Code is constitutional. *Wagener* is binding authority upon this court. See *Hedrich v. Mack*, 2015 IL App (2d) 141126, ¶ 16, 27 N.E.3d 666. Further, the Supreme Court of the United States has concluded that a judge may determine facts which are necessary for the imposition of consecutive sentences. *Ice*, 555 U.S. at 170.

¶ 22 C. Timeliness

¶ 23 Because we have rejected defendant’s arguments on the merits, we need not consider whether his petition was untimely. See *Pekin Insurance Co. v. AAA-1 Masonry & Truckpointing, Inc.*, 2017 IL App (1st) 160200, ¶ 21, 81 N.E.3d 1040 (holding that a reviewing court may affirm the trial court’s judgment for any reason supported by the record).

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's order. As a part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 26 Affirmed.