2026 IL App (1st) 230317-UB

SECOND DIVISION
August 31, 2026

No. 1-23-0317 and 1-23-1032, Cons.

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PERNELL BROWN, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 01CR15671 Honorable Charles P. Burns, Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Van Tine and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the trial court's resentencing decision over defendant's claims that the court erroneously imposed a more severe sentence, and that the sentence constitutes an unconstitutional *de facto* life sentence.

¶ 2 After a bench trial, defendant, Pernell Brown, was found guilty of the 2001 shooting death of the victim, Robert Byrd, and sentenced to 50 years' imprisonment. During post-conviction proceedings, the trial court agreed with defendant's claim that his 50-year sentence was a *de facto* life sentence imposed without consideration of defendant's youth. The court held a new sentencing hearing, and resentenced defendant to a term of 41 years in the Illinois Department of Corrections.

In this appeal, defendant argues that the court impermissibly imposed a more severe sentence on resentencing, and that his new sentence remained an unconstitutional *de facto* life sentence.

¶ 3 The trial evidence has been extensively set out in prior appeals. In summary, defendant was identified by two witnesses as the shooter in the January 16, 2001, murder of Robert Byrd at the Super Sub Shop in Chicago, while other witnesses saw defendant near the time of the shooting by the Super Sub Shop and/or driving the vehicle that was used in the shooting. In his defense, defendant suggested that his deceased brother, David Payton, was the actual shooter. The court found defendant guilty of first-degree murder and sentenced him to 50 years' imprisonment, and that judgment was affirmed on direct appeal.

¶ 4 Defendant's first *pro se* postconviction petition, filed in December 2006, was summarily dismissed by the trial court at the first stage of postconviction proceedings, and this court affirmed. *People v. Brown*, No. 1-07-0406 (2008) (unpublished order under Supreme Court Rule 23). Defendant sought leave to file his first successive *pro se* postconviction petition in June 2009. The court denied defendant leave to file the petition, and we affirmed. *People v. Brown*, 2012 IL App (1st) 092597-U.

¶ 5 On September 24, 2014, defendant sought leave to file his second successive *pro se* postconviction petition. By agreement of the parties, defendant's second successive post-conviction petition was advanced for second stage proceedings. Defense counsel then filed an amended petition, which alleged claims of actual innocence and that his 50-year sentence was an unconstitutional *de facto* life sentence where the trial court did not consider defendant's youth or make a finding that he was irreparably corrupt. The court denied defendant's petition as to his actual innocence claim, but agreed that defendant's sentence should be vacated.

¶ 6 The court conducted a new sentencing hearing on January 26, 2023, during which it reviewed an updated presentencing investigation report, heard from several witnesses, and considered the parties' arguments in aggravation and mitigation.

¶ 7 On January 31, 2023, the parties reconvened for the court's sentencing decision. The court noted that defendant had previously received a sentence of 50 years, which was comprised of 25 years on his murder conviction, plus a 25-year mandatory firearm enhancement, and that the firearm enhancement was now discretionary. The court sentenced defendant to a 41-year term on the murder conviction, and chose not to apply the discretionary enhancement. The court explained that defendant's new sentence was 9 years less than the sentence previously imposed. The court also found it "very important" that defendant was "eligible for parole almost immediately, because defendant had served approximately 20 years, and accordingly, he had "the opportunity to apply for a parole hearing" at which "the parole board will be able to ascertain his rehabilitation."

¶ 8 Defense counsel moved to reconsider the sentence, arguing that because the sentence was "over 41 years it'd be our position that *** this is a life sentence in violation of *Buffer*."

¶ 9 The court responded, "Respectfully I don't believe *** it's *de facto* life anymore." The court believed that the case law indicated that whether a sentence amounts to a *de facto* life sentence is "controlled by the [defendant's] ability to be released before 40 years." The court further explained that in *People v. Dorsey*, 2021 IL 123010, the Illinois Supreme Court held that a "sentence imposed pursuant to [a] statutory scheme that affords a juvenile an opportunity to be released from prison after serving 40 years or less imposed does not constitute a *de facto* life sentence." Because defendant had the opportunity to be released after 20 years, the court concluded that it was not a *de facto* life sentence, and denied defendant's motion to reconsider.

¶ 10 Defendant filed a timely notice of appeal from that order that same day.

¶ 11 In the prior opinion issued in this matter, this court found that the trial court erred in dismissing defendant's postconviction petition claim of actual innocence at the second stage of proceedings, and we remanded for a third stage evidentiary hearing on that issue. *People v. Brown*, 2024 IL App (1st) 230317-U, ¶ 113. In so holding, this court determined that it need not reach defendant's sentencing issue, because defendant's conviction could be vacated following that third stage hearing. *Id.* ¶ 114 ("it would be premature at this time for this court to consider defendant's sentence for a conviction that may be vacated.").

¶ 12 On remand, the trial court conducted a third stage evidentiary hearing, and denied defendant's actual innocence claim on March 3, 2026. An appeal from that order is currently pending under a separate case number.

¶ 13 On April 20, 2026, defendant filed a motion requesting this court to issue a ruling on the outstanding sentencing issues raised in this appeal. Defendant argued that this court retained jurisdiction to decide those claims, and that we should resolve them in this appeal rather than in the later appeal from defendant's third stage hearing, because if this court decides in defendant's favor, he may be entitled "to immediate release."

¶ 14 This court agreed that we had retained jurisdiction over defendant's sentencing claims (*People v. Garrett*, 139 Ill. 2d 189, 195 (1990); *People v. Lawson*, 2019 IL App (4th) 180452, ¶ 35), and that justice was "best served" by an expeditious consideration of defendant's claims. We informed the parties that this court would consider the arguments previously raised in the briefs, and also allowed the parties to update those arguments with any additional authority by filing supplemental briefs.

¶ 15 In this appeal, defendant contends that the trial court erred in its resentencing decision in two ways: first, the court erroneously increased defendant's sentence without receiving evidence

justifying the increase; and second, the 41-year term of imprisonment imposed remained an unconstitutional *de facto* life sentence.

¶ 16 We first address defendant's claim that his sentence was erroneously increased. Section 5-5-4(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-4(a) (West 2022)) governs resentencing on remand. It provides, in relevant part, as follows:

> "Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied unless the more severe sentence is based upon conduct on the part of the defendant occurring after the original sentencing." 730 ILCS 5/5-5-4(a) (West 2022).

¶ 17 The purpose of section 5-5-4 of the Code is to ensure a defendant's due process rights by "preventing vindictiveness in resentencing a defendant for having exercised his appeal rights or his right to file a post-judgment motion." *People v. Woolsey*, 278 Ill. App. 3d 708, 710 (1996) Whether a trial court complied with section 5-5-4(a) is a matter of law we review *de novo. People v. Moore*, 359 Ill. App. 3d 1090, 1092 (2005).

¶ 18 Defendant's argument that the court "increased" his sentence rests on the premise that his initial sentence was only 25 years—which defendant terms a "base sentence"—to which a then-mandatory 25-year firearm enhancement was added. Defendant compares the prior 25-year "base sentence" to the 41-year sentence that was imposed on resentencing, to contend that the trial court "increased" defendant's sentence for the offense by 16 years. Apparently acknowledging that he forfeited this challenge to his sentence by failing to raise it at his resentencing hearing and in a motion to reconsider, defendant asserts that we should review his claim for plain error.

¶ 19 The plain error doctrine is a narrow and limited exception to forfeiture. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). To obtain relief under this doctrine in the sentencing context, a defendant must show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Id.* Whether forfeiture may be excused requires us first to determine whether a clear error occurred. *People v. Garcia*, 2023 IL App (1st) 220524, ¶ 18. Here, we find no clear error.

¶ 20 Courts have roundly rejected defendant's claim that a sentence is comprised of distinct component parts consisting of a "base" sentence and a firearm enhancement. See *People v. Garza*, 2025 IL App (1st) 231600-U, ¶ 52 (rejecting "invitation to treat an underlying murder charge and a weapons enhancement as separate sentences"); *People v. Cox*, 2025 IL App (1st) 230602-U, ¶ 91 (also rejecting "defendant's entreaty to consider the 40-year sentence and the 25-year firearm enhancement as separate, distinct sentences"); *People v. Applewhite*, 2025 IL App (1st) 231109-U, ¶ 34 ("defendant did not originally receive a 'base sentence' for murder separate from the firearm enhancement, but one 45-year sentence that included the firearm enhancement"); *People v. Bonner*, 2025 IL App (1st) 221395-U, ¶ 46 ("Illinois courts have routinely rejected the theory that the firearm enhancements operate as a second discrete sentence that is served in addition to some 'base' sentence. [Citations] All that matters is the final number"); *People v. Gomez*, 2023 IL App (1st) 220810-U, ¶ 42 (explaining that a sentence is considered "as a whole" and not as "two separate pieces").

¶ 21 Here, defendant was originally sentenced to a term of 50 years' imprisonment, and the court imposed a shorter 41-year term on resentencing. Accordingly, the court did not violate Section 5-5-4(a)'s prohibition against imposing a more severe sentence in resentencing.

¶ 22 Defendant next contends that his 41-year sentence is an unconstitutional *de facto* life sentence. Defendant asserts that the court's comments in resentencing indicate that it did not intend to impose a *de facto* life sentence, but that it erroneously did so by exceeding the 40-year threshold set by our supreme court in *People v. Buffer*, 2019 IL 122327.

¶ 23 Defendant's challenge is based on *Miller v. Alabama*, 567 U.S. 460 (2012), which held that imposing a mandatory sentence of life without the possibility of parole upon a juvenile offender, without consideration of the defendant's youth and its attendant characteristics, violated the eighth amendment. Illinois courts have held that *Miller* also applies to *de facto* life sentences (*People v. Reyes*, 2016 IL 119271, ¶ 9), which is a prison term that exceeds 40 years (*Buffer*, 2019 IL 122327, ¶¶ 40-41). To

> "prevail on a claim based on *Miller* and its progeny, a defendant sentenced for an offense committed while a juvenile must show that (1) the defendant was subject to a life sentence, mandatory or discretionary, natural or *de facto*, and (2) the sentencing court failed to consider youth and its attendant characteristics in imposing the sentence." *Buffer*, 2019 IL 122327, ¶ 27.

¶ 24 Following *Miller* and its progeny, the Illinois legislature amended the statute governing juvenile parole to allow offenders sentenced to prison for first-degree murder, who were under 21-years-old at the time of the offense, and sentenced after June 1, 2019, opportunities to request early release after serving 20 years in prison. 730 ILCS 5/5-4.5-115(b) (West 2022). Defendant recognizes that he may seek parole review after 20 years under section 5/5-4.5-115, but he contends that the statute does not provide a "*meaningful* opportunity to be released" (emphasis in original).

¶ 25 At the time of original briefing, a split existed in the appellate court regarding whether and how section 5/5-4.5-115 affected the determination of whether a sentence is a *de facto* life term. Since that briefing, however, the Illinois Supreme Court decided *People v. Spencer*, 2025 IL 130015, and held that when a defendant is eligible for parole after 20 years under section 5-4.5-115, "the statutory scheme allows [him] a meaningful opportunity to obtain release" prior to 40 years. *Id.* ¶ 40. Accordingly, his sentence does not qualify as a *de facto* life sentence, even if the term is greater than 40 years. *Id.*

¶ 26 In defendant's supplemental brief, he "acknowledges *Spencer* and understands this Court is bound to follow it," but declines to withdraw the claim to preserve the argument for a future appeal. Indeed, we are bound by decisions of our supreme court and have no authority to overrule or modify its decisions. *People v. Salamie*, 2023 IL App (2d) 220312, ¶ 60. We thus conclude, under *Spencer*, that defendant was not subject to a *de facto* life sentence because he is eligible for parole after 20 years under section 5/5-4.5-115, which provides him a "meaningful opportunity to obtain release" prior to 40 years." *Spencer*, 2025 IL 130015, ¶ 40; see also *People v. Cox*, 2025 IL App (1st) 230602-U, ¶ 45.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 28 Affirmed.