APPENDIX A

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 3-91-0687
Consolidated with No. 3-91-0688

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 1992

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of La Salle County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 90-CF-256
EARNEST MERRITTE,	)	
Defendant-Appellant,	)	
and	)	No. 90-CF-254
WALTER MERRITTE,	)	Honorable Alexander T. Bower
Defendant-Appellant.	)	Judge, Presiding

Publ. In Full

JUSTICE SLATER delivered the opinion of the court:

Following a jury trial, defendants Earnest and Walter Merritte were convicted of first degree murder. Earnest Merritte was sentenced to a term of 80 years imprisonment. Walter Merritte was sentenced to natural life imprisonment. Defendants now appeal from their convictions and sentences. We affirm.

Mark Harcar was beaten to death on October 26, 1990, near Tony's Meat Market in Streator, Illinois. William Vietti, a friend of the victim, testified that he was with Mark on the day he was killed. Vietti met Mark at the market at about 5 p.m. They spent the evening drinking beer and burning boxes and papers

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from the market. The market, owned by members of the Harcar family, was being remodeled. Vietti brought eight to twelve beers with him to the market and bought three additional twelve-packs of beer during the course of the evening. Jeffrey Harcar, the victim's 14-year old nephew, arrived around 10:15 p.m. Jeffrey did not see his uncle drinking beer, but he thought that Vietti was drunk.

Jeffrey Harcar and Vietti both testified regarding an incident involving two black women who walked by the market that evening. According to Jeffrey, as the women walked by, Vietti said, "Maybe we can get a B.J. from these two girls." Vietti walked up to the women and said something that Jeffrey could not hear. Jeffrey then heard one of the women say that they did not like being called niggers. Vietti left the women and they continued to walk down the street.

According to Vietti, Mark Harcar said to him, "There's two for you" as the women walked by, and then yelled out, "How about a blow job, mama?" Vietti approached the women and they asked, "What's his [Mark's] problem?" Vietti told them that Mark didn't like blacks. One of the women shook Vietti's hand, and he returned to the trash fire where Mark and Jeffrey were standing.

Both Jeffrey Harcar and Vietti agreed that after Vietti returned from talking to the women, Mark Harcar got into Vietti's truck and followed the women. At one point, the women moved from the street to a path that had been a sidewalk and yelled at Mark not to run them over. Mark later turned around and returned to the market and the women continued on their way.

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Gwendolyn Patterson testified that she and Earl Phillips were in Streator on October 26, 1990, drinking and socializing with Alice Phillips. At about 10 p.m. the three of them, along with Jessie Phillips, drove to a tavern where the women got out and the men drove away. Patterson and Alice Phillips were unable to enter the tavern because they did not have membership cards so they walked through town looking for Earl or for someone to give them a ride. As they walked past the meat market around 10:30 p.m., one of two men standing outside the market called out, "You niggers." One of the men approached and Patterson asked him why they had called them niggers. The man said that the other man had called out to them, not him. Patterson and the man shook hands and she and Alice Phillips continued to walk down the street. The second man soon drove up behind them in a truck and the women left the street running into a yard. Patterson picked up a brick and told the man that she would throw it through his windshield if he tried to run them over. The man pulled into a vacant lot across the street and, according to Patterson, said, "You nigger bitches come through here again, you're as good as dead." The man, whom Patterson identified as Mark Harcar, then drove back to the meat market.

Patterson further testified that she and Alice later found someone to give them a ride to look for Earl Phillips. On the way, they stopped at a liquor store and bought some beer and whiskey. They eventually found Earl and some other people, including Earnest and Walter Merritte, outside an apartment in Streator. Patterson had known the Merrittes for about eight

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years. She told the group about the incident at the meat market and a number of people, including Patterson, the Merrittes and Alice, Earl and Jessie Phillips, got into two cars and drove to the market at about 11 or 11:30 p.m.

Vietti testified that when he saw the two cars drive up to the market, he told Mark Harcar that they were outnumbered and that they should go inside the market. According to Vietti, Harcar said "f--- it", grabbed a piece of conduit, and began walking in the direction of the cars. Vietti went inside the market and locked the door.

Gwendolyn Patterson and Earl Phillips testified that after parking the cars, they walked toward the market along with the Merrittes and Alice Phillips. Patterson picked up a four-foot long stick and saw Mark Harcar approaching with a shovel in his hands. Walter Merritte asked Harcar why he had tried to run the women over. Harcar denied it. Patterson became angry, insisted Harcar had tried to run them over and swung the stick at Harcar, which he blocked with the shovel. Patterson then saw Harcar get hit with a beer can and fall to the ground. Earl Phillips testified that the can was thrown by Earnest Merritte. After Harcar fell, Patterson jumped on top of him and began hitting him with her fists. Walter Merritte told Earl Phillips to pull Patterson off of Harcar. Walter Merritte then began hitting Harcar in the side with the shovel that Harcar had dropped when he fell. Earnest Merritte, meanwhile, was kicking Harcar in the back. During this time, Harcar was lying on his side, covering up his head with his hands and forearms.

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Earl Phillips further testified that Gregory Ennis appeared on the scene, picked up a wire milk crate and used it to beat Harcar in the head. Earl stated that he hadn't seen Ennis earlier that evening and didn't know where Ennis had come from. Patterson claimed that she had seen Ennis earlier in the day at Alice Phillips' house but she did not see him at any time later that day. Patterson stated that she did not know that Ennis had been involved in the beating until the next morning when Ennis told her that he had beaten Harcar in the head with an iron crate.

According to Patterson, the beating ended when she and Alice Phillips told the Merrittes to stop. Patterson thought that the entire incident lasted three or four minutes. Earl Phillips testified that the beating stopped when Earnest Merritte stepped between Ennis and Walter Merritte and told them that that was enough. Earl thought that the incident lasted 11 or 12 minutes.

Jessie Phillips testified that he went to the market but he stayed where the cars were parked and he did not witness the beating. Jessie knew Greg Ennis but he did not see him that night.

Doctor Mary Jumbelic, a forensic pathologist who performed the autopsy on Mark Harcar, testified that he sustained numerous injuries, including four skull fractures. In addition to the head injuries, there were abrasions on the chest and hands and bruising on the back, left side, left arm and both legs, along with four broken ribs and a ruptured spleen. In Jumbelic's opinion, the victim died as a result of injuries to the skull and

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brain caused by blunt trauma. Contributing causes of death were a lacerated spleen and fractured ribs. Jumbelic stated that the skull injuries and certain abrasions on the body were consistent with being struck by a shovel. An abrasion on the upper left chest was consistent with being struck by a wire metal crate. On cross-examination, Jumbelic testified that the skull injuries could have been caused by a baseball bat, a hammer, the butt of a gun or a two-by-four. Jumbelic could not determine exactly what kind of object caused the injuries.

The parties stipulated that forensic scientist Arlene Hall would testify that no blood was found on the shovel, but blood was found on a pair of white jogging pants. This blood could have come from Mark Harcar but it could not have come from Gregory Ennis or either of the Merrittes. The jogging pants had been worn by Ennis on the day of the beating, according to Earl Phillips. The pants were found in a hole in a wall at the home of Earl Phillips' mother.

As indicated earlier, the jury found both defendants guilty of first degree murder. At the sentencing hearing, the trial court found that the defendants' conduct was brutal and heinous and indicative of wanton cruelty. The court referred to the photographs of the victim presented at trial and noted that it had never seen anyone beaten more viciously. The court found that no mitigating factors were present and, after discussing the factors in aggravation, sentenced Walter Merritte to natural life imprisonment and Earnest Merritte to a term of 80 years imprisonment.

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Defendants first contend that they were denied a fair trial because the jury may have found them guilty on the basis of Gregory Ennis' actions, rather than their own. The jury was instructed that the defendants could be convicted on the basis of accountability, and in closing argument the prosecutor told the jury that the defendants were legally responsible for the acts of Ennis. Defendants argue that they could not be held accountable for Ennis' acts because Ennis was not with the defendants prior to the beating and arrived after the beating began. Defendants also note that there was no plan between Ennis and the defendants to engage in illegal conduct, nor did the defendants invite or encourage Ennis to participate in the beating.

Section 5-2 of the Criminal Code of 1961 provides in part:

> "A person is legally accountable for the conduct of another when:
>
> * * *
>
> (c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." Ill. Rev. Stat. 1989, ch. 38, par. 5-2.

The State has met its burden of proving that a defendant intended to promote or facilitate the offense where it establishes that the defendant shared the criminal intent of the principal or where there was a community of unlawful purpose. (People v. Hudson (1988), 165 Ill. App. 3d 375, 519 N.E.2d 28.) A conviction based on a theory of accountability will be upheld where more than one person engages in an assault and the defendant, by his participation, encourages the perpetration of the offense. (Hudson, 165 Ill. App. 3d 375, 519 N.E.2d 28.) A

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common purpose to commit a crime can be inferred from the circumstances of the offense; words of agreement are not necessary to establish a common criminal design. (People v. Lovelady (1991), 221 Ill. App. 3d 829, 582 N.E.2d 1217; Hudson, 165 Ill. App. 3d 375, 519 N.E.2d 28.) A trial court's finding that a defendant is legally accountable for the criminal conduct of another will not be disturbed unless the evidence, when viewed in the light most favorable to the prosecution, is so improbable or unsatisfactory that a reasonable doubt of guilt exists. People v. Haynes (1991), 223 Ill. App. 3d 147, 583 N.E.2d 1177; Lovelady, 221 Ill. App. 3d 829, 582 N.E.2d 1217.

We recognize that defendants' argument is not framed as a challenge to the sufficiency of the evidence, but is instead based on the possibility that they were convicted for Ennis' actions. Analytically, however, the issue is the same. If the evidence was sufficient to support the defendants' conviction on the basis of accountability for Ennis' conduct, then the jury was properly instructed concerning accountability.

We find that there was ample evidence to support the defendants' conviction on the basis of accountability. In People v. Perez (1985), 108 Ill. 2d 70, 483 N.E.2d 250, the defendant saw two individuals stab the victim and then run away. The victim pursued his attackers. The defendant ran after the victim and stabbed him as he struggled with one of his original assailants. The defendant argued that he could not be held accountable for the acts of the original attackers because there was no showing that he acted according to a preconceived plan or agreement to

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kill the victim. The supreme court stated that evidence that a person voluntarily attaches himself to a group bent on illegal acts with knowledge of its design will support an inference that he shared a common purpose and will sustain a conviction for a crime committed by another in furtherance of the venture. The court concluded that "even though defendant's actions may have been spontaneous, his participation in the stabbing made him legally accountable for the actions of every other member of the group." Perez, 108 Ill. 2d at 83, 483 N.E.2d at 256.

Similarly in this case, the defendants are responsible for the actions of those who took part in the beating of Mark Harcar, including the actions of Gregory Ennis. While this case represents the converse of that presented in Perez (i.e., accountability of the initial attackers for the acts of a subsequent assailant) we find such a distinction to be irrelevant under the circumstances. The evidence is clear that Earnest and Walter Merritte and Gregory Ennis engaged in a common design to brutally beat Mark Harcar, and each of them is legally accountable for his death. See Perez, 108 Ill. 2d 70, 483 N.E.2d 250; see also People v. Woodrome (1992), 237 Ill. App. 3d 220, 604 N.E.2d 486; People v. Walker (1992), 230 Ill. App. 3d 377, 594 N.E.2d 1252; Hudson, 165 Ill. App. 3d 375, 519 N.E.2d 28.

Defendants next contend that a new sentencing hearing is required because the trial court failed to consider a mitigating factor and improperly relied upon two aggravating factors. Defendants first argue that Harcar's insults, threats and attempt to run over Patterson and Alice Phillips, which defendants were

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told of shortly before the beating, were strong provocation which should have been considered as a mitigating factor. The trial court found that any provocation had occurred "quite sometime" prior to the beating and that the defendants were only "second-hand recipients" of the provocation.

Section 5-5-3.1 of the Unified Code of Corrections (Ill. Rev. Stat. 1989, ch. 38, par. 1005-5-3.1) sets forth the mitigating factors that a trial court is to consider when imposing sentence. Among those factors is that the defendants acted under a strong provocation (Ill. Rev. Stat. 1989, ch. 38, par. 1005-5-3.1(a)(3)). While the term "strong provocation" is not defined in the Code of Corrections, the similar term "serious provocation" has a well established meaning under Illinois law. When considering whether an individual has acted under serious provocation sufficient to reduce the offense of first degree murder to second degree murder, the only categories of serious provocation recognized by our courts are substantial physical injury or assault, mutual quarrel or combat, illegal arrest and spousal adultery. (People v. Chevalier (1989), 131 Ill. 2d 66, 544 N.E.2d 942.) Mere words, no matter how abusive or indecent, are not considered serious provocation. (Chevalier, 131 Ill. 2d 66, 544 N.E.2d 942.) The facts presented here clearly do not rise to the level of serious provocation.

Defendants maintain, however, that strong provocation as a mitigating factor should be interpreted more broadly than serious provocation in the second degree murder context because mitigating factors are not defenses which excuse a defendant's criminal

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conduct but are simply grounds tending to favor a more lenient sentence. We agree that strong provocation as a mitigating factor at sentencing encompasses a wider range of conduct than that defined as serious provocation under the second degree murder statute. Certainly, if the defendants had been insulted and threatened by Harcar in the manner described by Gwendolyn Patterson and Alice Phillips, and the defendants had then attacked Harcar, it would have been error for the court to find that they had not been strongly provoked. The provocation in this case, however, was neither direct nor immediate. Under the circumstances, we are unable to find that the trial court erred in determining that the defendants were not acting under a strong provocation.

The defendants further claim that the trial court improperly considered that their conduct caused or threatened serious harm, a factor which is inherent in the offense of murder. (See People v. Saldivar (1986), 113 Ill. 2d 256, 497 N.E.2d 1138.) The basis of this alleged error is the following statement by the court:

> "The conduct of both in this matter caused and threatened serious harm. I've covered that amply in my discussion with the factors in mitigation, the factors in aggravation."

As defendants note, the court had in fact referred to the severe harm factor in its earlier discussion of the statutory mitigating factors.

> "Defendants' criminal conduct neither caused nor threatened serious physical harm to another. That speaks for itself. We have a death."

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Defendants acknowledge that this comment indicates that the court recognized that serious physical harm is an inherent element of murder. Defendants nevertheless argue that the court then considered this same factor in aggravation. We disagree.

A review of the transcript of the sentencing hearing shows that the trial court addressed each of the applicable factors in mitigation and aggravation in the order in which they appear in the Uniform Code of Corrections. (Ill. Rev. Stat. (1989), ch. 38, pars. 1005-5-3.1; 1005-5-3.2). In discussing serious harm as a mitigating factor, the court recognized that harm was an inherent element of the offense. When discussing the same factor in aggravation, the court simply referred back to its earlier discussion. Such a remark was proper and does not indicate that the court improperly considered serious harm as an aggravating factor. "It is unrealistic to suggest that the judge sentencing a convicted murderer must avoid mentioning the fact that someone has died or risk committing reversible error." People v. Barney (1982), 111 Ill. App. 3d 669, 679, 444 N.E.2d 518, 525.

Defendants also contend that the trial court improperly considered the defendants' decision not to testify or exercise their right of allocution as evidence of a lack of remorse. Defendants' argument is premised on the following statement by the court:

> "I can see nothing in the record, any statements that have been made to this [c]ourt, proffered, that in any way indicates any remorse for the crime here."

In determining whether a sentence was properly imposed, a reviewing court should not focus on a few isolated words or

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statements, but should consider the entire record as a whole. (People v. Ward (1986), 113 Ill. 2d 516, 499 N.E.2d 422; People v. Fenderson (1987), 157 Ill. App. 3d 537, 510 N.E.2d 479.) Immediately prior to the remark related above, the court stated:

> "I have presided through the trial and observed the demeanor, the attitude of the parties as they have sat here. The attitude during the trial of the defendants does not in any way exhibit remorse, did not give any reflection as to the seriousness of the crime with which they here stood charged."

Considered in context, we find that the court's remark that no statements had been made indicating remorse was merely an observation that defendants chose not to exercise their right of allocution and was not a significant factor in finding that the defendants showed no remorse. A defendant's remorse or the lack of it is a proper subject for consideration at sentencing (People v. Barrow (1989), 133 Ill. 2d 226, 549 N.E.2d 240) and we find no error here.

Finally, defendants contend that their sentences were excessive and constituted an abuse of discretion by the trial court. Defendants argue that their conduct was provoked by the victim and was spontaneous and unpremeditated, that they did not intend to kill the victim, and that their sentences were grossly disparate to the 60 year sentence imposed on Gregory Ennis. Ennis was tried separately and also convicted of first degree murder. In addition, defendant Earnest Merritte contends that his actions were not brutal and heinous and therefore he was not eligible for an extended term sentence.

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It is the trial court's task to fashion a sentence which strikes the proper balance between the protection of society and rehabilitation of the defendant (People v. Cox (1980), 82 Ill. 2d 268, 412 N.E.2d 541) and that determination will not be disturbed absent an abuse of discretion (People v. Perruquet (1977), 68 Ill. 2d 149, 368 N.E.2d 882). The sentencing court's judgment depends upon many factors, including the defendants' demeanor, moral character and mentality, and its determination is entitled to great deference and weight. Perruquet, 68 Ill. 2d 149, 368 N.E.2d 882.

We have already found that the court did not abuse its discretion in finding a lack of strong provocation. The spontaneity of defendants' acts and the absence or presence of premeditation and intent to kill are simply circumstances of the offense to be considered by the trial court in passing sentence. The court is not obligated to recite and assign value to each fact presented at a sentencing hearing. (People v. Meeks (1980), 81 Ill. 2d 524, 411 N.E.2d 9.) The record shows that the trial court considered the arguments of counsel, the presentence reports and the statutory factors in aggravation and mitigation. The court noted that after being knocked to the ground the victim was defenseless and that he had never seen a more viciously beaten victim. The court also pointed out that both of the defendants had prior criminal records. Earnest Merritte had two juvenile adjudications of delinquency for burglary and adult convictions for battery and residential burglary. Walter Merritte had previously been convicted of robbery, armed robbery

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and possession of a stolen vehicle. He was on mandatory supervised release at the time of the instant offense. The court further found that the defendants' prospects for rehabilitation were very limited in light of their poor disciplinary records while in prison and that the sentences were necessary to deter others. Under the circumstances, we find no abuse of discretion, nor do we find that defendants' sentences were grossly disparate to the 60 year sentence given to Gregory Ennis. While similarly situated defendants should not receive grossly disparate sentences, differences in sentences may be justified by the relative character and history of the co-defendants, the degree of culpability, rehabilitative potential or a more serious criminal record. (People v. Foster (1990), 199 Ill. App. 3d 372, 556 N.E.2d 1289.) Ennis, who had prior convictions for battery and resisting arrest, had never been sentenced to prison. The criminal records of Earnest and Walter Merritte were much more serious and both had served time in prison. The defendants' disciplinary records while in prison were poor, indicating a lack of potential for rehabilitation. We find that these factors are sufficient to justify the disparity between Ennis' sentence and those imposed upon the defendants. See People v. Coleman (1990), 201 Ill. App. 3d 803, 559 N.E.2d 243.

We additionally find that the trial court did not err in finding Earnest Merritte eligible for an extended term sentence on the basis of exceptionally brutal or heinous behavior indicative of wanton cruelty (see Ill. Rev. Stat. 1989, ch. 38, par. 1005-5-3.2(b)(2)). Although defendant's actions may not have

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been as brutal as those of Walter Merritte and Gregory Ennis, we will not disturb the trial court's finding that it is brutal and heinous behavior to kick a man who has been knocked to the ground and "is helpless, is defenseless, and at that point can do absolutely nothing to defend his life and he is not at that time a threat to anyone." Furthermore, in addition to his own conduct, the defendant was accountable for the brutal and heinous behavior of Walter Merritte and Ennis. (See People v. Hines (1988), 165 Ill. App. 3d 289, 518 N.E.2d 1362; People v. Tibbs (1981), 103 Ill. App. 3d 73, 430 N.E.2d 681.) Finally, we note that defendant was eligible for an extended term sentence based on his prior conviction for residential burglary. See Ill. Rev. Stat. 1989, ch. 38, par. 1005-5-3.2(b)(7); People v. Tipton (1990), 207 Ill. App. 3d 688, 566 N.E.2d 352 (extended term statute permits imposition of extended term if any one of the enumerated factors is present).

For the reasons stated above, the judgment of the circuit court is affirmed.

Affirmed.

McCUSKEY, P.J., and STOUDER, J., concur.

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STATE OF ILLINOIS

APPELLATE COURT THIRD DISTRICT

OTTAWA

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT,)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and the keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete JUDGMENT of the said Appellate Court in the above entitled cause, now of record in my said office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 2nd day of November in the year of our Lord one thousand nine hundred and ninety three.

Clerk of the Appellate Court

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APPENDIX B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, COUNTY OF LASALLE

PEOPLE OF THE STATE OF ILLINOIS,)
VS.) NO: 90 CF 254
Walter E. Merritte) ORDER

X The defendant, having appeared (in person) (~~by his/her attorney~~) (~~by attorneys written appearance~~) and having pleaded not guilty, (waived) (demanded) a jury trial, it is ORDERED that the above cause is hereby set for:

/ / Pretrial conference on _____, 19___ at _____.m.
/ / Bench trial on _____, 19___ at _____.m.
/ / Jury trial on _____, 19___ at _____.m.
with final pretrial _____, 19___ at _____.m.

OCT 29 1990

/ / Cause dismissed for the following reason: Supreme Court Rule 504 on motion of People with leave granted to reinstate for want of prosecution there being no complaining witness in Court on motion of defendant after a hearing on the motion.

X Bail set at $ 250,000.00 cash 10% rule applies ~~personal recognizance~~.

/ / Defendant failed to appear. The Clerk shall forfeit bail in the amount of $_____obtain a verification of the complaint and issue a warrant with new bail in the amount of $_____and the 10% rule applies does not apply.

X Cause continued until the 1st day of Nov, 1990, at ~~9:00 A~~.M. 10:00 for appearance w/counsel (by agreement of the parties) (on motion of the defendant) (on People's motion) (on the Court's motion.)

/ / Ordered, that the following order heretofore entered is hereby vacated: bail forfeiture driver's license forfeiture issuance warrant, and the warrant is hereby recalled plea of guilty, and the sentence is hereby vacated and cause set for (bench trial) (jury trial) (pre-trial conference) on the _____ day of _____, 19___, at 9:00 A.M.

/ / The defendant appearing and having requested a continuance for payment, the Court orders this cause continued to _____,19___ at _____.m. for (payment) (Rule). IF THE TOTAL FINE AND COSTS IS NOT PAID BY THE DUE DATE, THE DEFENDANT IS ORDERED TO APPEAR BEFORE THIS COURT ON SAID DATE OR A WARRANT WILL BE ISSUED FOR THE DEFENDANT'S ARREST.

/ / Balance due on fine and costs in the amount of $_____ is hereby revoked.

/ / Court supervision heretofore ordered is terminated and cause is dismissed.

/ / _____

/ / Defendant applied for Court appointed Counsel, and was examined under oath in Court as to his assets and liabilities. The State's Attorney informed the Court that imprisonment ~~will be~~ sought in the event that a judgment of guilty is entered. The Court finds that the defendant does qualify for the appointment of Counsel. ORDERED that the Public Defender of LaSalle County is hereby appointed to represent the defendant in all causes arising from this occurrence.

DATE 10-29-90

JUDGE

Copy of this order hand delivered to the following this date: SAO

X Walter L Merritte
SIGNATURE

Copy of this order mailed to the following at the address furnished

_____

DATE_____

C-4
SIGNATURE/TITLE

APPENDIX C

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

March 23, 2021

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Walter L. Merritte
Reg. No. N-72053
Hill Correctional Center
P.O. Box 1700
Galesburg, IL 61402

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

M.D.014597 - Merritte v. People

The motion by movant for a supervisory order is denied.

Very truly yours,

Carolyn Taft Grosboll

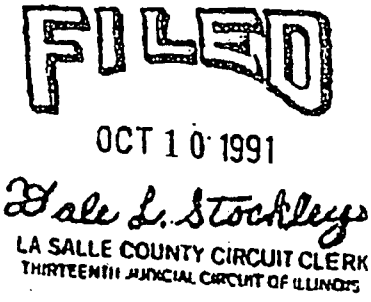
Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division

APPENDIX D

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

LASALLE COUNTY, ILLINOIS



PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v.

No. 90-CF-254

WALTER LEE MERRITTE,

Defendant.

REPORT OF PROCEEDINGS at the First Appearance Hearing in this cause held on October 29, 1990, before the HONORABLE ALEXANDER T. BOWER, Circuit Judge of said Court, in his courtroom in the LaSalle County Criminal Justice Center.

REPORTED BY:

BETH M. BUTE
OFFICIAL COURT REPORTER
P.O. Box 458
Ottawa, IL 61350

R1

14:20 08202018

APPEARANCES:

MR. JOSEPH R. NAVARRO,
STATE'S ATTORNEY OF LASALLE CO.,
Criminal Justice Center,
707 Etna Road,
Ottawa, Illinois,

appearing on behalf of the People.

The Defendant, Walter Lee Merritte, is personally present in court, unaccompanied by counsel.

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MR. NAVARRO: Your Honor, this is the People of the State of Illinois versus Walter K. Merritte, M-e-r-r-i-t-t-e, 90-CF-254.

THE COURT: The pleadings show Walter L. Merritte.

MR. NAVARRO: Yes, Your Honor, I'd like to move instanter to amend. I'm going to file Count III.

THE COURT: That may be allowed.

YOu may correct it on its face.

MR. NAVARRO: The Counts I and II that I have indicates L and that is correct. I'd be filing instanter, Your Honor, Count III.

THE COURT: Thank you.

MR. NAVARRO: Your Honor, I'm sorry I gave you all the copies. I need one for myself.

The defendant is present in court. He's not accompanied by an attorney. He was taken into custody this weekend.

At this time I would be handing him a copy of Count III, Counts I and II of the criminal information, Your Honor.

THE COURT: Mr. Merritte, you have received from the State's Attorney, have you not, a copy of

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each of the counts of the information filed?

MR. W. MERRITTE: Yes.

THE COURT: Thank you.

MR. NAVARRO: Your Honor, I would advise that Count I reads in pertinent part that on or about October 26th, 1990, in LaSalle County, Illinois, Walter L. Merritte, male, black, date of birth 6/23/66, Chicago, Illinois, committed the offense of first degree murder in that said defendant, without lawful justification and with the intent to kill Mark Harcar, beat Mark Harcar with a shovel, thereby causing the death of Mark Harcar, in violation of Chapter 38, Section 9-1(a-1), Illinois Revised Statutes..

Count II reads that on or about October 26th, 1990, in LaSalle County, Illinois, the defendant committed the offense of first degree murder in that said defendant, without lawful justification and with the intent to do great bodily harm to Mark Harcar, beat Mark Harcar with a shovel, thereby causing the death of Mark Harcar, in violation of 9-1(a-1), Chapter 38 Illinois Revised Statutes.

I would advise the defendant that the

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possible penalties for first degree murder is between -- not less than twenty years and not more than sixty years in the penitentiary. And if the Court finds that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or any of the requirements listed in subsection B, 9-1 of the Criminal Code are present, the Court may sentence the defendant to a term of natural life imprisonment.

In addition, Your Honor, the State would indicate that we believe the factors are present so that a natural life term would be sought. However, according to Chapter 38, Section 1005-a-2, in the alternative, an extended term sentence would be possible in that he would be -- could be sentenced to not less than sixty years and not more than one hundred years.

In addition, there would be a three-year mandatory supervised release period and possibly a $10,000.00 fine assessed in addition to prison time.

Count III is mob action, by the use of force and violence distirubed the public peace in that he, while with Gregory Ennis and Earnest Merritte,

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and without authority of law, struck and kicked Mark Harcar, inflicting injury in violation of 25-1(1)1, Chapter 38, Illinois Revised Statutes.

A Class 4 felony is punishable by one to three years in the penitentiary with a one year mandatory supervised release period and/or probation and up to six months in the county jail in addition to a $1,000.00 fine.

THE COURT: Do you have an attorney?

MR. W. MERRITTE: No, I'm planning on getting one.

THE COURT: You're planning on getting your own counsel?

MR. W. MERRITTE: Yes.

THE COURT: Set it for November 1st, Mr. Merritte, with your counsel.

MR. NAVARRO: Your Honor, with regard to bond, I would indicate that Mr. Merritte is on parole for an armed robbery and has a prior burglary and a prior robbery. I would be asking that bond be --

MR. W. MERRITTE: I don't have a robbery.

MR. NAVARRO: -- set in the amount of $750,000.00, ten percent to apply.

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THE COURT: So ordered.

Mr. Merritte, you can be released on bail upon the posting of ten percent of $750,000.00, or $75,000.00.

I would further advise you that you have a right to be present at all material aspects of these proceedings against you. However, if you willfully absent yourself from any of these proceedings, the Court may take that willful absence by you as a waiver of your right to be present. In such event, then the Court may proceed and then you may be tried, convicted and sentenced in your absence.

Do you understand that?

MR. W. MERRITTE: Yes.

THE COURT: All right.

MR. W. MERRITTE: Your Honor, can I say something to my sister here?

THE COURT: No, that's up to the jailer.

MR. NAVARRO: That's setting your next court date for appearance with counsel. Sign right there (indicating). It's setting bail at $750,000.00.

(At which time court is adjourned relative to

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said cause.)

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C E R T I F I C A T E

I, Beth M. Bute, duly appointed and qualified shorthand reporter of the Circuit Court of LaSalle County, Illinois, do hereby certify that the above and foregoing is a true and correct transcript of the notes taken by me in machine shorthand, and evidence offered in said Court, in the matter of the Proof in the above-entitled matter, which testimony was taken on the date heretofore given, and I verily believe said notes to be correct and to be a full and complete transcript of all the evidence offered or introduced in said matter.

Beth M. Bute

OFFICIAL COURT REPORTER

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