2025 IL App (4th) 240844-U

NO. 4-24-0844

FILED
April 3, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
JUAN BARRADASFERRAL,	)	No. 15CF661
Defendant-Appellant.	)	
	)	Honorable
	)	John S. Lowry,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Grischow and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court granted the Office of the State Appellate Defender's motion to withdraw as counsel and affirmed the trial court's order modifying the mittimus on remand.

¶ 2 Defendant, Juan Barradasferral, appeals the order modifying the mittimus on remand from our decision in *People v. Barradas-Ferral*, 2024 IL App (4th) 230466-U (*Barradas-Ferral I*). The Office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD moved to withdraw as counsel on the ground no issue of arguable merit can be raised in this appeal. We grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 Because defendant's case has been the subject of two appeals (see *Barradas-Ferral I*, 2024 IL App (4th) 230466-U; *People v. Barradas-Ferral*, 2024 IL App (4th) 231559-U) (*Barradas-Ferral II*)), we recite here only those facts necessary to understand the issues raised

now. (We note some documents in this case, including the notice of appeal and documents attached thereto, provide defendant's last name as Barradasferral, not Barradas-Ferral.)

¶ 5 Defendant was charged by indictment with two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2014)) and four counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)). One of the four counts of the indictment charging defendant with predatory criminal sexual assault of a child provided:

> "That between the 1st day of September, 2014 and the 25th day of March, 2015, in the County of Winnebago, State of Illinois, [DEFENDANT] committed the offense of PREDATORY CRIMINAL SEX ASSAULT in that the defendant, a person 17 years of age or older, knowingly committed an act of sexual penetration with B.N.F. (DOB: 3-23-04) [who] was under the age of 13, in that the defendant placed his finger on the vagina of B.N.F. (DOB: 3-23-2004) in violation of 720 ILCS 5/11-1.4(a)(1) [*sic*]."

As indicated, the citation to the predatory criminal sexual assault of a child statute was "720 ILCS 5/11-1.4(a)(1) [*sic*]," rather than section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2014)). The four counts charging defendant with predatory criminal sexual assault of a child differed only in the way the assault was committed. That is, in addition to charging defendant with placing his finger on the vagina of B.N.F., the three other counts in the indictment charged defendant with (1) "plac[ing] his penis on the buttocks of B.N.F.," (2) "plac[ing] his mouth on [the] vagina of B.N[.]F.," and (3) "plac[ing] his penis in [the] mouth of B.N.F."

¶ 6 Following a bench trial, defendant was convicted of one count of aggravated criminal sexual abuse and four counts of predatory criminal sexual assault of a child. In April

2019, he was orally sentenced to an aggregate term of 35 years' imprisonment. In imposing the sentence, the trial court mentioned "defendant's character and attitude, [which was of a] manipulative nature," and concluded his "character and attitude *** do not indicate he's unlikely to commit another crime."

¶ 7 The trial court's oral pronouncement of defendant's sentence provided:

> "[A]s for Count 1, [aggravated criminal sexual abuse], the Court sentences the defendant to three years [in the] Department of Corrections followed by two years mandatory supervised release. *** The sentence on Count 1 shall run consecutive to the sentences for Counts 3, 4, 5 and 6, predatory criminal sexual assault [of a child] ***. Counts 3, 4, 5 and 6 are consecutive to each other.
>
> For each of the Counts 3, 4, 5 and 6, the Court sentences the defendant *** to eight years [in the] Department of Corrections. That's eight years to run consecutive."

¶ 8 The mittimus, like the trial court's oral pronouncement, provided the aggravated criminal sexual abuse sentence was to be served consecutively to the other sentences. However, contrary to the court's oral pronouncement, the mittimus provided the predatory criminal sexual assault of a child sentences were to be served concurrently to each another. Thus, the mittimus provided for an aggregate sentence of only 11 years. Additionally, the mittimus, like the indictment, miscited the predatory criminal sexual assault of a child statute as "720 ILCS 5/11-1.4(a)(1) [*sic*]."

¶ 9 In December 2021, over two years after defendant was sentenced, the State filed a "Motion to Correct Mittimus." The State asked the trial court to modify the mittimus to conform with section 5-8-4(d) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-4(d) (West

2020)), which required consecutive sentences for convictions of predatory criminal sexual assault of a child. The State also asked the court to correct the typographical error concerning the citation to the predatory criminal sexual assault of a child statute.

¶ 10 The State and defendant, who was represented by Assistant Public Defender Brad Morrison, agreed (1) the trial court had orally pronounced a sentence consistent with section 5-8-4(d) of the Code but (2) the mittimus erroneously provided, in contravention of section 5-8-4(d) of the Code, for concurrent sentences on the predatory criminal sexual assault of a child convictions. The State asked the court to correct the mittimus to conform with the court's oral pronouncement. See *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993) ("When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement of the court controls."). Additionally, the State and Morrison agreed the court lacked a statutory basis for making the sentence for aggravated criminal sexual abuse consecutive to the sentences for predatory criminal sexual assault of a child. Thus, they asked the court to make the aggravated criminal sexual abuse sentence concurrent to the other sentences, for an aggregate sentence of 32 years.

¶ 11 In April 2023, defendant filed *pro se* a petition for relief from judgment (see 735 ILCS 5/2-1401 (West 2022)). At the time, Morrison still represented defendant. Defendant intimated in his motion, among other things, his sentences for predatory criminal sexual assault of a child were void and unconstitutional because the indictment and mittimus did not cite the correct statute for those offenses. When the trial court asked Morrison to comment, he said he believed defendant's argument was baseless. The court dismissed defendant's petition, and defendant appealed. On appeal, OSAD moved to withdraw, and we granted the motion. See *Barradas-Ferral II*, 2024 IL App (4th) 231559-U.

¶ 12 In May 2023, the trial court filed a corrected mittimus *nunc pro tunc*. The court granted the parties' request to make the aggravated criminal sexual abuse sentence concurrent to the other sentences. The court also granted the State's request to conform the sentences for predatory criminal sexual assault of a child to the court's oral pronouncement by making those sentences consecutive to each other. Thus, the corrected mittimus provided for an aggregate sentence of 32 years. The citation to the predatory criminal sexual assault of a child statute was not corrected.

¶ 13 Defendant appealed. We determined the trial court, pursuant to Illinois Supreme Court Rule 472(a)(4) (eff. May 17, 2019), retained jurisdiction to correct " '[c]lerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.' " *Berradas-Ferral I*, 2024 IL App (4th) 230466-U, ¶ 12 (quoting Ill. S. Ct. R. 472(a)(4) (eff. May 17, 2019)). Thus, the court could modify the mittimus to reflect the predatory criminal sexual assault of a child sentences ran consecutively to each other, consistent with the court's oral pronouncement. *Berradas-Ferral I*, 2024 IL App (4th) 230466-U, ¶ 13. However, we found the court could not change the way the aggravated criminal sexual abuse sentence was served in relation to the predatory criminal sexual assault of a child sentences, *i.e.*, from consecutive to concurrent, because doing so was not consistent with the sentence the court orally pronounced and, thus, went beyond the court's jurisdiction under Rule 472. *Berradas-Ferral I*, 2024 IL App (4th) 230466-U, ¶ 14. Given all of this, we "remand[ed] the cause for the issuance of a corrected [mittimus] stating the aggravated criminal sexual abuse sentence should run consecutively to the four predatory criminal sexual assault of a child counts, which run consecutively to each other." *Berradas-Ferral I*, 2024 IL App (4th) 230466-U, ¶ 14. We also directed the court to "correct the citation for the predatory criminal sexual assault of a child

counts." *Berradas-Ferral I,* 2024 IL App (4th) 230466-U, ¶ 14.

¶ 14 On remand, Morrison was again appointed to represent defendant. His appointment was limited to helping defendant understand his appeal rights. At a subsequent hearing, a corrected mittimus was filed *nunc pro tunc*. In compliance with this court's directive, the aggravated criminal sexual abuse sentence of 3 years was ordered to run consecutively to the four 8-year sentences for predatory criminal sexual assault of a child—which were ordered to run consecutively to each other—for an aggregate term of 35 years.

¶ 15 Before ending the proceedings, defendant advised the trial court he wanted to make objections on the record. The court allowed defendant to do so, noting the objections might not be preserved for this court's review. Defendant then informed the court (1) "there were no[ ] aggravating factors for [the aggravated criminal sexual abuse sentence]" and (2) the citation in the indictment for predatory criminal sexual assault of a child was incorrect, which made the proceedings unconstitutional. The court corrected the mittimus, providing, as this court directed, a proper citation to the predatory criminal sexual assault of a child statute. Morrison was then granted time to speak with defendant about any subsequent appeal.

¶ 16 Defendant filed a timely notice of appeal, raising, *in toto,* the following claims: (1) "Denial of an attorney to assist defendant," (2) "Improper sentence filed under a facially [unconstitutional] statute and void *ab initio*," (3) "In violation of due Process and equal Protection clause," and (4) "Unsupported [aggravated] factors to support a consecutive sentence on [aggravated criminal sexual abuse] under objections by defendant."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, OSAD moves to withdraw. Counsel for OSAD asserts she (1) read the

record on appeal, (2) reviewed the facts and applicable law, and (3) discussed the case with another attorney. OSAD concludes an appeal in this case would be without arguable merit. This court informed defendant of his opportunity to respond to the motion, and defendant did not file a response.

¶ 20 OSAD submits, in part on reliance of defendant's notice of appeal, it would be frivolous to argue (1) the trial court failed to comply with this court's remand order, (2) defendant was denied his right to counsel during the proceedings on remand, (3) defendant's convictions of and sentences for predatory criminal sexual assault of a child are unconstitutional and void, and (4) the court lacked a proper basis to order the aggravated criminal sexual abuse sentence was to run consecutively to the predatory criminal sexual assault of a child sentences. We agree this appeal presents no nonfrivolous issues.

¶ 21 First, the trial court complied with this court's remand order. "[A] reviewing court's mandate vests a trial court with jurisdiction only to take action that complies with the reviewing court's mandate." *People v. Winters*, 349 Ill. App. 3d 747, 749 (2004). "A trial court lacks the authority to exceed the scope of the mandate, and must obey precise and unambiguous directions on remand." *Winters*, 349 Ill. App. 3d at 750. Thus, any part of the court's order which exceeds the reviewing court's mandate is void for lack of jurisdiction. See *Winters*, 349 Ill. App. 3d at 749-50. We review *de novo* whether the court complied with our mandate. *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1205, 1208 (2006).

¶ 22 Here, this court's mandate ordered the trial court to correct the mittimus to reflect (1) the three-year sentence for aggravated criminal sexual abuse ran consecutively to the four eight-year sentences for predatory criminal sexual assault of a child; (2) the four eight-year sentences for predatory criminal sexual assault of a child ran consecutively to each other; and

(3) the predatory criminal sexual assault of a child sentences cited the correct statute. The trial court corrected the mittimus *nunc pro tunc* to comply with these, and only these, directives. Accordingly, the court complied with this court's mandate.

¶ 23 Second, defendant was not denied his right to counsel during the proceedings on remand. Every defendant has a constitutional right to the effective assistance of counsel under the United States and Illinois Constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. "Under the United States and Illinois Constitutions, criminal defendants are entitled to counsel at any 'critical stage' of the proceedings." (Internal quotation marks omitted.) *People v. Knight*, 2023 IL App (3d) 220198, ¶ 19. "Critical stages" encompass "any proceeding where a defendant asserts or waives constitutional rights." *People v. Lindsey*, 201 Ill. 2d 45, 56 (2002). This includes, for example, when the defendant waives his right to a jury trial (*Lindsey*, 201 Ill. 2d at 56) and is tried for the offense with which he is charged (*People v. Allen*, 220 Ill. App. 3d 772, 781 (1991)). We review *de novo* whether a defendant was denied his right to counsel. *People v. Medina*, 2022 IL App (3d) 180493, ¶ 24.

¶ 24 Here, Morrison represented defendant during the proceedings on remand. Although admittedly, Morrison was appointed only to help defendant in proceeding with an appeal, defendant had no right to counsel at all during these proceedings. A defendant has no constitutional right to counsel during collateral proceedings to a judgment. *Knight*, 2023 IL App (3d) 220198, ¶ 19. "Moreover, a plain reading of Rule 472 reveals that it, too, conveys no right to counsel." *Knight*, 2023 IL App (3d) 220198, ¶ 21. Although the proceedings were on remand from this court, the proceedings were still related to correcting errors in the mittimus, which are governed by Rule 472. Accordingly, defendant had no right to counsel at the proceedings on remand, despite Morrison's appointment to represent him. Because defendant had no right to counsel, he could not

have been denied his right to counsel. See *Wainright v. Torna*, 455 U.S. 586, 587-88 (1982) ("Since respondent had no constitutional right to counsel, he could not be deprived of the effective assistance of counsel.").

¶ 25 Third, defendant's convictions of and sentences for predatory criminal sexual assault of a child are not unconstitutional or void. It appears defendant was primarily arguing his convictions and sentences are void and unconstitutional because the indictment miscites the statute. Assuming the issue is not forfeited by defendant's failure to raise it in the trial court before the State sought to correct the mittimus (see *People v. LaRue*, 298 Ill. App. 3d 89, 91-92 (1998) (finding the defendant could not forfeit a contention he was convicted of a nonexistent offense)), we observe, under our *de novo* review, the indictment adequately apprised defendant of the offenses with which he was charged (see *People v. Espinoza*, 2015 IL 118218, ¶ 15 (sufficiency of charging instrument reviewed *de novo*)). "An accused is constitutionally entitled to notice of the 'nature and cause of the accusation' against him." *People v. Ryan*, 117 Ill. 2d 28, 37 (1987) (citing U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8). "The allegations of the charge should identify the offense and the offender, set out the nature and elements of the crime, and provide the date and county of the occurrence." *Ryan*, 117 Ill. 2d at 37. Here, the indictment, in relevant part, provides for (1) the offense (predatory criminal sex assault); (2) the offender (defendant); (3) the nature and the elements of the crimes (defendant, who was 17 or older, knowingly committed an act of sexual penetration with B.N.F., who was under 13, by placing (a) his finger on her vagina, (b) his penis on her buttocks, (c) his mouth on her vagina, and (d) his penis in her mouth); (4) the date of the offenses (between September 1, 2014, and March 25, 2015); and (5) the county in which the offenses occurred (Winnebago). The fact the indictment miscites the predatory criminal sexual assault of a child statute is not fatal here, as defendant was fully apprised of the nature of the

charges filed against him and never alleged his defense was thwarted in any way. See *Ryan*, 117 Ill. 2d at 37 ("The citation to an incorrect statutory provision is not necessarily fatal."). Given the indictment recited the facts noted above, we conclude "the citation[ ] used here [is] not so misleading that *** defendant[ ] could be prejudiced by [it]." *Ryan*, 117 Ill. 2d at 37. Thus, the incorrect citation does not render defendant's convictions of or sentences for predatory criminal sexual assault of a child void or unconstitutional.

¶ 26 In so concluding, we also find, as OSAD argues, neither the judgment nor sentencing order is void for lack of personal or subject matter jurisdiction, as (1) defendant appeared in court and subjected himself to the trial court's jurisdiction over him (see *People v. Woodall*, 333 Ill. App. 3d 1146, 1156 (2002)) and (2) the trial court, as a court of general jurisdiction, had jurisdiction over defendant's criminal case (see *People v. Hughes*, 2012 IL 112817, ¶ 21). The fact the indictment miscited the statute did not divest the court of personal jurisdiction over defendant or jurisdiction over his case. See *People v. Davis*, 156 Ill. 2d 149, 156 (1993); *People v. Kleiss*, 90 Ill. App. 3d 53, 55 (1980). Likewise, as OSAD observes, although an earlier version of the predatory criminal sexual assault of a child statute had been declared unconstitutional, as it was enacted in violation of the Illinois Constitution's single subject rule, the statute was reenacted by public act and was constitutional when defendant's crimes were committed and when he was charged. See *People v. Jaramillo*, 307 Ill. App. 3d 914, 915 (1999).

¶ 27 Fourth, the trial court did not lack a proper basis to order the aggravated criminal sexual abuse sentence to run consecutively to the predatory criminal sexual assault of a child sentences. Putting aside the fact defendant's argument is forfeited because he never raised it when he was sentenced (see *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); see also *People v. Leggans*, 253 Ill. App. 3d 724, 738 (1993) ("[A] defendant's failure to request a specific finding of the

sentencing court relative to the protection of the public [for purposes of consecutive sentences], or to complain of an insufficiently articulated basis for the required statutory finding, results in a waiver of the issue upon review")), we cannot find, under our *de novo* review, the court relied on improper aggravating factors in sentencing defendant to a consecutive sentence of three years for aggravated criminal sexual abuse (see *People v. Streater*, 2023 IL App (1st) 220640, ¶ 73 (*de novo* review applies when the question is whether the court relied on improper aggravating factors in sentencing the defendant)). A defendant convicted of aggravated criminal sexual abuse, a Class 2 felony as charged here (720 ILCS 5/11-1.60(c)(1)(i), (g) (West 2014)), faces a prison term between three and seven years (730 ILCS 5/5-4.5-35(a) (West 2020)). Defendant's three-year sentence was the minimum sentence which could be imposed, and, given the court's conclusion at sentencing regarding defendant's manipulative character and attitude making it unlikely he would not commit future crimes, ordering the aggravated criminal sexual abuse sentence to run consecutively to the predatory criminal sexual assault of a child sentences was proper to protect the public. See 730 ILCS 5/5-8-4(a)(1) (West 2020) (consecutive sentences may be imposed when, having regard for the nature and circumstances of the offense, as well as the history and character of the defendant, the court is of the opinion consecutive sentences are necessary to protect the public from any future criminal acts of the defendant); *Leggans*, 253 Ill. App. 3d at 737-38 ("Our supreme court has held that the statutory requirement that the court 'shall set forth in the record' the basis for the court's determination [in imposing consecutive sentences] is permissive, rather than mandatory.").

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 30 Affirmed.