SUPREME COURT OF ILLINOIS

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March 19, 2019

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In re: People ex rel. Raoul v. Gaughan
124535

Today the following order was entered in the captioned case:

Motion by Petitioners for leave to file a petition for an original writ of mandamus and/or writ of prohibition. Denied.

Kilbride, J., concurring in part and dissenting in part (attached).
Neville, J., dissenting (attached).

Order entered by the Court.

Theis, J., took no part.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
Clerk of the Circuit Court of Cook County
Brian McLeish
Daniel Q. Herbert
Darren William O'Brien
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Hon. Vincent Michael Gaughan

FILED
March 19, 2019
SUPREME COURT
CLERK

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 124535)

THE PEOPLE OF THE STATE OF ILLINOIS *ex rel.* KWAME RAOUL, Attorney General, *et al.*, Petitioners, v. HONORABLE VINCENT M. GAUGHAN *et al.*, Respondents.

Filed March 19, 2019.

JUSTICE KILBRIDE, concurring in part and dissenting in part from the court's denial of the motion for leave to file a petition for writ of *mandamus* or prohibition:

¶ 1 Fundamentally, this matter involves a dispute on discretionary sentencing issues that are not suitable for resolution in an action seeking *mandamus* or prohibition relief. Consequently, petitioners' motion seeking leave to file a petition for writ of *mandamus* or prohibition should be denied. See *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93 (2009) (recognizing that the extraordinary remedy of *mandamus* relief is not available for discretionary matters).

¶ 2 In my opinion, however, the controversy here presents an important issue that warrants the exercise of this court's supervisory authority. Notably, respondent, the

trial judge, expressly relied on an argument made by a dissenting justice in *People v. Lee*, 213 Ill. 2d 218 (2004). Without question, that dissent does not represent the law in Illinois. Thus, the trial court's actions here were clearly improper as a matter of law. See, e.g., *People v. Artis*, 232 Ill. 2d 156, 164 (2009) (recognizing that this court's decisions are binding on Illinois appellate and circuit courts); see also *Blumenthal v. Brewer*, 2016 IL 118781, ¶¶ 28-29 (explaining that the Illinois Constitution of 1970 requires the appellate and circuit courts to adhere to this court's decisions). Under these circumstances, I believe this court should enter a supervisory order directing the trial court to vacate its final sentencing judgment and resentence Van Dyke in accordance with the applicable sentencing law, including this court's relevant decisions.

¶ 3 JUSTICE NEVILLE, dissenting from the court's denial of the motion for leave to file a petition for writ of *mandamus* or prohibition:

¶ 4 Petitioners, Kwame Raoul, Attorney General of Illinois, and Joseph H. McMahon, Special Prosecutor and State's Attorney of Kane County, filed a motion seeking leave to file a petition for writ of *mandamus* or prohibition against respondent, the Honorable Vincent M. Gaughan, judge of the circuit court of Cook County. See Ill. Const. 1970, art. VI, § 4(a); Ill. S. Ct. R. 381 (eff. July 1, 2017). This court denies the motion. I respectfully dissent.

¶ 5 I. BACKGROUND

¶ 6 On October 20, 2014, then-Chicago police officer Jason Van Dyke fatally shot the victim, Laquan McDonald. In March 2017, Van Dyke was charged by indictment with several offenses resulting from the shooting, including six counts of first degree murder (720 ILCS 5/9-1(a) (West 2014)). Van Dyke was also charged with 16 counts of aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), one charge for each separate shot that Van Dyke fired.

¶ 7 At trial, the State argued that each shot supported a separate conviction for aggravated battery with a firearm. Dr. Ponni Arunkumar, Cook County Chief Medical Examiner, opined that the victim died from multiple gunshot wounds. Dr. Arunkumar testified that each shot struck the victim, caused blood loss, and

contributed to the victim's death. On October 5, 2018, a jury found Van Dyke guilty of second degree murder (*id.* § 9-2) and all 16 counts of aggravated battery with a firearm.

¶ 8 In its sentencing memorandum, the State argued that respondent was required to sentence Van Dyke on each of the 16 convictions of aggravated battery with a firearm. Further, pursuant to *People v. Lee*, 213 Ill. 2d 218 (2004), and *People v. Crespo*, 203 Ill. 2d 335 (2001), the State argued that respondent was required to sentence Van Dyke on the more serious offense and that aggravated battery with a firearm was a more serious offense than second degree murder.

¶ 9 At the January 18, 2019, sentencing hearing, respondent acknowledged that he was required to sentence Van Dyke on the more serious offense. However, in determining whether aggravated battery with a firearm or second degree murder was the more serious offense in this case, respondent stated that he relied on the dissenting opinion in *Lee* rather than the majority opinion. Respondent sentenced defendant solely on the second degree murder conviction to a prison term of 81 months. Respondent added that, were he to impose sentence on the aggravated battery with a firearm convictions, he would merge all 16 convictions because Van Dyke fired the shots close in time.

¶ 10 On February 11, 2019, the State filed a motion for leave to file a petition for writ of *mandamus* or prohibition. This court now denies the motion.

¶ 11 II. ANALYSIS

¶ 12 Petitioners contend that respondent failed to comply with mandatory legal standards by sentencing Van Dyke only on the second degree murder conviction rather than the more serious 16 convictions of aggravated battery with a firearm. Petitioners also contend that respondent acted beyond his legitimate authority by declaring that, if he were to sentence Van Dyke on the convictions for aggravated battery with a firearm, he would merge all 16 counts and refuse to impose separate sentences on all 16 counts.

¶ 13 This court has discretionary original jurisdiction to hear *mandamus* and prohibition actions. Ill. Const. 1970, art. VI, § 4(a).

¶ 14 *Mandamus* is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved. A writ of *mandamus* will be awarded only if the petitioner establishes a clear right to the relief requested, a clear duty of the public official to act, and clear authority in the public official to comply with the writ. Although *mandamus* generally provides affirmative rather than prohibitory relief, the writ can be used to compel the undoing of an act. *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 12; *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 193, 211 (2009).

¶ 15 Similarly, a writ of prohibition may be used to prevent a judicial act that is beyond the scope of a judge's legitimate judicial authority. Four requirements must be met for a writ of prohibition to be issued: (1) the action to be prohibited must be judicial or quasi-judicial, (2) the writ must be issued against a court of inferior jurisdiction, (3) the action to be prohibited must be outside either the inferior court's jurisdiction or its legitimate authority, and (4) the petitioner must lack any other adequate remedy. *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 449-50 (2007).

¶ 16 A. Sentencing on the More Serious Offense

¶ 17 Before this court, petitioners assert that *mandamus* relief is warranted based on the arguments that were presented to respondent in the sentencing memorandum. Petitioners specifically contend that, under this court's established precedent in *Lee* and *Crespo*, respondent was required to sentence Van Dyke on his 16 convictions for aggravated battery with a firearm.

¶ 18 In *Lee*, this court directly addressed the relative seriousness of the offense of second degree murder as compared to aggravated battery with a firearm. *Lee*, 213 Ill. 2d at 227-29. The *Lee* court held that "the legislature determines the relative gravity of all offenses." *Id.* at 228. Accordingly, "when vacating an offense for one-act, one-crime purposes in cases involving crimes of differing legislative classifications, the seriousness of each offense must be ascertained by the relative punishments prescribed by the General Assembly." *Id.* at 230. Given that aggravated battery with a firearm is a Class X felony with a possible sentence of 6 to 30 years while second degree murder is a Class 1 felony with a possible sentence

of 4 to 20 years, the *Lee* court concluded that the legislature has determined that aggravated battery with a firearm is the more serious offense. *Id.* at 228-29.

¶ 19 Although *Lee* was decided almost 15 years ago, its reasoning has endured. In *People v. Johnson*, 237 Ill. 2d 81 (2010), the court applied the analysis set forth in *Lee* and confirmed that "[t]he determinative question in each case is the intent of the legislature." *Id.* at 98-99. Moreover, the legislature has not seen fit to amend either the felony classifications or the sentencing ranges for second degree murder or aggravated battery with a firearm. Consequently, this court can safely assume that the decision in *Lee* is in accord with the intent of the legislature. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 77 (recognizing that, when the legislature does not amend a statute following a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the legislative intent).

¶ 20 In this case, although *Lee* clearly and definitively held that aggravated battery with a firearm is a more serious offense than second degree murder, respondent sentenced Van Dyke on second degree murder and declined to impose sentence on the 16 convictions for aggravated battery with a firearm. Petitioners argue that, in so doing, respondent ignored this court's pronouncements in *Lee* and instead relied on the dissenting opinion of a single justice in that case. See *Lee*, 213 Ill. 2d at 230-34 (Thomas, J., dissenting). A dissenting opinion is not the law of Illinois. Indeed, it is the opposite. In petitioners' view, because Illinois law mandated that respondent sentence Van Dyke on the convictions for aggravated battery with a firearm, the sentence imposed for second degree murder was in direct conflict with the statutory guidelines as well as the prevailing precedent of this court. See generally *Blumenthal*, 2016 IL 118781, ¶¶ 28-30 (observing that lower courts are not free to disregard decisions of the supreme court). According to petitioners, respondent had no discretion to ignore this court's controlling precedent as to the seriousness of the two offenses at issue. Petitioners claim that, as a consequence, the sentence imposed by respondent did not comply with the sentencing statute for aggravated battery with a firearm, as interpreted by this court.

¶ 21 B. Separate Sentences: Aggravated Battery With a Firearm Convictions

¶ 22 Petitioners also argue that respondent should have sentenced Van Dyke on each of the 16 separate convictions for aggravated battery of a firearm. In *Crespo*, the

court considered whether separate convictions and sentences are appropriate where the prosecution is premised on multiple stab wounds inflicted on the victim within a relatively short period of time. See *Crespo*, 203 Ill. 2d at 338-40. In that case, the defendant had been charged with armed violence and aggravated battery, but the separate counts were premised on various discrete theories of criminal culpability and were not differentiated based on the individual stab wounds inflicted by the defendant. *Id.* at 342. The court specifically recognized that each individual act of stabbing could support a separate offense. *Id.* (citing *People v. Dixon*, 91 Ill. 2d 346 (1982)). Yet the court noted that was not the theory under which the defendant had been charged, and it was not consistent with the way the State presented and argued the case to the jury. *Id.* Therefore, the court rejected the State's argument that multiple convictions and sentences were proper. *Id.* at 343-45.

¶ 23 Thus, under *Crespo*, multiple acts by a defendant can sustain multiple convictions, even where those acts are committed close in time, as long as the State charges and argues each individual act as a separate offense. Here, the supporting record indicates that is precisely how the prosecution of Van Dyke proceeded in this case. Petitioners contend that, because the State separately charged each of the 16 individual gunshots and the jury convicted on each count, separate convictions and sentences are required. According to petitioners, respondent ignored this court's controlling precedent yet again by stating that the 16 shots would warrant a single sentence for aggravated battery with a firearm because they were fired in less than 30 seconds and constituted a single act. Petitioners assert that this conclusion is in direct opposition to this court's holding in *Crespo*.

¶ 24 In petitioners' view, Van Dyke should be sentenced on each of the 16 separate aggravated battery with a firearm convictions in accordance with *Crespo*. However, because only offenses that caused "severe bodily injury" warrant consecutive sentences (730 ILCS 5/5-8-4(d)(1) (West 2016)) and not every gunshot wound constitutes severe bodily injury, the case should be remanded for a determination of whether concurrent or consecutive sentences are warranted. See *People v. Deleon*, 227 Ill. 2d 322, 332 (2008) (recognizing that whether an offense has resulted in "severe bodily injury" is a question of fact for the sentencing judge).

¶ 25 Based on the foregoing, I believe that petitioners have sufficiently asserted that *mandamus* relief is appropriate in this case. I also firmly believe that the arguments

of petitioners raise compelling questions that merit additional briefing, argument, and consideration by this court.

¶ 26 C. Supervisory Order

¶ 27 Even if respondent's sentencing order is viewed as involving judgment and discretion, which would preclude *mandamus*, I deem this case to be an appropriate one for the exercise of our supervisory authority. See, *e.g.*, *Doherty v. Caisley*, 104 Ill. 2d 72, 80 (1984).

¶ 28 Section 16 of article VI of the Illinois Constitution vests this court with general administrative and supervisory authority over Illinois's judicial system. Ill. Const. 1970, art. VI, § 16. That authority is unlimited, unhampered by specific rules, and " 'is bounded only by the exigencies which call for its exercise.' " *Gonzalez v. Union Health Service, Inc.*, 2018 IL 123025, ¶ 16 (quoting *In re Estate of Funk*, 221 Ill. 2d 30, 97-98 (2006)). While our supervisory authority is expansive, it is exercised with restraint and only under exceptional circumstances. Generally, this court will not issue a supervisory order unless (1) the normal appellate process will not afford adequate relief, (2) the dispute involves a matter important to the administration of justice, or (3) our intervention is necessary in order to prevent an inferior tribunal from acting beyond the scope of its authority. *Id.* ¶ 17 (and cases cited therein); *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 513 (2001).

¶ 29 These circumstances are clearly present in this case. Initially, the normal appellate process will not afford adequate relief because Van Dyke's direct appeal will not address respondent's alleged sentencing errors and the State may not address the errors through a cross-appeal. *People v. Castleberry*, 2015 IL 116916, ¶¶ 21-23.

¶ 30 Also, our intervention is necessary to prevent respondent from acting beyond the extent of the circuit court's sentencing authority pursuant to *Lee* and *Crespo*. See, *e.g.*, *Blumenthal*, 2016 IL 118781, ¶¶ 28-30 (observing that lower courts are not free to disregard decisions of the supreme court).

¶ 31 Additionally, this dispute clearly involves a matter of the utmost importance to the administration of justice. Allowing a sentence to stand, where it has been

challenged as contrary to supreme court precedent and contrary to statutory sentencing guidelines, "would lead to public contempt for, and ridicule of, our court system, as well as nullify our mandate under the constitution to supervise our court system." *McDunn v. Williams*, 156 Ill. 2d 288, 302-03 (1993).

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, I would allow the petitioners' motion for leave to file a petition for *mandamus* or prohibition or issue a supervisory order. Accordingly, I respectfully dissent.