APPENDIX

1. Denial of Petition for Leave to Appeal

   (from Illinois Supreme Court).....Exhibit A

2. Denial of Motion to Correct Mittimus

   (from Appellate Court,5th Judicial District.....Exhibit B

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

Christopher J. Cox
Reg. No. S03715
Kewanee Life Skills Re-Entry Center
2021 Kentville Road
Kewanee IL 61443

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
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September 28, 2022

In re: People State of Illinois, respondent, v. Christopher J. Cox, petitioner. Leave to appeal, Appellate Court, Fifth District. 128690

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/02/2022.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

Exh. A

NO. 5-19-0389

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Christian County.
	)	
v.	)	No. 04-CF-154
	)	
CHRISTOPHER J. COX,	)	Honorable
	)	Christopher W. Matoush,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Barberis and Wharton concurred in the judgment.

ORDER

¶ 1 Defendant, Christopher J. Cox, appeals the denial of his "motion to amend the mittimus." The Office of the State Appellate Defender (OSAD) was appointed to represent him. OSAD filed a motion to withdraw as counsel, alleging there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Defendant was given proper notice and granted an extension of time to file briefs, objections, or any other documents supporting his appeal. He has not filed a response. For the following reasons, we now grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court.

¶ 2 Following a 2005 consolidated jury trial, defendant was convicted of disorderly conduct (case No. 04-CM-88), unlawful restraint, aggravated fleeing and eluding, and

domestic battery (case No. 04-CF-112), and aggravated unlawful restraint and armed violence (case No. 04-CF-154).[1] On motion by the State, the court vacated defendant's aggravated unlawful restraint as a lesser-included offense of armed violence. The court sentenced defendant to serve concurrent prison sentences of 3 years for unlawful restraint and aggravated fleeing and eluding, 364 days for domestic battery, 30 days for disorderly conduct, and a consecutive sentence of 22 years' imprisonment for armed violence. The court also ordered that defendant receive day-for-day credit on all sentences except for the sentence for armed violence, for which he would have to serve 85% of his sentence.

¶ 3 Defendant appealed, arguing, *inter alia*, that the trial court lacked the authority to order him to serve his armed violence sentence at 85% because it failed to make a finding on the record that defendant had caused great bodily harm to the victim. Another panel of this court rejected the argument, noting that the trial court's docket entry clearly showed that the court made a finding of great bodily harm to the victim and that the record supported this finding. *People v. Cox*, No. 5-06-0033 (2007) (unpublished order under Illinois Supreme Court Rule 23).

¶ 4 In 2007, defendant filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)), arguing, *inter alia*, that his armed violence sentence was excessive and tantamount to a death sentence given his age and health. The circuit court's dismissal of the petition at the second-stage proceedings

[1]These cases were consolidated in the trial court under No. 04-CF-154.

was affirmed on appeal. *People v. Cox*, No. 5-08-0498 (2010) (unpublished order under Illinois Supreme Court Rule 23).

¶ 5 In 2012, defendant filed a petition for postjudgment relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) arguing, *inter alia*, that the evidence did not support the trial court's finding that he inflicted great bodily harm on the victim, and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), required a jury to make this finding rather than the trial court. The circuit court dismissed the petition as untimely. We affirmed, holding that the court's own finding of great bodily harm was sufficient to support the order that defendant serve 85% of his sentence for armed violence because the order was entered in accordance with section 3-6-3(a)(2)(iii) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2)(iii) (West 2004)), which did not implicate *Apprendi* concerns. *People v. Cox*, 2014 IL App (5th) 120391-U, ¶ 19 (citing *People v. Newbolds*, 325 Ill. App. 3d 192, 196 (2001)).

¶ 6 In 2014, defendant filed a motion for an order *nunc pro tunc* challenging the order requiring him to serve 85% of his sentence for armed violence. The State filed a motion to dismiss, arguing that defendant's claim was barred by the doctrine of *res judicata* because it had been raised and rejected on direct appeal and on appeal from the dismissal of his section 2-1401 petition. The trial court agreed with the State and dismissed defendant's motion. Defendant voluntarily dismissed his appeal.

¶ 7 On July 25, 2019, defendant filed a "motion to amend the mittimus" requesting the court "correct" the judgment order to reflect that his sentence for armed violence should be served at 50% rather than 85%. Defendant argued that when pronouncing sentence, the

court did not explicitly find that he caused great bodily harm to the victim. Defendant contended that the trial court's oral pronouncement of sentence was therefore in conflict with the written judgment, and the oral pronouncement controlled. The circuit court found the motion to be frivolous and dismissed it. This timely appeal followed.

¶ 8 OSAD finds there is no meritorious argument to support the contention that the circuit court erred in dismissing defendant's motion to amend the mittimus. We agree.

¶ 9 Defendant's claim is barred by the doctrine of *res judicata*. The doctrine of *res judicata* bars the consideration of issues that were actually decided on appeal, and "any issues that could have been presented on direct appeal, but were not." *People v. O'Neil*, 319 Ill. App. 3d 609, 611 (2001). Defendant argued on direct appeal that the trial court failed to make a finding on the record that he caused great bodily harm to the victim. This court rejected his argument, noting that the trial court's docket entry specifically found that defendant's conduct caused great bodily harm to the victim. See *People v. Cox*, No. 5-06-0033 (2007) (unpublished order under Illinois Supreme Court Rule 23). While defendant now argues that the trial court's oral pronouncement conflicts with its written judgment, he could have raised that argument on direct appeal.

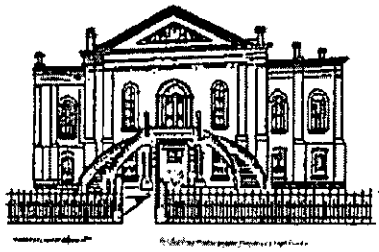
¶ 10 We further note that a motion to correct the mittimus is not the proper vehicle for the relief defendant sought. The only proper purpose for a motion to amend the mittimus is to correct clerical errors or nonsubstantial matters of inadvertence or mistake. *People v. Scheurich*, 2019 IL App (4th) 160441, ¶¶ 19-21; *Baker v. Department of Corrections*, 106 Ill. 2d 100, 106 (1985). Defendant's "motion to amend the mittimus" sought to "correct" the mittimus to reflect that he was entitled to day-for-day good conduct credit on his armed

violence sentence because the trial court's finding that he had caused great bodily harm to the victim was not included in the court's oral pronunciation of sentence. It is clear from the record the requirement to serve 85% of his armed violence sentence was not the result of mistake or inadvertence. As such, defendant was, in reality, seeking an amendment of the sentencing judgment itself based on what he perceived to be the trial court's failure to comply with the truth-in-sentencing statute. Such substantive amendment cannot be obtained through a motion to amend the mittimus. *Scheurich*, 2019 IL App (4th) 160441, ¶¶ 21-22.

¶ 11 For the foregoing reasons and pursuant to Illinois Supreme Court Rule 23(c)(2) (eff. Apr. 1, 2018), we grant OSAD's motion to withdraw and affirm the judgment of the circuit court.

¶ 12 Motion granted; judgment affirmed.

JOHN J. FLOOD
CLERK
(618) 242-3120



APPELLATE COURT, FIFTH DISTRICT
14TH & MAIN ST., P.O. BOX 867
MT. VERNON, IL 62864-0018

STATE OF ILLINOIS, FIFTH DISTRICT APPELLATE COURT MANDATE

Panel: Honorable Barry L. Vaughan
Honorable John B. Barberis, Jr.
Honorable Milton S. Wharton

BE IT REMEMBERED, that on 7th day of June, 2022 the final judgment of said Appellate Court was entered of record as follows:

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,
v.
CHRISTOPHER J. COX,
Defendant-Appellant.

General No: 5-19-0389
County/Agency: Christian County
Trial Court/Agency Case No.: 04CF154

MOTION GRANTED; JUDGMENT AFFIRMED.

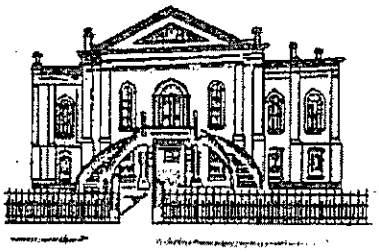
In accordance with Supreme Court Rule 368, this Mandate is issued. As Clerk of the Appellate Court and keeper of the records, files and Seal thereof, I certify that the foregoing is a true statement of the final Order of said Appellate Court in the above cause of record in my office. Pursuant to Supreme Court Rule 369, the clerk of the circuit court shall file the Mandate promptly.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Seal of the Illinois Appellate Court this 3rd day of November, 2022.

Clerk of the Appellate Court

Exh. B

JOHN J. FLOOD
CLERK
(618) 242-3120



APPELLATE COURT, FIFTH DISTRICT
14TH & MAIN ST., P.O. BOX 867
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Clerk of the Appellate Court

Exh. B