No. 130207

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JATTERIUS YANKAWAY, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-22-0982. There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 20-CF-212. Honorable Kevin Lyons, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

After a jury trial, Jatterius L. Yankaway was convicted of attempt first degree murder, aggravated battery, and unlawful use of a weapon by a felon. He was sentenced to consecutive prison terms of 44 years for the attempt murder conviction and 26 years for the aggravated battery conviction. The appellate court vacated Yankaway's conviction and sentence for the aggravated battery charge in an order entered on October 20, 2023.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I. Whether defense counsel's failure to affirmatively demand a speedy trial on the record and failure to correctly demand a speedy-trial under the Intrastate Detainers statute constituted ineffective assistance of counsel?

II. In the alternative, whether the trial court's misapprehension of the minimum sentence requires resentencing on defendant's conviction for attempt murder?

III. Whether the invited error doctrine precludes remand for sentencing on an unsentenced conviction?

STATEMENT OF FACTS

Jatterius Yankaway was arrested in this case on April 7, 2020, over the allegation that he shot Robert Hunter. (R. 20–21). Prior to his arrest, this Court entered an emergency order related to the coronavirus pandemic, which tolled speedy-trial terms in criminal proceedings. Ill. S. Ct., M.R. 30370 (eff. Mar. 20, 2020). On June 30, 2021, this Court entered an order lifting the emergency tolling starting on October 1, 2021. Ill. S. Ct., M.R. 30370 (eff. June 30, 2021).

This appeal concerns Peoria County case no. 20CF212. The information charged Yankaway with attempt first degree murder, aggravated battery, and unlawful possession of a firearm by a felon (UPWF), all related to the allegation that Yankaway shot Hunter on July 26, 2019. (C. 32–34). Yankaway filed a *pro se* speedy-trial demand on April 24, 2020. (C. 31, 36). Defense counsel for Yankaway entered his appearance on April 29, 2020. (C. 40).

Yankaway received a separate charge of UPWF in Peoria County case no. 20CF238, which the State filed on April 30, 2020. (R. 17, 19). The State elected to proceed first on case no. 20CF238. (R. 155–56; C. 57–58). Defense counsel moved to continue trial for case no. 20CF238, and later moved to continue the final status date by four days. (R. 159–60; C. 68, 96). On September 28, 2020, Yankaway pleaded guilty to the charge in case no. 20CF238 and received a seven-year prison sentence. (R. 190–91, 197–98). He was transferred to a DOC facility. (R. 204).

Pre-Trial Proceedings in Case No. 20CF212

For this case, defense counsel initially requested a trial date of December 14, 2020. (R. 203–04). The trial court set trial for January 25, 2021, without seeking

input from the parties. (R. 204). The written order from October 5, 2020, read that Yankaway was "to appear in person on 1-25-21 for speedy trial." (C. 98).

On January 14, 2021, the State moved to continue trial over an unavailable witness, specifically, "a person who works for the third-party vendor that the IDOC uses for their ankle monitors for those person on parole." (R. 209–10). Defense counsel objected but the court reset trial for April 26, 2021. (R. 214, 216; C. 118).

On April 8, 2021, the State moved to continue trial over "some ballistics work that still needs to be done on the items of evidence that were collected, one that's related specifically to a mushroomed bullet." (R. 223). Defense counsel did not object. (R. 224; C, 149). Trial was reset for August 30, 2021. (R. 231; C. 156).

A. Proceedings and continuance on August 19, 2021

On August 19, 2021, the State moved to continue trial "due to a lock down at one of the correctional facilities where one of our witnesses is due to covid." (C. 234–35). The State said it would not be ready for trial. (R. 235). Defense counsel objected and told the court, "My client was planning to go to trial." (R. 235).

The court granted the continuance and reset trial for November 15, 2021. (R. 235; C. 185). The court noted it set trial "sooner than everybody else." (R. 235).

B. Proceedings and continuance on November 15, 2021

On November 4, 2021, the trial court received a motion to withdraw from defense counsel and a request from Yankaway for a new lawyer. (R. 239). Yankaway said defense counsel did not have enough time and that he intended to hire another lawyer. (R. 239–40). The court denied the motion and request because trial was twelve days away. (R. 241). Neither the motion to withdraw nor the request for

a new attorney were mentioned in the written order from November 4. (C. 210–11).

On November 15, 2021, the trial court said it had three trials set for which defense counsel also was the lawyer, and decided to continue Yankaway's trial. (R. 244–45). The trial court said it could set the trial date in December 2021 "because we're picking back up with the speedy trial counts." (R. 247).

When the trial court asked defense counsel for his preference on a new date, defense counsel responded, "[M]y December calendar is pretty crowded, so we can't even begin getting ready for trial. So it would probably be better January or February." (R. 247). The court offered to remand Yankaway back to DOC and set a new date on the defense's motion. (R. 248). Defense counsel agreed:

> TRIAL COURT: So is that what you'd like to do, [defense counsel]? You'd move to continue and then allow [us] to set a date that's convenient for all of you in January or February.
>
> DEFENSE COUNSEL: Yeah. My client wants to be returned to Pinckneyville, so that would be agreeable.
>
> TRIAL COURT: So you're okay with that, Mr. Yankaway?
>
> YANKAWAY: Yes, sir.

(R. 249). The State suggested a trial date of February 28, 2022, to which defense counsel said, "That's fine." (R. 250). The written order entered on November 15, 2021, read that "The Defendant moves for a continuance." (C. 222).

C. Proceedings and Continuance on February 24, 2022

The State filed a written "motion for continuance and for buccal swabbing of the defendant" on February 23, 2022. (C. 257). This motion was made "pursuant to 725 ILCS 5/114-4(d) and Supreme Court Rule 413(a)(vii)." (C. 257). The buccal swab and continuance were requested in order to perform a confirmatory analysis

between Yankaway and DNA found on the swab of a handgun. (C. 257–58).

On February 24, 2022, the trial court noted Yankaway was still at his DOC facility and that the complaining witness "is also either in the Department of Corrections or very closely about to be paroled." (R. 256). The court then discussed the coronavirus pandemic, the writs of habeas for Yankaway and Hunter to appear only for trial not to proceed, and Hunter's potential unavailability. (R. 256–27). Noting those issues, the court said "it's not practical to think it's going to happen" and decided to continue the trial. (R. 257–59). The State suggested July 11 for trial and defense counsel said, "That's fine." (R. 260). The written order entered on February 24, 2022, said, "The parties move for a continuance." (C. 262).

Regarding the request for a buccal swab, the State told the court that it could obtain the buccal swab at a later status hearing. (R. 260–61). The hearing on the motion for a buccal swab was held on April 14, 2022, and the court granted the motion over objection. (R. 264–65; C. 278).

Yankaway sent a pleading to the court titled "Ineffective Counsel," in which he alleged that he told defense counsel he did not want any continuances in his case. (C. 269–70). The pleading included a letter addressed to "Court Room 221," which read, "I don't want no continuance if it did not come out my mouth." (C. 272). The pleading also reasserted Yankaway's speedy trial demand. (C. 283).

Defense counsel filed a written objection, titled "Objection to Pre-Trial Order," on April 14, 2022, in which he objected to the representation in the February 24 order "that the parties mutually moved for a continuance." (C. 277). Defense counsel said he did not approve of the continuance and did not toll Yankaway's speedy-trial

rights. (C. 277). Neither Yankaway's *pro se* pleading nor defense counsel's written objection were addressed by the court.

D. Proceedings and continuance on June 30, 2022

On June 29, 2022, the State filed a written motion to continue trial pursuant to 725 ILCS 5/114-4(c)(2). (C. 291). In the motion, the State said it had two law enforcement witnesses who were unavailable for trial. (C. 291).

On June 30, 2022, defense counsel filed a speedy trial demand pursuant to 725 ILCS 5/103-5. (C. 299).

At the hearing on June 30, the State said "the basis for the continuance is the unavailability of the two officers." (R. 270). An outstanding crime lab report was arriving shortly and not the basis for the continuance. (R. 270). Defense counsel objected "on behalf of my client because he wants his speedy trial rights." (R. 270).

The court then asked if Yankaway had a speedy-trial right in this case and both parties agreed he did, and that the term was 120 days:

> TRIAL COURT: There's no speedy trial application that comes while he's in this case, right?
>
> DEFENSE COUNSEL: No, it applies.
>
> TRIAL COURT: No.
>
> THE STATE: Judge, [Yankaway]'s got 53 days on the 120-day term.
> * * * *
>
> TRIAL COURT: So is there a 120-day requirement in this case?
>
> DEFENSE COUNSEL: Yes, there is.
>
> THE STATE: Yes, Judge.

(R. 271).

Using the State's calculation, the court noted that a continuance into September would exceed the 120-day speedy-trial term and the State agreed:

> TRIAL COURT: If I set it in September, you're going to be beyond the 120 days.
>
> THE STATE: No. He's only 53 days into his term, Judge.
>
> TRIAL COURT: Now.
>
> THE STATE: Now.
>
> TRIAL COURT: July, August, half of September would be 75 days plus 55.
>
> THE STATE: I'm sorry. Based on—I wasn't getting—you're right, Judge. You're right.
>
> TRIAL COURT: So then what?
>
> THE STATE: So it would have to be set sooner than that date.

(R. 271–72). Following this discussion, the court said, "I really don't have time to put this in July or August" and reset trial for September 19, 2022. (R. 273). The court also set a status date at which the parties could "review the case so that [Yankaway] can have his trial within 120 days if needed." (R. 274).

At the next status date, neither party addressed the speedy-trial term, but the court told Yankaway, "I don't think there is a speedy trial issue because you can't get out anyway." (R. 280).

Following the June hearing, Yankaway sent a letter to "court room 221" regarding his speedy-trial rights. (C. 315). Yankaway wrote that he had defense counsel "make a verbal request on 10/5/20 to make the court aware at the start of the case 20CF212 that I want a 120 day speedy trial." (C. 315). The letter said defense counsel told Yankaway that he "file[d] the request in writing." (C. 315).

E. Motion to Dismiss and Hearing

Defense counsel filed a motion to dismiss Yankaway's case due to a speedy-trial violation under 725 ILCS 5/103-5(a) on September 15, 2022. (C. 331). Defense counsel argued that Yankaway's speedy-trial term began on October 1, 2021, and was 120 days. (C. 331–33). He argued that the continuances of November 15, 2021, February 24, 2022, and June 30, 2022, delayed trial beyond the 120-day term and that Yankaway's case accordingly should be dismissed. (C. 333).

At the hearing on the motion held on September 19, 2022, defense counsel argued that he did not agree to the February 24 continuance and that it should not be attributed to Yankaway. (R. 289–90).

The State responded that the disposition in case no. 20CF238 meant the speedy-trial term was 160 days, and that the February 24 continuance was by agreement. (R. 290–91). The State said Yankaway's speedy-trial clock began to run on October 1, 2021, and concluded he was at day 128 out of 160. (R. 293).

In reply, defense counsel argued that the applicable speedy-trial term was 120 days and that it ran automatically starting on October 1, 2021. (R. 293).

Due to case no. 20CF238, the court found that the applicable speedy-trial term was 160 days. (R. 294–95). The court accepted the State's representation that the case was at day 128. (R. 295). Regarding the February continuance, the court said, "I remember that Mr. Yankaway's case was moved from its trial date because it was unrealistic to think that the parties were going to be ready." (R. 295). The court concluded the continuance in February "[was] not lodged against the State" and denied the motion to dismiss. (R. 296–97).

Trial

Prior to trial, the State informed the court it would seek a 15-year sentencing add-on alleging firearm possession for Yankaway's attempt charge. (R. 314). The State was not seeking the 20-year add-on alleging discharge of a firearm. (R. 315).

At trial, the State played Hunter's 911 call placed at 12:27 AM on July 26, 2019, in which he said he was on Haungs Avenue and was shot. (R. 437; Ex. 1).

Peoria police officer Brian Johnson responded and found Hunter in an alley. (R. 453–54, 456). Hunter had three gunshot wounds. (R. 456–57). Johnson also collected evidence, including five .40-caliber shell casings. (R. 461–62).

Peoria Detective Roberto Vasquez interviewed Hunter on January 29, 2020, after Hunter's arrest for possession of drugs and a weapon. (R. 526). Hunter brought up "being involved in a shooting" and "ask[ed] for consideration." (R. 537–38). After the interview, Vasquez contacted the Peoria Heights Police Department about a firearm recovered in a traffic stop involving Yankaway. (R. 528, 576).

Jacob Potts of the Peoria Heights Police Department conducted the traffic stop on August 5, 2019. (R. 551–53). Potts identified Yankaway as the driver of the car. (R. 553–54). Yankaway gave Potts a false name for a person with an active arrest warrant, so Potts arrested Yankaway. (R. 553–55). Potts found a .40-caliber handgun in the car. (R. 556–59).

Scott Hulse of the Peoria Police Department interviewed Yankaway on April 7, 2020. (R. 609–10). Yankaway told Hulse he worked until 12 or 12:30 AM on July 26, 2019. (R. 610, 612). Hulse obtained records showing Yankaway clocked out from work at 10:32 PM on July 25. (R. 618; E. 34).

Dustin Johnson, an expert in firearms identification, concluded that two shell casings found in the alley were fired out of the handgun found in Peoria Heights. (R. 675, 680, 682, 690). Svetlana Gershburg, an expert in DNA analysis, found it likely that Yankaway contributed DNA to the handgun's grip and trigger, but not its magazine. (R. 705, 719–20).

Robert Hunter testified that he was with Yankaway, Jazzston Logan, and Jafari Robinson on July 25, 2019. (R. 740–41). At Haungs Avenue, Hunter said he exited the car and saw Yankaway and Robinson with guns. (R. 741–45). He heard the guns firing and saw flashes. (R. 744). Hunter called 911 while the others left. (R. 745–46).

A certified copy of Yankaway's prior conviction in Peoria County case no. 17CF116 was admitted for purposes of the UPWF charge. (R. 826–27).

The defense called Jazzston Logan, who testified he was not with Hunter that night. (R. 831–33). Yankaway testified he was with friends at a bar during the incident. (R. 838–48).

The jury found Yankaway guilty on all counts and found that Yankaway was "armed with a firearm" during the commission of attempt murder. (C. 363–66).

Post-Trial Motion and Sentencing

Defense counsel moved for a new trial and argued the court erred in denying the motion to dismiss based on a speedy-trial violation. (C. 508). He argued Yankaway had a 120-day term that ran automatically starting on October 1, 2021, and that the February 24 continuance was not attributable to Yankaway. (C. 508–10). Counsel attached an inmate status sheet from the DOC website showing

that Robert Hunter's parole date from DOC was February 15, 2022. (C. 520).

The trial court denied the motion, finding that Yankaway was the one "who primarily hobbled this case along in a somewhat slow fashion." (R. 976). The court also attributed the number of continuances to the defense, saying, "Not only was [Yankaway] brought to trial in a timely fashion, it was the Defendant who continuously wanted another court date, and we'd give it to him." (R. 975). And, the court suggested defense counsel lengthened the proceedings by only preparing for the case when Yankaway was writted to Peoria County. (R. 974–75).

At the sentencing hearing, the State told the court that Yankaway's conviction for attempt carried a "20-year add-on" with a sentencing range 26-to-50 years in prison. (R. 984–85). The State also told the court not to enter a sentence on Yankaway's UPWF conviction, and instead to enter a "finding without a judgment." (R. 986).

The court sentenced Yankaway to 44 years in prison for the attempt conviction, which included a 20-year firearm enhancement, and 26 years for the aggravated battery conviction, to be served consecutively. (R. 1002–03). A finding without a judgment was entered for UPWF. (R. 1003). The defense filed a motion to reconsider sentence, which was denied. (C. 542, 545).

Appeal

Yankaway raised four issues in the appellate court: (1) ineffective assistance of counsel for filing an incorrect speedy-trial demand; (2) a one-act, one-crime violation; (3) a misapprehension of the sentencing range for his attempt conviction; and (4) judicial bias at sentencing. *People v. Yankaway*, 2023 IL App (4th) 220982-U,

¶ 3. The appellate court issued an unpublished order finding that Yankaway could not show prejudice for his ineffective assistance claim. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42. The appellate court agreed that defense counsel performed deficiently but said it "simply [did] not know what would have happened" had defense counsel correctly demanded speedy trial. *Id.* For the sentencing claims, the appellate court vacated the conviction and sentence for aggravated battery under the one-act, one-crime rule, but affirmed on the other issues. *Id.*, ¶¶ 52, 62, 68. The appellate court remanded Yankaway for sentencing on his unsentenced UPWF conviction. *Id.*, ¶ 55.

On October 31, 2023, Yankaway filed a petition for rehearing challenging his remand for sentencing on UPWF as precluded under the invited-error doctrine. The appellate court denied the petition on November 3, 2023.

This Court granted leave to appeal on January 24, 2024.

ARGUMENT

I.

This Court should reverse Jatterius Yankaway's convictions outright because he was denied the effective assistance of counsel where defense counsel failed to make an affirmative statement in the record demanding a speedy trial and failed to file a demand under the correct statute.

This case presents a question of ineffective assistance of counsel based on a speedy-trial violation. Jatterius Yankaway initially demanded a speedy trial on April 24, 2020, but was not tried until September 19, 2022. Due to the prison sentence Yankaway received for a separate case on September 28, 2020, Yankaway needed to demand trial under the intrastate detainers statute. But the record showed defense counsel believed Yankaway had a 120-day term under Section 103-5(a) of the speedy-trial statute and that the term started to run automatically on October 1, 2021—the date this Court lifted emergency tolling of speedy-trial terms during the coronavirus pandemic.[1] Accordingly, defense counsel did not affirmatively demand trial until June 30, 2022, and never filed a demand compliant with the intrastate detainers statute. As a result, from October 1, 2021, three continuances delayed Yankaway's trial by 89 days beyond the 160-day term prescribed in the intrastate detainers statute.

Specifically, a continuance on August 19, 2021, moved Yankaway's trial 45 days past October 1; a continuance on February 24, 2022, moved the trial 134 days; and a continuance on June 30 moved the trial 70 days. In total, Yankaway's trial was held on day 249, or 89 days beyond the 160-day statutory term, meaning,

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[1]Yankaway is not challenging this Court's coronavirus-related speedy-trial orders in this appeal.

Yankaway's statutory right to a speedy trial *was* violated. But defense counsel only affirmatively requested a speedy trial at the last hearing and under the wrong statute, and but for that deficient performance, it was reasonably probable that Yankaway's motion to dismiss due to a speedy-trial violation would have succeeded. In other words, Yankaway received ineffective assistance of counsel. This Court should find the same and reverse Yankaway's convictions outright.

An issue of ineffective assistance of counsel presents the reviewing court with mixed questions of fact and law. *Strickland v. Washington*, 466 U.S. 668, 698 (1984); *People v. Johnson*, 2021 IL 126291, ¶ 52. The trial court's findings of fact receive deference on appeal but will be reversed when they are against the manifest weight of the evidence. *People v. Peterson*, 2015 IL App (3d) 130157, ¶ 222. The standard of review for determining whether a defendant was denied the effective assistance of counsel is *de novo*. *Johnson*, 2021 IL 126291, ¶ 52.

To determine whether a defendant received ineffective assistance of counsel, reviewing courts use the two-pronged test first developed in *Strickland*, 466 U.S. at 687, and adopted by this Court in *People v. Albanese*, 104 Ill.2d 504, 526 (1984). *People v. Cordell*, 223 Ill.2d 380, 385 (2006). The test requires a defendant to show that (1) counsel's performance was deficient; and (2) the deficient performance prejudiced defendant. *Cordell*, 223 Ill.2d at 385. A claim of ineffective assistance based on an alleged speedy-trial violation also requires a lawful basis for arguing the speedy-trial violation. *Id.* In other words, this Court first must determine whether Yankaway's speedy-trial rights were violated "before we can determine whether counsel was ineffective." *Id.*; *see also People v. Cooksey*, 309 Ill.App.3d

839, 844 (1st Dist. 1999) (requiring "lawful grounds" to move for dismissal before defendant can demonstrate deficient performance and prejudice).

In Illinois, a defendant has both a constitutional and a statutory right to a speedy trial. *Cordell*, 223 Ill.2d at 385; U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/103-5 (2020). In order to invoke the statutory speedy-trial right, a defendant must do more than merely object to delay. *People v. Hartfield*, 2022 IL 126729, ¶ 35. Rather, the statutory speedy-trial right "requires some affirmative statement in the record requesting a *speedy* trial." *Hartfield*, 2022 IL 126729, ¶ 35 (emphasis in original). But defendants can argue the ineffectiveness of counsel for failing to demand trial at a hearing on a continuance. *Id.*, ¶ 38.

Under subsection (e) of the speedy-trial statute, a person in custody on more than one charge has a 160-day term for all remaining charges to be tried from the date of judgment "relative to the first charge thus prosecuted." 725 ILCS 5/103-5(e). But if committed to DOC, a person with remaining charges also must make a written demand pursuant to the intrastate detainers statute, requiring:

> [A] statement of the place of present commitment, the term, and length of the remaining term, the charges pending against him or her to be tried and the county of the charges, and the demand shall be addressed to the state's attorney of the county where he or she is charged with a copy to the clerk of the court and a copy to the chief administrative officer of the Department of Corrections institution or facility to which he or she is committed.

730 ILCS 5/3-8-10 (2020). The intrastate detainers statute requires a compliant demand in order for defendants to exercise their statutory right to be tried within 160 days. *People v. Staten*, 159 Ill.2d 419, 428 (1994). Put another way, the filing of a demand compliant with the intrastate detainers statute is "a *precondition*

to the running of the 160-day period." *Staten*, 159 Ill.2d at 429 (emphasis in original).

These statutes enforce the constitutional right to a speedy trial and are to be liberally construed in favor of the defendant. *People v. Reimolds*, 92 Ill.2d 101, 106 (1982). Proof of a violation of the statutory right requires only that the defendant has not been tried within the statutory term and that defendant has not caused or contributed to the delays. *Staten*, 159 Ill.2d at 426. A defendant relying on the statutory right need not show prejudice resulting from the delay in trial or other factors that are part of the burden of establishing a constitutional violation. *Id.* at 426–27.

Here, Yankaway was arrested on April 7, 2020, charged in case no. 20CF212, and filed a speedy trial demand. (C. 32, 36). For his separate charge in case no. 20CF238, he received a seven-year prison sentence, requiring a demand compliant with the intrastate detainers statute in order for his speedy-trial term to start running. (E. 123, 129, 131); *Staten*, 159 Ill.2d at 429. But due to counsel's erroneous belief that Yankaway had a 120-day term that ran automatically starting on October 1, 2021, (C. 508–10), counsel never filed a demand compliant with the intrastate detainers statute and only affirmatively demanded a speedy trial at one hearing following October 1, 2021. (C. 299; R. 270). Even then, that demand was not pursuant to intrastate detainers. (C. 299). But for the ineffective assistance of trial counsel, Yankaway's trial was delayed by 89 days beyond the 160-day term, which this Court should find to be a speedy-trial violation.

Importantly, the appellate court in this case *agreed* that defense counsel performed deficiently. *People v. Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42.

("Defense counsel's performance fell below a reasonably competent standard because he should have known the Intrastate Detainers Statute governed [Yankaway]'s speedy trial right."). And, because a reviewing court first must determine if a speedy-trial violation occurred before determining a counsel's effectiveness, *Cordell*, 223 Ill.2d at 385, the appellate court appeared to implicitly agree a violation occurred here. *See, e.g., Yankaway*, 2023 IL App (4th) 220982-U, ¶ 35 (noting "228 days allegedly not attributable to defendant"). As such, the main issue before this Court is whether defense counsel's deficient performance prejudiced Yankaway. For clarity, however, this Brief first will argue (1) that a speedy-trial violation occurred; (2) that the trial court abused its discretion in attributing the February 24 continuance to both parties; and (3) that defense counsel performed deficiently by failing to correctly demand a speedy trial.

A. Counsel failed to affirmatively request a speedy trial during the hearing on a continuance on August 19, 2021, which was not attributable to Yankaway and would not have tolled the speedy-trial term that started October 1, 2021.

On August 19, 2021, the State moved to continue trial until November 15, 2021, over an unavailable witness. (R. 234–35; C. 185–86). Defense counsel objected and said, "My client was planning to go to trial." (R. 235). Since the trial was scheduled for August 30, 2021, this Court should find defense counsel's statement to be the equivalent of announcing ready for trial. *See People v. Wyatt*, 47 Ill.App.3d 686, 688 (1st Dist. 1977) (counsel can "indicat[e] readiness" for trial); *People v. Lendabarker*, 215 Ill.App.3d 540, 549 (2d Dist. 1991) (State "indicated it was ready" for hearing or trial).

But the objection and statement by defense counsel was not an affirmative

demand for a speedy trial under *People v. Hartfield*, 2022 IL 126729, ¶ 35. (R. 235). Although the trial court noted it would reschedule the trial "sooner than everybody else," (R. 235), it was unclear if the court recognized counsel's statement as a demand for trial or a mere objection. *See Hartfield*, 2022 IL 126729, ¶ 37 (trial court may recognize an objection as a demand for trial). Either way, defense counsel should have known to make an affirmative demand for a speedy trial, since Yankaway told counsel he wanted a speedy trial as early as October 5, 2020. (C. 98, 315). Instead, the pre- and post-trial motions showed defense counsel believed that Yankaway had a speedy-trial term of 120 days under 725 ILCS 5/103-5(a) (2020) that ran automatically staring on October 1, 2021. (C. 331, 508). Since counsel did not agree to the August 19 continuance, he needed to demand trial but failed to do so. *Hartfield*, 2022 IL 126729, ¶ 38.

In addition, had defense counsel correctly demanded trial, the State's motion for a continuance would not have tolled the period following October 1, 2021, nor given the State additional days. The speedy-trial statute allows the State a grant of additional days depending on the reason, *see* 725 ILCS 5/103-5(c), but that subsection has no application here because the State did not request a continuance under the speedy-trial statute and the trial court made no related findings. *People v. Brown*, 24 Ill.2d 603, 606–07 (1962) (holding that the speedy-trial term is not extended under the speedy-trial statute unless the trial court made findings pursuant to that statute); *People v. Bonds*, 401 Ill.App.3d 668, 677 (2d Dist. 2010) (same). While the State may move for a continuance under 725 ICLS 5/114-4(c)(2) if "[a] material witness is unavailable and the prosecution will be prejudiced by

the absence of his testimony," such a continuance will *not* toll the speedy-trial period. *Bonds*, 401 Ill.App.3d at 677.

Here, the State failed to specifically request a continuance under the speedy-trial statute and the trial court granted the continuance without making any findings under the speedy-trial statute. (R. 235–36; C. 185–86). Instead, the court merely said, "I thought that this would probably occur" because both Yankaway and Hunter were incarcerated and "it's just a lot of moving parts to get people here at the same time." (R. 235). The continuance granted on August 19, 2021, accordingly would not have tolled Yankaway's speedy-trial term or given the State extra days.

The State's basis for the continuance was an unavailable witness, which "cannot be attributed to a defendant." (R. 234–35); *People v. Mooney*, 2019 IL App (3d) 150607, ¶ 23; *People v. Kliner*, 185 Ill.2d 81, 119 (1998) ("Defense counsel was given no choice in regard to this delay. As such, defense counsel was essentially forced to accept another date."). Also, this Court's order lifting the tolling of speedy-trial terms on October 1 was issued on June 30, meaning defense counsel knew or should have known by August 19 to demand trial. Ill. Sup. Ct., M.R. 30370 (eff. June 30, 2021). Thus, had defense counsel correctly demanded a speedy trial, the 45 days from October 1 to November 15 would have counted against the State.

B. This Court should find the trial court abused its discretion in attributing the continuance granted on February 24, 2022, to both parties. The record showed that, but for defense counsel's failure to correctly demand a speedy trial, this continuance was not attributable to Yankaway and did not toll the speedy-trial period.

The written order from February 24, 2022, read, "The parties move for a continuance," (C. 262), but the transcript of proceedings from the same date showed

the court "proposed and interjected the matter of a continuance." (R. 256–57); *People v. Beyah*, 67 Ill.2d 423, 428–29 (1977) (attributing delay to the court, not the defendant). Specifically, this continuance was based on the court's conclusion that, for various reasons, "it's not practical to think [Yankaway's trial is] going to happen." (R. 256–57). The mere comment by defense counsel of "That's fine" to the State picking a trial date of July 11, 2022, did not make this continuance by agreement and this Court should find the trial court's attribution of this 134-day continuance to both parties to be an abuse of discretion. (R. 258–60). If this Court disagrees and determines the continuance was by agreement, it still should find that defense counsel performed deficiently and the 134 days from February 28 to July 11 were not attributable to Yankaway.

While the trial court's determination on who is responsible for a delay of trial receives deference, that determination will be reversed on a showing of the trial court's abuse of discretion. *People v. Bowman*, 138 Ill.2d 131, 137 (1990); *People v. Reimolds*, 92 Ill.2d 101, 107 (1982). Although the written order in this case indicated that "the parties move[d] for a continuance," (C. 262), reviewing courts examine *both* the transcript of proceedings and the common-law record in order to do complete justice to the State and defendant. *People v. Sojak*, 273 Ill.App.3d 579, 583 (1st Dist. 1995).

For example, in *Beyah*, 67 Ill.2d at 426–27, the trial court erroneously determined a continuance was by agreement "since both attorneys and the initial trial judge were . . . engaged in another criminal trial." In fact, the transcript from that date showed the trial court said it had no time for the case and told the parties

to "pick a date." *Beyah*, 67 Ill.2d at 425–27. This Court said a finding attributing the delay to defendant would be a "mockery of justice," explaining:

> Any fair and honest appraisal of the proceeding . . . shows that it was the court, and the court alone, which proposed and interjected the matter of a continuance. It is true defendant was willing to take advantage of the court's offer, once the court suggested it, but we are unable to see how this factor converted the offer into a request for delay on motion of defendant. In short, the delay which occurred was the responsibility of and attributable to the court, rather than defendant.

Id. at 428–29, *quoting People v. Wyatt*, 24 Ill.2d 151, 154 (1962).

Here, this Court should find the trial court abused its discretion in attributing this continuance to both parties because, like in *Beyah*, the transcript of proceedings from February 24, 2022, showed that the court proposed the continuance. (R. 256–57). Indeed, except for a few questions, the trial court spoke almost uninterrupted for several transcript pages when explaining its decision to continue the case. (*See* R. 255–59). The court reasoned:

> TRIAL COURT: We have this COVID matter, and Mr. Yankaway is serving a sentence in a DOC facility in Pinckneyville. The State's witness was or is in Robinson Correctional Center. And, so, it's not that Mr. Yankaway isn't here for some reason or not or the witness.
> * * * *
>
> [The State] was telling me his witness, they were gonna writ him here, but then they called and said, oh, there's a COVID outbreak so he couldn't come. So, what we're set for is Mr. Yankaway's case for this Monday, right?
>
> THE STATE: Right.
>
> TRIAL COURT: But because of those issues that I've just tried to describe on the record, it's not practical to think it's going to happen.

(R. 256–57). Again, like in *Beyah*, a fair appraisal of this transcript showed that defense counsel *never* proposed to continue the trial. (R. 255–59).

Importantly, the State's written motion for a continuance and a buccal swab was *not* the basis for this continuance, as the State did not mention the motion until after the court already continued the case and a new trial date was selected. (R. 260–62). Moreover, the State told the court it could wait until the next status hearing to address the motion, and accordingly the buccal swab motion was not even heard until almost two months later. (R. 260–62; C. 278). In addition, the State's continuance motion was made "pursuant to 725 ILCS 5/114-4(d) and Supreme Court Rule 413(a)(vii)," (C. 257), neither of which purport to toll the speedy-trial term or grant additional days upon a continuance. *See* 725 ILCS 5/114-4(d); Ill. Sup. Ct. R. 413(a)(vii); *cf. People v. Bonds*, 401 Ill.App.3d 668, 677 (2d Dist. 2010) (continuances granted under Section 114-4(c) do not toll the speedy-trial term). Therefore, not only was the State's motion not the basis for the continuance, it would not have provided the State additional days or tolled Yankaway's term had defense counsel correctly demanded a speedy trial.

Not only that, but while the trial court noted Robert Hunter's potential unavailability for trial, the State never moved for a continuance on that basis—in fact, it was not clear at all whether Hunter *was* unavailable for trial. (R. 257). The court commented that the State received a phone call from Hunter's DOC facility saying, "there's a COVID outbreak so he couldn't come." (R. 257). But it was unclear when the State received that call and a print-out of Hunter's inmate status sheet from the DOC website showed Hunter had a parole date of February 15, 2022—almost two full weeks before the scheduled trial date. (C. 520). Even the trial court expressed no certainty on Hunter's availability, saying Hunter "was

or is in Robinson Correctional Center" or that he was "very closely about to be paroled." (R. 256–57). And while the State never moved for a continuance under Section 103-5(c), the ambiguity of Hunter's availability meant the State failed to exercise the due diligence required for a grant of additional days. 725 ILCS 5/103-5(c) (continuance may be granted if State used "due diligence to obtain evidence" without success). Like with the State's request for a buccal swab, Hunter's alleged unavailability was not the cause of this continuance, and but for defense counsel's deficient performance, the alleged unavailability would not have tolled the speedy-trial term or granted the State additional days.

While Yankaway also was not present at the hearing on February 24, 2022, that fact should not preclude a finding that the trial court abused its discretion in attributing this continuance to both parties. (R. 256). In general, "a defendant is bound by his counsel's request for a continuance, even if the request is made in the accused's absence." *Bowman*, 138 Ill.2d at 142. But, here, the transcript showed defense counsel never requested additional time during the February 24 hearing; rather, the trial court determined on its own to continue the trial. (R. 256–60). Put simply, Yankaway could not be bound to a request defense counsel never made.

And despite Yankaway's absence on February 24, the record showed that Yankaway previously communicated to defense counsel that he wanted a speedy trial and that he opposed to the February 24 continuance when he learned of it. *See People v. Staten*, 159 Ill.2d 419, 433–34 (1994) (where trial court ordered continuance of trial and defense counsel replied, "Okay," defendant acquiesced

to continuance because he was present in court when trial was continued and nothing in the record suggested he wanted an earlier trial date or that he was opposed to this continuance). In contrast to *Staten*, Yankaway was absent during this continuance but immediately filed a *pro se* pleading entitled "Ineffective Counsel" in which he said he told defense counsel "he don't want any continuance" *and* informed the court, "I don't want no continuance if it did not come out my mouth." (C. 269–70, 272). Yankaway explained his absence was due to a coronavirus-related quarantine that concluded before February 24 and said he still could have attended the February 28 trial. (R. 320–21). To the extent a defendant must "take affirmative action when he becomes aware that his trial is being delayed," *People v. Cordell*, 223 Ill.2d 380, 391 (2006), Yankaway did so here.

Moreover, Yankaway previously communicated to defense counsel he wanted a speedy trial in this case, and the record showed the court and defense counsel knew Yankaway wanted a speedy trial. In fact, Yankaway filed a *pro se* speedy trial demand as early as April 24, 2020. (C. 36). When Yankaway's trial in this case first was set for January of 2021, the written order from the court ordered Yankaway's in-person appearance "for speedy trial." (C. 98). On August 19, 2021, the court noted to Yankaway it reset his trial "sooner than everybody else." (R. 235). And on November 15, 2021, the trial court offered to schedule Yankaway's trial in December because "we're picking back up with the speedy trial counts."(R. 217). In his *pro se* pleadings to the court, Yankaway also represented that he discussed verbal and written speedy-trial requests with defense counsel on October 5, 2020. (C. 315). Put simply, Yankaway repeatedly communicated he wanted

a speedy trial and opposed this continuance as soon as he learned of it, supporting a finding that the trial court abused its discretion in attributing the February 24 continuance to both parties.

Although defense counsel failed to make a contemporaneous objection, his statement of "That's fine" to the rescheduled date was a mere reaction, *not* a concurrence that made the continuance by agreement. (R. 260); *see, e.g., People v. Healy*, 293 Ill.App.3d 684, 693 (1st Dist. 1997) (distinguishing between statements of "personal concurrence" and "reactions by defense counsel . . . to accept the trial court's decision to offer a continuance to the prosecution"). The record showed defense counsel's comment followed a long colloquy between the court and the State over the new date, made *after* the court decided to continue the trial:

> TRIAL COURT: So, we'll set the trial for June 13th—that's the day before Flag Day—and the schedule conference for June 2nd.
> * * * *
>
> THE STATE: Can I request the trial to be June 20th instead of the 13th only because I have a defendant whose trial is part of a three-defendant trial.
>
> TRIAL COURT: When's that?
>
> THE STATE: June 13, Judge.
>
> TRIAL COURT: What about June 6th? The 20th is a holiday.
> * * * *
>
> THE STATE: We can leave it the 13th.
>
> TRIAL COURT: Well, no. I'm not married to any of those days.
>
> THE STATE: How about July 11th?
>
> DEFENSE COUNSEL: That's fine.
>
> TRIAL COURT: We'll try July 11th.

(R. 259–60). Even though defense counsel acquiesced to the rescheduled trial date, this was not an affirmative act agreeing to the continuance and this Court should find the same. *Healy*, 293 Ill.App.3d at 690 (acquiescence to a new date is not an affirmative act attributable to defendant); *see also id.* at 692 (listing cases where delay was attributable to court despite defendants' silence and failure to object).

Notably, *Healy* interpreted a prior version of Section 103-5(a) of the speedy-trial statute, which the General Assembly subsequently amended to require a defendant to object to delay through a "written or oral demand." 725 ILCS 5/103-5(a); *Cordell*, 223 Ill.2d at 388. However, this Court has recognized that other statutory subsections of the speedy-trial statute lack the requirements of Section 103-5(a). *Cordell*, 223 Ill.2d at 392, *citing People v. Vasquez*, 311 Ill.App.3d 291, 294 (2d Dist. 2000) (mere silence or failure to object to a delay not attributable to defendant where speedy trial term ran under Section 103-5(b)). Even this Court's holding in *People v. Hartfield*, 2022 IL 126729, ¶ 35, that the speedy-trial statute "requires some affirmative statement in the record requesting a speedy trial" revolved around a defendant's speedy-trial right under Section 103-5(a).

The intrastate detainers statute does not share the same requirement as Section 103-5(a) that a defendant must object to delay through a written or oral demand for trial. 725 ILCS 5/103-5(a), 730 ILCS 5/3-8-10. Nor do subsections (b), (c), or (e) of the speedy-trial statute, which are incorporated into intrastate detainers. 725 ILCS 5/103-5(a), (b), (c), (e); 730 ILCS 5/3-8-10. As such, this Court should find that, under *Healy*, defense counsel's mere acquiescence to the continuance on February 24 was not an affirmative act attributable to Yankaway. The transcripts

showed the court already decided to continue the trial *before* defense counsel's mere comment of "That's fine" to the suggested date. This Court therefore should find the attribution of the 134-day continuance to both parties was an abuse of discretion and that those days were not attributable to Yankaway.

However, if this Court disagrees and finds that the trial court did not abuse its discretion in attributing this continuance to both parties, it still should find this 134-day continuance was not attributable to Yankaway as part of the argument that defense counsel performed deficiently by not demanding a speedy trial. This Court found in *Hartfield*, 2022 IL 126729, ¶ 38, that defendants may argue ineffective assistance of counsel for failing to demand trial during hearings on continuances. As argued above, defense counsel knew that Yankaway wanted a speedy trial in this case but failed to make an affirmative demand when the court gave its reasons for continuing the trial. (R. 255–60).

And despite believing Yankaway had a 120-day term under Section 103-5(a), by not correctly demanding a speedy trial on February 24, defense counsel allowed the trial to be continued by *134* days. (C. 331, 508; R. 259–60). Whether a 120-day or a 160-day term applied, no reasonably effective defense attorney, facing similar circumstances, would allow so many days to accrue against a client who repeatedly expressed he or she wanted a speedy trial. *People v. Watson*, 2012 IL App (2d) 091328, ¶ 32 (ineffective assistance claim requires consideration of how a reasonably effective defense attorney would conduct himself or herself under similar circumstances). Therefore, if this Court does not find the trial court abused its discretion in attributing the continuance to both parties, it should still find that

defense counsel performed deficiently in not correctly demanding a speedy trial on February 24, 2022, and that those days should not be attributed to Yankaway.

Importantly, the 134 days from February 28, 2022, to July 11, 2022, when added to the 45 days following October 1, 2021, totaled 179 days, thereby delaying the trial date beyond the applicable 160-day term. *See People v. Brexton*, 2012 IL App (2d) 110606, ¶ 18 (delay refers to any action by parties or court that moves the trial date outside of the speedy-trial term). Had defense counsel affirmatively demanded a speedy trial under the correct statute, Yankaway successfully could have argued a speedy-trial violation occurred.

C. The continuance on June 30, 2022, was not attributable to Yankaway and did not toll the speedy-trial period.

On June 29, 2022, the State moved to continue trial pursuant to 725 ILCS 5/114-4(c)(2) over two unavailable law enforcement witnesses. (C. 291). The State confirmed at the hearing that the basis for the continuance was the missing officers. (R. 270). While the State noted "one outstanding report that's coming from the Springfield lab," it specifically said that report would arrive by the next week and was *not* the basis for this continuance. (R. 270).

As it did on August 19, 2021, the State did not make a specific request for a continuance under Section 103-5(c) of the speedy-trial statute, nor did the trial court make any findings pursuant to that section. (R. 270, 273; C. 291, 296). As such, the speedy-trial term would not have been tolled nor would the State have received extra days had defense counsel correctly demanded a speedy trial. *People v. Bonds*, 401 Ill.App.3d 668, 677 (2d Dist. 2010); *People v. Toolate*, 62 Ill.App.3d 895, 898–99 (4th Dist. 1978).

Importantly, for this hearing, defense counsel "respectfully object[ed] to the continuance on behalf of [Yankaway] because he wants his speedy-trial rights," thereby complying with *People v. Hartfield*, 2022 IL 126729. (R. 270). But defense counsel's written speedy-trial demand was made pursuant to 725 ILCS 5/103-5, *not* the intrastate detainers statute. (C. 299). And defense counsel's statements at the hearing showed his incorrect belief that Yankaway had a 120-day term under Section 103-5(a) of the speedy-trial statute. (*See* R. 271). Based on the above, had defense counsel not performed deficiently, the 70 days from July 11 to September 19, 2022, would have counted against the State.

D. Defense counsel's failure to affirmatively demand a speedy trial and file a speedy-trial demand that complied with the intrastate detainers statute was deficient performance.

As noted above, the appellate court in this case agreed that defense counsel performed deficiently and this Court should affirm that finding and determine whether Yankaway was prejudiced by defense counsel's unprofessional errors. *People v. Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42. But for defense counsel's deficient performance in this case, Yankaway's statutory right to a speedy trial under the intrastate detainers statute was violated because he was not tried within the applicable 160-day period. *People v. Hartfield*, 2022 IL 126729, ¶¶ 35, 38; *People v. Staten*, 159 Ill.2d 419, 426 (1994). Due to counsel's erroneous belief that Yankaway had a 120-day term that ran automatically starting on October 1, 2021, he did not affirmatively demand a speedy trial at the hearing on August 19, 2021 or February 24, 2022, and he never filed a demand under the correct statute. (C. 508; R. 271). The relevant continuances in this case exceeded the actual speedy-trial

term of 160 days by 89 days. Had counsel demanded a speedy trial under the correct statute, Yankaway would have prevailed in his motion to dismiss. This Court therefore should find that defense counsel's failure to correctly demand a speedy trial was ineffective assistance and reverse Yankaway's convictions outright.

The effective assistance of counsel is guaranteed to every defendant under the sixth amendment to the United States Constitution and the Constitution of Illinois. *People v. Domagala*, 2013 IL 113688, ¶ 36; U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, § 8. The two-pronged test for assessing counsel's effectiveness is found in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on such a claim, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced defendant. *Strickland*, 466 U.S. at 687. To show deficient performance, a defendant must show "that counsel's performance was objectively unreasonable under prevailing professional norms." *Domagala*, 2013 IL 113688, ¶ 36.

First, this Court should find that defense counsel performed deficiently by failing to affirmatively demand a speedy trial in this case on August 19, 2021, and February 24, 2022. *Hartfield*, 2022 IL 126729, ¶ 38 (defendant may argue counsel was ineffective for failing to demand trial at a hearing on a continuance). Here, Yankaway filed a speedy-trial demand in this case on April 24, 2020, and he represented he told defense counsel to demand a speedy trial on October 5, 2020. (C. 36, 315). Indeed, the written order entered for October 5, 2020, read that Yankaway was to appear in January of 2021 "for speedy trial." (C. 98). It was deficient performance for defense counsel to know Yankaway wanted a speedy

trial but not to affirmatively demand one, and this Court should find the same.

Second, this Court should affirm the finding of the appellate court that defense counsel performed deficiently for not demanding a speedy trial under the intrastate detainers statute. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42 ("Defense counsel's performance fell below a reasonably competent standard because he should have known the Intrastate Detainers Statute governed defendant's speedy trial right."). The appellate court's finding stemmed from *People v. Jackson*, 235 Ill.App.3d 732, 738 (4th Dist. 1992), and *People v. Willis*, 235 Ill.App.3d 1060 (4th Dist. 1992), which were related cases where defendants argued their attorney was ineffective for failing to demand a speedy trial under the intrastate detainers statute. *See Jackson*, 235 Ill.App.3d at 736. In *Jackson*, the appellate court explained that "defense counsel knew defendant was an inmate" and explained the following:

> Defense counsel had a duty to represent defendant competently. Competence requires the legal skill, knowledge, thoroughness, and preparation reasonably necessary for the representation. [Citation]. The intrastate detainers provision became law effective November 14, 1973.

Id. at 738. Importantly, this Court cited *Jackson* and *Willis* approvingly in finding the intrastate detainers statute applied to incarcerated defendants. *Staten*, 159 Ill.2d at 429–30 ("The above authorities recognize that a defendant who claims a violation of a speedy-trial right cannot prevail if the demand for trial fails to comply with the terms of the governing speedy-trial provision.").

Here, defense counsel should have known to file a demand under the intrastate detainers statute. Like in *Jackson* and *Willis*, counsel knew Yankaway was committed to DOC because he represented Yankaway at the plea entry in

case no. 20CF238 and even asked the trial court to send Yankaway to DOC while awaiting trial in this case. (E. 123; R. 188–89, 204). Also, counsel knew Yankaway wanted a speedy trial at least by October 5, 2020, for which the written order said Yankaway was to appear in January "for speedy trial." (C. 98). Not only that, but Yankaway filed a *pro se* demand on April 24, 2020, and represented in later pleadings that he told defense counsel he wanted a speedy trial and they discussed written and oral demands. (C. 31, 36, 270, 304, 315). Finally, while counsel knew Yankaway wanted a speedy trial, he incorrectly believed he was in compliance with Section 103-5(a) and that Yankaway had a 120-day term. (C. 508; R. 271).

As this Court said in *Staten*, a violation of a speedy-trial right cannot prevail if the demand failed to comply with the terms of the governing speedy-trial provision. *Staten*, 159 Ill.2d at 429. The intrastate detainers statute unambiguously applies "to persons committed to any institution or facility or program of the Illinois Department of Corrections who have untried complaints, charges, or indictments" and defense counsel should have known it applied here. 730 ILCS 5/3-8-10 (2020). Therefore, this Court should find that defense counsel performed deficiently by failing to correctly demand a speedy trial in this case.

E. Defense counsel's deficient performance prejudiced Yankaway and this Court should reverse his convictions outright.

Although the appellate court correctly determined that defense counsel performed deficiently, its determination that Yankaway could not show prejudice was incorrect. *People v. Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42. The appellate court reasoned that a finding of prejudice in this case would be too speculative. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 42. But the appellate court's decision

practically forecloses a criminal defendant from *ever* making a meritorious claim of ineffective assistance of counsel based on a speedy-trial violation. This Court should reverse the finding of the appellate court for three reasons: (1) the appellate court misconstrued the prejudice prong of *Strickland*; (2) the appellate court's reliance on past precedent to find no prejudice was unpersuasive; and (3) Yankaway can affirmatively show the prejudice resulting from counsel's error.

To start, prejudice occurs in the context of an ineffective assistance claim when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Domagala*, 2013 IL 113688, ¶ 36. This Court recently explained this standard in detail:

> In assessing prejudice under [*Strickland v. Washington*, 466 U.S. 668 (1984)], the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. [Citation]. Instead, *Strickland* asks whether it is reasonably likely the result would have been different. [Citation]. A reasonable probability that, but for counsel's errors, the result of the proceeding would have been different is a probability sufficient to undermine confidence in the outcome. [Citation].
> * * * *
>
> *Strickland* requires a defendant to affirmatively prove that prejudice resulted from counsel's errors. [Citation]. It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. [Citation]. Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply speculation defendant may have been prejudiced.

People v. Johnson, 2021 IL 126291, ¶¶ 54–55 (internal quotes removed).

While the appellate court's decision here essentially followed the above-quoted rule that a claim of ineffective assistance "requires actual prejudice be shown, not mere speculation to prejudice," *People v. Bew*, 228 Ill.2d 122, 135 (2008), the

appellate court misapplied that rule by presuming that the State would have held trial within 160 days had defense counsel demanded trial correctly. *See Yankaway*, 2023 IL App (4th) 220982-U, ¶¶ 40, 42. In other words, the appellate court refused to find prejudice occurred because, "We simply do not know what would have happened if defense counsel filed a proper intrastate detainers motion earlier in the process." *Id.*, ¶ 42. The appellate court essentially asked for certainty on whether counsel's performance effected the outcome, which is not required by *Strickland*. *Johnson*, 2021 IL 126291, ¶ 54.

In Illinois, decisional law on claims of ineffective assistance based on an alleged speedy-trial violation have analyzed prejudice by looking to the date when the motion to dismiss was or should have been argued, and not speculated on the parties' actions had counsel not performed deficiently. *E.g., People v. Staten*, 159 Ill.2d 419, 432 (1994). Specifically, in *Staten*, defendant argued his counsel was ineffective for failing to properly demand a speedy trial and failing to move for discharge before the trial, which was on March 21, 1991. *Staten*, 159 Ill.2d at 423–24, 430. In analyzing the prejudice prong, this Court explained it would look at the circumstances on the date the motion to dismiss should have been filed:

> [Defendant] must be able to demonstrate that if his attorney had made a proper demand for a speedy trial and then moved for discharge at the time of trial, there is a reasonable probability the trial court would have discharged him on speedy-trial grounds. Therefore, this Court must assess the circumstances *as they existed* on March 21, 1991, and determine whether there was a reasonable probability that a defense motion for discharge would have prevailed.

Id. at 432–33 (emphasis added).

Likewise, in *People v. Mooney*, 2019 IL App (3d) 150607, ¶¶ 25–26, the

appellate court determined whether a defendant was prejudiced by his defense counsel's deficient performance of agreeing to continuances despite being ready for trial, thereby allowing trial to be held outside the applicable speedy-trial term. On the question of prejudice, the *Mooney* Court noted the speculation involved in determining the merit of a motion to dismiss, and that the trial court *could* have set the trial earlier but for the deficient performance—but that did not end the analysis. *Mooney*, 2019 IL App (3d) 150607, ¶ 27. Instead, relying on this Court's decision in *People v. Beyah*, 67 Ill.2d 423, 429 (1977), which "did not engage in any reconstruction or speculate as to what would have happened had the circuit court's order been correct," the *Mooney* Court looked at the *actual* date when the motion to dismiss should have been argued. *Id.*, ¶ 28. The *Mooney* Court explained:

> Hanging over this uncertainty is the *actuality* that defendant was—had the final two continuances been properly attributed—brought to trial outside of the 160-day window.
> * * * *
>
> Defendant's speedy trial period should have ended on January 26, 2015, but because of counsel's deficient performance, it did not. To pretend otherwise would be a mockery of justice.

Id., ¶¶ 28–29 (emphasis added). In other words, the *Mooney* Court found the prejudice prong was satisfied not because of speculation, but because of the actuality that the trial was held outside the speedy-trial term. *Id.*

While the Fifth District appellate court recently disagreed with *Mooney*, its reasoning in that case misconstrued *Mooney*'s holding. *People v. Teen*, 2023 IL App (5th) 190456, ¶¶ 46–52. In *Teen*, the appellate court reviewed a claim of ineffective assistance that counsel misled defendant into allowing the speedy-trial term to lapse. *Teen* 2023 IL App (5th) 190456, ¶¶ 42–43. On appeal, defendant

argued *Mooney* allowed reviewing courts to *presume* prejudice, which is not the case. *Id.*, ¶ 46. As such, the *Teen* Court's analysis of *Mooney* repeatedly quoted its discussion that the determination of the merit of a motion to dismiss based on a speedy-trial violation "inevitably involves a certain amount of speculation" and erroneously claimed that *Mooney* did not follow the legal principles laid out in *Strickland*. *Id.*, ¶¶ 48–49, *quoting Mooney*, 2019 IL App (3d) 150607, ¶ 27.

Frankly, this discussion from *Mooney* was mere dicta—the *Mooney* Court's actual holding was that prejudice resulted because the *actuality* of defense counsel's deficient performance caused defendant's trial to happen outside the speedy-trial term. *See Mooney*, 2019 IL App (3d) 150607, ¶¶ 28–29. Notably, the *Teen* Court *never* noted that *Mooney* looked to the actual day when the motion to dismiss should have been argued to determine prejudice. *See Teen*, 2023 IL App (5th) 190456, ¶¶ 42–52. Accordingly, this Court should find *Teen* erred and follow the precedent set by *Staten* and followed in *Mooney*—prejudice is determined by looking at when the motion to dismiss was or should have been filed. *Staten*, 159 Ill.2d at 432–33.

Moreover, the rule that a claim of ineffective assistance requires actual prejudice be shown, not mere speculation, already is decided in claims based on a speedy-trial violation because they first require the reviewing court to determine if a violation occurred. *Bew*, 228 Ill.2d at 135; *People v. Cordell*, 223 Ill.2d 380, 385 (2006). Put another way, lawful grounds to move for dismissal already are required before a defendant can demonstrate deficient performance and prejudice to the reviewing court. *People v. Cooksey*, 309 Ill.App.3d 839, 844 (1st Dist. 1999).

By contrast, those cases finding prejudice was based on "pure speculation"

involve claims where the defendant *cannot* establish some violation, rather than establishing a violation first. *E.g., People v. Brown*, 2023 IL 126852, ¶ 28 (defendant conceded record lacked evidence to support his claim); *Johnson*, 2021 IL 126291, ¶ 58 (defendant could not actually show ineffectiveness for failing to request DNA swabs be tested where nothing suggested the DNA would be exculpatory); *People v. Olinger*, 176 Ill.2d 326, 363 (1997) (defendant "merely posited" that unidentified fingerprints belonged to another person); *Bew*, 228 Ill.2d at 135 (defendant contended defense counsel could have forced State to offer better plea deal, but nothing showed parties were engaged in plea negotiations). Unlike the above-cited cases, Yankaway's claim of ineffective assistance is not purely speculative but based on the actuality of the speedy-trial violation that occurred in his case. As such, the appellate court here did not properly analyze prejudice under *Strickland*.

Next, the appellate court's reliance on its precedent is unpersuasive. *See Yankaway*, 2023 IL App (4th) 220982-U, ¶¶ 41–42, *citing People v. Jackson*, 235 Ill.App.3d 732, 740 (4th Dist. 1992), *and People v. Willis*, 235 Ill.App.3d 1060, 1069 (4th Dist. 1992). Although *Jackson* and *Willis* found defense counsel performed deficiently, the appellate court found no prejudice because the record showed the State would have brought the defendants to trial within the term had counsel made the correct demand. *E.g., Jackson*, 235 Ill.App.3d at 740. Importantly, the finding that defendants were not prejudiced was not based on an attempt to reconstruct what would have happened had defense counsel performed effectively, but rather was based on the State's concession that it caught defense counsel's unprofessional error and exploited it, thereby allowing the trial to be held outside

the 160-day term. *Id.* at 739. In fact, the appellate court criticized the State's action but concluded that nothing in the record showed that a violation still would have occurred had defense counsel correctly demanded trial. *Id.* at 740.

To the contrary, the record here showed that the State shared the same mistaken belief as defense counsel that Yankaway's speedy-trial term started to run automatically on October 1, 2021. (R. 271, 293). And, following the plea entry in case no. 20CF238, *every* continuance in this case either was occasioned by the State or the court. (R. 209, 214, 234–35, 257; C. 118, 185, 291). Even on November 15, 2021, while the court asked if it could attribute the continuance to the defense, was occasioned by the court's discussion of its trial schedule, and was not made at defense counsel's specific request. (R. 244–45). Indeed, the trial court's finding that Yankaway "continuously wanted another court date" was against the manifest the weight of the evidence. (R. 975). Not even including the unavailability of Robert Hunter, the State moved for multiple continuances on the basis of unavailable witnesses and outstanding crime lab work. (R. 209, 214; C. 291). As a result, trial was held on day 249, and nothing suggested the State would have been able to bring Yankaway to trial 89 days earlier had defense counsel filed the correct demand.

Most importantly, the record showed that, when the State thought a speedy-trial violation *would occur*, it did not seek to set the trial sooner. (R. 271–72). At the hearing on June 30, 2022, the State said it believed Yankaway was "53 days on the 120-day term." (R. 271). When the trial court noted a continuance into mid-September would exceed 120 days, the State said, "You're right, Judge." (R. 272).

While the State did say trial would need to be set sooner than mid-September to avoid a speedy-trial problem, it made no comment after the trial court actually reset trial for September 19, 2022, despite believing at that time a speedy-trial violation would result. (R. 273–74). Even though Yankaway actually had a 160-day term, unlike *Jackson* and *Willis*, the prosecutor here allowed a potential violation to occur, which supports a conclusion that the State still would not have brought Yankaway to trial within 160 days had counsel not performed deficiently.

Finally, because a claim of ineffective assistance based on a speedy-trial violation first requires a defendant to show a violation occurred *Cordell*, 223 Ill.2d at 385, Yankaway can affirmatively show prejudice because his trial was held on day 249, or 89 days past the 160-day term. As this Court did in *Staten*, 159 Ill.2d at 432–33, looking at the circumstances *as they existed* on September 19, 2022—the day Yankaway's trial actually started—showed that the trial date exceeded the applicable term and Yankaway's motion to dismiss would have been meritorious but for counsel's deficient performance. (C. 331). In addition, as argued above, the defense did not move for or occasion any of the continuances in this case *and* the State showed its willingness to allow a potential speedy-trial violation to occur. (R. 271–72). Under *Strickland*, defense counsel's unprofessional errors did not simply have a conceivable effect on the outcome of the motion to dismiss, but *actually* resulted in the motion's denial. *Johnson*, 2021 IL 126291, ¶ 55.

For the above reasons, this Court therefore should reverse the judgment of the appellate court as to prejudice, find Yankaway was denied the effective assistance of counsel, and reverse his convictions outright.

II.

Alternatively, the trial court's misapprehension of the sentencing range influenced its sentencing decision and was plain error.

Prior to trial, the State told the trial court it sought a 15-year sentencing add-on for the attempt first degree murder charge, which alleged Yankaway possessed a weapon and would make the sentencing range 21–45 years upon conviction. (R. 314–15). The State specifically decided *not* to seek the 20-year add-on for discharging a firearm and the jury accordingly received instructions only on whether the State proved Yankaway possessed a firearm. (R. 314–15; C. 366). But after the jury found Yankaway guilty and the sentencing add-on proved, the State said at the sentencing hearing that the 20-year add-on applied to attempt for a range of 26–50 years. (R. 984). The trial court then imposed a 44-year sentence for attempt based on its mistaken belief on the minimum sentence. (R. 1002–03). Therefore, if this Court does not reverse Yankaway's convictions outright for the reasons argued above, it should find the trial court's misapprehension of the sentencing range influenced its sentencing decision and was plain error, and accordingly order a new sentencing hearing for Yankaway's attempt conviction.

The standard of review when a trial court operated under a legal misapprehension is *de novo*. *People v. Moore*, 207 Ill.2d 68, 75 (2003). While not preserved for review here, reviewing courts have found claims that the trial court misunderstood the sentencing range to fall within the second prong of the plain error rule. *People v. Crawford*, 2023 IL App (4th) 210503, ¶ 46; *People v. Hausman*, 287 Ill.App.3d 1069, 1071–72 (4th Dist. 1997) ("A defendant is entitled to be sentenced by a trial judge who knows the minimum and maximum sentences for

the offense."). As such, this Court should review for plain error.

A misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision. *People v. Eddington*, 77 Ill.2d 41, 48 (1979). In *Eddington*, the trial judge referenced a mistaken belief on the minimum sentence but the record did not show that the mistaken term "was used by the trial judge as a reference point" in imposing sentence. *Eddington*, 77 Ill.2d at 47–48. When applying this Court's holding in *Eddington*, reviewing courts look at the trial court's comments during the sentencing hearing for an indication as to whether the court relied on or used its mistaken belief as a reference point in imposing sentence. *See, e.g., Crawford*, 2023 IL App (4th) 210503, ¶ 51.

Here, because the jury found only the 15-year add-on proved, the minimum term for the sentence for attempt was 21 years in prison. (C. 366). In this case, Count 1 charged Yankaway with a Class X felony offense of attempt first degree murder, which normally carries a sentencing range of 6–30 years in prison. (C. 534); 720 ILCS 5/8-4(c)(1) (2020); 730 ILCS 5/5-4.5-25(a) (2020). The statute provides for several firearm enhancements for attempt first degree murder, including a 15-year increase if the trier of fact finds a defense was "armed with a firearm," and a 20-year increase if the trier of fact finds a defendant "personally discharged a firearm." 720 ILCS 5/8-4(B)–(C).

While the State considered seeking the 20-year add-on, it decided to seek only the 15-year enhancement. (R. 314–15). In fact, although the information originally alleged that Yankaway "personally discharged a firearm," (C. 32), the

State *did not submit* that add-on to the jury. (C. 394). Instead, the State asked and the jury found only the firearm enhancement that Yankaway "was armed with a firearm." (C. 366, 394–96). As such, the correct sentencing range for Yankaway's attempt conviction in this case was 21–45 years. (R. 315).

At the sentencing hearing, however, and for the first time, the State represented Yankaway's conviction carried a 20-year add-on, causing the trial court to mistakenly accept the minimum term to be 26 years:

> THE STATE: For attempt first-degree murder, a Class X felony, that sentencing range with the 20-year add-on makes the sentencing range for the Court 26–50 years at 85 percent plus a three-year mandatory supervised release . . .
>
> TRIAL COURT: It's a 6 to 30, but with an add-on, *it makes the minimum 26 to*?
>
> THE STATE: 50, sir, at 85 percent.

(R. 984–85) (emphasis added). Not only that, but when imposing the sentence on Count 1, the court did so with direct reference to its mistaken belief on the minimum term: "44 years *being a 26-year minimum* because it's a 20-year tack-on with a six-year minimum." (R. 1003) (emphasis added).

Importantly, the appellate court agreed that the trial court misapprehended the minimum sentence and sentencing range, but said the misapprehension did not arguably influence its imposition of sentence. *People v. Yankaway*, 2023 IL App (4th) 220982–U, ¶ 60. The appellate court found that, because the State pursued only the 15-year add-on, the sentencing range was 21 to 45 years. *Yankaway*, 2023 IL App (4th) 220982–U, ¶ 60. But the appellate court did not believe the trial court "expressed [an] intent to sentence [Yankaway] to the minimum or maximum

sentence, [or] seek to impose a sentence tied to either extreme." *Id.* In other words, the appellate court found the trial judge did not use his mistaken belief in the minimum sentence "as a reference point." *Id.*

But this Court's decision in *Eddington* did not purport that a misapprehension in the sentencing range only influences the sentencing decision when the sentence is at the minimum or maximum of the mistaken range; rather, the misapprehension need only "arguably [influence] the sentencing decision." *Eddington*, 77 Ill.2d at 48. For example, in *Eddington*, this Court affirmed the sentence because the judge did not appear to use a mistaken belief of a four-year minimum as "a reference point in fixing the minimum term of 20 years." *Id.* And, when applying *Eddington*, reviewing courts have found a mistaken belief by the trial judge on the applicable sentencing range meant the trial court might have considered the wrong range in fixing a sentence. *People v. Sims*, 265 Ill.App.3d 352, 366 (1st Dist. 1994). More recently, where a trial judge imposed a sentence below the erroneous maximum term, the appellate court remanded for a new hearing because the court's sentence was the maximum term of imprisonment under the correct range and the record showed the court might not have imposed the maximum sentence had it known the correct range. *People v. Mosley*, 2023 IL App (1st) 200309, ¶ 50.

In this case, the trial court's misapprehension of the sentencing range arguably influenced its sentencing decision for three reasons. First, the court imposed the sentence of 44 years on attempt with direct reference to the erroneous sentencing add-on of 20 years. (R. 1002–03). Specifically, the court explained its sentencing decision as follows: "44 years being a 26-year minimum because it's

a 20-year tack–on with a six-year minimum." (R. 1003). Second, the trial court imposed a sentence for aggravated battery of 26 years—the same erroneous minimum the court believed applied to attempt—without any further explanation as to why. (R. 1003). And finally, the trial court imposed a sentence on attempt that was six years below the erroneous minimum of 50 years and the court noted some mitigating factors, such as Yankaway's rough childhood. (R. 998, 1003). Had the trial court known the correct sentencing range, it is likely, as in *Mosley*, that it would have adjusted accordingly and not imposed a sentence on attempt only one year below the maximum term. *Mosley*, 2023 IL App (1st) 200309, ¶ 50. Based on the above, this Court should find the misapprehension by the trial court of the correct range arguably influenced its sentencing decision.

To conclude, if this Court does not reverse Yankaway's convictions outright for the reasons argued above, this Court should apply its decision in *Eddington* to vacate Yankaway's sentence and remand for resentencing on attempt. The record showed the trial court both misapprehended the sentencing range and that the misapprehension influenced its sentencing decision. Therefore, resentencing on Yankaway's attempt conviction is justified.

III.

The invited-error doctrine precludes remand for sentencing on Yankaway's unsentenced conviction for UPWF.

At the sentencing hearing, the State told the trial court that, "because of the convictions on the two more serious cases, as the Court is aware, the Court would not enter a finding with regards to Count 3." (R. 985). When the court asked for clarification, the State confirmed it sought only a finding without judgment:

TRIAL COURT: Enter a finding but not judgment on Count 3, right?

THE STATE: Yes, Judge, finding without a judgment.

(R. 985–86). The court accordingly entered a finding without a judgment on Yankaway's UPWF conviction. (R. 1003).

Despite this request, the State asked the appellate court to remand for sentencing on Count 3, but only if the appellate court agreed with Yankaway's separate one-act, one-crime argument. *People v. Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54. The appellate court ordered the remand, *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54, *citing People v. Robinson*, 267 Ill.App.3d 900, 907 (1st Dist. 1994), but the State plainly injected this error into proceedings and this Court should find remand precluded under the invited-error doctrine.

This Court may consider this issue although Yankaway did not initially raise it in the appellate court. *Yankaway*, 2023 IL App (4th) 220992-U, ¶ 3. Supreme Court Rule 341 says, "Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). But this rule does not limit jurisdiction, and may be overridden to achieve a just result and maintain a sound and uniform body of precedent. *People*

v. McCarthy, 223 Ill.2d 109, 142 (2006); *Hux v. Raben*, 38 Ill.2d 223, 224–25 (1967).

This issue was raised for the first time in the State's response brief. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54. Appellate counsel addressed the issue at oral argument by arguing that the State invited the error. Oral Argument at 47:35, *People v. Yankaway*, 2023 IL App (4th) 220982-U, https://www.illinoiscourts.gov/courts/appellate-court-oral-argument-audio/. The appellate court did not discuss the merits of the invited error argument in its decision. *See Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54. Nor did the court address the merits of the argument when denying Yankaway's petition for rehearing, even though Yankaway's petition specifically raised the argument. In order to achieve a just result and maintain a sound body of precedent, this Court should consider the merits of this argument if it does not reverse Yankaway's convictions outright.

The power of reviewing courts to remand for sentencing on unsentenced convictions emanates from this Court's decision in *People v. Scott*, 69 Ill.2d 85, 87–89 (1977). *See Robinson*, 267 Ill.App.3d at 907. The effect of the remanding order for the imposition of sentence is to complete the circuit court's order and render the judgment final. *Scott*, 69 Ill.2d at 89. Subsequently, courts have ordered remand to address unsentenced convictions "because sentencing is a necessary component of a judgment of conviction." *People v. Segara*, 126 Ill.2d 70, 78 (1988).

But following the abolishment of the void sentencing rule in *People v. Castleberry*, 2015 IL 116916, ¶¶ 13–19, this Court should find a sentencing order that includes an unsentenced conviction is subject to the invited-error rule. A remand order over an unsentenced conviction is derived from the proposition that a "final

judgment in a criminal case is the imposition of sentence," as well as the statutory definition of "judgment." *Robinson*, 267 Ill.App.3d at 907; *People v. Allen*, 71 Ill.2d 378, 381 (1978) (quoting definition of judgment and explaining "the pronouncement of the sentence is the judicial act which comprises the judgment of the court"). "Judgment" means "an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court." 730 ILCS 5/5-1-12 (eff. Jan. 1, 1973).

As such, an unsentenced conviction means the court's judgment failed to conform to statutory requirements, making it subject to the invited-error rule. *People v. Brown*, 2023 IL App (2d) 220334, ¶ 36 ("[O]rders that are not void are subject to the invited-error rule."); *see also People v. Moore*, 2021 IL App (2d) 200407, ¶ 35 (citing *Castleberry* in finding sentencing order was subject to invited-error rule because it was not void despite defendant's argument that the State present an insufficient factual basis to support sentencing add-on).

The invited-error rule precludes a party from complaining of error that it brought about or participated in. *People v. Hughes*, 2015 IL 117242, ¶ 33. Also called equitable estoppel, the rule says a party "may not request to proceed in one manner and then later contend that the course of action was in error." *People v. Reed*, 2020 IL 124940, ¶ 39, *quoting People v. Carter*, 208 Ill.2d 309, 319 (2003). The rationale behind the rule is that it would be manifestly unfair to allow a party a second trial or hearing on the basis of error which the same party injected into the proceedings. *In re Detention of Swope*, 213 Ill.2d 210, 217 (2004).

Here, the State injected the error of Yankaway's unsentenced conviction

for UPWF into trial court proceedings. (R. 985–86). Specifically, the State told the court to enter "finding without a judgment" for that count, and the trial court obliged. (R. 985–86, 1003). And, the State treated this as a final judgment at the hearing on Yankaway's motion to reconsider sentence. (R. 1008–09); *see Brown*, 2023 IL App (2d) 220334, ¶¶ 36–37 (invited-error rule is implicated where a party sought to have trial court enter an order that it claimed on appeal was not a final judgment). Then, the State used its same request as a vehicle to ask the appellate court for remand. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54. The State's request to proceed in one way in the trial court and contend on appeal that the request was error is a quintessential invited error, and this Court should find the same.

It is true that this Court has distinguished between rules "prohibit[ing] the appellate court from increasing a defendant's sentence on review" from the holding that a reviewing court may remand an unsentenced conviction to the trial court for sentencing in order to "complete the circuit court's order and render the judgment final." *Castleberry*, 2015 IL 116916, ¶¶ 24–25, *citing People v. Scott*, 69 Ill.2d 85 (1977). Even so, this Court explained that "*Scott* does not stand for the broader notion that the appellate court may increase any criminal sentence at the request of the State." *Castleberry*, 2015 IL 116916, ¶ 25.

A review of case law remanding on unsentenced convictions showed these errors came from mistaken beliefs of trial judges on issues such as merger, *not* at the State's invitation. *See Scott*, 69 Ill.2d at 86–87 (trial judge erred in merging convictions); *People v. Dixon*, 91 Ill.2d 346, 353 (1982) (trial judge erred in merging convictions); *Segara*, 126 Ill.2d at 77–78 (trial court erred in vacating a conviction,

requiring remand for sentencing on that conviction); *Robinson*, 267 Ill.App.3d at 906 (trial court erred in merging convictions); *People v. Baldwin*, 256 Ill.App.3d 536, 543–46 (2d Dist. 1994) (trial court erred where it imposed no sentence on a conviction "without explanation," requiring remand on that count). None of the above-cited cases showed or suggested the State invited the error; rather, remand followed the trial court acting on its own erroneous belief.

Finally, while *Castleberry* permitted limited remand for sentencing in order to render a judgment final, this Court condemned the State's practice of raising a new and different issue with a view to "lessening the rights" of a defendant, as opposed to sustaining the judgment of the trial court. *Castleberry*, 2015 IL 116916, ¶¶ 23, 25. Such an argument is considered an impermissible *de facto* cross-appeal. *Id.*, ¶ 23, *citing People v. Newlin*, 2014 IL App (5th) 120518, ¶ 31 (finding "no authority" to allow the State "to piggyback an appeal on defendant's appeal"). Here, the State did piggyback off a separate issue, requesting remand *only* if the appellate court agreed with Yankaway's one-act, one-crime argument. *Yankaway*, 2023 IL App (4th) 220982-U, ¶ 54. In doing so, the State was not trying to sustain the judgment of the trial court, but to lessen Yankaway's rights, and this Court should find the State's request to be an impermissible *de facto* cross-appeal.

Therefore, This Court should reverse the trial court's order remanding Yankaway for sentencing on UPWF. The State plainly injected this error into trial court proceedings only to complain of it on appeal. The invited-error doctrine precludes such a remand and this Court should find the same.

CONCLUSION

For the foregoing reasons, Jatterius L. Yankaway, defendant-appellant, respectfully requests that this Court reverse his convictions outright. In the alternative, Yankaway respectfully requests that this Court vacate his sentence under Count 1 and remand for a new sentencing hearing on only that count, and reverse the order remanding for sentencing for Count 3 as precluded under the invited-error doctrine.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 50 pages.

/s/Anthony J. Santella
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Assistant Appellate Defender

No. 130207

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JATTERIUS YANKAWAY, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-22-0982. There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 20-CF-212. Honorable Kevin Lyons, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 22, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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APPENDIX TO THE BRIEF

Jatterius L. Yankaway No.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

JATTERIUS L YANKAWAY
Defendant/Respondent

Reviewing Court No: 4-22-0982
Circuit Court No: 20-CF-00212-1
Trial Judge: Kevin W Lyons

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

JATTERIUS L YANKAWAY
Defendant/Respondent

Reviewing Court No: 4-22-0982
Circuit Court No: 20-CF-00212-1
Trial Judge: Kevin W Lyons

COMMON LAW RECORD - TABLE OF CONTENTS

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

THE STATE OF ILLINOIS

Plaintiff/Petitioner

v.

JATTERIUS L YANKAWAY
Defendant/Respondent

Reviewing Court No:	4-22-0982
Circuit Court No:	20-CF-00212-1
Trial Judge:	Kevin W Lyons

REPORT OF PROCEEDINGS – TABLE OF CONTENTS

E-FILED
Transaction ID: 4-22-0982
File Date: 2/15/2023 8:31 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

PEOPLE)
Plaintiff/Petitioner) Reviewing Court:
) Circuit Court Number: 20-CF-00212-1
v.) Trial Judge: Kevin W Lyons
JATTERIUS L YANKAWAY)
Defendant/Respondent)
)

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FILED
ROBERT M. SPEARS
OCT 26 2022
CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, PEORIA COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
) Case No: 20-CF-00212-1
VS.) Date of Sentence: 10/26/22
)
JATTERIUS L YANKAWAY) Date of Birth: 01/02/1996
Defendant.) (Defendant)

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE		MSR
1	ATTEMPT FIRST DEGREE MURDER	7/26/19	720ILCS5/8-4A	X	44 Yrs.	0 Mos.	3 Yrs.
To run consecutively to count(s) 2 and served at 85% pursuant to 730 ILCS 5/3-6-3							_____Per PRB, MSR up to 12 Mos
2	AGGRAVATED BATTERY	7/27/19	720ILCS5/12-3.05e1	X	26 Yrs.	0 Mos.	3 Yrs.
To run consecutively to count(s) 1 and served at 85% pursuant to 730 ILCS 5/3-6-3							_____Per PRB, MSR up to 12 Mos
____	____	____	____	____	_____ Yrs.	_____ Mos.	_____ Yrs.
To run concurrent with count(s) _____ and served at 50% pursuant to 730 ILCS 5/3-6-3							_____Per PRB, MSR up to 12 Mos

The Court finds that the defendant is:

☐ Convicted of a class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4.5-95(b) on counts _____.
☐ Convicted of a Class 3 or 4 offense (other than a violent crime as defined in Section 3 of the Rights of Crime Victims & Witnesses Act)
☐ 4 or more months remaining ☐ fewer than 4 months remaining 730 ILCS 5/5-4-1(c-7) (effective 7/1/21 P.A. 101-652)

The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 933 days as of the date of this order) from (specify dates) 4/7/20. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

☒ The defendant remained in continuous custody from the date of this order.
☐ The defendant did not remain in continuous custody from the date of this order (less _____ days from a release date of _____ to a surrender date of _____).

☐ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).

☐ The court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. (730 ILCS 5/5-4-1(a)).

☐ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. (730 ILCS 5/5-4-1(a)).

☐ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program: ☐ Educational/Vocational ☐Substance Abuse ☐ Behavior Modification ☐ Life Skills ☐ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible and shall be awarded additional sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4) for _____ total number of days of program participation, if not previously awarded.

☐ The Court further finds that the Defendant served _____days engaged in a self-improvement program, volunteer work, or work assignments, and shall receive .5 days of sentence credit for each day the Defendant was engaged in activities for a total of _____ (730 ILCS 5/3-6-3(a)(4.2)

☐ The Court further finds that the Defendant has been advised of and given a copy of the financial obligations and statutory fines, fees and assessments pursuant to SCR 452.

☐ The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

☐ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be concurrent with the sentence imposed in case number _____ in the Circuit Court of _____ County.
☐ IT IS FURTHER ORDERED that _____

The Clerk of the Court shall deliver a certified copy of this order to the sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of corrections which shall confine said defendant until expiration of this sentence or otherwise released by operation of law.

This order is ☒ effective immediately; ☐ stayed until _____

DATE:10/26/2022 ENTER: _____ **Kevin W Lyons**

FILED
ROBERT M. SPEARS
12/2/2022 10:14 AM
CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

No. 4-22-0982

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JATTERIUS YANKAWAY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois No. 20-CF-212 Honorable Kevin Lyons, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Jateirrus L. Yankaway
Appellant's Address:	Pinckneyville Correctional Center 5835 State Route 154 Pinckneyville, IL 62274
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Attempt First Degree Murder, Aggravated Battery, and Unlawful Use of a Weapon by a Felon
Date of Judgment or Order:	November 7, 2022
Sentence:	44 years and 26 years in prison
Nature of Order Appealed:	Conviction, Sentence, and Denial of Motion to Reconsider Sentence

/s/ Catherine K. Hart
CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

2023 IL App (4th) 220982-U

NO. 4-22-0982

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 20, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
JATTERIUS L. YANKAWAY,	)	No. 20CF212
Defendant-Appellant.	)	
	)	Honorable
	)	Kevin W. Lyons,
	)	Judge Presiding.

PRESIDING JUSTICE DeARMOND delivered the judgment of the court.
Justices Turner and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Counsel was not ineffective for filing a speedy trial demand under the wrong statute because defendant could not show counsel's deficient performance caused prejudice.

(2) Defendant's convictions for attempted first degree murder and aggravated battery violated the one-act, one-crime rule because the State treated the shooting as a single act by not apportioning the offenses among the shots fired in the charging documents or at trial.

(3) The trial court's misapprehension of the minimum sentence for attempted first degree murder did not arguably influence its sentencing decision.

(4) The trial court did not demonstrate judicial bias during sentencing.

¶ 2 In April 2020, defendant, Jatterius L. Yankaway, was charged with attempted first degree murder (720 ILCS 5/8-4(a), 9-1(A)(1) (West 2018)), aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2018)), and unlawful possession of a weapon by a felon (UPWF) (720

ILCS 5/24-1.1(a) (West 2018)). After a trial, which began on September 19, 2022, the jury found defendant guilty of the charged offenses and found the State proved a 15-year sentencing enhancement for possessing a firearm while committing attempted first degree murder.

¶ 3 Defendant appeals, arguing (1) he received ineffective assistance when counsel filed a speedy trial demand under the wrong statute after agreeing to multiple continuances, (2) his convictions for attempted first degree murder and aggravated battery violated the one-act, one-crime rule, (3) the trial court misapprehended the applicable sentence for attempted first degree murder, and (4) the court showed judicial bias during sentencing.

¶ 4 I. BACKGROUND

¶ 5 On March 20, 2020, the Illinois Supreme Court entered an emergency order permitting circuit courts to continue trials indefinitely to prevent the spread of the novel COVID-19 virus. Ill. S. Ct., M.R. 30370 (eff. Mar. 20, 2020). The stay remained in effect until October 1, 2021. Ill. S. Ct., M.R. 30370 (eff. June 30, 2021).

¶ 6 On April 9, 2020, the State charged defendant with attempted first degree murder, aggravated battery, and UPWF. Count I alleged defendant "personally discharged a firearm at Robert Hunter *** with the intent to kill or do great bodily harm to *** Hunter," causing great bodily harm. Count II alleged defendant knowingly discharged a firearm in Hunter's direction without legal justification while committing a battery, "thereby causing an injury to *** Hunter by means of the discharging of said firearm." Count III alleged defendant "knowingly had in his possession a firearm" after being previously convicted of a felony.

¶ 7 On April 13, 2020, the State charged defendant with UPWF in Peoria County case No. 20-CF-238. The State elected to proceed on case No. 20-CF-238, and defendant pleaded

guilty on September 28, 2020. The trial court sentenced him to seven years' imprisonment. Defendant remained in custody during the subsequent proceedings.

¶ 8 A. Pretrial Continuances

¶ 9 Turning to the case at issue, the trial court initially set the trial for January 25, 2021. However, on January 14, 2021, the State asked for a continuance due to an unavailable witness. The court moved the trial date to April 26, 2021, over defense counsel's objection. On April 8, 2021, the State requested a continuance because "there is some ballistics work that still needs to be done on the items of evidence that were collected." Defense counsel did not object, and the trial was moved to August 30, 2021.

¶ 10 On August 19, 2021, the State asked for a continuance because a COVID-19-related lockdown at an Illinois Department of Corrections (DOC) facility rendered one of its witnesses unavailable. Defense counsel objected, asserting, "My client was planning to go to trial." The court moved the trial date to November 15, 2021.

¶ 11 On November 15, 2021, the trial court had three trials scheduled, and defense counsel was the attorney of record in each of them. The court doubted all three would be completed that day, and it suggested continuing defendant's trial. After conferring with the parties, the court scheduled the trial for February 28, 2022.

¶ 12 On February 24, 2022, one of the State's witnesses was unavailable due to another COVID-19-related DOC facility lockdown, and the trial court moved the trial date to July 11, 2022. The court entered an order showing the parties moved for a continuance. Defense counsel filed an objection, arguing he "did not approve" of the continuance and it "did not toll the Defendant's speedy trial rights."

¶ 13 On June 29, 2022, the State moved for another continuance because two witnesses were unavailable. Defense counsel objected to the continuance. The trial court tried to determine whether the case's speedy trial clock was running, and if so, when it would expire. After conferring with the parties, the court concluded the clock was running, but neither the court nor the parties could determine its expiration date. The court set the trial for September 19, 2022, but it scheduled a status hearing on August 10, 2022, to review the speedy trial issue.

¶ 14 On June 30, 2022, defense counsel filed a speedy trial demand under section 103-5 of the Code of Criminal Procedure of 1963 (Criminal Code) (725 ILCS 5/103-5 (West 2020)).

¶ 15 At the status hearing on August 10, 2022, the trial court stated, "I don't think there is a speedy trial issue because [defendant] can't get out anyway," and it left the September trial date unchanged.

¶ 16 B. Motion to Dismiss

¶ 17 On September 15, 2022, defense counsel filed a motion to dismiss, alleging a speedy trial violation occurred. The motion argued the speedy trial clock began to run on October 1, 2021, and the continuances granted on August 19, 2021, February 24, 2022, and June 30, 2022, were not attributable to defendant. It alleged that, of the time between October 1, 2021, and the trial date of September 19, 2022, 228 days were not attributable to defendant and those 228 days exceeded the 120-day limit under section 103-5 of the Criminal Code. The trial court denied the motion, finding a 160-day speedy trial period applied pursuant to section 3-8-10 of the Unified Code of Corrections (Intrastate Detainers Statute) (730 ILCS 5/3-8-10 (West 2020)), and the trial fell within that time frame.

¶ 18 C. Attempted First Degree Murder Sentencing Range

¶ 19 On September 19, 2022, prior to trial, the State advised the trial court the sentencing range for attempted first degree murder was 6 to 30 years' imprisonment, with an additional 15 or 20 years possible, depending on which enhancement the State chose to pursue. The State asserted, "I believe that upon conviction the People would only be asking for a 15-year possession of a firearm [enhancement]," and "I can represent now that upon conviction I would be adding 15 years." Based on the 15-year enhancement, defendant faced a sentencing range of 21 to 45 years for attempted first degree murder, and the court admonished defendant accordingly.

¶ 20 D. Jury Trial

¶ 21 At trial, the evidence showed defendant and his accomplice, Jafari Robinson, shot Robert Hunter, defendant's cousin, multiple times during the early hours of July 26, 2019. Hunter testified he attended a party that night and he left the party in a vehicle with defendant, Robinson, and two other individuals. When Hunter exited the vehicle, he turned around and saw defendant and Robinson standing on either side of the vehicle, holding firearms. Hunter saw "flashes" and heard gunshots. Hunter suffered gunshot wounds to his "lower abdomen, left lower thigh, left groin, left thumb, left pinky and middle finger, left forearm, and left biceps." Due to his injuries, Hunter lost one of his fingers, he can no longer have children, and he cannot walk and must use a wheelchair.

¶ 22 Officers discovered five rounds of spent .40-caliber cartridge cases at the scene of the shooting. After defendant's arrest, officers found a .40-caliber handgun in the vehicle defendant was driving. Testing showed "very strong support" that defendant contributed DNA to the handgun's grip and trigger. Dustin Johnson, a forensic scientist who testified as an expert in

the field of firearm identification, said two of the spent .40-caliber rounds discovered at the scene were fired from defendant's .40-caliber handgun.

¶ 23 At the trial's conclusion, the jury found defendant guilty of attempted first degree murder, aggravated battery, and UPWF. The jury also found the State proved the 15-year enhancement for possessing a firearm while committing attempted first degree murder.

¶ 24 Defendant filed a motion for a new trial, arguing the trial court erred in denying his motion to dismiss on speedy trial grounds. The court denied the motion.

¶ 25 E. Sentencing Hearing

¶ 26 On October 26, 2022, the matter proceeded to sentencing. During defendant's statement in allocution, the following exchange occurred:

> "THE COURT: [Y]ou have the opportunity to say something in your own behalf, if you'd like to, before you get a sentence. I'm not suggesting you should or should not say anything, but if there's anything you would like to[ ] say now would be the time.
>
> Anything you'd like to say?
>
> [DEFENDANT]: Yeah, Your Honor.
>
> I want to take the time to let my little brother know that he'll see what I'm going through right now and just be mindful of who you keep around you and what you do out there. Even if you is innocent, there's still people ain't going to look at it the same with you having a reputation.
>
> I know I ain't a bad person. I know you all said a lot in this court. I know I ain't no bad person. I know I did a lot of good out there. I changed a lot of people life [*sic*], and I'm going to continue to do that. I'm going to continue to strive.

Yeah, my best friend [(the victim)] came in here and he told him—he told a lie. And if you all feel like that's the truth, that's on you all. It's deeper than the trial.

THE COURT: No. It's not on us all. It's on you.

[DEFENDANT]: It's deeper than the trial to me. This was—this is losing a family member and losing more family. I mean, it might be entertaining to you all, but—

THE COURT: I don't find it the least bit entertaining.

Go ahead.

[DEFENDANT]: It was different. So I want to see—I want you all to see—to my little brother, I want you to see how many people love me knowing that I was innocent. Just for they own pride, for they own thing, and I want—I want you to just really focus and pay attention. I want you all to pay attention. Look how many people ain't in this courtroom right now. How many people's life I changed. Focus on that. No matter how good you do, there's going to be an outcome like this if you play around with the wrong people. And to that I would—forever I would be my brother['s] keeper.

That's all I got to say.

THE COURT: All right. Thank you."

¶ 27 Before delivering its sentencing decision, the trial court made the following comments:

"[Y]ou murdered your cousin.

> So to say that somebody has a bad view of you comes as a surprise to no one. When you murder your cousin and your best friend or try to, that has a way of sticking around.
>
> ***
>
> [Y]ou said during your release that you were trying to spend time with your son and, quote, just trying to stay alive.
>
> When the probation officer asked for you to expand on that, you know, what's that all about, he said in 2015, when you were sentenced to the DOC, you kept hearing about friends of yours being killed and locked up for serious offenses. And you went on to say that this made you start feeling somewhat depressed and have anxiety about your own safety when back in the community.
>
> You, [defendant], are the person that the community needs to be afraid of, but, worse than that, your own family, your own family, and your own friend needed to be afraid of you.
>
> Now, maybe, maybe your view or maybe the way you cope with this is to say that he was going to kill me first. I don't see any evidence of that, but, either way, as difficult as this if for me to say, you are the reason prisons are built."

The court concluded, "I can't think of another case off the top of my head where the Defendant has been so cavalier, not in a rude way, I think you've not been rude, here you've been cordial, for the most part, but it's a shame that you picked a life of prison and not a life of Peoria."

¶ 28 The trial court sentenced defendant to 70 years' imprisonment—44 years for attempted first degree murder and 26 years for aggravated battery, to be served consecutively. It

did not sentence defendant for UPWF, saying, "A finding will be entered on the [UPWF] in Count 3, but judgment will not be entered." In delivering its sentencing decision, the court stated:

> "[I]t's the order and judgment of the Court that the Defendant *** be sentenced in Count 1, attempt first-degree murder, a Class X felony, to a term in [DOC] of 44 years. That it be followed by a period of three years of mandatory supervised release known as parole. That it be served at its 85 percent rate.
>
> It will be mandatorily consecutive to Count 2 as a matter of law. 44 years being a 26-year minimum because it's a 20-year tack-on with a six-year minimum. 44 years in total. It should be served at the mandatory consecutive rate in Count 2. Judgment is entered on Count 1.
>
> On Count 2, for aggravated battery, for 26 years, and that that be served with three years of mandatory supervised release as well."

¶ 29 On November 7, 2022, defendant filed a motion to reconsider his sentence, which the trial court denied.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Defendant argues (1) he received ineffective assistance when defense counsel did not file a speedy trial demand until June 30, 2022, and he failed to file the demand under the Intrastate Detainers Statute; (2) his convictions for attempted first degree murder and aggravated battery violated the one-act, one-crime rule; (3) the trial court misapprehended the minimum sentence defendant faced for attempted first degree murder; and (4) the court denied defendant a fair sentencing hearing by demonstrating judicial bias. We disagree.

¶ 33 A. Defendant Cannot Show Defense Counsel's Deficient Performance Caused Prejudice

¶ 34 While defendant possesses both a statutory and constitutional speedy trial right, this appeal involves only his statutory right. See 725 ILCS 5/103-5(a) (West 2022); U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. 1, § 8. When an incarcerated individual faces more than one charge in the same county, they "shall be tried upon all of the remaining charges thus pending within 160 days." 725 ILCS 5/103-5(e) (West 2022). The 160-day speedy trial timeline also applies "to persons committed to any institution or facility or program in the [DOC] who have untried complaints, charges[,] or indictments pending." 730 ILCS 5/3-8-10 (West 2022). Such a person must file an unambiguous speedy trial demand meeting the Intrastate Detainers Statute's requirements. See *People v. Staten*, 159 Ill. 2d 419, 428, 639 N.E.2d 550, 555 (1994); *People v. Sandoval*, 236 Ill. 2d 57, 65-67, 923 N.E.2d 292, 297-98 (2010). "[A] mere objection to delay does not suffice to invoke the statutory speedy-trial right. Rather, the defendant must make an objection specifically by demanding trial." *People v. Hartfield*, 2022 IL 126729, ¶ 35, 202 N.E.3d 890.

¶ 35 Defendant argues defense counsel provided ineffective assistance when he did not file a speedy trial demand under the Intrastate Detainers Statute or object on speedy trial grounds when the trial court granted continuances on August 19, 2021, November 15, 2021, February 24, 2022, and June 30, 2022. Defendant insists that had counsel filed a timely speedy trial demand under the proper statute and objected to the State's continuance requests, the 228 days allegedly not attributable to defendant between October 1, 2021, when our supreme court lifted the emergency order, and trial date on September 19, 2022, would have constituted a statutory speedy trial violation.

¶ 36 Defendant was subject to the Intrastate Detainers Statute because he was incarcerated when the State proceeded on the charges in the case below. See 730 ILCS 5/3-8-10 (West 2022). Defense counsel did not file a speedy trial demand until June 30, 2022, and he filed it under section 103-5 of the Criminal Code rather than the Intrastate Detainers Statute. Because counsel did not file the demand under the proper statute, the 160-day limit did not begin to run. See *Staten*, 159 Ill. 2d at 428-30.

¶ 37 When faced with an ineffective assistance of counsel claim, we apply the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 10, 93 N.E.3d 664. "To prevail on such a claim, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." (Internal quotation marks omitted.) *Thomas*, 2017 IL App (4th) 150815, ¶ 10. To establish deficient performance, the defendant must demonstrate counsel's performance "fell below an objective standard of reasonableness." *Thomas*, 2017 IL App (4th) 150815, ¶ 10. To establish prejudice, the defendant must show that, "but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different." (Internal quotation marks omitted.) *Thomas*, 2017 IL App (4th) 150815, ¶ 11. "A defendant must satisfy both prongs of the *Strickland* test and a failure to satisfy any one of the prongs precludes a finding of ineffectiveness." *People v. Simpson*, 2015 IL 116512, ¶ 35, 25 N.E.3d 601.

¶ 38 We find instructive our decisions in *People v. Jackson*, 235 Ill. App. 3d 732, 601 N.E.2d 1317 (1992), and *People v. Willis*, 235 Ill. App. 3d 1060, 601 N.E.2d 1307 (1992). *Jackson* and *Willis* involved codefendants represented by the same defense counsel, both of whom argued counsel was ineffective for filing a speedy trial demand under section 103-5 of the

Criminal Code rather than the Intrastate Detainers Statute. See *Jackson*, 235 Ill. App. 3d at 736; *Willis*, 235 Ill. App. 3d at 1063. Both defendants were incarcerated for 210 days between counsel's speedy trial demand and the trial's start date. *Jackson*, 235 Ill. App. 3d at 736, 739; *Willis*, 235 Ill. App. 3d at 1068. Both insisted counsel's allegedly deficient performance prejudiced them because the 160-day speedy trial limit would have expired if counsel had filed a demand under the proper statute. *Jackson*, 235 Ill. App. 3d at 736-40; *Willis*, 235 Ill. App. 3d at 1065-69.

¶ 39 In both *Jackson* and *Willis*, we found counsel's performance deficient. While counsel insisted he did not know the defendants were incarcerated when he filed his speedy trial motion, the record available to him showed they were. *Jackson*, 235 Ill. App. 3d at 737; *Willis*, 235 Ill. App. 3d at 1066. We determined "counsel should have known [the Intrastate Detainers Statute] governed [the defendants'] right to a speedy trial," and therefore counsel's actions "fell below a reasonably competent standard." *Jackson*, 235 Ill. App. 3d at 738; see *Willis*, 235 Ill. App. 3d at 1067.

¶ 40 However, we found the defendants failed to demonstrate prejudice because "the record [did] not support the conclusion that if defense counsel had filed the appropriate speedy-trial demand the State would not have brought defendant to trial within 160 days." *Jackson*, 235 Ill. App. 3d at 740; see *Willis*, 235 Ill. App. 3d at 1069. We emphasized that a prejudice finding would be wholly speculative, finding, "We cannot presume the State would not have prosecuted defendant within the required time. We simply do not know what would have happened had defense counsel filed a proper intrastate detainers motion." *Willis*, 235 Ill. App. 3d at 1069; see *Jackson*, 235 Ill. App. 3d at 740.

¶ 41 A notable factual difference exists between those cases and the one at issue. In *Jackson*, we observed, "The State's brief indicates defendant's trial was not delayed because of case backlog." *Jackson*, 235 Ill. App. 3d at 740. We found the State chose not to try the defendants within 160 days "because [the State] knew defense counsel erroneously cited section 103-5 of the Code, rather than [the Intrastate Detainers Statute], and did not fulfill the terms of the latter section in requesting a speedy trial." *Jackson*, 235 Ill. App. 3d at 740. We denounced the State's decision as "an inappropriate reliance on the procedural requirements of [the Intrastate Detainers Statute], particularly when the information that would have been contained in a proper demand was already known to the prosecutor." *Jackson*, 235 Ill. App. 3d at 740. Here, neither the record nor the briefs suggest the State inappropriately exploited defense counsel's mistaken belief regarding the applicable speedy trial time frame. Instead, the record suggests the State, defense counsel, and the trial court all operated under similar misunderstandings regarding the speedy trial time frame during the hearing on June 30, 2022.

¶ 42 Nevertheless, we reach the same conclusion here as we did in *Jackson* and *Willis*. Defendant was incarcerated for the duration of the proceedings below. Defense counsel's performance fell below a reasonably competent standard because he should have known the Intrastate Detainers Statute governed defendant's speedy trial right. See *Jackson*, 235 Ill. App. 3d at 738; *Willis*, 235 Ill. App. 3d at 1067. However, the record does not support the conclusion that if defense counsel filed a speedy trial demand under the proper statute, defendant would not have been brought to trial within 160 days. See *Jackson*, 235 Ill. App. 3d at 740; *Willis*, 235 Ill. App. 3d at 1069. We simply do not know what would have happened if defense counsel filed a proper intrastate detainers motion earlier in the process. *Jackson*, 235 Ill. App. 3d at 740; *Willis*, 235 Ill. App. 3d at 1069. Therefore, defendant cannot satisfy *Strickland*'s second prong by showing a

reasonable probability exists the proceeding's result would have been different but for counsel's error in preparing defendant's speedy trial demand. *Jackson*, 235 Ill. App. 3d at 740; *Willis*, 235 Ill. App. 3d at 1069. Accordingly, defendant's ineffective assistance argument fails. See *Simpson*, 2015 IL 116512, ¶ 35.

¶ 43 B. Defendant's Convictions for Attempted First Degree Murder and Aggravated x Battery Violated the One-Act, One-Crime Rule

¶ 44 Next, defendant argues we must vacate his aggravated battery conviction for violating the one-act, one crime rule. While defendant forfeited this issue by not raising it during the proceedings below or including it in a posttrial motion, he contends it constitutes second-prong plain error.

¶ 45 The plain error doctrine permits us to review unpreserved error in two instances:

> "(1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error and (2) where a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Belknap*, 2014 IL 117094, ¶ 48, 23 N.E.3d 325.

"Under the second prong of plain-error review, prejudice to the defendant is presumed because of the importance of the right involved, *regardless* of the strength of the evidence." (Emphasis in original and internal quotation marks omitted.) *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). "[O]ne-act, one crime violations fall within the second prong of the

plain error doctrine as an obvious error so serious that it challenges the integrity of the judicial process." *People v. Coats*, 2018 IL 121926, ¶ 10, 104 N.E.3d 1102.

¶ 46 "[A] criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *Coats*, 2018 IL 121926, ¶ 11. When conducting a one-act, one-crime analysis, we first "ascertain[ ] whether the defendant's conduct consists of a single physical act or separate acts." *Coats*, 2018 IL 121926, ¶ 12. An act is "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844-45 (1977). If the defendant committed multiple acts, we must then "determine[ ] whether any of the offenses are lesser-included offenses. [Citation.] If none of the offenses are lesser-included offenses, then multiple convictions are proper." *Coats*, 2018 IL 121926, ¶ 12. We review *de novo* whether a one-act, one-crime violation occurred. *Coats*, 2018 IL 121926, ¶ 12.

¶ 47 1. *The State Did Not Apportion the Offenses Among the Different Gunshots*

¶ 48 Defendant argues his attempted first degree murder and aggravated battery convictions were based on the same act, and he claims the State did not apportion the offenses into separate conduct. Relying on *People v. Crespo*, 203 Ill. 2d 335, 788 N.E.2d 1117 (2001), defendant contends we should not distinguish between the various gunshots because the State did not make that distinction in the charging documents or at trial.

¶ 49 In *Crespo*, the defendant stabbed the victim three times, but the State did not differentiate between the different stab wounds when charging the defendant with armed violence and two counts of aggravated battery. *Crespo*, 203 Ill. 2d at 342-43. Rather than apportioning the offenses among the three stab wounds, the indictment treated the stabbings as a single infliction of bodily harm and "charge[d] [the] defendant with the same conduct under

different theories of criminal culpability." *Crespo*, 203 Ill. 2d at 342. After reviewing the indictment and the State's closing argument to the jury, our supreme court determined "the State's theory at trial *** amply supports the conclusion that the intent of the prosecution was to portray [the] defendant's conduct as a single attack." *Crespo*, 203 Ill. 2d at 343-44. The court found the defendant's convictions for armed violence and aggravated battery with a deadly weapon violated the one-act, one-crime doctrine, and it vacated his conviction for aggravated battery with a deadly weapon. *Crespo*, 203 Ill. 2d at 344-46.

¶ 50 In *People v. Beltran*, 327 Ill. App. 3d 685, 693, 765 N.E.2d 1071, 1078 (2002), the Second District applied *Crespo* to an incident involving multiple shooters, after which the defendant was convicted of attempted first degree murder and aggravated discharge of a firearm. The Second District summarized *Crespo*'s finding thusly: "[A]lthough the multiple stabbings could have supported the separate convictions, the State did not apportion the crimes among the various wounds, either in the indictment or at trial. Because the State portrayed the defendant's conduct as a single attack, multiple convictions were untenable." *Beltran*, 327 Ill. App. 3d at 693. The Second District found *Crespo* controlled because, while the defendant and his accomplice fired multiple shots at multiple victims, the State "did not specify which shot supported which charge" in the indictment or at trial. *Beltran*, 327 Ill. App. 3d at 693. The Second District concluded, "Thus, against each victim, defendant committed a single act that supported only a single conviction," and it vacated the defendant's aggravated discharge of a firearm convictions. *Beltran*, 327 Ill. App. 3d at 693.

¶ 51 We find *Crespo* controls. While defendant and his accomplice fired multiple gunshots, which would have supported the different charges if distinguished in the charging documents or at trial (see *Crespo*, 203 Ill. 2d at 342, 345; *Beltran*, 327 Ill. App. 3d at 693), the

State failed to apportion the offenses to the various gunshots fired, "and it is improper for this court to do so now on appeal." *Crespo*, 203 Ill. 2d at 345. On appeal, the State argues the shooting consisted of multiple acts because the jury was instructed on defendant's accountability for his accomplice's actions. However, the State fails to distinguish *Crespo* and *Beltran*, which require us to look to the proceedings below to identify how the State treated the conduct at issue. See *Crespo*, 203 Ill. 2d at 345 ("[T]he indictment must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained."); *Beltran*, 327 Ill. App. 3d at 693 ("Because the State portrayed the defendant's conduct as a single attack, multiple convictions were untenable."). *Beltran* also dealt with a shooting involving a defendant and an accomplice, finding the defendant's accountability for his accomplice's actions did not prevent his convictions from violating the one-act, one-crime rule. See *Beltran*, 327 Ill. App. 3d at 692-93. We agree with *Beltran* and reach the same conclusion.

¶ 52 During the proceedings below, the State treated the shooting as a single act of bodily harm, as it did not apportion the charged offenses to the gunshots fired or the multiple injuries inflicted. See *Beltran*, 327 Ill. App. 3d at 693. Accordingly, defendant's conduct constituted a single act, which cannot sustain multiple convictions. See *Coats*, 2018 IL 121926, ¶ 11. We vacate defendant's conviction and sentence for aggravated battery, as attempted first degree murder is the more serious offense. See *Beltran*, 327 Ill. App. 3d at 693.

¶ 53 2. *Sentencing on Defendant's UPWF Conviction*

¶ 54 The State contends we should remand this matter for defendant to be sentenced on his UPWF conviction if we find a one-act, one-crime violation occurred. Defendant does not challenge this contention. The jury found defendant guilty of UPWF, but the trial court did not impose a sentence for it. The final judgment in a criminal case is the imposition of a sentence,

and the sentence is a necessary part of a complete judgment of guilt. *People v. Robinson*, 267 Ill. App. 3d 900, 907, 642 N.E.2d 1317, 1322 (1994). "In the absence of a sentence, a judgment of conviction is not final." *Robinson*, 267 Ill. App. 3d at 907. "The proper remedy for a failure to enter judgment is to remand to the circuit court for entry of judgment." *Robinson*, 267 Ill. App. 3d at 907. Because the court did not sentence defendant for his UPWF conviction, remand for sentencing on that count is necessary. See *People v. Segara*, 126 Ill. 2d 70, 78, 533 N.E.2d 802, 806 (1988) (remanding the matter "for sentencing on the second conviction because sentencing is a necessary component of a judgment of conviction").

¶ 55 We quickly note remand for sentencing on defendant's UPWF conviction raises no one-act, one-crime concerns, as defendant performed multiple acts by possessing a handgun and then firing it at Hunter. See *King*, 66 Ill. 2d at 566. The State distinguished those actions in the charging documents, and neither attempted first degree murder nor UPWF is a lesser-included offense of the other. See 720 ILCS 5/8-4(a), 9-1(A)(1), 24-1.1(a) (West 2020); *Coats*, 2018 IL 121926, ¶ 12.

¶ 56 C. The Trial Court's Misapprehension of the Sentencing Range Did Not Arguably Influence Its Sentencing Decision

¶ 57 Defendant also argues the trial court misapprehended the minimum sentence for attempted first degree murder, and the alleged misapprehension influenced the court's sentencing decision. As with his one-act, one-crime claim, defendant acknowledges he did not properly preserve these arguments, but he asks us to review them for second-prong plain error.

¶ 58 To establish second-prong plain error in the sentencing context, "a defendant must first show that a clear or obvious error occurred. [Citation.] Then, the defendant must show that *** the error was so egregious as to deny the defendant a fair sentencing hearing." *People v.*

Fisher, 2023 IL App (4th) 220717, ¶ 29. "A misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision." *People v. Eddington*, 77 Ill. 2d 41, 48, 394 N.E.2d 1185, 1188 (1979).

¶ 59 In *Eddington*, the trial court erroneously believed the minimum sentence applicable was 4 years' imprisonment, though it ultimately imposed a 20-year sentence. *Eddington*, 77 Ill. 2d at 48; see *People v. Eddington*, 64 Ill. App. 3d 650, 655, 381 N.E.2d 835, 839 (1978). In reaching its conclusion, our supreme court distinguished *People v. Moore*, 69 Ill. 2d 520, 372 N.E.2d 666 (1978), where "the trial judge imposed a 4-year minimum sentence term on a defendant, thinking that the law required a 4-year minimum term." *Eddington*, 77 Ill. 2d at 48 (citing *Moore*, 69 Ill. 2d at 521-24). The *Eddington* court found, "Nothing like that occurred here. The [trial] judge here expressly stated that 'this isn't the minimal kind of situation.' " *Eddington*, 77 Ill. 2d at 48. Our supreme court affirmed the defendant's sentence, finding, "Although the trial [judge] did refer, in his evaluation of the case for sentencing purposes, to his mistaken belief as to the minimum sentence required, there is no indication here that the 4-year minimum term was used by the trial judge as a reference point ***." *Eddington*, 77 Ill. 2d at 48.

¶ 60 *Eddington* applies here. The jury found the State met its burden regarding the 15-year sentencing enhancement for possessing a firearm while committing attempted first degree murder. Based on the 15-year enhancement, defendant faced a sentencing range of 21 to 45 years' imprisonment for attempted first degree murder. However, after imposing a 44-year sentence for attempted first degree murder, the trial court erroneously said defendant faced a 26-year minimum for that offense "because it's a 20-year tack-on with a six-year minimum." Notably, the court delivered its attempted first degree murder sentencing decision before

demonstrating its mistaken belief. It also expressed no intent to sentence defendant to the minimum or maximum sentence, nor did it seek to impose a sentence directly tied to either extreme. We find the court did not use its misapprehension of the applicable minimum sentence as a reference point, and its misstatement satisfied neither plain error prong. See *Eddington*, 77 Ill. 2d at 48.

¶ 61 Defendant analogizes this case to *People v. Hausman*, 287 Ill. App. 3d 1069, 679 N.E.2d 867 (1997). In *Hausman*, the trial court erroneously stated the applicable minimum sentence for aggravated battery was three years, rather than two years, and it imposed consecutive three-year prison terms. *Hausman*, 287 Ill. App. 3d at 1070-71. In doing so, the court declared, "[E]ven though I think your record mandates a much longer sentence, I am going to impose the *minimum sentence of three (3) years* in the [DOC]." (Emphasis added.) *Hausman*, 287 Ill. App. 3d at 1071. Based on the court's statements, we vacated the defendant's sentence and remanded for a new sentencing hearing because "it arguably influenced the judge's sentencing decision." *Hausman*, 287 Ill. App. 3d at 1072.

¶ 62 *Hausman* is distinguishable. There, the trial court's statements clearly and undeniably influenced its sentencing decision—the court sought to impose the minimum sentence, it believed the offense carried a three-year minimum sentence, and thus it sentenced the defendant to three years' imprisonment. See *Hausman*, 287 Ill. App. 3d at 1070-71. The same was true in *Moore*, where the trial court imposed a four-year sentence because it believed that was the minimum. *Moore*, 69 Ill. 2d at 521. Conversely, the trial court here declared the incorrect minimum sentence for attempted first degree murder, but it did not use that incorrect minimum as a reference point when sentencing defendant. See *Eddington*, 77 Ill. 2d at 48. The court's mistaken belief regarding the applicable minimum sentence for attempted first degree

murder did not arguably influence its sentencing decision. See *Eddington*, 77 Ill. 2d at 48. Accordingly, plain error did not occur.

¶ 63 D. The Trial Court Did Not Demonstrate Judicial Bias During Sentencing

¶ 64 Finally, defendant argues the trial court exhibited judicial bias against him, thereby denying him a fair sentencing hearing. "A sentencing hearing is fundamentally unfair when the proceeding is affected by judicial bias." *People v. Montgomery*, 2023 IL App (3d) 200389, ¶ 28. "Trial judges are presumed to be impartial, and the party claiming bias bears the burden of overcoming this presumption." *Montgomery*, 2023 IL App (3d) 200389, ¶ 28. To prevail on a judicial bias claim, a defendant must show the court exhibited "animosity, hostility, ill will, or distrust" toward the defendant. *People v. Vance*, 76 Ill. 2d 171, 181, 390 N.E.2d 867, 872 (1979). "Allegations of judicial bias must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place." *People v. Jackson*, 205 Ill. 2d 247, 277, 793 N.E. 2d 1, 19 (2001). We review *de novo* whether a trial court's conduct constitutes bias and requires reversal. *Fisher*, 2023 IL App (4th) 220717, ¶ 31.

¶ 65 As evidence of the trial court's purported bias, defendant highlights comments made during sentencing. During defendant's statement in allocution, defendant accused Hunter of lying during his testimony, saying, "[M]y best friend came in here and *** he told a lie. And if you all feel like that's the truth, that's on you all. It's deeper than the trial." The court briefly interjected, responding, "No. It's not on us all. It's on you." When defendant countered, "I mean, it might be entertaining to you all," the court replied, "I don't find it the least bit entertaining." Before delivering defendant's sentence, the court laid out the factors it considered in reaching its decision. In doing so, the court commented, "[Defendant is] the person that the community

needed to be afraid of," "[defendant is] the reason prisons are built," and "I can't think of another case off the top of my head where the Defendant has been so cavalier."

¶ 66 When viewed in context, these statements do not demonstrate bias against defendant. During his statement in allocution, defendant refused to accept responsibility for his actions and portrayed himself as a victim. Defendant blamed the trial court for believing Hunter's testimony and suggested the court found the process "entertaining." The court quickly refuted both assertions without belaboring either point. The court told defendant the community needed to fear him in response to defendant's claim he experienced anxiety and feared for his own safety when in the community. After noting Hunter, defendant's cousin, needed to fear defendant, the court declared, "[M]aybe the way you cope with this is to say that [Hunter] was going to kill me first. I don't see any evidence of that, but, either way, as difficult as this is for me to say, you are the reason prisons are built."

¶ 67 "The seriousness of the crime is the most important factor in determining an appropriate sentence." (Internal quotation marks omitted.) *People v. Kendrick*, 2023 IL App (3d) 200127, ¶ 50. Additionally, "trial courts may consider a defendant's lack of remorse or lack of veracity in imposing a sentence, since those are factors which may have a bearing on the defendant's potential for rehabilitation." (Internal quotation marks omitted.) *People v. Donlow*, 2020 IL App (4th) 170374, ¶ 84, 178 N.E.3d 1148; see *People v. Ward*, 113 Ill. 2d 516, 528, 499 N.E.2d 422, 426 (1986) ("[A] continued protestation of innocence and a lack of remorse may convey a strong message to the trial judge that the defendant is an unmitigated liar and at continued war with society. Such impressions *** are proper factors to consider in imposing sentence."). Here, the trial court responded to the seriousness of defendant's crimes and the significance of his refusal to accept responsibility, which are proper considerations during

sentencing. See *Kendrick*, 2023 IL App (3d) 200127, ¶ 50; *Donlow*, 2020 IL App (4th) 170374, ¶ 84.

¶ 68 Likewise, the record shows the trial court described defendant as "cavalier" because defendant's record demonstrated a complete disregard for the law, as well as a preference for committing crimes rather than abiding by the rules of society. Specifically, the court said, "I can't think of another case off the top of my head where the Defendant has been so cavalier, not in a rude way, I think you've not been rude, here you've been cordial, for the most part, but it's a shame that you picked a life of prison and not a life of Peoria." The court's statements, in context, demonstrate it was responding to the offense's seriousness, defendant's commitment to a life of crime, and defendant's refusal to take responsibility for his actions. They do not show "animosity, hostility, ill will, or distrust" toward defendant. *Vance*, 76 Ill. 2d at 181. Accordingly, remand for a new sentencing hearing is not warranted.

¶ 69 III. CONCLUSION

¶ 70 For the foregoing reasons, we affirm defendant's attempted first degree murder conviction and sentence, vacate his aggravated battery conviction and sentence, and remand this matter to the trial court for the limited purpose of sentencing defendant for his UPWF conviction.

¶ 71 Affirmed in part and vacated in part; cause remanded with instructions.