

No. 124337

IN THE
SUPREME COURT OF ILLINOIS

<p>PEOPLE OF THE STATE OF ILLINOIS,</p> <p style="padding-left: 100px;">Plaintiff-Appellant,</p> <p style="padding-left: 100px;">v.</p> <p>PHOUVONE V. SOPHANAVONG,</p> <p style="padding-left: 100px;">Defendant-Appellee.</p>	<p>) Appeal from the Appellate Court of Illinois, Third Judicial District No. 3-17-0450.</p> <p>)</p> <p>) There on Appeal from the Circuit Court of the Tenth Judicial Circuit, Tazewell County, Illinois, No. 13-CF-613.</p> <p>)</p> <p>) The Honorable Michael E. Brandt, Judge Presiding.</p>
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**BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS**

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NATURE OF THE CASE

Defendant pleaded guilty to one count of first degree murder under a fully negotiated plea agreement, C65-69; R. 39,¹ and the Circuit Court of Tazewell County sentenced him to fifty-five years in prison, C67; R54. When defendant moved to withdraw his guilty plea, C135-40, the circuit court denied his motion, C146-50. On appeal, defendant abandoned the challenge to his plea and instead argued that his sentence should be vacated because the circuit court had failed to strictly comply with section 5-3-1 of the Unified Code of Corrections (Code) (730 ILCS 5/5-3-1), which requires the trial court to consider a written presentence investigation report (PSI) before sentencing a defendant or, where there is an agreed sentence, to make certain findings regarding the defendant's criminal history. The Illinois Appellate Court, Third District vacated defendant's sentence and remanded for a new sentencing hearing, holding that section 5-3-1 required the circuit court to be informed of the sentences for defendant's prior convictions. *People v. Sophanavong*, 2018 IL App (3d) 170450, ¶ 1; A2. The People appeal that judgment. No question is raised on the pleadings.

¹ Citations to the direct appeal common law record and report of proceedings appear as "C__," and "R__," respectively. Citations to this brief's appendix appear as "A__."

ISSUE PRESENTED

Whether defendant forfeited the claim that the trial court violated 730 ILCS 5/5-3-1 by failing to include this argument in the motion to withdraw his plea.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). On March 20, 2019, this Court granted the People's petition for leave to appeal. *People v. Sophanavong*, No. 124337 (Mar. 20, 2019).

STATUTES INVOLVED

§ 5-3-1. Presentence Investigation

A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court.

However, other than for felony sex offenders being considered for probation, the court need not order a presentence report of investigation where both parties agree to the imposition of a specific sentence, provided there is a finding made for the record as to the defendant's history of delinquency or criminality, including any previous sentence to a term of probation, periodic imprisonment, conditional discharge, or imprisonment.

730 ILCS 5/5-3-1 (eff. Aug. 20, 2004).

Illinois Supreme Court Rule 604(d)

No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment....

Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

STATEMENT OF FACTS

In November 2013, defendant kidnapped, shot, and killed his estranged wife, Laongdao Phangthong. R48-51. He was charged with three counts of first degree murder, one count of aggravated kidnapping, and one count of violating an order of protection. C22-24.

Pursuant to a fully negotiated plea agreement, defendant pleaded guilty to one count of first degree murder in exchange for an aggregate sentence of fifty-five years² and the dismissal of the remaining charges. C65-68; R39-52. At the plea hearing, the trial court found that there was a factual basis for the plea and determined that defendant's plea was knowing and voluntary. R51-52. The People informed the court that defendant had previously been convicted of manufacture or delivery of cannabis, a Class 1 felony, and two traffic violations, but provided no information on the sentences imposed for those prior convictions. R53. Both parties waived

² Defendant was sentenced to thirty years for murder with a twenty-five year firearm enhancement. C67.

presentation of a PSI. R53-54. The circuit court accepted the plea agreement and sentenced defendant consistent with the plea agreement. C65-68; R54.

One month later, defendant filed a pro se motion to withdraw his guilty plea. C75. The court appointed new counsel, who filed an amended motion to withdraw arguing that (1) defendant's plea was not knowingly, understandingly, and voluntarily made, and (2) defense counsel was ineffective. C95-96. Neither the initial nor the amended motion raised arguments about the lack of a PSI or defendant's sentence. *See C75, 95-96.* Although the trial court denied the motion, C107, the appellate court remanded for compliance with Supreme Court Rule 604(d)'s certificate requirement. C114-15; *People v. Sophanavong*, No. 3-14-0864 (Sept. 19, 2016) (letter ruling).

On remand, newly appointed counsel filed a second amended motion to withdraw defendant's plea, renewing the claims raised in the initial amended motion. C135-40. The circuit court denied the second amended motion. C146-50. On appeal, defendant abandoned the arguments in his second amended motion and argued, for the first time, that his sentence should be vacated and the case remanded for a new sentencing hearing because the circuit court failed to strictly comply with section 5-3-1 of the Code, 730 ILCS 5/5-3-1, because it had not been informed of the sentences defendant had received for his prior convictions, as required by the statute. A3-4. The appellate court noted that since section 5-3-1's requirements were mandatory

and required strict compliance, the proper remedy was to vacate defendant's sentence and remand for a new sentencing hearing. *Id.* At the new sentencing hearing, the People would inform the trial court of defendant's criminal history, including his prior sentences, and the court would determine if the plea agreement should be accepted. *Id.*

ARGUMENT

This case presents the Court with an opportunity to resolve a split between the appellate court districts regarding the interplay of Rule 604(d) — which provides that defendants who wish to appeal a conviction or sentence entered upon a fully negotiated plea must first move to withdraw their guilty plea and may not challenge their sentence as excessive — and section 5-3-1, which allows a court to sentence a defendant without considering a written PSI only if the parties agree to a sentence and the court makes a finding regarding the defendant's criminal history, including prior sentences. The Second, Third, and Fifth Districts have held that defendants who pleaded guilty under a fully negotiated plea agreement may raise a claim under section 5-3-1 on appeal. The First District has held that such claims are barred. The rule adopted by the Second, Third, and Fifth Districts is correct because a challenge under section 5-3-1 attacks the trial court's acceptance of a plea agreement and does not seek to modify the sentence agreed upon by the parties. Such a claim does not offend the contract principles that govern plea bargaining.

Regardless of how the Court resolves this split among the appellate court districts, the appellate court erred in vacating defendant's sentence and remanding for a new sentencing hearing because defendant forfeited his section 5-3-1 claim by failing to include it in his motion to withdraw his guilty plea. Accordingly, this Court should reverse the appellate court's judgment.

I. Standard of Review

The interpretation of statutes and Supreme Court rules are legal questions that this Court reviews de novo. *People v. Clark*, 2019 IL 122891, ¶ 17; *People v. Johnson*, 2019 IL 122956, ¶ 22.

II. Defendant's Section 5-3-1 Claim Is Not an Excessive Sentence Challenge Prohibited by Rule 604(d).

A. Plea bargaining principles and Rule 604(d).

Plea agreements are governed by contract law principles. *People v. Evans*, 174 Ill. 2d 320, 326 (1996). Due process and fundamental fairness require that courts respect the promises made by both parties to a plea agreement. *People v. Stapinski*, 2015 IL 118278, ¶ 48. When a defendant pleads guilty in reliance on an agreement with the People, the People must honor the agreement. *Id.* Similarly, the defendant may not negotiate charging or sentencing concessions from the People and then unilaterally renege or seek to modify the terms of the agreement. *Evans*, 174 Ill. 2d at 327-28.

Consistent with these principles, Supreme Court Rule 604(d) prohibits appeals "taken upon a negotiated plea of guilty challenging the sentence as

excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.” Ill. S. Ct. R. 604(d).

Rule 604(d)’s prohibition on sentencing challenges is not limited to those expressly labelled an “excessive” sentencing claim. *See People v. Johnson*, 2019 IL 122956, ¶¶ 39-41. In *Johnson*, the defendant pleaded guilty in exchange for a sentencing cap of thirteen years and the dismissal of other charges. *Id.* ¶ 4. The trial court sentenced him to eleven years, and the defendant appealed arguing that the court had relied on improper sentencing factors. *Id.* ¶¶ 11, 16. As a remedy, the defendant sought to reduce his sentence without withdrawing his plea. *Id.* ¶¶ 36, 50. This Court reasoned that the defendant’s claim was an excessive sentence claim because he was ultimately seeking a modification of his sentence. *Id.* ¶¶ 39-41. The Court concluded that Rule 604(d) and contract principles prohibited the defendant from raising his claim without first seeking to withdraw his plea. *Id.* ¶ 57.

B. Section 5-3-1 Compliance.

Because Rule 604(d) prohibits excessive sentence claims on appeal from a fully negotiated guilty plea, the question presented here is whether defendant’s claim that his sentence should be vacated (and the case remanded for a new sentencing hearing) because the circuit court failed to strictly comply with section 5-3-1 presents an excessive sentence claim. Section 5-3-1 requires a sentencing court to consider a written PSI before

sentencing a defendant for a felony. 730 ILCS 5/5-3-1 (“A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court.”). Because section 5-3-1 employs the mandatory word “shall” coupled with a negative limitation upon the sentencing court, this Court has held that section 5-3-1’s PSI requirement is mandatory. *People v. Youngbey*, 82 Ill. 2d 556, 562 (1980).

Moreover, the sentencing court must strictly comply with section 5-3-1. *People v. Harris*, 105 Ill. 2d 290, 302-03 (1985). Although a previous version of the statute explicitly permitted defendants to waive the PSI requirement, *see id.* at 562-63, the statute’s current language permits a waiver only on the condition that “both parties agree to the imposition of a specific sentence,” and “provided there is a finding made for the record as to the defendant's history of delinquency or criminality, including any previous sentence to a term of probation, periodic imprisonment, conditional discharge, or imprisonment.” 730 ILCS 5/5-3-1. Because the statute is intended to both benefit the defendant and allow the sentencing court to make an informed decision, the PSI requirement is not a personal right of the defendant and cannot be waived “except in accordance with the statute.” *Youngbey*, 82 Ill. 2d at 561, 564-65; *see also Harris*, 105 Ill. 2d at 302.

Here, sections 5-3-1’s first condition was satisfied, in that “both parties agree[d] to the imposition of a specific sentence.” But the court did not strictly comply with the second condition: although a finding was made

regarding defendant's prior convictions (i.e., his "history of delinquency or criminality,") no information was presented regarding the attendant "sentence[s] to a term of probation, periodic imprisonment, conditional discharge, or imprisonment."

C. The appellate court districts have split on the interplay between Rule 604(d) and section 5-3-1.

As noted above, the appellate court districts are split regarding whether a defendant who enters a negotiated guilty plea may raise a section 5-3-1 claim on appeal. The Second District considered the issue in a case where a defendant had unsuccessfully moved to withdraw his negotiated guilty plea, arguing that the trial court's acceptance of his plea was invalid because it failed to comply with section 5-3-1. *People v. Walton*, 357 Ill. App. 3d 819, 821 (2d Dist. 2005). On appeal, the Second District noted that Walton sought to invalidate the trial court's approval of the plea agreement rather than merely modify his sentence. *Id.* Noting that the error did not undermine the negotiation process or the plea admonishments, the appellate court concluded that the proper remedy was a new sentencing hearing at which the trial court would first comply with section 5-3-1 and then determine whether it still found the negotiated plea agreement acceptable. *Id.* at 824. Once properly informed and having made the findings required by section 5-3-1, if the court no longer concurred with the agreement, Walton would be allowed to withdraw his plea. *Id.* The Fifth District ordered the same remedy under similar circumstances in *People v. Bryant*, 2016 IL App

(5th) 140334, ¶¶ 49-50 (citing *Walton*, 357 Ill. App. 3d at 824). And the Third District followed suit here. A4-5.

In a departure from these decisions, the First District reached a different conclusion in *People v. Haywood*, 2016 IL App (1st) 133201. There, the defendant similarly sought a new sentencing hearing based on non-compliance with section 5-3-1. *Id.* ¶ 41. The First District noted that contract principles bar a defendant who pleaded guilty pursuant to a negotiated plea agreement from seeking to unilaterally reduce his sentence and held that a “[d]efendant cannot seek a new sentencing hearing while a negotiated plea remains in place.” *Id.* (citing *Evans*, 174 Ill. 2d at 332).

Because defendant’s section 5-3-1 claim here is not properly characterized as an “excessive” sentence claim within the meaning of Rule 604(d)’s bar on such appeals, the Second, Third, and Fifth Districts state the better rule. Rule 604(d)’s prohibition exists to prevent a defendant from unfairly binding the People to the terms of a plea agreement and then seeking to unilaterally modify its terms. *Johnson*, 2019 IL 122956, ¶¶ 26-28. Yet a section 5-3-1 claim does not seek to alter the terms of a plea agreement. This is evident in the remedy employed by the Second, Third, and Fifth Districts. Given a valid section 5-3-1 claim, the sentencing court holds a new sentencing hearing and — having been properly informed about the defendant’s prior convictions and related dispositions — either accepts the plea agreement and sentences the defendant in accordance with its terms or

rejects the agreement and allows the defendant to withdraw his plea. *See Walton*, 357 Ill. App. 3d at 824. Contract principles are not offended because the parties are either held to the terms of their agreement or returned to the status quo as it existed prior to the acceptance of the plea. *See Johnson*, 2019 IL 122956, ¶ 47.

Thus, defendant's section 5-3-1 claim is best characterized as a challenge to the sentencing court's acceptance of his guilty plea. Although a trial court has discretion to reject a plea agreement, *People v. Henderson*, 211 Ill. 2d 90, 103 (2004), if the court accepts a negotiated plea agreement, it must act in accordance with the agreed terms, *People v. Whitfield*, 217 Ill. 2d 177, 194 (2005) ("When a defendant has pled guilty in contemplation of receiving a specific sentence, imposing additional and unbargained-for terms or conditions is not permissible."). In instances where the court does not — or cannot — act in accordance with the plea agreement, the defendant must be given the opportunity to withdraw his plea. *See Whitfield*, 271 Ill. 2d at 186 (holding that where a defendant is not sentenced in accordance with his plea agreement, the remedy is either specific performance of the deal's terms or the opportunity to withdraw his plea); *see also* Ill. S. Ct. R. 402(d)(2) (eff. July 1, 2012) (If a court withdraws its agreement to a plea deal, it shall "call upon the defendant either to affirm or to withdraw his or her plea of guilty."). Because section 5-3-1 imposes explicit conditions on a court's ability to sentence a defendant without a PSI, non-compliance with the statutory

conditions also undermines the validity of the court's acceptance of a negotiated plea deal.

The First District's contrary approach, reading Rule 604(d) to prohibit defendant's claim, renders the second condition of section 5-3-1's exception unenforceable. *Contra People v. Ellis*, 199 Ill. 2d 28, 39 (2002) ("If possible, the court must give effect to every word, clause, and sentence [of a statute]; it must not read a statute so as to render any part inoperative, superfluous, or insignificant."). Section 5-3-1's written PSI requirement can be waived in only one circumstance: when the parties agree to a specified sentence and the court makes a finding as to the defendant's convictions and attendant dispositions. 730 ILCS 5/5-3-1; *Youngbey*, 82 Ill. 2d at 561 ("the presentence investigation and report is a mandatory legislative requirement which cannot be waived except in accordance with the exception in the statute."). In virtually all instances in which the parties agree to a specified sentence, that agreement will be the result of a negotiated plea deal. In such cases, Rule 604(d) bars excessive sentencing claims on appeal unless the defendant successfully withdraws his plea, and consequently has his sentence vacated. *See* Ill. S. Ct. R. 604(d). Thus, if a section 5-3-1 claim is construed to present an excessive sentence claim, Rule 604(d) would bar on appeal any claim that the sentencing court did not follow section 5-3-1's PSI waiver requirements. Yet, the provisions of Rule 604(d) and section 5-3-1 can be harmonized. *See People v. Rinehart*, 2012 IL 111719, ¶ 26 (Where two statutes "concern[] the

same subject,” they “must be considered together in order to produce a harmonious whole.”). If defendant’s claim is construed as a challenge to the validity of the trial court’s acceptance of a plea deal, Rule 604(d) would permit enforcement of section 5-3-1’s PSI waiver requirements, so long as the claim was properly preserved.

III. Defendant’s Claim Is Forfeited Because He Did Not Raise It In the Trial Court.

Although Rule 604(d) did not bar defendant’s section 5-3-1 claim as an excessive sentence claim, defendant forfeited it because he failed to raise it in the motion to withdraw his guilty plea and vacate the judgment.

Rule 604(d) requires a defendant who has pleaded guilty to file a written motion to withdraw his plea and vacate the judgment before an appeal challenging the plea will be heard. Ill. S. Ct. R. 604(d). Strict compliance with Rule 604(d)’s requirements is a condition precedent to an appeal. *People v. Flowers*, 208 Ill. 2d 291, 308-09 (2003).

Any issue not raised in the defendant’s motion to withdraw his plea and vacate the judgment is forfeited. *See* Ill. S. Ct. R. 604(d) (“Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.”). Although the rule uses the word waiver, this Court has noted that the words “forfeiture” and “waiver” are frequently — albeit incorrectly — used interchangeably in criminal contexts. *People v. Hughes*, 2015 IL 117242, ¶ 37. The two doctrines are distinct; waiver refers to the

“voluntary relinquishment of a known right,” while forfeiture is a “failure to timely comply with procedural requirements.” *Id.* The barring of claims on appeal that were not raised before the trial court is properly characterized as a forfeiture. *People v. Allen*, 222 Ill. 2d 340, 351 n.1 (2006); *People v. Blair*, 215 Ill.2d 427, 444 n.2 (2005). Because defendant did not raise his section 5-3-1 claim in his initial or amended motions to withdraw his guilty plea, *see* C75, 95-96, he forfeited the claim.

Additionally, considerations of judicial economy favor the enforcement of defendant’s forfeiture. The purpose of Rule 604(d)’s restrictions is to “allow[] a trial court to immediately correct any improper conduct or any errors of the trial court that may have produced a guilty plea” because the trial court is best suited to do so. *People v. Wilk*, 124 Ill. 2d 93, 104 (1988). Defendant’s claim could have been readily resolved had it been raised in the circuit court. Had he raised the claim in the motion to withdraw his plea, the court could have cured the section 5-3-1 error and determined whether to accept the plea deal.

Therefore, although the appellate court correctly determined that defendant’s section 5-3-1 claim was not barred by Rule 604(d)’s prohibition against excessive sentence claims following a fully negotiated plea deal, it did not recognize that defendant had nonetheless forfeited the claim by failing to include it in the motion to withdraw his plea and vacate his conviction. Had defendant properly raised the claim before the trial court, it could have

readily remedied the error. Accordingly, the People respectfully request this Court to resolve the district split and adopt the reasoning of the Second, Third, and Fifth Districts but ultimately acknowledge defendant's forfeiture and reverse the appellate court's judgment.

CONCLUSION

This Court should reverse the judgment of the Illinois Appellate Court, Third District.

August 6, 2019

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is fifteen pages.

/s/ Nicholas Moeller
Nicholas Moeller
Assistant Attorney General

APPENDIX

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People v. Sophanavong, 2018 IL App (3d) 170450

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PHOUVONE V. SOPHANAVONG, Defendant-Appellant.
District & No.	Third District Docket No. 3-17-0450
Filed	November 14, 2018
Decision Under Review	Appeal from the Circuit Court of Tazewell County, No. 13-CF-613; the Hon. Michael E. Brandt and the Hon. Stephen A. Kouri, Judges, presiding.
Judgment	Sentence vacated; cause remanded.
Counsel on Appeal	James E. Chadd, Peter A. Carusona, and Santiago A. Durango, of State Appellate Defender's Office, of Ottawa, for appellant. Stewart J. Umholtz, State's Attorney, of Pekin (Patrick Delfino, David J. Robinson, and Mark A. Austill, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE CARTER delivered the judgment of the court, with opinion. Justice McDade concurred in the judgment and opinion. Justice Schmidt dissented, with opinion.

OPINION

¶ 1 Pursuant to a fully-negotiated plea agreement, defendant, Phouvone V. Sophanavong, pled guilty to first degree murder (720 ILCS 5/9-1(a)(3) (West 2012)) and was sentenced to 55 years in prison. Defendant filed a second amended motion to withdraw his guilty plea, alleging that his plea was not knowingly, understandingly, and voluntarily made and that he had been denied effective assistance of counsel at the time of the plea. Following a hearing, the trial court denied defendant's motion. Defendant appeals, arguing that the trial court's acceptance of the plea agreement was improper because the trial court did not have before it at the time a presentence investigation or any information regarding the dispositions that defendant received on his prior convictions as required by section 5-3-1 of the Unified Code of Corrections (Code) (730 ILCS 5/5-3-1 (West 2012)). We agree with defendant. We, therefore, vacate defendant's sentence and remand for a new sentencing hearing in strict compliance with section 5-3-1 of the Code.

¶ 2 FACTS

¶ 3 In December 2013, defendant was charged by indictment with three counts of first degree murder, one count of aggravated kidnapping, and one count of violation of an order of protection for the November 2013 kidnapping and shooting death of his estranged wife.

¶ 4 In April 2014, pursuant to a fully negotiated plea agreement, defendant pled guilty to one count of first degree murder and was sentenced to 55 years in prison (30 years for murder plus a 25-year sentencing enhancement for personally discharging a firearm during the offense that proximately caused the victim's death). Pursuant to the terms of the plea agreement, the State nol prossed the remaining charges and agreed not to file certain other charges. During the plea hearing, the State provided a factual basis for the plea and defense counsel confirmed that the State's rendition of the facts was consistent with the discovery that defense counsel had received. The trial court found that a factual basis existed for the plea and that the plea was knowingly and voluntarily made. The trial court inquired as to defendant's criminal history. The State informed the trial court that defendant had previously been convicted of manufacture or delivery of cannabis, a Class 1 felony, in a 2004 Tazewell County case and that defendant had also been convicted of a speeding offense and of a seatbelt offense. The State did not, however, report to the trial court the disposition on any of defendant's prior offenses. Upon inquiry, the parties informed the trial court that they were waiving a presentence investigation report (PSI). The trial court accepted the plea agreement and entered the agreed-upon conviction and sentence.

¶ 5 The following month, in May 2014, defendant filed a *pro se* motion to withdraw his guilty plea and raised, among other things, claims of ineffective assistance of counsel. Defendant did not raise, however, any claim regarding the waiver of a PSI or as to the lack of a disposition history for defendant's prior criminal offenses at the time of the plea. After inquiring into defendant's *pro se* claims of ineffective assistance of counsel, the trial court appointed new defense counsel (postplea counsel) to represent defendant in the proceedings on the motion.

¶ 6 In October 2014, postplea counsel filed an amended motion to withdraw guilty plea. In the amended motion, postplea counsel alleged that defendant's plea was not knowingly, understandingly, and voluntarily made for various reasons and that defendant had been denied effective assistance of counsel at the time of the plea. In the amended motion, however,

postplea counsel did not raise any claim regarding the waiver of a PSI or as to the lack of a disposition history for defendant's prior criminal offenses at the time of the plea. The State filed a response and opposed the amended motion. After a hearing, the trial court denied defendant's amended motion to withdraw guilty plea. Defendant appealed, and this court remanded the case for compliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). *People v. Sophanavong*, No. 3-14-0864 (Sept. 19, 2016) (letter ruling vacating and remanding with instructions).

¶ 7 On remand, defendant was again appointed counsel (postremand counsel). In May 2017, postremand counsel filed a second amended motion to withdraw guilty plea. In the second amended motion, postremand counsel again alleged that defendant's plea was not knowingly, understandingly, and voluntarily made and that defendant had been denied effective assistance of counsel at the time of the plea. No issue was raised, however, in the second amended motion regarding the waiver of a PSI or as to the lack of a disposition history for defendant's prior criminal offenses. After a hearing, the trial court denied defendant's second amended motion to withdraw guilty plea. Defendant appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant abandons his challenge to the trial court's ruling on his second amended motion to withdraw guilty plea and argues instead that his sentence should be vacated and the case remanded for a new sentencing hearing because the trial court failed to strictly comply with section 5-3-1 of the Code when it accepted the parties' plea agreement. More specifically, defendant asserts that vacation and remand are required under section 5-3-1 because no PSI was ordered and the trial court was not informed of the dispositions on defendant's prior criminal offenses when the trial court accepted the plea agreement and sentenced defendant.

¶ 10 The State argues that the trial court properly accepted defendant's fully negotiated guilty plea and that defendant's assertion on appeal should be rejected. In support of that argument, the State asserts first that because defendant's negotiated guilty plea is still in effect, defendant has no ability to challenge his sentence on appeal. The State makes that assertion based upon the decision in *People v. Haywood*, 2016 IL App (1st) 133201, ¶ 41, where the First District Appellate Court found, under similar circumstances, that the defendant could not challenge his sentence on appeal because his guilty plea and the negotiated plea agreement were still in effect. Second, and in the alternative, the State asserts that section 5-3-1 was complied with in this case because the trial court was sufficiently informed of defendant's criminal history; the trial court could reasonably infer, based upon its knowledge of the law and the circumstances of this case, the range of sentences that the defendant received for his prior convictions; and the trial court was able to assess the dangerousness of defendant from the factual basis that was provided. The State asks, therefore, that we affirm the trial court's judgment.

¶ 11 The issue in this case centers around section 5-3-1 of the Code, which states that:

“A defendant shall not be sentenced for a felony before a written presentence report of investigation is presented to and considered by the court.

However, other than for felony sex offenders being considered for probation, the court need not order a presentence report of investigation where both parties agree to the imposition of a specific sentence, provided there is a finding made for the record as to the defendant's history of delinquency or criminality, including any previous

sentence to a term of probation, periodic imprisonment, conditional discharge, or imprisonment.

The court may order a presentence investigation of any defendant.” 730 ILCS 5/5-3-1 (West 2012).

Whether the trial court has complied with section 5-3-1 of the Code is a question of law that is subject to *de novo* review on appeal. *People v. Walton*, 357 Ill. App. 3d 819, 822 (2005).

¶ 12 The PSI requirement contained in section 5-3-1 is a mandatory legislative requirement that cannot be waived except as provided for in the statute. *People v. Youngbey*, 82 Ill. 2d 556, 564-65 (1980); *Walton*, 357 Ill. App. 3d at 821. The purpose of the requirement is to ensure that the trial court has all of the necessary information about the defendant, including the defendant’s criminal history, before the trial court imposes a sentence. *Youngbey*, 82 Ill. 2d at 564; *Walton*, 357 Ill. App. 3d at 821. A defendant cannot waive the PSI requirement, other than as noted above, because the requirement serves not only to benefit the defendant, but also to enlighten the trial court and is a useful tool for the sentencing judge. *Youngbey*, 82 Ill. 2d at 565; *Walton*, 357 Ill. App. 3d at 821-22. Although section 5-3-1 is primarily concerned with making the sentencing judge aware of the dangerousness of a particular defendant, the lack of a criminal history is also relevant in determining the appropriateness of the sentence. *Walton*, 357 Ill. App. 3d at 822.

¶ 13 When the trial court is presented with a negotiated plea for an agreed-upon sentence, section 5-3-1 of the Code requires that the trial court be aware of the history of the defendant’s criminality and delinquency in determining whether to accept the negotiated plea. *People v. Bryant*, 2016 IL App (5th) 140334, ¶ 49. Strict compliance with section 5-3-1 is mandatory. *People v. Harris*, 105 Ill. 2d 290, 302-03 (1985); *Bryant*, 2016 IL App (5th) 140334, ¶ 49. If the trial court fails to strictly comply with section 5-3-1, the sentence imposed must be vacated, and the case must be remanded for a new sentencing hearing so that the trial court can consider the defendant’s criminal history before deciding if the negotiated sentence is appropriate. *Bryant*, 2016 IL App (5th) 140334, ¶ 49; *Walton*, 357 Ill. App. 3d at 824.

¶ 14 In the present case, there can be no dispute that the trial court did not strictly comply with section 5-3-1 of the Code when it accepted the fully negotiated plea agreement. See *Youngbey*, 82 Ill. 2d at 564-65; *Harris*, 105 Ill. 2d at 302-03; *Walton*, 357 Ill. App. 3d at 821-22; *Bryant*, 2016 IL App (5th) 140334, ¶ 49. Although the State provided the trial court with some information as to defendant’s prior criminal history, no information whatsoever was presented as to the dispositions defendant received in his prior criminal cases. Defendant’s sentence, therefore, must be vacated and the case remanded for a new sentencing hearing so that the trial court can be informed of defendant’s history of delinquency and criminality before it determines whether the agreed-upon sentence is appropriate. See *Walton*, 357 Ill. App. 3d at 824; *Bryant*, 2016 IL App (5th) 140334, ¶ 50. Once informed, if the trial court determines that the sentence is appropriate, it should resentence defendant in accordance with the terms of the plea agreement. See *Walton*, 357 Ill. App. 3d at 824; *Bryant*, 2016 IL App (5th) 140334, ¶ 50. If the sentence is not appropriate, however, the trial court should allow defendant to withdraw his guilty plea. See *Walton*, 357 Ill. App. 3d at 824; *Bryant*, 2016 IL App (5th) 140334, ¶ 50. To the extent that the appellate court in *Haywood* reached a different conclusion (see *Haywood*, 2016 IL App (1st) 133201, ¶ 41), we respectfully disagree.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we vacate defendant's sentence and remand for further proceedings consistent with this ruling.

¶ 17 Sentence vacated; cause remanded.

¶ 18 JUSTICE SCHMIDT, dissenting:

¶ 19 I agree with the First District's opinion in *Haywood. Id.* I would affirm.

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 6, 2019 the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered e-mail addresses:

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