Illinois Official Reports

Appellate Court

People v. Irrelevant, 2021 IL App (4th) 200626

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KAWIKA T. IRRELEVANT, Defendant-Appellant.
District & No.	Fourth District No. 4-20-0626
Filed	December 8, 2021
Decision Under Review	Appeal from the Circuit Court of Logan County, No. 16-CF-152; the Hon. William G. Workman, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd, Catherine K. Hart, and Joshua Scanlon, of State Appellate Defender's Office, of Springfield, for appellant. Bradley M. Hauge, State's Attorney, of Lincoln (Patrick Delfino, David J. Robinson, and David E. Mannchen, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE KNECHT delivered the judgment of the court, with opinion. Justices DeArmond and Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Kawika T. Irrelevant, appeals from the circuit court's denial of his amended motion to withdraw his guilty plea and vacate the judgment. On appeal, defendant argues this court should reverse that denial and remand for further proceedings because (1) the factual basis provided in support of the guilty plea was insufficient and (2) the combination of his reasonable misapprehension of fact and law concerning the requirement he serve 85% of any sentence imposed and the circuit court's insufficient determination of his understanding of the terms of the plea and its consequences show it was more than likely he never fully understood what he was agreeing to and would have rejected the plea agreement and not pleaded guilty had he known about the 85% requirement. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Information

¶ 4 In September 2016, the State charged defendant by information with the offense of being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2016)), a Class X felony. Specifically, the State alleged that defendant, on or about September 13, 2016, "knowingly possessed, received, sold, or transferred a firearm after having been convicted two or more times of a forcible felony or any violation of the Illinois Controlled Substances Act that is punishable as a Class 3 felony or higher." The State further alleged that any prison sentence imposed would have to be served at least 85% under the truth-in-sentencing provisions (730 ILCS 5/3-6-3(a)(2)(ii) (West 2016)), meaning defendant could receive no more than 4.5 days of sentence credit for each month of any prison sentence.

¶ 5 At a hearing that same month, the circuit court admonished defendant as to the charge and the possible penalties. With respect to the possible penalties, the court admonished defendant, in part, as follows:

> "Now, there is also a sentencing provision that applies to you, according to the State; and, that is, pursuant to Illinois Compiled Statutes, upon conviction for this offense, the defendant has received no more than 4.5 days of sentence credit for each month of his sentence of imprisonment. So that means whatever sentence you get anywhere between that range of 6 to 30 years, you would have to serve 85 percent of that sentence."

After admonishing defendant as to the charge and the possible penalties, the court asked defendant if he had any questions. Defendant indicated he did not.

¶ 6 B. Plea Hearing

¶ 7 In March 2018, the circuit court held a plea hearing. The court stated it had received a document indicating that defendant desired to plead guilty based upon a partially negotiated plea agreement. Defendant confirmed that was his desire. The court stated it also had received information indicating that defendant had rejected a prior plea offer from the State and, at the request of the State, would first review the rejected offer with defendant.

¶ 8 As to the rejected offer, the circuit court began by briefly admonishing defendant as to the charge and the possible penalties. With respect to the possible penalties, the court did not discuss the requirement that any prison sentence imposed would have to be served at least

85%. After admonishing defendant as to the charge and the possible penalties, the court asked defendant if he had any questions. Defendant indicated he did not. The court then asked the State about the prior plea offer. The State stated it tendered an offer of "17 years in the Department of Corrections at 85 percent, plus the statutory minimum fines and costs," in exchange for defendant pleading guilty to the charged offense. The court asked defense counsel and defendant about the offer. Both confirmed knowledge of the offer, and defendant confirmed it was his decision to reject the offer.

¶ 9 The circuit court turned next to the partially negotiated plea agreement. The court reviewed the alleged terms of the plea agreement with defendant:

> "[Y]ou are going to admit or plead guilty to the offense of armed habitual criminal, a Class X felony; and in exchange for that, the State is going to cap their recommendation, meaning they are going to ask for no more than the 17 years in the Illinois Department of Corrections."

Defendant confirmed that was his understanding of the agreement. The court asked defendant if his signature was on the bottom of the document that contained the terms of the plea agreement. Defendant confirmed it was his signature. The court asked defendant if he had the opportunity to review the document with counsel before he signed it. Defendant indicated he did. The court asked defendant if he understood the document. Defendant indicated he did. The court asked defendant if he signed the document of his own free will. Defendant indicated he did.

¶ 10 After confirming the terms of the plea agreement, the circuit court admonished defendant as to the charge and the possible penalties. With respect to the possible penalties, the court admonished defendant, in part, as follows:

> "Now, there is a sentencing provision that applies in this case; and, that is, that this under truth in sentencing is an 85 percent case, so whatever sentence you receive, you will have to do 85 percent of that sentence, which means pursuant to Illinois Compiled Statutes, upon conviction for this offense, the defendant will receive no more than 4.5 days of sentence credit for each month of sentence of imprisonment."

After admonishing defendant as to the charge and the possible penalties, the court asked defendant if he had "any questions *** about the charge that you are pleading guilty to or the possible penalties that could be imposed." Defendant indicated he did not. The court admonished defendant as to the rights he was giving up if he pleaded guilty. Defendant indicated he understood. The court asked defendant if he was forced or threatened to plead guilty. Defendant indicated he was not. The court asked defendant if he was promised anything outside the plea agreement in exchange for pleading guilty. Defendant indicated he was not. The court admonished defendant as to some possible collateral consequences for pleading guilty. Defendant indicated he understood. The court asked defendant if he desired to plead guilty or not guilty. Defendant stated, "Guilty."

¶ 11 The State provided the following factual basis in support of the guilty plea:

> "[I]f this matter were to proceed to a trial, the State would provide evidence and testimony to prove beyond a reasonable doubt that the defendant committed the offense of armed habitual criminal.
>
> Law enforcement officers would testify that they on September 13th, 2016, they conducted a covert operation after obtaining a [c]ourt-authorized overhear order using

a confidential source. Law enforcement officers gave the confidential source [(C.S.)] approximately $400 in U.S. currency in official advanced funds and transportation was arranged so that the C.S. could make contact with this defendant.

After the contact was made, the C.S. then made contact with law enforcement officers. At the end of the exchange, [the C.S.] provided officers with a firearm that was purported to be purchased from this defendant and $50 of U.S. currency was returned to law enforcement.

The confidential source would testify to receiving the U.S. currency from law enforcement, to meeting with this defendant, who he would identify in open court, and that this defendant sold a firearm to the confidential source for $350.

The State would also provide certified copies of convictions in the defendant's criminal history showing that he has a 1983 Logan County burglary, Class 2 felony, which is a forcible felony; and also a 1988 Logan County, unlawful delivery of a controlled substance, a Class X felony, which is, obviously, punishable by more than the Class [3] felony by the Illinois Controlled Substances Act."

Defense counsel agreed the State had witnesses who would testify substantially as indicated. However, counsel noted defendant did "dispute the prior Class X felony, but I would imagine we can resolve that on a pre-sentence report."

¶ 12 The circuit court accepted defendant's guilty plea, finding it to be knowingly and voluntarily made and supported by a sufficient factual basis, and ordered the preparation of a presentence investigation report (PSI).

¶ 13 C. Sentencing Hearing

¶ 14 In May 2018, the circuit court held a sentencing hearing. The court received a PSI and heard evidence in aggravation. The PSI provided, in relevant part, the following. Defendant was born on June 10, 1966. In December 1984, defendant was convicted in Logan County case No. 83-CF-56 of committing a residential burglary, a Class 1 felony, on November 26, 1983. In June 1988, defendant was convicted in Logan County case No. 88-CF-11 of committing the unlawful delivery of a controlled substance, a Class 2 felony, on October 20, 1986.

¶ 15 The State recommended that defendant be sentenced to 17 years' imprisonment. In making its recommendation, the State highlighted defendant's criminal history but noted it was not asking the court to consider defendant's convictions in case Nos. 83-CF-56 or 88-CF-11, as those convictions were used as elements of the offense. Conversely, the defense recommended the court enter a sentence where defendant would "get out of prison in his early 60s or late 50s."

¶ 16 Following the recommendations from the State and the defense, defendant made a statement in allocution. Defendant asked the circuit court to "at least waive the 85 percent or at least make the sentence a little bit lighter." Defense counsel then noted defendant disclosed to him that, at the plea hearing, the State told him it would waive the 85% if he pleaded guilty. Counsel stated he had no notes on the matter and the State, upon previous inquiry by counsel, reported no knowledge of it. The State told the court it had not spoken with defendant and had made no such promise. Counsel responded, stating defendant claimed "it was said in court." The State maintained the record would show no such promise was made. The court reviewed its notes from the plea hearing and found the plea agreement made no reference to waiving the

85% requirement and defendant indicated he was not promised anything else for his guilty plea. The court further expressed doubt with the State's ability to waive the 85% requirement.

¶ 17 The circuit court sentenced defendant to 17 years' imprisonment, to be served at least 85%.

¶ 18 D. Postplea Proceedings

¶ 19 In May 2018, defendant filed motion a motion to withdraw his guilty plea and vacate the judgment, which he later amended. Following a March 2019 hearing, the circuit court denied defendant's motion, and defendant appealed. In August 2019, this court allowed an agreed motion for summary remand pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 20 In October 2019, defendant, on remand, filed a new motion to withdraw his guilty plea and vacate the judgment, which he later amended. In support of his motion, defendant asserted, amongst other things, (1) his conviction for his "1983 residential burglary" could not have served as a predicate conviction under the armed habitual criminal statute because, had he committed the same offense in 2016 at the age of 17, it would have resulted in a juvenile adjudication and (2) the circuit court improperly admonished him pursuant to Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 2012) by asking if he had any questions about the charge and possible penalties as opposed to asking whether he understood the charge and possible penalties. With respect to his latter assertion, defendant further alleged,

> "If he actually did not understand the charge or the possible penalties, it is possible to argue that this was not a proper determination that he understood them. [He] told counsel he thought that the requirement for him to serve 85% of the sentence could or would be waived by the State. If this was because he did not understand the plea deal when the judge explained it, that misunderstanding could be included as part of his motion."

¶ 21 In December 2020, the circuit court held a hearing on defendant's amended motion to withdraw his guilty plea and vacate the judgment. As to his assertion concerning the court's admonishments, defense counsel argued:

> "He also claims, Your Honor, that he was improperly admonished. When the Court asked him if he had any questions, he didn't specify that he had any questions, and the Court only asked if he had any questions. If the defendant did not understand the charge or possible penalties, we believe it's possible to argue that this was not a proper determination that he understood them."

In response, the State asserted defendant failed to meet his burden to allow the withdrawal of his guilty plea. After hearing from the defense and the State, the court denied defendant's motion.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant argues this court should reverse the circuit court's denial of his amended motion to withdraw his guilty plea and vacate the judgment and then remand for further proceedings because (1) the factual basis provided in support of the guilty plea was insufficient and (2) the combination of his reasonable misapprehension of fact and law concerning the requirement that he serve 85% of any sentence imposed and the court's insufficient determination of his understanding of the terms of the plea and its consequences

show it was more than likely he never fully understood what he was agreeing to and would have rejected the plea agreement and not pleaded guilty had he known about the 85% requirement. The State disagrees.

¶ 25 "A defendant has no absolute right to withdraw his guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. Rather, the defendant must establish "a manifest injustice under the facts involved." *Id.* The decision to grant or deny a motion to withdraw a guilty plea and vacate the judgment is generally reviewed for an abuse of discretion. *People v. Baez*, 241 Ill. 2d 44, 109-10, 946 N.E.2d 359, 398 (2011). "An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the *** court." *People v. Delvillar*, 235 Ill. 2d 507, 519, 922 N.E.2d 330, 338 (2009).

¶ 26 First, defendant suggests that the circuit court abused its discretion when it denied his amended motion to withdraw his guilty plea and vacate the judgment because the factual basis provided in support of the guilty plea was insufficient. Specifically, defendant contends that his conviction for his 1983 "burglary" could not have served as a predicate conviction under the armed habitual criminal statute because, had he committed the same offense in 2016 at the age of 17, it would have resulted in a juvenile adjudication.

¶ 27 Both the First District and this district have considered similar claims as it relates to the habitual criminal statute (730 ILCS 5/5-4.5-95(a), (b) (West 2016)). The First District, beginning with its decision in *People v. Miles*, 2020 IL App (1st) 180736, 170 N.E.3d 984, found the defendant's position persuasive. See also *People v. Williams*, 2020 IL App (1st) 190414; *People v. Martinez*, 2021 IL App (1st) 182553; *People v. Stewart*, 2020 IL App (1st) 180014-U. Conversely, this district, beginning with its decision in *People v. Reed*, 2020 IL App (4th) 180533, 175 N.E.3d 717, rejected defendant's position. See also *People v. O'Neal*, 2021 IL App (4th) 170682; *People v. Lewis*, 2020 IL App (4th) 180595-U. In addition, the First District in *People v. Gray*, 2021 IL App (1st) 191086, recently considered the same claim that defendant raises in this appeal relating to the armed habitual criminal statute (720 ILCS 5/24-1.7 (West 2016)) and found, relying primarily on the rationale employed in *Miles*, the defendant's position persuasive. Now, in this case, defendant encourages us to follow *Gray* and the rationale employed by the First District, while the State encourages us to follow the rationale employed by this district. Accordingly, we will begin our analysis with a review of the decisions in *Miles*, *Reed*, and *Gray*. Prior to doing so, we note the supreme court has granted leave to appeal in *Stewart*, which, as indicated above, followed *Miles*.

¶ 28 In *Miles*, 2020 IL App (1st) 180736, ¶¶ 3, 5-6, the defendant contended he should not have been subject to Class X sentencing under the habitual criminal statute (730 ILCS 5/5-4.5-95(b) (West 2016)) for a Class 2 felony he committed on June 9, 2016. The defendant argued that his prior "2006 conviction for aggravated vehicular hijacking with a firearm and armed robbery" was not a qualifying conviction since the unlawful conduct related to that conviction occurred in 2005 when he was 15 years old. *Miles*, 2020 IL App (1st) 180736, ¶ 3. The *Miles* court found the defendant's contention involved an issue of statutory interpretation and therefore turned to the statutory language, which provided as follows:

> " '(b) When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense that contains the same elements as an offense now (the date the Class 1 or Class 2 felony was committed) classified in Illinois as a Class 2 or greater Class felony and

> those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender.' 730 ILCS 5/5-4.5-95(b) (West 2016)." *Id.* ¶ 10.

The court, after acknowledging that the statute focused on the elements of the prior offenses, concluded:

> "We agree with defendant that because his 2006 conviction, had it been committed on June 9, 2016, would have been resolved with delinquency proceedings in juvenile court rather than criminal proceedings, it is not 'an offense now *** classified in Illinois as a Class 2 or greater Class felony' and, therefore, is not a qualifying offense for Class X sentencing." *Id.* ¶ 11.

The court's holding hinged on recent amendments to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2016)), which it asserted would have resulted in a juvenile court having "exclusive jurisdiction" had the defendant committed his 2005 offense under the laws in effect on June 9, 2016. *Miles*, 2020 IL App (1st) 180736, ¶¶ 21-22. Thus, the court vacated the defendant's Class X sentence and remanded for resentencing within the authorized sentencing range for a Class 2 felony. *Id.* ¶ 23.

¶ 29 In *Reed*, 2020 IL App (4th) 180533, ¶ 17, the defendant, relying heavily on *Miles*, contended he should not have been subject to Class X sentencing under the habitual criminal statute (720 ILCS 5/5-4.5-95(b) (West 2016)) for a Class 2 felony he committed in 2016 because his prior 2006 burglary conviction was not a qualifying conviction since the unlawful conduct related to that conviction occurred when he was 17 years old. The *Reed* court disagreed with the decision in *Miles* for several reasons. *Reed*, 2020 IL App (4th) 180533, ¶ 24. First, the court disagreed with the assertion that, even under recent amendments, juvenile courts have exclusive jurisdiction, noting the statutory exceptions under which a juvenile can be tried in the criminal courts. *Id.* The court also found no statutory support for the proposition that a criminal conviction entered on a person under 18 years of age should be later considered a juvenile adjudication—"a juvenile conviction is a conviction." *Id.* ¶ 25. Finally, the court disagreed with the interpretation of section 5-4.5-95(b) in *Miles*, finding the statute "only requires the trial court to look at the elements of defendant's prior offense and determine whether an offense with the same elements, classified as a Class 2 or greater felony, existed when the present offense was committed." *Id.* ¶ 26. Turning to the facts of the case before it, the court concluded, because a defendant's age was not an element of the offense of burglary in either 2006 or 2016, the fact the defendant was 17 years old when he committed the burglary for which he was convicted was irrelevant. *Id.* ¶¶ 28-29. Thus, the court affirmed. *Id.* ¶ 30.

¶ 30 In *Gray*, 2021 IL App (1st) 191086, ¶ 9, the defendant contended his 2002 narcotics conviction could not have served as a predicate conviction under the armed habitual criminal statute (720 ILCS 5/24-1.7 (West 2016)) because, had he committed the same offense in 2016 at the age of 17, his offense would not subject him to the jurisdiction of the criminal courts. The *Gray* court found that the defendant's contention involved an issue of statutory interpretation and therefore turned to the statutory language (cited in detail below). *Gray*, 2021 IL App (1st) 191086, ¶¶ 10-11. The court, after reciting the statutory language, found "[t]he plain language *** requires the State to prove that the defendant was convicted for conduct that 'is punishable' as a felony." *Id.* ¶ 12. The court then considered *Miles* and *Williams* and found the rationale in those cases applicable and persuasive. *Id.* ¶¶ 13-15. The court concluded,

> "To obtain a conviction for aggravated vehicular hijacking (*Miles*), burglary (*Williams*), or delivery of narcotics (here), the prosecution would need to prove that the defendant was at least 18 years old at the time of the offense, or that the defendant merited transfer to the criminal courts under the restrictive provisions for such transfer. See 705 ILCS 405/5-120 (West 2016). In view of the changes to the Juvenile Court Act of 1987, for most offenses age of the defendant operates as an element of the offense." *Id.* ¶ 15.

Thus, the court reversed the defendant's conviction for being an armed habitual criminal. *Id.* ¶ 18.

¶ 31 Like *Miles*, *Reed*, and *Gray*, we find that the resolution of whether defendant's conviction for the unlawful conduct he committed in 1983 could have served as a predicate conviction under the armed habitual criminal statute raises an issue of statutory interpretation, which we review *de novo*. See *People v. Stoecker*, 2014 IL 115756, ¶ 21, 10 N.E.3d 843 ("Issues of statutory interpretation are subject to *de novo* review.").

¶ 32 Prior to considering the legal issue, we note a factual matter concerning the predicate conviction. As part of the factual basis, the State referred to "a 1983 Logan County burglary, Class 2 felony." At sentencing, the circuit court received a PSI indicating that, in December 1984, defendant was convicted in Logan County case No. 83-CF-56 of committing a residential burglary, a Class 1 felony, on November 26, 1983. The State, in making its sentencing recommendation, highlighted defendant's criminal history but noted it was not asking the court to consider defendant's conviction in case No. 83-CF-56, as that conviction was used as an element of the offense. Defendant, in his amended motion to withdraw his guilty plea and vacate the judgment, acknowledged that the State relied upon his conviction for his 1983 residential burglary in obtaining his conviction for being an armed habitual criminal. Defendant now, on appeal, refers to a 1983 "burglary" conviction. Regardless of whether defendant previously committed a burglary or residential burglary in 1983, it is undisputed that defendant committed the offense while he was 17 years old and his conviction for that offense served as one of the predicate convictions to obtain his conviction for being an armed habitual criminal.

¶ 33 We now, with that factual matter in mind, turn to the legal issue and the well-established principles of statutory interpretation. "The primary objective in statutory interpretation is to ascertain and give effect to the legislature's intent, and the best indication of that intent is the statutory language itself, giving it its plain and ordinary meaning." *People v. Johnson*, 2019 IL 123318, ¶ 14, 160 N.E.3d 31. "Unless the language of a statute is ambiguous, a court should not resort to further aids of construction and must apply the statute as written." *People v. Clark*, 2019 IL 122891, ¶ 26, 135 N.E.3d 21.

¶ 34 Section 24-1.7(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.7(a) (West 2016)), the section under which defendant was convicted of being an armed habitual criminal, provides as follows:

> "(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
>
> (1) a forcible felony as defined in Section 2-8 of this Code;

(2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or

(3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher."

Section 2-8 of the Code (*id.* § 2-8), in turn, defines a "[f]orcible felony" as several named felonies, including burglary and residential burglary, as well as any other felony that involves the use or threat of physical force or violence against any individual.

¶ 35 Applying the principles of statutory interpretation set forth above, we glean the following from the plain and unambiguous language of section 24-1.7(a). To be convicted of being an armed habitual criminal, a defendant must be shown to have received, sold, possessed, or transferred any firearm and, at the time of that conduct, the defendant had at least two prior convictions for criminal offenses described in subsections (a)(1) through (a)(3). Stated differently, for a defendant's conviction to serve as a predicate conviction for the offense of being an armed habitual criminal, the conviction must be for an offense described in subsections (a)(1) through (a)(3) at the time of the underlying conduct that resulted in the armed habitual criminal charge. This requires courts to look at the elements of the prior offense for which the defendant was convicted and determine whether an offense with the same elements is set forth in subsections (a)(1) through (a)(3) when the underlying conduct was committed that resulted in the armed habitual criminal charge.

¶ 36 In this case, it is undisputed that, at the time defendant committed the underlying conduct which resulted in the armed habitual criminal charge, (1) he had a conviction for either burglary or residential burglary and (2) both burglary and residential burglary constituted forcible felonies under subsection (a)(1). It is further undisputed that a defendant's age has never been an element set forth in the statutes defining the offenses of burglary and residential burglary. Therefore, we find the fact defendant was 17 years old when he committed the 1983 offense for which he was convicted is irrelevant—all that matters is that defendant had a conviction, and that conviction was for an offense described in subsection (a)(1) at the time defendant committed the underlying conduct which resulted in the armed habitual criminal charge.

¶ 37 Defendant's position before this court would require not only a comparison of the elements of his prior offense with the elements of an offense described in subsection (a)(1) but also a determination as to whether he would have received a conviction or juvenile adjudication if he was prosecuted for the prior offense under the laws as they existed at the time of his underlying conduct that resulted in the armed habitual criminal charge. Defendant's position finds no support under the plain and unambiguous language of the armed habitual criminal statute. Instead, it is effectively an invitation to interpose an age element into each of the offenses described in the armed habitual criminal statute so that any conviction of a defendant who is under 18 years of age may no longer serve as a predicate conviction under the armed habitual criminal statute, unless it is an offense that still automatically subjected the defendant to the prosecution under the criminal laws of this state. Defendant's invitation is one for the legislature, not this court.

¶ 38 Moreover, defendant's position is based on a faulty assumption. Defendant asserts that had he committed his 1983 offense in 2016 at the age of 17, it would have resulted in a juvenile adjudication. However, as recognized in both *Reed* and *Gray*, the Juvenile Court Act authorized the discretionary transfer of a minor over 13 years of age from the juvenile courts to the criminal courts in 2016. 705 ILCS 405/5-805(3)(a) (West 2016). Therefore, it is speculative to assume defendant would not have been subject to a discretionary transfer had he committed his 1983 offense in 2016 at the age of 17.

¶ 39 Defendant has not shown his conviction for his 1983 offense could not have served as one of the two predicate convictions under the armed habitual criminal statute. Therefore, we reject his suggestion the factual basis provided in support of the guilty plea was insufficient.

¶ 40 Second, defendant suggests the circuit court abused its discretion when it denied his amended motion to withdraw his guilty plea and vacate the judgment because the combination of his reasonable misapprehension of fact and law concerning the requirement that he serve 85% of any sentence imposed and the court's insufficient determination of his understanding of the terms of the plea and its consequences show it was more than likely that he never fully understood what he was agreeing to and would have rejected the plea agreement and not pleaded guilty had he known about the 85% requirement.

¶ 41 At the outset, the State contends defendant's argument attempts to improperly introduce issues that were not raised in his amended motion to withdraw his guilty plea and vacate the judgment—issues concerning whether he had a reasonable misapprehension of fact and/or law about the requirement he serve 85% of any sentence imposed. We agree. The issue raised in defendant's amended motion concerned whether the circuit court improperly admonished defendant pursuant to Rule 402(a)(2) by asking if he had any questions about the charge and possible penalties as opposed to asking whether he understood the charge and possible penalties. The additional allegations in defendant's motion related to that issue, which were primarily presented as mere hypotheticals, did not raise issues concerning whether defendant had a reasonable misapprehension of fact and/or law about the 85% requirement. As such, the additional issues are forfeited. See *People v. Stevenson*, 2020 IL App (4th) 180143, ¶ 11, 156 N.E.3d 1275 (" 'Upon appeal[,] any issue not raised by the defendant in the motion to *** withdraw the plea of guilty and vacate the judgment shall be deemed waived,' that is to say, forfeited." (quoting Ill. S. Ct. R. 604(d) (eff. July 1, 2017))).

¶ 42 Forfeiture aside, defendant relies primarily on *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991), in support of his argument. In *Davis*, 145 Ill. 2d at 247-48, the supreme court found the trial court, when admonishing the defendant about the possible penalties for pleading guilty, erroneously admonished the defendant that he would be eligible for a nonprison sentence. As a result of the improper admonishment, the supreme court found "it is likely that the defendant never fully understood the range of penalties which he was subject to at the time of the plea." *Id.* at 248. Nevertheless, the court found "[t]he failure to properly admonish a defendant, alone, does not automatically establish grounds for reversing the judgment or vacating the plea." *Id.* at 250. The court considered "whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishment." *Id.* The court found the defendant had shown the requisite prejudice. In support, the court highlighted (1) the fact defendant had alleged "if he was aware that he was not eligible for [Treatment Alternatives to Street Crimes (TASC)] placement, he would not have pleaded guilty for an

open sentence," and (2) the absence of evidence in the record indicating "defendant knew that he was ineligible for TASC, probation or conditional discharge." *Id.*

¶ 43 *Davis* is not only distinguishable from this case but also demonstrates a fatal flaw in defendant's argument. At no point during the proceedings below did defendant allege either he (1) did not understand the court's admonishments about the possible penalties or (2) would not have pleaded guilty had he known about the 85% requirement. Without these allegations, we find defendant did not establish a basis for the withdrawal of his guilty plea and vacatur of the judgment. See *People v. McIntosh*, 2020 IL App (5th) 170068, ¶ 39, 146 N.E.3d 813 ("The defendant has the burden of demonstrating sufficient grounds to allow withdrawal of the plea."); *People v. Williams*, 2012 IL App (2d) 110559, ¶ 18, 980 N.E.2d 768 ("Here, defendant does not allege that he would not have pleaded guilty. *** This defeats his claim of prejudice.").

¶ 44 Accordingly, the circuit court did not abuse its discretion when it denied defendant's amended motion to withdraw his guilty plea and vacate the judgment.

¶ 45 III. CONCLUSION

¶ 46 We affirm the circuit court's judgment.

¶ 47 Affirmed.