The oddly perverse consequences of mandatory sentencing enhancements

In June, the Illinois 2nd District Appellate Court reversed the first-degree murder conviction of defendant Gareng Deng under rather unusual circumstances. Deng who pleaded guilty to a killing in 2009 in exchange for 35 years in prison, argued that his conviction should be overturned because the sentencing judge had given him too lenient a sentence—and the appellate panel agreed. People v. Deng, 2013 Ill. App. (2d) 11089 (2013).

A counterintuitive ruling was in accord with Illinois decisional law, under which sentences falling outside of statutory maximums or minimums are deemed “void” from the outset. People v. White, 953 N.E.2d 398, 403 (Ill. 2011). This particular prison sentence was illegal because a mandatory sentencing enhancement (which would add at least 25 more years for using a firearm) was over-looked by the prosecution, defense and judge.

Though such enhancements are a trip for tough-on-crime politicians who write the provisions into law, under which sentences falling outside of statutory maximums or minimums are deemed “void” from the outset. People v. White, 953 N.E.2d 398, 403 (Ill. 2011). This particular prison sentence was illegal because a mandatory sentencing enhancement (which would add at least 25 more years for using a firearm) was over-looked by the prosecution, defense and judge. Deng had been charged in 2007 with the killing, two years earlier, of Marilyn Bethel, a 47-year-old substance abuse counselor who lived in Aurora, about a mile from Deng’s home. As alleged in the indictment, the 14-year-old Deng broke into Bethel’s house (leaving behind DNA evidence) and kidnapped her, forcing her into a car and driving her about two miles to the Illinois Prairie Path, where he fired a bullet into her head. Bethel’s body was discovered about two months later.

In 2009, Deng pleaded guilty to one of the first-degree murder charges (carrying a penalty of 20 to 60 years) in exchange for a sentence of 35 years and dismissal of the other counts. Deng subsequently moved to withdraw his plea, contending among other things that although he was pre-sent at the shooting, he was not the shooter. That motion was denied in 2011. Deng appealed to the 2nd District, arguing his sentence was illegal and his conviction should be set aside as a legal nullity. What argument? Since he had confessed to personally using a firearm to commit the offense, the judge was obliged under Section 5-8-1 of the Uniform Code of Corrections to enhance his sentence by at least 25 years.

Since the judge didn’t apply the mandatory enhancement, the sentence was void and must be vacated. Further, the court couldn’t just fix the error by tackling the enhancement onto his prison sentence since then Deng wouldn’t receive the benefit of the plea bargain he made with the state. His conviction, he argued, should therefore be set aside. QED.

Strange as it may sound, Deng was on solid ground with his argument. As the appellate court correctly noted, just two years ago the Illinois Supreme Court had applied the same logic in People v. White, a case directly on point that also involved a sentencing court’s failure to apply a mandatory firearm enhancement. As the White court explained, “the legislature has the power to prescribe penalties for defined offenses and a court “does not have authority to impose a sentence that does not conform with statutory guidelines.” 953 N.E.2d at 403.

Do the holdings in White and Deng make sense? Isn’t a defendant’s claim that his sentence is too low the very definition of “harmless error,” merit an out-of-hand dismissal, if not sanctioning for chutzpah?

The answer is no, because the erroneous sentences in White and Deng were “voided” rather than just “voidable.” As the Illinois Supreme Court has explained, where a court acts without jurisdiction, any judgment issued is void from the start—a nullity that cannot be fixed. People v. Davis, 619 N.E.2d 750, 754 (Ill. 1993).

Kristopher N. Classen and Justice Jack O’Malley, colleagues of mine at the Northern Illinois University College of Law, have persuasively argued that the Illinois courts have simply gotten the voidness issue wrong, reminding us that a circuit court’s jurisdiction is derived from the Illinois Constitution rather than from the legislature. “Filling the Void: The Case for Repudiating and Replacing Illinois’ Void Sentence Rule,” 42 Loy. U. Chi. L.J. 427, 427 (2011). But, notwithstanding the virtues of Classen and O’Malley’s position, there’s little prospect that the Illinois Supreme Court will revisit the voidness issue any time soon.

Moving forward, such errors will likely be avoided now that prosecutors and judges are on notice that mutual agreement of the parties can’t circumvent the effect of mandatory sentencing enhancements. Where there is no dispute that a defendant used a firearm to kill his victim, the prosecution will amend the indictment to allege only that he committed the crime with a dangerous weapon, the defendant will allocate to using only a dangerous weapon, and the court will approve the factual basis of the plea. Cf. People v. Keller, 819 N.E.2d 1205, 1205 (Ill. 2004).

Personally, I find it disconcerting that fair outcomes in criminal trials might require the parties and the judge to conspire to remain silent about mutually agreed upon facts. Of course, the wink and nudge approach that’s been approved by the Illinois Supreme Court is necessary only because the General Assembly, by mandating sentencing enhancements, has taken away some of the traditional discretion of the sentencing court.

Data from the Illinois Criminal Justice Information Authority shows that nearly 70 percent of all convictions are the result of guilty pleas. Despite the nearly 500,000 convictions handed down in Illinois courts each year, nearly 60 percent are plea agreements. The unfortunate and predictable result of imposing mandatory sentencing policies will be for judges to countenance misleading plea agreements. That’s not the kind of behavior that enhances the perceived legitimacy of the courts or that reflects well on the integrity of our criminal justice system. Moreover, jettisoning mandatory sentencing enhancements would limit the opportunity for convicted defendants like Deng to strategically argue against their own interests in order to get undeserved do-overs in their criminal cases.