

No. 1-19-1914

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 18777
)	
COURTNEY WOODS,)	Honorable
)	Diane Cannon,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s sentence is vacated and the cause remanded for resentencing, where the resentencing court failed to follow this court’s mandate from his prior appeal.

¶ 2 Defendant Courtney Woods was found guilty of two counts of armed robbery and sentenced to concurrent terms of 34 years in prison. On Mr. Woods’s first direct appeal, we vacated one of the two armed robbery counts because the two convictions violated the one-act, one-crime rule, and we also vacated Mr. Woods’s sentence and remanded for resentencing. *People v. Woods*,

2018 IL App (1st) 153323. On remand before a new judge, Mr. Woods was sentenced to 32 years in prison. He now appeals that sentence, asking that we again vacate his sentence because the resentencing court abused its discretion and failed to comply with our mandate from the prior appeal. Mr. Woods also asks us to vacate a 2006 conviction for aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2006)) as void pursuant to *In re N.G.*, 2018 IL 121939.

¶ 3 For the following reasons, we agree with Mr. Woods that the sentencing court on remand appears to have misunderstood and failed to follow our mandate and we remand for resentencing, with more specific directions. We need not address Mr. Woods’s claim that his AUUW conviction should be vacated because, as he informs us in his reply brief, the circuit court has already done so.

¶ 4 I. BACKGROUND

¶ 5 Mr. Woods’s conviction stems from the September 15, 2012, armed robbery of Tiffany House and Anton Brown. The details of that occurrence can be found in our prior opinion. *Woods*, 2018 IL App (1st) 153323. The facts relevant to this appeal are outlined below.

¶ 6 A. The Initial Sentencing Hearing

¶ 7 After Mr. Woods was found guilty, the trial court ordered a presentence investigation (PSI) report be completed. The first PSI report only contained a recitation of Mr. Woods’s criminal history and the official version of the offense. The “Summary” section of the report simply indicated that Mr. Woods “respectfully declined to answer any questions pertaining to his investigation.” At his next court date, the trial court ordered Mr. Woods to speak with the probation officers for the PSI report.

¶ 8 A new PSI report was filed with the trial court, including statements from Mr. Woods about

his social and educational background. According to the investigator, Mr. Woods “admitted” he was a former member of the Mafia Insane Vice Lords street gang, explaining that he had joined the gang at 13 but left at 24 because he wanted to be a positive role model for his younger half-brothers. According to his statements to the investigator, Mr. Woods dropped out of school after eighth grade because “ ‘his heart wasn’t in it.’ ” Mr. Woods also said his “ ‘whole world literally collapsed’ ” in 2006 when his mother passed away from breast cancer.

¶ 9 At the sentencing hearing, the State emphasized Mr. Woods’s prior gang affiliation and asked for a substantial amount of prison time. The defense relied on Mr. Woods’s family history in mitigation: he was raised in a home with a single mother who he lost to breast cancer in 2006, but he still made sure his younger half-brothers finished high school, obtained good jobs, and had good lives.

¶ 10 The trial court considered the factors in aggravation and mitigation, and specifically noted from the PSI report that Mr. Woods “had more than other students do, and *** just drop[ped] out,” that he “could have had the, you know, help of the *** teammates and the basketball team and your coach, *** but instead, you go to the streets and hang out with gang members,” and reiterated that “gangs and guns” had been Mr. Woods’s repeated choice. The court sentenced Mr. Woods to 34 years in prison, 8 more than the minimum of 26 years.

¶ 11 **B. The Initial Appeal**

¶ 12 On his first appeal, Mr. Woods argued, in pertinent part, that the trial court had violated his fifth amendment right against self-incrimination by ordering him “to participate in a PSI and then us[ing] the information provided about his prior gang affiliation and educational background against him in aggravation at sentencing.” *Woods*, 2018 IL App (1st) 153323, ¶ 22. We agreed, finding that “the trial court plainly erred by insisting that Mr. Woods cooperate with the PSI and

then using this information against him” (*id.* ¶ 37) and remanded “to the presiding judge of the criminal division so that Mr. Woods c[ould] be resentenced before a new judge with a new PSI” (*id.* ¶ 39).

¶ 13 We remanded the case to a new judge because, as we explained, it was “the best way to ‘remove any suggestion of unfairness’ *** where, as here, improper considerations ha[d] come into the sentencing process.” *Id.* ¶ 39 (quoting *People v. Heider*, 231 Ill. 2d 1, 25 (2008)).

¶ 14 C. The Resentencing Hearing

¶ 15 On remand, Mr. Woods’s case was reassigned to a new judge for resentencing, and that judge ordered a new PSI. A new PSI report was filed with the resentencing court on August 16, 2019. This PSI report contained Mr. Woods’s criminal history and an official version of the underlying incident. Although Mr. Woods declined to comment about the offense, he did answer questions with respect to his social history, education and employment, and family. Mr. Woods said he had been married for six years and had two children with whom he had a good relationship. Mr. Woods also said that he “ ‘belonged to a gang in the past, but [was] not in one currently.’ ”

¶ 16 At the resentencing hearing on August 16, 2019, the State asked the court to resentence Mr. Woods “to the sentence that was previously imposed of *** 34 years” because it was in the sentencing range, and the State argued it was “still appropriate.”

¶ 17 In mitigation, defense counsel argued that Mr. Woods’s life “literally collapsed” after his mother passed away from breast cancer when he was 18 years old and “he started making some bad decisions and getting into trouble with the police, hanging out with the wrong crowd.” Counsel also argued that Mr. Woods had been “very positive” since he had been in prison:

“He’s made good use of his time. He admitted to me that he has been—he’s gotten closer to God and his family. He’s had time to reflect on what’s really important in life. He did

earn his high school diploma. He is also pursuing college courses in the culinary arts and business management, Judge, but he is also paying close attention to his case here and he's been doing a lot of studying.”

Defense counsel asked for the minimum sentence of 26 years.

¶ 18 The resentencing court judge stated that she had considered Mr. Woods's criminal history, social history, the facts of the case, his prior convictions, the loss of his mother at 18, and his children. The judge then concluded: “I'm assuming that the last two years you have behaved in the penitentiary. And for that, I will reduce yours sentence to 32 years in the Illinois Department of Corrections from the 34.”

¶ 19 Mr. Woods's motion to reduce the sentence of 32 years was denied. This appeal followed.

¶ 20 **II. JURISDICTION**

¶ 21 Mr. Woods's motion to reduce his sentence was denied on August 16, 2019, and he timely filed a notice of appeal that same day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. Dec. 11, 2014), governing appeals from final judgments in criminal cases.

¶ 22 **III. ANALYSIS**

¶ 23 Mr. Woods's case was remanded to the circuit court strictly for the purpose of resentencing based on the concern expressed in the majority opinion that his original sentence was imposed in violation of his fifth amendment rights. On remand, the court was required to follow the mandate of this court. Under Illinois law, a circuit court must comply with “the clear and unambiguous directions in a mandate issued by a reviewing court.” *People v. Stephens*, 2012 IL App (1st) 110296, ¶ 123 (quoting *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982)); see also

People v. Mitchell, 2014 IL App (1st) 120080, ¶ 17 (“This court has the inherent authority to compel compliance with our orders. [Citation.] *** On remand, the trial court must conduct a resentencing hearing in compliance with our mandate and [statutory requirements].”)

¶ 24 When the circuit court imposed the sentence that Mr. Woods is currently appealing, the court quite appropriately considered Mr. Woods’s conduct in prison as a mitigating factor. As our legislature has made clear, where, as in Mr. Woods’s case, a defendant is remanded for resentencing, it is appropriate to consider “evidence of the defendant’s life, moral character and occupation during the time since the original sentence was passed.” 730 ILCS 5/5-5-3(d) (West 2018). The circuit court also appropriately recognized that it could not sentence Mr. Woods to more than the 34 years he had received at his original sentencing. The legislature has also made clear that the court may “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 (West 2018).

¶ 25 However, in imposing a sentence of 32 years, the resentencing court began with Mr. Woods’s previous sentence of 34 years, a sentence that we had found was imposed in violation of his fifth amendment rights. *Woods*, 2018 IL 153323, ¶¶ 33, 37. Because, as we made clear when we remanded Mr. Woods’s case to the circuit court for a new sentence, his original sentence was tainted by a violation of his fifth amendment rights, it was a violation of our mandate for the newly assigned resentencing judge to begin the analysis with the question of how to adjust the original sentence imposed. Indeed, we took the unusual step of remanding to a different judge in an effort to ensure that the new sentence would not be impacted in any way by what we viewed as a fifth amendment violation during the imposition of the original sentence.

¶ 26 The State’s response to this argument is that Mr. Woods has not shown that the 32-year sentence imposed was an abuse of discretion. However, this argument misses the problem, which is that the court began with the premise that the original sentence was valid and then adjusted it slightly to account for Mr. Woods’s conduct since he had been sentenced. This is not what our mandate required.

¶ 27 Mr. Woods also argues that the sentence on remand conflicted with our mandate because the resentencing court failed to treat Mr. Woods’s prior gang affiliation—and specifically the fact that he cut ties with the gang—as mitigation and to reduce his sentence on this basis. The State argues that our initial decision did not mandate a particular approach to this issue. However, there is no need to resolve this disagreement. Our mandate was that the new sentencing judge should have started over so that the original sentence was not used as the measuring stick for the new sentence imposed. Thus, whether the new sentence should have included a downward departure from the 34 year sentence because Mr. Woods was in fact a “former” gang member who had left the gang, is purely academic.

¶ 28 Mr. Woods asks that we use our authority under Illinois Supreme Court Rule 615(b)(4) (eff. June 1, 2020) to reduce his sentence to the minimum of 26 years. He cites *People v. McCumber*, 148 Ill. App. 3d 19 (1986), for the proposition that such an action should be taken when “a further remand would be ‘an exercise in futility’ based on the trial court’s failure to comply with a mandate.” However, we reject Mr. Woods’s conclusion that remand would be an exercise in futility. Rather, the resentencing court should be given another opportunity to give Mr. Woods an appropriate sentencing hearing, in accordance with our now clarified mandate.

¶ 29 Accordingly, we vacate Mr. Woods’s sentence of 32 years and remand again for resentencing. The resentencing judge is to start the sentencing process anew, not from either of

Mr. Woods's vacated sentences, and resentence him after considering all the factors in aggravation and mitigation. On remand, of course, the court must also consider the statutory directives to consider Mr. Woods's conduct since he has been in prison and that no sentence can be greater than the sentence of 32 years that he is now appealing, except in specific limited circumstances. As we noted in *Mitchell*, a new mittimus should be prepared following the resentencing hearing. 2014 IL App (1st) 120080, ¶ 17.

¶ 30

IV. CONCLUSION

¶ 31 For the foregoing reasons, we vacate Mr. Woods's sentence of 32 years, and remand for a resentencing hearing consistent with this order.

¶ 32 Sentence vacated; cause remanded with instructions.