

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).

2026 IL App (4th) 251150-U

NO. 4-25-1150

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 10, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
CECIL BARBARY,	)	No. 20CF555
Defendant-Appellant.	)	
	)	Honorable
	)	Debra D. Schafer,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court granted appellate counsel’s motion to withdraw and affirmed defendant’s conviction for home invasion, as counsel was correct that no issues of arguable merit could be raised on appeal.
- ¶ 2 Defendant, Cecil Barbary, was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2020)). The trial court sentenced him to six years in prison. Defendant timely appealed, and the court appointed counsel to represent him.
- ¶ 3 Counsel now seeks to withdraw pursuant to the procedure set forth in *Anders v. California*, 386 U.S. 738 (1967). In her supporting brief, counsel contends any argument she might make would be meritless. Defendant was given notice that he had the opportunity to respond to the motion to withdraw, but he did not file a response. For the following reasons, we grant counsel’s motion to withdraw and affirm the trial court’s judgment.

¶ 4

I. BACKGROUND

¶ 5 On April 8, 2020, a grand jury indicted defendant in Winnebago County case No. 20-CF-555 for home invasion (720 ILCS 5/19-6(a)(2) (West 2020)), criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2020)), criminal damage to property (720 ILCS 5/21-1(a)(1) (West 2020)), and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2020)). These charges were based on an incident between defendant and his girlfriend, M.L., on March 15, 2020, where defendant allegedly broke down the door to her apartment, grabbed her by the neck, and pushed her to the floor. At the time of this occurrence, defendant was released on bond in Winnebago County case No. 19-CF-3320, in which he had been charged with felony aggravated battery and resisting a police officer. On June 12, 2020, the trial court ordered defendant not to have contact with M.L. On June 26, 2020, an order of protection was filed in Winnebago County case No. 20-OP-476, ordering defendant not to contact M.L. or come within 300 feet of her residence. On July 2, 2020, defendant was charged in Winnebago County case No. 20-CF-1437 with violating that order of protection by texting M.L. He was charged with another violation of the order of protection in September 2021 in Winnebago County case No. 21-CF-1864.

¶ 6 Initially, the State expressed its intent to elect to proceed on case No. 19-CF-3320. However, on May 11, 2021, the State chose to proceed to trial first on the charges in case No. 20-CF-555 in lieu of case No. 19-CF-3320. On October 28, 2021, defendant waived his right to a jury trial.

¶ 7

A. Motions *In Limine*

¶ 8 The State filed (1) a motion *in limine* to introduce a 911 call as an excited utterance and (2) a motion to introduce evidence of prior domestic violence pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2020)). The parties

argued the motions at a hearing on December 2, 2021. The State argued that the 911 call from the victim's neighbor should be admitted as a spontaneous declaration, as she was "relaying not only what prompted her to call 911, but also what is still occurring in present time as she is on the phone." Defense counsel argued that the neighbor was describing something that had been happening for 45 minutes and about which she had no personal knowledge. Counsel emphasized that the neighbor "sounds very calm ***, very measured" and "does have time to fabricate based on her own statement" that it was "something that has been going on for 45 minutes."

¶ 9 As to the motion to introduce evidence of prior domestic violence, the State argued that it was "seeking to introduce domestic violence incidents that pertain to three separate individuals," including the named victim in this case, M.L. The first incident occurred with M.L. a few hours before the events on which the charges in the present case were based, when defendant allegedly punched M.L. in the face during an argument. There were other incidents with M.L. in 2014, 2015, and 2019, as well as a violation of the order of protection in July 2020. The State intended to introduce this evidence via M.L.'s testimony. The State also sought to introduce evidence of prior domestic violence incidents with T.T. in 2008, 2017, and 2019, and T.C. in 2017. The State argued that this evidence was "indicative of the defendant's propensity to commit other acts of domestic violence," which was admissible under section 115-7.4 of the Code. In turn, defense counsel argued that these prior incidents were unrelated to the charged conduct, and most were from more than seven years ago and thus not proximate in time. Counsel also contended that allowing this evidence would turn the trial into a "mini trial on collateral incidents." The trial court indicated it would "review this again in light of [the parties'] arguments" and would "have a decision to [them] by Monday on both of the issues so you have that in advance of trial." At the next court date, on December 13, 2021, the parties implied that the motions *in limine* had been

ruled on, as defense counsel stated, “[B]ased on the Court’s rulings on motions *in limine* a day and a half is still appropriate” for the trial. However, there is no order or docket entry reflecting that the court ruled on this motion, nor does the record contain a transcript of any oral ruling on this motion.

¶ 10 B. Bench Trial

¶ 11 The trial court held a bench trial between February 15 and 17, 2022. The following evidence was presented.

¶ 12 M.L. and defendant began an on-and-off dating relationship in 2013 that lasted into 2019. They had two children together. One of the homes they shared during their relationship was an apartment on Sun Valley Terrace in Rockford, Illinois. Defendant began living with M.L. at that apartment in 2016 but moved out in approximately 2017 or 2018. At the time of trial, M.L. still lived there.

¶ 13 M.L. testified that the relationship was physically abusive. In 2014, after an argument at an Applebee’s restaurant, defendant “ended up spitting in [her] face” and “kicked *** [her] mom’s car window.” In 2015, in the kitchen of the apartment where they resided together, defendant “pinned [M.L.] against the wall,” “put his hands on [her] neck[,] and held [her] there for about five or ten seconds.” Also in 2015, at their child’s school, defendant, while drunk, grabbed M.L. on her way to her car and “would not let [her] go.” M.L. testified that defendant had previously struck her with his fist in the eye. He had additionally made threats against her and her family “once or twice,” such as, “ ‘I’ll shoot you’ or ‘If you get anybody else involved, I’ll shoot your brothers’ or ‘your family.’ ”

¶ 14 M.L. testified that, on March 15, 2020, she and defendant were “back on.” They were at Cliffbreakers Event Center at Riverview Inn and Suites (Cliffbreakers), a hotel, to “hav[e]

a good time.” Defendant was not living with M.L. at the time. She did not know where or with whom he was living. While there, defendant insisted on a paternity test to prove that two of M.L.’s children were his. They argued. M.L. testified that they were in an elevator when defendant “pushed” her in her eye, causing her pain. While they were at Cliffbreakers, she threatened to “call the police to make sure that [defendant] got put in jail.” According to M.L., she went home but did not invite defendant to go home with her. She testified that she got home at 2 or 3 in the morning, locked the deadbolt on her door, and went to sleep. M.L. testified that she was awakened by multiple telephone messages from defendant, so she fastened the chain on her door in addition to the deadbolt. Her door was in working condition at that time.

¶ 15 M.L. testified that she next awoke to find defendant standing over her bed. She asked defendant how he got into her residence because he did not have a key. M.L. testified that she went into the living room and saw the door was “off the hinges,” and the doorframe was broken. According to M.L., she tried to get to her phone to call the police, but defendant grabbed her by her neck with one hand, pushed her down to the floor, and squeezed. She testified she had bruises where defendant squeezed her neck. M.L. testified that she was screaming. The next thing she knew, the police were there.

¶ 16 At the State’s request and without objection, the trial court admitted photographs of M.L. and her home taken by police, some of which displayed bruises on her neck. Other photos displayed the door to her apartment, with a broken doorframe and one of the door hinges on the floor. The police report did not say anything about a physical altercation at Cliffbreakers.

¶ 17 On cross-examination, M.L. testified that, until a couple of months before trial, her electric bill had still been in defendant’s name, even though he had not lived there since 2019. There was a several-thousand-dollar electric bill still in defendant’s name. M.L. acknowledged

that defendant and his daughter (from another relationship) would sometimes come over to her apartment at the beginning of 2020.

¶ 18 On redirect examination, M.L. testified that defendant did not have permission to be in her residence on March 15, 2020, nor did he have the key to enter. He had a key “[p]robably a year or two” before the incident. She explained that there was an outside door to enter the apartment complex, which you needed a key to open or for someone to come and unlock it for you. There was no damage to that outside door.

¶ 19 The evidence showed that the police received a 911 call in the early morning hours of March 15, 2020, regarding an altercation at M.L.’s address. A recording of the 911 call was admitted into evidence over defendant’s objection, which incorporated the arguments the defense had raised in opposition to the State’s motion *in limine*. The transcript implies that the trial court had previously granted the State’s motion *in limine*, as the prosecutor noted the court had “already listened to [the 911 recording] when ruling on the motion *in limine* previously.” One section of the call was eight and a half minutes long, while the second section was two minutes. The caller indicated that there was a man knocking and banging on her neighbor’s door for 45 minutes, asking her to let him in. He then kicked in the door and entered the residence while the caller was on the phone with the dispatcher. After that, the caller stated that “it sounds like they’re fighting,” and she heard “a lot of throwing around, like bumps,” “like he threw her around.” She then heard yelling and “kids crying.” She informed the dispatcher that she did not know her neighbor’s name, but the man’s voice “sounds like [the neighbor’s] boyfriend.” She said her neighbor had two or three kids. At some point, the caller stated, “Oh my god, I don’t know what he’s doing but she’s screaming.” The caller then threw her building keys down through her window to arriving police officers so they could enter the building. She stated, “[H]e’s beating on her or something.”

¶ 20 In response to the 911 call, at approximately 5:30 that morning, the police were dispatched to M.L.’s apartment. Upon arrival, they saw the door to M.L.’s apartment broken off its hinges and the doorframe pulled out from the wall. M.L. was in the kitchen and met them in the living room, while defendant was in one of the bedrooms of the apartment. The police observed that M.L. was “hysterical” and that she had an injury to her neck. M.L. gave a statement to police and stated that she and defendant had a verbal argument at Cliffbreakers earlier that night but did not say there was a physical altercation. Police detained defendant. Defendant accused the officers of violating his rights. He “freely stated that him and [M.L.] got into an argument about their children being his or not.” He stated he never touched M.L. Defendant “changed his story several times,” starting by “not knowing how the door was damaged,” but then stating “the door was damaged before he got there.” Defendant later told the police that “he was in the apartment and the door got damaged but he doesn’t know by who.” After speaking to the other police officers, one of the officers returned to his squad car and gave defendant *Miranda* warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)). The State presented testimony that defendant gave the sheriff’s department an address on “Rose Avenue” when defendant was booked into the county jail following this incident.

¶ 21 After the State rested, defendant’s first witness was Gilbert McDonald, who testified that he visited defendant at M.L.’s Sun Valley Terrace address prior to defendant’s arrest in March 2020. Defendant usually picked him up in M.L.’s car. On cross-examination, McDonald testified that he did not know how long defendant lived at the Sun Valley Terrace address or when he moved from that address.

¶ 22 Defendant then testified on his own behalf. Defendant testified that he first moved in with M.L. in 2013. They lived together in Belvidere, Illinois, until they moved to Rockford in

2015. According to defendant, M.L. moved with her children to the apartment on Sun Valley Terrace in 2016. Defendant testified that he moved in with M.L. at the Sun Valley Terrace apartment at the end of 2016 or in early 2017. Defendant stated that he moved out of the Sun Valley Terrace apartment in 2018 but moved back in with M.L. in 2019. According to defendant, when he was arrested in March 2020, he still had the electric bill in his name and kept everyday items, like a toothbrush and video games, at M.L.'s apartment. Defendant testified that his daughter from another relationship also stayed at the Sun Valley Terrace address. Defendant testified that he gave the Rose Avenue address to the police when he was booked in March 2020 because he "never really gave out where [he] was technically living." According to defendant, Rose Avenue was his mother's address and where he received mail.

¶ 23 Defendant addressed some of the previous instances of domestic violence that M.L. had testified about. He explained that in 2014, he did not intend to spit on her after going to Applebee's, but rather did so unintentionally as he spoke with her because he had been drinking. However, he did admit to striking M.L. that night and claimed "[i]t was a reflex" to "[h]er attacking [him]." He did not recall an incident in 2015 where he put his hands around her neck and choked her. He testified he never threatened to shoot M.L. and did not own or have access to any firearms.

¶ 24 Defendant testified that on March 14, 2020, he was living "[o]n and off with [M.L.]" at the Sun Valley Terrace apartment. He stated that he and M.L. argued that evening while they were at Cliffbreakers. He asked for a DNA test for his son, and M.L. subsequently "literally just started hitting [him] in [his] face, went crazy, got upset, [and] ran upstairs." He said that she did not want to talk to him, and he was "trying to keep her from the room" so she would talk. They left the hotel, and in the parking lot, she told defendant, " 'I'm going to make sure you stay in jail for the rest of your life,' " and, " 'I'm going to make sure I lie to these police to make sure you

stay in police [*sic*] for the rest of your life.’ ” He admitted that he then “took the palm of [his] hand *** and pushed her away from [him] in the parking lot because of the words she said to [him].” He indicated that he pushed her on the forehead. M.L. then got in her car and left.

¶ 25 He testified that, after M.L. left, he asked a friend to pick him up and drop him off at the Sun Valley Terrace apartment. He arrived there around 4 a.m. He then let himself into the lobby with a key. According to defendant, he knocked on M.L.’s door “very hard,” and it “just came open.” He stated that he “was sitting out there banging on the door for like at least about 45 minutes to an hour.” After he broke the door, he “sat there on the steps before [he] *** walked inside the house because [he] knew [he] broke the door” and said to himself, “ ‘Man, if I go in here, I know I can technically be charged for a home invasion or something of that nature.’ ”

¶ 26 Defendant testified that he went inside because he “technically just broke the door,” and he did not want M.L. to be inside with a broken door. According to defendant, nothing physical occurred between him and M.L., and he did not try to prevent M.L. from reaching her phone. Defendant testified that M.L. was “kind of scared” because of how he got in. Defendant testified that the door was “weak *** [so] it just came open.” M.L. was “crying and yelling,” saying, “ ‘I told you I didn’t want to talk to you.’ ” Then, according to defendant, the police came in “very aggressive.” According to defendant, he told the police, “ ‘I didn’t touch [M.L.]’ ” He testified that he did not put his hands on M.L.’s neck or push her.

¶ 27 Defendant admitted that he stopped paying the electric bill that was in his name at the Sun Valley Terrace apartment and “[j]ust let it run up.” He also acknowledged that when he was interviewed by pretrial services on March 16, 2020, he informed them that his address was on Rose Avenue and that he had lived there for the last eight months. He told pretrial services that he lived on Sun Valley Terrace prior to that.

¶ 28 Defendant testified that he did not have a key to M.L.’s apartment, though he did have a key to the exterior door of the building. He stated that M.L. had taken his key back from him prior to March 14, 2020. Defendant testified: “[M.L.] didn’t want me to come in randomly or anything like that.” After defendant’s testimony, the defense rested.

¶ 29 In rebuttal, the State presented evidence that, on March 16, 2020, defendant reported his residence as the Rose Avenue address to a county pretrial services officer. According to that officer, defendant stated that he had been living at the Rose Avenue address for eight months and that his previous address was on Sun Valley Terrace. The State then rested, and the trial court asked if there were “any motions at this time.” Defense counsel answered, “No, Judge.”

¶ 30 The trial court pointed out that count I of the superseding indictment lacked two elements of the offense of home invasion, namely, that defendant was not a peace officer acting in the line of duty and that defendant entered M.L.’s residence “ ‘without authority.’ ” See 720 ILCS 5/19-6(a) (West 2020). Defense counsel then filed a written motion for a directed finding based on the fatal defectiveness of count I. The court granted the motion and found that “[W]here there are two material elements that are not alleged ***, I can’t find that to be sufficient. *** [T]here will be no judgment of conviction” on count I.

¶ 31 As to the remaining three counts, the trial court found defendant guilty. The court noted that it was “clear that [defendant] and [M.L.] had an ongoing domestic relationship” that was “on-again, off-again” but was “on again” on March 15, 2020. Although M.L. threatened to call the police on defendant, the court noted that she was not ultimately the one who called the police. The court stated that defendant “was probably pretty angry at being locked out of the apartment for 45 minutes.” The court “believe[d] that he did, at the very least, shove [M.L.] in the course of that,” and as a result, it found defendant guilty of criminal trespass, criminal damage to

property, and domestic battery.

¶ 32 The State filed a timely notice of an interlocutory appeal, challenging the trial court's finding on count I. This court addressed this issue in *People v. Barbary*, 2022 IL App (4th) 220216-U. We held that the trial court abused its discretion in dismissing count I of the superseding indictment and remanded for the court to consider the evidence regarding that count. *Barbary*, 2022 IL App (4th) 220216-U, ¶¶ 32-33.

¶ 33 Defendant filed a motion for a new trial on March 18, 2022, which the trial court noted it could not consider pending appeal.

¶ 34 During the pendency of that appeal, on May 19, 2022, the trial court sentenced defendant to 4½ years in prison in connection with one of his other cases, case No. 19-CF-3320, with credit for time served of 343 days, followed by 1 year of mandatory supervised release (MSR). The court noted this credit included time from December 19, 2019, to March 5, 2020; April 23, 2020, to June 25, 2020; October 28, 2021, to February 3, 2022 (when defendant was on home confinement); and February 4, 2022, to May 19, 2022. The court also sentenced defendant to a consecutive term of 30 months of probation in case Nos. 20-CF-1437 and 21-CF-1864 (the cases concerning defendant's violations of the order of protection).

¶ 35 On May 5, 2023, defendant had served his sentence in case No. 19-CF-3320, been released from prison, and had begun his probation in case Nos. 20-CF-1437 and 21-CF-1864. At a status hearing on June 1, 2023, the trial court ordered defendant to be taken back into custody on this case (case No. 20-CF-55), pending compliance with the appellate court's mandate to consider whether the State had proved defendant guilty of home invasion.

¶ 36 On August 1, 2023, the trial court found defendant guilty of home invasion. The court reasoned that the circumstances of the case, with defendant battering at M.L.'s front door for

45 minutes before breaking it and entering the residence, indicated that he was not a peace officer acting in the line of duty. The court found that the State had also proved the remaining propositions of the charge of home invasion.

¶ 37

C. *Krankel* Proceedings

¶ 38 Defendant filed a *pro se* motion for a new trial on September 12, 2023, arguing that (1) the State did not prove his guilt beyond a reasonable doubt, (2) his trial counsel provided ineffective assistance, and (3) the trial court made several errors in admitting evidence. The court noted that it would set the motion for a “pre-*Krankel* hearing.” See *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 39

At that hearing on October 27, 2023, the trial court asked defendant to describe his allegations of ineffective assistance of counsel. Defendant argued that his trial counsel was ineffective for (1) failing to obtain evidence from the Illinois Department of Children and Family Services (DCFS) that showed that defendant and his daughter were residing at the Sun Valley Terrace apartment at the time of the charges; (2) failing to adequately explain the State’s plea offer to him; (3) failing to obtain phone call recordings from the county jail where M.L. admitted she made false accusations against defendant; (4) failing to obtain dash camera footage from a police squad car; (5) failing to show defendant any discovery before trial; (6) failing to raise “essential points” in his original motion for a new trial; (7) failing to show defendant pictures from discovery; (8) failing to review the trial transcript with defendant; (9) failing to “raise certain concerns during trial” that defendant asked counsel to raise regarding M.L.’s testimony; (10) telling defendant that courts never grant motions for a new trial; and (11) telling defendant he could not present new evidence if he was granted a new trial.

¶ 40

The trial court allowed trial counsel to respond to each of defendant’s allegations.

Counsel stated that (1) defendant never informed him about the existence of or requested him to obtain DCFS documents and never told him the name of a DCFS caseworker to contact; (2) he conveyed to defendant that the State did not agree to credit for time served in its plea offer, and defendant only expressed further interest in the offer after it had been withdrawn; (3) defendant rarely met with him before trial and missed multiple meetings, defendant brought up the existence of his jail phone call with M.L. very late, and based on defendant's summary of the phone call, counsel did not believe it would be exculpatory; (4) defendant's contention that the squad car video would have shown he was not properly given *Miranda* warnings was irrelevant where no inculpatory statements by defendant were admitted at trial, especially where there was likely no such video, as dashcams were not yet required in 2020; (5) defendant never requested to see the discovery; (6) he brought his file when defendant requested him to do so and reviewed the motion for a new trial with him; (7) he gave defendant a digital copy of the pictures, and defendant did not request a disk drive to view the pictures; (8) he gave defendant a digital copy of the trial transcripts; and (9) he intended to work with defendant to incorporate the claims he wanted to include in the motion for a new trial, but defendant had already filed his own motion at that point. The court asked defense counsel to issue a subpoena for the DCFS records that defendant had discussed. The court noted that the hearing would need to be continued to address defendant's remaining arguments of ineffective assistance of counsel.

¶ 41 The trial court continued to address defendant's *pro se* motion at a subsequent hearing on November 15, 2023. The court noted that it had received the DCFS records from defense counsel's subpoena. The court allowed defendant to address his remaining allegations of ineffectiveness. Trial counsel then responded that he (1) made a strategic decision not to impeach M.L. the way defendant wished him to, (2) was honest with defendant about the odds of his motion

for a new trial being granted, and (3) told defendant they could not present new evidence in the motion for a new trial, not that they could not bring new evidence should there be a new trial.

¶ 42 At a subsequent hearing on December 1, 2023, the trial court acknowledged that “generally speaking, [the State] do[es]n’t participate in the Pre-*Krankel*,” but it asked the prosecutor some follow-up questions about the issues defendant brought up in his allegations of ineffectiveness. The prosecutor indicated that she did not recall ever seeing any dash camera footage from a squad car. Defendant’s trial counsel also indicated that he had reviewed the DCFS records, and they would not have been helpful and did not indicate that defendant lived at M.L.’s residence. The court agreed. The court ultimately found that trial counsel was not ineffective on any of the grounds that defendant alleged, as (1) the DCFS records were not helpful to the defense; (2) any misunderstanding around the State’s plea offer was a miscommunication, rather than ineffectiveness or neglect; (3) there was no indication that the jail call would have been helpful; (4) there was no dash camera footage from a squad car; (5) defendant did not make any inculpatory statements during his arrest; (6) defendant never informed the court that he had not seen any discovery; (7) decisions about impeaching a witness are strategic; (8) telling defendant the truth that motions for a new trial are not often granted was not neglectful but honest; and (9) defendant’s understanding of bringing new evidence “sounds like miscommunication.” The court thus denied defendant’s motion and indicated that counsel should prepare an amended motion for a new trial with the points that defendant wished to raise.

¶ 43 D. Posttrial Proceedings

¶ 44 Defense counsel filed an amended motion for a new trial on December 21, 2023. He argued that (1) the State failed to prove defendant guilty beyond a reasonable doubt, (2) the trial court erred in granting the State’s motion to admit the 911 call, (3) the court erred in admitting

evidence of prior domestic violence, and (4) the court erred in taking judicial notice of defendant's bond sheet in case No. 19-CF-3320. The court held a hearing on the motion on January 26, 2024, and denied the motion on January 30, 2024. The parties and the court each alluded to the fact that the court had granted the State's motions *in limine* as to the 911 call and the prior instances of domestic violence.

¶ 45

E. Sentencing

¶ 46

The trial court held a sentencing hearing on March 27, 2024. The State asked the court to take judicial notice of the facts of the case and defendant's 33 bond violations. Defendant tendered two additional exhibits into evidence: a letter from Amarianna Davis and a workbook from a self-improvement program that defendant completed while in jail. The parties agreed that defendant should be sentenced only for home invasion, as the other charges merged. During argument, the parties also agreed that the court had the discretion to order defendant's sentence for home invasion to be served consecutively to his sentence in case No. 19-CF-3320, a case in which he was on MSR. Defendant presented a statement in allocution and discussed what he had learned from some programs in which he participated while he was in jail and apologized to M.L.

¶ 47

The trial court indicated that it had considered the trial evidence, the presentence investigation report, the history, character, and attitude of defendant, the evidence, arguments, and statement in allocution presented at the sentencing hearing, and all the statutory factors in mitigation and aggravation. The court noted that this was defendant's seventh felony conviction. The court ultimately sentenced defendant to six years in prison. The court noted that it could make this sentence consecutive to or concurrent with his sentence in case No. 19-CF-3320 and ultimately ruled it should be consecutive. The court terminated defendant's probation in case Nos. 20-CF-1437 and 21-CF-1864. The court found defendant was "definitely entitled to credit from June 2 of

2023 through today's date," and potentially additional credit based on the programs he completed while in prison and during the period of home confinement.

¶ 48 Defendant filed a motion for reconsideration of his sentence on April 10, 2024, arguing that (1) the sentence was excessive, (2) he had no previous history of adult criminal activity, except as noted in the presentence investigation report, (3) the trial court failed to take into consideration defendant's rehabilitative potential and the statutory factors in mitigation, and (4) he was entitled to additional credit for time spent on home confinement and for programming completed while in jail. The court addressed the motion at hearings on April 26 and 30, 2024.

¶ 49 The issue of credit for time served was complicated because defendant was in custody for multiple offenses at the same time throughout the duration of this case. The parties noted that defendant had, in an order on May 19, 2022, issued in case No. 19-CF-3320, received credit for 343 days. The parties agreed that if defendant's sentences in the two cases were to remain consecutive, he could not get double credit for that time. That order gave defendant credit for time served from December 19, 2019, to March 5, 2020; April 23, 2020, to June 25, 2020; October 28, 2021, to February 3, 2022 (when defendant was on home confinement); and February 4, 2022, to May 19, 2022. It did not, however, include time between March 15 and April 23, 2020, and the parties agreed that credit should count toward the sentence in this case. Additionally, the parties agreed that defendant should receive credit for time served between June 1, 2023, when he was taken back into custody in this case, to March 27, 2024, when he was sentenced. Defense counsel also indicated that he had spoken with someone from the jail, who stated that the programs that defendant participated in while in jail were "intended specifically for an inmate's benefit" and "not intended to be used for credit." The parties agreed that defendant's credit totaled 340 days.

¶ 50 Defendant appealed. However, because the trial court never issued a decision on

defendant's motion to reconsider his sentence, defendant's appeal was dismissed and remanded for a hearing on his timely motion. The court denied the motion on March 26, 2025. The court noted, "Based on [defendant's] prior criminal history, the violations of what was then bond, violations of orders of protection that relate to [M.L.], who is the victim in the home invasion, I felt then and reaffirm now that I believe that a consecutive sentence on this case is warranted."

¶ 51 This appeal followed.

¶ 52 II. ANALYSIS

¶ 53 Appellate counsel moves for leave to withdraw. Counsel supports her motion with a memorandum, which states she considered raising six issues on defendant's behalf: (1) whether the State proved defendant guilty of the charged offenses beyond a reasonable doubt, (2) whether the trial court erred in admitting the 911 call, (3) whether the court erred in allowing the State to present prior incidents of domestic violence between defendant and M.L., (4) whether defendant should have been appointed new counsel after the *Krankel* hearing, (5) whether defendant was entitled to additional credit against his sentence for participating in self-improvement programs while in jail, and (6) whether the court erred in ordering that the sentence in this case be served consecutively to defendant's sentence in case No. 19-CF-3320. Counsel explains why she concluded that none of these issues have arguable merit.

¶ 54 We consider counsel's motion to withdraw under the procedure set out in *Anders*. After examining the record, we agree that the issues counsel identifies lack arguable merit, and we have identified no other arguably meritorious issues. We therefore grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 55 A. Sufficiency of the Evidence

¶ 56 Counsel first concludes that it is not arguable that the State failed to prove

defendant's guilt for the charged offenses beyond a reasonable doubt. We agree.

¶ 57 When a defendant challenges the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35. "A criminal conviction will not be set aside on a challenge to the sufficiency of the evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Jackson*, 2020 IL 124112, ¶ 64.

¶ 58 It is the function of the trier of fact to determine the credibility of the witnesses, assess the weight given to their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence. *People v. Baker*, 2022 IL App (4th) 210713, ¶ 35. These credibility determinations are entitled to great weight. *Baker*, 2022 IL App (4th) 210713, ¶ 35. In contrast, "[i]t is not the function of the reviewing court to retry the defendant," and thus, an appellate court will not "substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses." *Jackson*, 2020 IL 124112, ¶ 64.

¶ 59 A defendant commits home invasion when he (1) is "not a peace officer acting in the line of duty," (2) knowingly and without authority "enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present," and (3) "[i]ntentionally causes any injury *** to any person or persons within the dwelling place." 720 ILCS 5/19-6(a)(2) (West 2020). Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found these essential elements beyond a reasonable doubt in this case. The evidence showed that defendant was banging on the door for 45 minutes before breaking it in; M.L. did not invite defendant to her apartment; defendant admitted he did not have a key to the apartment because M.L. had taken it away a few months prior to the incident, and "[M.L.] didn't

written order issued on this motion, indicating that this ruling was not documented in the trial court. However, the parties' statements on the record confirmed their understanding that the court had granted the State's motion *in limine* at some point, and the court reaffirmed its ruling during trial when it admitted the 911 recording into evidence. Though unusual for a ruling on a motion *in limine* not to be reflected in the record, under the circumstances, this does not impede our ability to review defendant's appellate counsel's conclusion that there would be no arguably meritorious basis to challenge the ruling on the motion *in limine*. Importantly,

“[a]lthough some explanation either in the written decision or when the trial court presented its ruling from the bench undoubtably would have been helpful to this court on review, the question before us is the correctness of the trial court's evidentiary rulings and not the reasons it may have relied upon for its decision. [Citation]. The decision may be affirmed on any ground supported by the record.”
People v. Safranek, 2025 IL App (4th) 240967, ¶ 76.

¶ 64 A ruling on a motion *in limine* is reviewed for an abuse of discretion, which “occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the court's view.” *Safranek*, 2025 IL App (4th) 240967, ¶ 73.

¶ 65 The State sought to admit the 911 call under an exception to the hearsay rule applicable to excited utterances. Hearsay is a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Hearsay is not admissible except under specific exceptions. Ill. R. Evid. 802 (eff. Jan. 1, 2011). One of these exceptions applies to an excited utterance, which is “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” Ill. R. Evid. 803(2) (eff. Sept. 28, 2018).

To fall under this exception, “(1) there must be an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, (2) there must be an absence of time for the declarant to fabricate the statement, and (3) the statement must relate to the circumstances of the occurrence.” *People v. Jones*, 2025 IL App (1st) 230771, ¶ 114. “The critical inquiry with regard to time is whether the statement was made while the excitement of the event predominated.” (Internal quotation marks omitted.) *People v. Kinnerson*, 2020 IL App (4th) 170650, ¶ 32. Importantly, “spontaneity is not necessarily destroyed by either the fact that a declarant’s statement is made after having spoken previously to another or the fact that a statement was made in response to a question.” *Kinnerson*, 2020 IL App (4th) 170650, ¶ 32. 911 calls are often admitted under the excited utterance exception to the hearsay rule if they meet the three requirements laid out above. See, e.g., *Kinnerson*, 2020 IL App (4th) 170650, ¶ 37; *Jones*, 2025 IL App (1st) 230771, ¶ 119.

¶ 66 Here, the caller was on the phone with dispatch while the events that she was talking about were happening. Although defendant had been banging on M.L.’s door for 45 minutes at that point, the caller was making her statements “while the excitement of the event predominated.” (Internal quotation marks omitted.) *Kinnerson*, 2020 IL App (4th) 170650, ¶ 32. She stated that “it sounds like they’re fighting,” that she heard yelling and “kids crying,” and that “he’s beating on her or something.” She also stated, “Oh my god, I don’t know what he’s doing but she’s screaming.” Her statements thus meet all three requirements to fall under the hearsay exception for excited utterances, as (1) hearing defendant break into M.L.’s apartment and injure her was “an occurrence sufficiently startling to produce a spontaneous and unreflecting statement”; (2) there was “an absence of time for the declarant to fabricate the statement,” as she was making these statements as she was hearing the events; and (3) her statements “relate[d] to the circumstances of the occurrence.” *Jones*, 2025 IL App (1st) 230771, ¶ 114. The fact that the caller answered

questions posed by the 911 dispatcher did not destroy the spontaneity of her statements or show an opportunity for reflection. See *Kinnerson*, 2020 IL App (4th) 170650, ¶ 37. As a result, it is not arguable that the trial court abused its discretion in finding the caller's statements during the 911 call qualified as excited utterances and granting the State's motion *in limine* to admit the recording.

¶ 67 We likewise agree with appellate counsel that it is not arguable that the admission of the 911 call violated defendant's confrontation rights. "Whether a defendant has suffered a violation of the confrontation clause presents a question of law and is subject to *de novo* review." *Kinnerson*, 2020 IL App (4th) 170650, ¶ 40. The confrontation clause of the sixth amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him." U.S. Const., amend. VI; see Ill. Const. 1970, art. I, § 8 ("In criminal prosecutions, the accused shall have the right *** to be confronted with the witnesses against him or her."). However, the United States Supreme Court has established this right only applies to "testimonial" statements. *People v. Stechly*, 225 Ill. 2d 246, 266 (2007) (quoting *Crawford v. Washington*, 541 U.S. 36, 61-62 (2004)). The confrontation clause does not apply to nontestimonial statements, which include those " 'made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency,' " such as 911 calls made while the events being reported are happening. *Stechly*, 225 Ill. 2d 267-68 (quoting *Davis v. Washington*, 547 U.S. 813, 822 (2006)). Here, it is clear that the caller's statements were made during an ongoing emergency to enable police assistance and squarely fall within the framework of nontestimonial statements that do not implicate defendant's sixth amendment right to confrontation. See *Kinnerson*, 2020 IL App (4th) 170650, ¶¶ 42-46.

¶ 68

C. Admissibility of Prior Incidents of Domestic Violence

¶ 69

Counsel concludes that it is not arguable that the trial court erred in admitting prior incidents of domestic violence under section 115-7.4 of the Code. 725 ILCS 5/115-7.4 (West 2020). As with the previous issue, the court's ruling on the State's motion *in limine* on this point is not in the record, though the parties' after-the-fact statements on the record confirm the court granted the State's motion. Again, though unusual, nothing prevents us from reviewing defendant's appellate counsel's conclusion that there would be no arguably meritorious basis to challenge the court's decision to allow this evidence. See *Safranek*, 2025 IL App (4th) 240967, ¶ 76.

¶ 70

Section 115-7.4 of the Code allows the admission of "evidence of the defendant's commission of another offense or offenses of domestic violence" in "a criminal prosecution in which the defendant is accused of an offense of domestic violence." 725 ILCS 5/115-7.4(a) (West 2020). This evidence "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.4(a) (West 2020). The statute instructs the trial court that "[i]n weighing the probative value of the evidence against undue prejudice to the defendant," it may consider "(1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances." 725 ILCS 5/115-7.4(b) (West 2020). "It is within the sound discretion of the trial court to determine the admissibility of other-crimes evidence, and its decision will not be disturbed absent a clear abuse of discretion," which occurs "where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Jenk*, 2016 IL App (1st) 143177, ¶ 35.

¶ 71 Based on our review of the record, the trial court clearly did not abuse its discretion in admitting evidence of prior incidents of domestic violence involving defendant and M.L. M.L. testified to several prior incidents of domestic violence between her and defendant. One of these was just a few hours before the home invasion occurred, as she testified that defendant hit her in the eye earlier in the evening at Cliffbreakers. She also testified to events in 2014 and 2015 where defendant threatened to shoot her and her family, grabbed her by the throat and pushed her up against the wall, spit in her face, and would not let her go to her vehicle to pick their child up from school. While these prior incidents have varying levels of similarity to the charged offense—with the incidents immediately prior to the offense and in 2015, where he grabbed her by the throat, being highly similar—none are so dissimilar that admitting the evidence could arguably be an abuse of discretion.

¶ 72 Moreover, the incidents in 2014 and 2015 were still sufficiently proximate in time to be probative of defendant’s propensity to commit domestic violence against M.L., especially given their similarity to the charged offense. There is no bright-line rule about how close in time other-crimes evidence must be to be admissible. See *People v. Donoho*, 204 Ill. 2d 159, 183-84 (2003) (declining to adopt a bright-line rule and emphasizing that “courts should evaluate this issue on a case-by-case basis”); *People v. Illgen*, 145 Ill. 2d 353, 370 (1991) (“[T]he admissibility of other-crimes evidence should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged.”).

¶ 73 Because the prior incidents of domestic violence between M.L. and defendant were both similar to the charged offense and sufficiently proximate in time, the trial court did not abuse its discretion in finding the probative value of this evidence outweighed any prejudice to defendant and granting the State’s motion *in limine*.

¶ 74 Although the State’s motion *in limine* addressed further incidents between defendants and two other ex-girlfriends, the State did not ultimately introduce this evidence at trial, and therefore we need not address it.

¶ 75 D. *Krankel* Proceedings

¶ 76 Counsel stated she considered arguing whether defendant should have been appointed new counsel after the trial court held a hearing in accordance with *Krankel*. However, she concluded that it is not arguable that the court failed to follow proper *Krankel* procedures or that the court erred in failing to appoint new counsel. We agree.

¶ 77 Under *Krankel*, the trial court first holds a preliminary inquiry, where a *pro se* defendant presents his ineffective assistance claims. The court must examine the factual basis for the claim of ineffectiveness. If the court determines that the “allegations show possible neglect of the case,” it appoints counsel to represent the defendant at a “hearing on the *pro se* claim of ineffective assistance of counsel.” *Jackson*, 2020 IL 124112, ¶ 97. If, however, “the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion.” *Jackson*, 2020 IL 124112, ¶ 97. In evaluating a defendant’s claims, “some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant’s claim,” which may involve trial counsel “answer[ing] questions and explain[ing] the facts and circumstances surrounding the defendant’s allegations.” *People v. Moore*, 207 Ill. 2d 68, 78 (2003). The court may also base its decision “on its knowledge of defense counsel’s performance at trial and the insufficiency of the defendant’s allegations on their face.” *Moore*, 207 Ill. 2d at 79.

¶ 78 “Whether the trial court properly conducted a *Krankel* preliminary inquiry presents a legal question that we review *de novo*.” *Jackson*, 2020 IL 124112, ¶ 98. “However, if the trial court has properly conducted a *Krankel* inquiry and has reached a determination on the merits of the defendant’s *Krankel* motion, we will reverse only if the trial court’s action was manifestly erroneous.” *Jackson*, 2020 IL 124112, ¶ 98.

¶ 79 Here, after receiving defendant’s *pro se* motion for a new trial that included allegations of ineffective assistance of trial counsel, the trial court held a hearing to allow defendant to present his allegations and for trial counsel to respond to them. The court was thorough and held two separate hearings on defendant’s motion to ensure that defendant had an adequate opportunity to present his claims and trial counsel was able to fully respond. The court even directed trial counsel to issue a subpoena for the DCFS records defendant claimed were exculpatory in order to thoroughly assess the merits of his claims. The court thus conducted an adequate preliminary *Krankel* inquiry into defendant’s *pro se* posttrial allegations of ineffective assistance of counsel.

¶ 80 The trial court’s ultimate determination that defendant’s claims lacked merit was not manifestly erroneous. The DCFS records did not indicate that defendant resided at the Sun Valley Terrace apartment and thus were not exculpatory, contrary to what defendant had claimed. Defendant did not inform his counsel of the jail phone call with M.L. until very late, and based on defendant’s summary of the call, it would not have been exculpatory. There was no indication that a dashcam video existed that would support defendant’s claim that he was improperly Mirandized, and he nevertheless did not make any inculpatory statements. Defendant’s claims that counsel failed to show him any discovery were belied by counsel’s summaries of their meetings and by counsel’s statements that defendant rarely met with him before trial and missed multiple scheduled meetings. The remainder of defendant’s claims were properly ascribed to defendant

misunderstanding what trial counsel was communicating to him, as with the plea offer and the likelihood of success of a motion for a new trial, or trial counsel’s trial strategy, as with counsel’s decision on how to impeach M.L. during her testimony at trial. Because all of defendant’s claims lacked merit, the court did not err in declining to appoint new counsel for defendant.

¶ 81 E. Credit for Self-Improvement Programs

¶ 82 Counsel concludes that it is not arguable that defendant was entitled to additional credit against his sentence for participating in two self-improvement programs while in jail awaiting trial. Section 3-6-3(a)(4.2)(A) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(4.2)(A) (West 2024)) provides that “any prisoner engaged in self-improvement programs, volunteer work, or work assignments that are not otherwise eligible activities under paragraph (4), shall receive up to 0.5 days of sentence credit for each day in which the prisoner is engaged in activities described in this paragraph.” However, Illinois courts have previously held that this provision does not apply to individuals held in pretrial custody. *People v. Williamson*, 2024 IL App (3d) 220501, ¶ 26; see *People v. Woods*, 2025 IL App (4th) 241136-U, ¶ 33; *People v. Simpson*, 2024 IL App (4th) 230846-U, ¶ 37. Counsel is thus correct that defendant was not entitled to additional credit against his sentence for participating in self-improvement programs while held in pretrial custody.

¶ 83 F. Consecutive Sentences

¶ 84 Counsel lastly concludes that it is not arguable that the trial court erred in ordering that defendant’s sentence in this case be served consecutively to his sentence in case No. 19-CF-3320.

¶ 85 “[A] reviewing court presumes that a sentence imposed within the statutory range” is proper. *People v. Musgrave*, 2019 IL App (4th) 170106, ¶ 56. Under this standard, we give

“substantial deference to the trial court’s sentencing decision because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant’s credibility, demeanor, moral character, mentality, environment, habits, and age.” *People v. Snyder*, 2011 IL 111382, ¶ 36. A sentence will only be reversed if it is “greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 86 Section 5-8-4(a) of the Unified Code provides, “[w]hen an Illinois court *** imposes a sentence of imprisonment on a defendant who is already subject to a sentence of imprisonment imposed by an Illinois court, *** then the sentences shall run concurrently unless otherwise determined by the Illinois court under this section.” 730 ILCS 5/5-8-4(a) (West 2024). At the time that defendant committed the offense of home invasion, this section of the Unified Code also provided for mandatory consecutive sentences if a person charged with a felony committed a separate felony while on pretrial release. 730 ILCS 5/5-8-4(d)(8) (West 2020). However, before defendant’s sentencing, the Unified Code was amended to provide for permissive consecutive terms, stating that the trial court “may” impose consecutive sentences if a person charged with a felony committed a separate felony while on pretrial release. 730 ILCS 5/5-8-4(c)(3) (West 2024).

¶ 87 A threshold issue is that this section of the Unified Code would only apply if defendant’s sentence in this case was imposed when he was “already subject to a sentence of imprisonment imposed by an Illinois court.” 730 ILCS 5/5-8-4(a) (West 2024). Defendant was sentenced to four and a half years in prison, followed by one year of MSR, in case No. 19-CF-3320 on May 19, 2022. Defendant completed his prison sentence in that case and was released from prison on May 5, 2023, and then began his MSR in that case, along with his consecutive

period of probation in case Nos. 20-CF-1437 and 21-CF-1864. He was taken back into custody in this case (case No. 20-CF-55) on June 1, 2023. He was then sentenced to six years in prison in this case on March 27, 2024. Appellate counsel contends that although defendant was briefly released from custody in May 2023 due to an administrative error, his sentence in case No. 19-CF-3320 was not yet discharged at the time the sentence in this case was imposed because he had not yet completed the MSR term. We agree. See *People v. Lee*, 2012 IL App (4th) 110403, ¶ 33 (“[A] sentence is not discharged until [a defendant] has completed his MSR term.”). If defendant were to violate his MSR, he would still be subject to a term of imprisonment. See 730 ILCS 5/3-3-9(a)(3) (West 2024). Therefore, section 5-8-4 of the Unified Code applies to defendant’s sentence in this case.

¶ 88 The trial court was then entitled to impose a consecutive, rather than concurrent, sentence in this case under section 5-8-4-(c)(3) of the Unified Code because defendant was on pretrial release in case No. 19-CF-3320, in which he was charged with felony aggravated battery, when he committed home invasion. The court acknowledged the applicable change in this law and that it had discretion concerning whether to impose a concurrent or consecutive sentence before choosing to exercise its discretion to impose consecutive sentences. Importantly, defendant’s trial counsel acknowledged that the court had discretion under section 5-8-4(a) and (c)(3) of the Unified Code to impose a consecutive sentence in this case. Thus, defendant would not be able to raise this issue on appeal except under an argument of ineffective assistance of counsel. See *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 60 (stating that under the invited error doctrine, “a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court’s actions constituted error”); *People v. Brown*, 2023 IL App (4th) 220400, ¶ 31 (stating

that where a party has invited an error, it may challenge the error on appeal only by asserting ineffective assistance of counsel).

¶ 89 Especially under an ineffectiveness framework, appellate counsel is correct that there is no support in the record for an argument that the trial court’s decision to impose consecutive sentences was an abuse of discretion. Home invasion under section 19-6(a)(2) of the Criminal Code of 2012 is a Class X felony (720 ILCS 5/19-6(c) (West 2024)), for which a mandatory term of imprisonment between 6 and 30 years must be imposed (730 ILCS 5/5-4.5-25(a) (West 2024)). The court’s sentence of six years of imprisonment is within this range—indeed, the very minimum sentence—and the court was entitled to impose it consecutively to the sentence in case No. 19-CF-3320 under section 5-8-4(c)(3) of the Unified Code. This sentence is thus presumptively proper. *Musgrave*, 2019 IL App (4th) 170106, ¶ 56.

¶ 90 There is no indication in the record that the trial court considered any improper factors or that the sentence was otherwise “greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.” *Stacey*, 193 Ill. 2d at 210 (2000). The court noted that this was a serious charge, that it took a significant amount of time and force for defendant to break down the apartment door after 45 minutes of banging on it, and that this was defendant’s seventh felony conviction. At the hearing on defendant’s motion to reconsider his sentence, the court reaffirmed its decision to impose consecutive, rather than concurrent, sentences “[b]ased on [defendant’s] prior criminal history, the violations of what was then bond, [and] violations of orders of protection that relate to [M.L.], who is the victim in the home invasion.” These were all proper considerations. We cannot say that imposing a six-year prison sentence to run consecutively to the sentence in case No. 19-CF-3320 was an abuse of discretion.

¶ 91 Counsel further contends that it is not arguable that the trial court erred in calculating defendant's sentencing credit for the time he spent in simultaneous pretrial custody in this case and case No. 19-CF-3320. The Unified Code provides that "[i]n determining the manner in which consecutive sentences of imprisonment, one or more of which is for a felony, will be served, the Department of Corrections shall treat the defendant as though he or she had been committed for a single term," and a defendant "shall be awarded credit against the aggregate maximum term and the aggregate minimum term of imprisonment for all time served in an institution since the commission of the offense or offenses and as a consequence thereof at the rate specified in Section 3-6-3." 720 ILCS 5/5-8-4(g)(4) (West 2024). "Since consecutive sentences are to be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *People v. Latona*, 184 Ill. 2d 260, 271 (1998). As a result, "to the extent that an offender sentenced to consecutive sentences had been incarcerated prior thereto on more than one offense simultaneously, he should be given credit only once for actual days served." *Latona*, 184 Ill. 2d at 271.

¶ 92 The trial court in this case correctly calculated defendant's credit for time served to exclude the credit granted to him in case No. 19-CF-3320, as the two sentences were to be served consecutively and defendant is not entitled to a double credit. Counsel is thus correct that it is not arguable that defendant was entitled to additional days of sentencing credit against his sentence in this case for the days he was in simultaneous custody on both cases.

¶ 93 III. CONCLUSION

¶ 94 For the reasons stated, we grant appellate counsel's motion to withdraw and affirm the trial court's judgment.

¶ 95

Affirmed.