2026 IL App (1st) 242284-U

No. 1-24-2284

Order filed August 18, 2026

Second Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 22 CR 10332
	)	
JOSE IBARRA-SACTA,	)	Honorable
	)	Aleksandra Gillespie,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE D.B. WALKER delivered the judgment of the court.
Justices Ellis and Van Tine concurred in the judgment.

ORDER

¶ 1 ***Held:*** Defendant's 12-year sentence for home invasion is vacated for plain error, and the cause is remanded for resentencing on that count, where the trial court erred in considering a factor implicit in the offense as an aggravating factor. Pursuant to plain error review and the one-act, one-crime rule, we also remand for the trial court to vacate the sentence for one of defendant's convictions for domestic battery.

¶ 2 Following a bench trial, defendant Jose Ibarra-Sacta was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2022)) and two counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2022)). He was sentenced to concurrent terms of 12 years' imprisonment for home invasion

and 364 days, time considered served, in Cook County jail for each count of domestic battery. On appeal, defendant argues that the trial court plainly erred in imposing sentence for home invasion by considering a factor in aggravation that was inherent in the offense, namely, that defendant harmed the victim. Defendant also argues, and the State concedes, that his convictions for domestic battery constitute plain error under the one-act, one-crime rule because both convictions are based on the same physical act.

¶ 3 For the following reasons, we vacate defendant's sentence for home invasion and remand for resentencing on that count. Because defendant's two convictions for domestic battery violate the one-act, one-crime rule, the sentence for one must be vacated. As we cannot determine which is the more serious offense, we remand for the trial court to make such determination. We affirm in all other respects.

¶ 4 BACKGROUND

¶ 5 Defendant was charged by indictment with aggravated kidnapping, four counts of home invasion, and two counts each of armed robbery, aggravated unlawful restraint, and domestic battery. Relevant here, count V for home invasion alleged that defendant, without authority, knowingly entered the dwelling of Alizza H. and intentionally injured her by striking her head. The counts for domestic battery alleged that defendant, without legal justification, made contact of an insulting or provoking nature with Alizza H. (count X) and caused her bodily harm by striking her head (count XI) and that she was a family or household member. The State proceeded on all counts except aggravated kidnapping.

¶ 6 We recount the facts only to the extent necessary to resolve the issues on appeal.

¶ 7 Prior to trial, the State filed a motion to admit evidence regarding allegations of prior domestic violence involving defendant and Alizza H. The trial court granted the motion as to eight of the nine alleged incidents.

¶ 8 The evidence at trial showed that on the evening of August 9, 2022, Izyra H. and Alizza H. were at their residence on the 3800 block of North Richmond Street. Izyra H. was alone in her bedroom, while Alizza H. was in her bedroom with her and defendant's infant daughter. Around 9 p.m., defendant and an unidentified man broke into the apartment. The unidentified man entered Izyra H.'s room and pointed a firearm at her. Defendant, meanwhile, entered Alizza H.'s room and ordered her to place their daughter into her car seat. When Alizza H. stood to retrieve the car seat, defendant struck her head and face with his hand, causing pain. Defendant placed their daughter in the car seat, took her, and left with the unidentified man. Alizza H. did not reunite with her daughter until the next morning when defendant texted Alizza H. stating he had left their infant on the front porch.

¶ 9 Alizza H. further testified that she and defendant were formerly in a romantic relationship beginning in 2020. In December 2020, and in subsequent incidents, defendant struck Alizza H. in the face and choked her after seeing something he did not like on her cell phone. Defendant struck Alizza H. multiple times while she was pregnant, including once with a firearm. After their daughter was born, defendant choked Alizza H. during an argument.

¶ 10 The trial court found defendant guilty of home invasion and two counts of domestic battery. The court found defendant not guilty of all other counts, noting the evidence did not prove beyond a reasonable doubt that he was armed. The court also noted that the other-crimes testimony "was not relevant and did not enter into any of these findings."

¶ 11 Defendant's presentence investigation (PSI) report showed that in 2017 he was convicted of aggravated unlawful use of a weapon (AUUW) and sentenced to one year imprisonment. In 2019, defendant was convicted of manufacture/delivery of a controlled substance and sentenced to four years' imprisonment. Defendant reported that he began drinking alcohol daily at age 13 and began using marijuana and Xanax at age 14. Defendant did not finish high school, but reported that he managed his substance use, worked, and supported his children.

¶ 12 At sentencing, the State argued that Alizza H. testified about a lengthy history of domestic violence by defendant and the physical and emotional abuse she suffered. The State asserted that "the court can consider that [abuse] in its sentencing." The State also argued that defendant's prior convictions, along with the instant offense, showed a pattern of recidivism with increasing seriousness and asked for a commensurate sentence.

¶ 13 In mitigation, defense counsel presented character letters and a verification of employment for defendant. Defense counsel stated that defendant pays taxes and wants to return home and resume work. Multiple coworkers, including a manager and assistant manager, submitted character letters on defendant's behalf. The remaining character letters, from his parents, the mother of his first child, his brothers, and several family friends, stated that defendant is on good terms with the mothers of both his children, and that he would like to return home and be in their lives.

¶ 14 In allocution, defendant stated that he wished the mothers of both his children were in court so he could apologize "for not being the man to be there, to support them as a role model and a father for [his] kids." He requested a lenient sentence so he could return to his family and children.

¶ 15 The court imposed concurrent terms of 12 years' imprisonment for home invasion and 364 days, time considered served, in Cook County jail for each domestic battery count. In ruling, the court stated that it considered the presentence investigation, the evidence presented, the arguments

by counsel, the letters submitted in mitigation, the statutory and non-statutory factors in aggravation and mitigation, the history and the character of defendant, the seriousness of the offense, and the objective of restoring defendant to useful citizenship. The court then stated that it will "rely on the aggravating factors" that defendant's conduct caused or threatened serious harm to Alizza H., along with defendant's criminal history.

¶ 16 Defendant filed a motion to reconsider sentence arguing that the court did not consider the mitigating factors and that his sentence was excessive given his criminal history, the facts of the case, and the mitigating evidence. The court denied defendant's motion. This appeal follows.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant first contends that his sentence is excessive because the court improperly considered a factor inherent in the offense of home invasion and did not consider the mitigation evidence. Defendant argues that he preserved this issue for appeal. In the alternative, he maintains that we should review this issue for plain error or ineffective assistance of trial counsel for failing to preserve the issue.

¶ 19 "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection *and* a written postsentencing motion raising the issue are required." (Emphasis added.) *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, defendant did not object to the court's consideration of a factor inherent in the offense contemporaneously or in his postsentencing motion. As a result, defendant forfeited review of the issue. Defendant, however, correctly argues that forfeited issues can be reviewed under plain error or as ineffective assistance of counsel. See *People v. Curry*, 2018 IL App (1st) 152616, ¶ 36. We begin with plain error analysis.

¶ 20 The plain error doctrine is a narrow and limited exception to forfeiture. *People v. Stephens*, 2017 IL App (1st) 151631, ¶ 43. To obtain relief under the plain error doctrine in a sentencing

context, a defendant must show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). "The first step under either prong of plain error analysis is to determine whether a clear or obvious error occurred." *People v. Bush*, 2023 IL 128747, ¶ 71.

¶ 21 Although this court affords great deference to the trial court's sentencing decisions and reviews such decisions for an abuse of discretion, whether the trial court relied on an improper factor during sentencing presents a question of law which we review *de novo*. *People v. Lopez*, 2025 IL App (1st) 232120, ¶ 48.

¶ 22 The prohibition against using a factor inherent in an offense as aggravation at sentencing is premised "on the assumption that, in designating the appropriate range of punishment for a criminal offense, the legislature necessarily considered the factors inherent in the offense." *People v. Phelps*, 211 Ill. 2d 1, 11-12 (2004). This rule is not meant to be applied rigidly, nor to prevent the judge from considering factors relevant to imposing a sentence. *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986). Rather, "sound public policy demands that a defendant's sentence be varied in accordance with the particular circumstances of the criminal offense committed." *Id*. at 269. "Certain criminal conduct may warrant a harsher penalty than other conduct," and "[t]he legislature clearly and unequivocally intended that this varying quantum of harm may constitute an aggravating factor." *Id*. As a result, the degree of harm caused to the victim may properly be considered as an aggravating factor at sentencing, "even in cases where serious bodily harm is arguably implicit in the offense for which a defendant is convicted." (Emphasis omitted.) *Id*. Indeed, whether a defendant's conduct "caused or threatened serious harm" is a statutory factor in aggravation. 730 ILCS 5/5-5-3.2(a)(1) (West 2022).

¶ 23 That said, "[a] sentence based on improper factors will not be affirmed unless the reviewing court can determine from the record that the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence." *People v. Heider*, 231 Ill. 2d 1, 21 (2008). The matter must be remanded for resentencing if "the reviewing court is unable to determine the weight given to an improperly considered factor." *People v. Bourke*, 96 Ill. 2d 327, 332 (1983). When reviewing the weight given to an improper factor at sentencing, we consider whether the sentence is near the minimum permissible for the offense, any statements made by the trial court when imposing the sentence, and the presence of other factors in aggravation. See *People v. Cook*, 217 Ill. App. 3d 299, 314-15 (1991).

¶ 24 As charged, a defendant commits home invasion when he or she "knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present" and "[i]ntentionally causes any injury *** to any person or persons within the dwelling place." 720 ILCS 5/19-6 (West 2022). Defendant was convicted of home invasion, a Class X felony with a sentencing range of 6 to 30 years' imprisonment. See 720 ILCS 5/5-4.5-25(a) (West 2022). Defendant was sentenced to 12 years, near the middle of the sentencing range.

¶ 25 Here, the trial court stated that defendant's sentence was premised on the fact that he "caused or threatened serious harm" to Alizza H. The record thus shows that the court, when imposing sentence, relied, at least in part, on the fact that defendant harmed Alizza H. The court made no reference to the circumstances or degree of harm caused, nor did Alizza H. testify in detail about how she was struck or the injuries she sustained. Given this record, the court committed a clear and obvious error in relying on a factor inherent in the offense—causing harm to Alizza H.—when sentencing defendant.

¶ 26 Consequently, we turn to the second step of the plain error analysis. Defendant seeks review under both prongs. In *People v. Johnson*, 2024 IL 130191, ¶ 96, our supreme court held that a trial court's consideration of an improper factor at sentencing is not reviewable under second-prong plain error because it is not a structural error. As a result, we apply the first prong of the plain error analysis.

¶ 27 "In the sentencing context," establishing first-prong plain error requires showing that "the evidence at the sentencing hearing was closely balanced." *Hillier*, 237 Ill. 2d at 545. When determining whether the evidence was closely balanced, we "conduct a qualitative, commonsense assessment of [the evidence] within the context of the case." *People v. Sebby*, 2017 IL 119445, ¶ 53.

¶ 28 In aggravation, the State presented evidence of defendant's history of domestic violence and his criminal history, arguing a pattern of recidivism and increasing seriousness. In mitigation, defendant presented evidence of his employment, close relationship with his children, familial support, character letters from friends and family, and failure to finish high school. Apart from the harm to Alizza H., the only factor the court considered in aggravation was defendant's criminal history. Defendant, however, presented substantial mitigating evidence. Because defendant presented significant mitigating evidence against the State's aggravating evidence, the evidence at defendant's sentencing hearing was closely balanced. See *People v. Martin*, 119 Ill. 2d 453, 458-59 (1988) (evidence at sentencing was closely balanced where "there was substantial mitigating evidence" and the only aggravating evidence besides the harm to the victim had "at best, marginal applicability").

¶ 29 As the evidence here is closely balanced, the trial court's improper consideration of the harm to Alizza H. as a sentencing factor was plain error. Consequently, we vacate defendant's

sentence for home invasion and remand for resentencing thereon. Because we resolve this issue under plain error, we need not address whether defendant received ineffective assistance of counsel. See *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 59. As the case is remanded for resentencing, we need not address defendant's argument that the court did not consider mitigating evidence.

¶ 30 Defendant next contends, and the State concedes, that his two convictions for domestic battery violate the one-act, one-crime rule. Plaintiff requests we review this for second-prong plain error.

¶ 31 Although defendant did not preserve the issue, violations of the one-act, one-crime rule are reviewable for second-prong plain error. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010) ("[F]orfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain error rule because they implicate the integrity of the judicial process."); see also Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). We must first determine whether an error occurred. *People v. Campos*, 2019 IL 152613, ¶ 35.

¶ 32 "Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act." (Internal quotation marks omitted.) *Curry*, 2018 IL App (1st) 152616, ¶ 26. If a defendant only performed a single act, then multiple convictions are improper. *Id*. If a defendant committed multiple acts, then we must determine whether any conviction is for a lesser-included offense, which is also prohibited under the rule. *People v. Ryan*, 2024 IL App (2d) 220076, ¶ 41.

¶ 33 Here, we agree with the parties that defendant's two convictions for domestic battery arise from the same physical act. The record shows that defendant struck Alizza H. once, and both

convictions arose from this same physical act. We therefore find that defendant's two separate convictions for domestic battery cannot stand.

¶ 34 When there is a violation of the one-act, one-crime rule, only the most serious conviction will remain. *Sapp*, 2022 IL App (1st) 200436, ¶ 73. Where it cannot be determined which offense is the more serious, the cause will be remanded to the trial court to make such a determination. *Id*. ¶ 76. Here, defendant was charged with two counts of domestic battery arising from his single act of striking Alizza H. on the head. As it cannot be determined from the record which charge is more serious, we remand to the trial court to make such determination.

¶ 35 CONCLUSION

¶ 36 For the reasons set forth above, we vacate defendant's sentence for home invasion and remand for resentencing thereon. Because defendant's two convictions for domestic battery violate the one-act, one-crime rule, the sentence on the more serious offense must be vacated. *People v. Woods*, 2018 IL App (1st) 153323, ¶ 43. As we cannot determine which is the more serious offense, we remand to the trial court to make such determination. We affirm in all other respects.

¶ 37 Affirmed in part, vacated in part, and remanded.