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2012 IL App (3d) 100402-U

Order filed February 15, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Putnam County, Illinois,
)	
v.)	Appeal No. 3-10-0402
)	Circuit No. 08-CF-5
)	
RICHARD M. KERETA, Jr.,)	Honorable
)	Kevin R. Galley,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State confesses error that defendant should not have been convicted of aggravated reckless driving, and resentencing on the remaining charges is not required.
- ¶ 2 Defendant, Richard M. Kereta, Jr., appeals his conviction for aggravated reckless driving causing permanent disability, arguing that reversal is required under the one-act, one-crime rule and that his case should be remanded for resentencing on his remaining convictions. We affirm in part and reverse in part.

¶ 3

FACTS

¶ 4 After a jury trial, defendant was convicted of aggravated driving under the influence of alcohol causing great bodily harm (625 ILCS 5/11-501(a)(2), (d)(1)(C) (West 2006)), aggravated reckless driving causing permanent disability (625 ILCS 5/11-503(a)(1), (c) (West 2006)), and driving while his license was revoked (625 ILCS 5/6-303(a), (d-3) (West 2006)). Defendant's convictions stemmed from a November 30, 2007, incident in which he was allegedly riding in a vehicle with the victim. While the victim was driving, defendant attempted to smoke cannabis. The victim became angry with defendant and asked him to stop smoking because her vehicle was new. The victim then stopped the vehicle, put its manual transmission into neutral, and walked away. Defendant continued to argue with the victim as she walked away, which prompted her to take off her right shoe and throw it at defendant. Defendant then exited the passenger side of the car and went to the driver's seat. At this point, the victim remembered that the vehicle began to move, but her next memory was of waking up in a hospital bed eight months later. The victim suffered severe injuries and was left paralyzed and unable to speak.

¶ 5 At the sentencing hearing, the trial court heard arguments from the State and defense counsel on factors in aggravation and mitigation. The court reasoned that its "sentence [was] based upon [its] assessment of the statutory factors in aggravation." The court noted: (1) that defendant's conduct caused "devastating bodily harm" to the victim; (2) he had a history of prior criminal activity; (3) the sentence was necessary to deter others from engaging in similar conduct; and (4) there were no factors in mitigation. The court declined to impose successive sentences on defendant's three convictions and imposed concurrent terms of 10 years'

imprisonment for aggravated driving under the influence, 3 years for aggravated reckless driving, and 3 years for driving while revoked. Defendant appeals.

¶ 6

ANALYSIS

¶ 7 On appeal, defendant argues that his conviction for aggravated reckless driving should be vacated under the one-act, one-crime rule. Defendant argues further that remand for resentencing is necessary because the trial court's sentencing decision was influenced by its erroneous conviction.

¶ 8 The State confesses error to defendant's first argument and recommends that we vacate defendant's conviction for aggravated reckless driving under the one-act, one-crime rule. However, the State argues that remand for resentencing is not warranted because the record does not indicate that the trial court considered the aggravated reckless driving conviction in sentencing the other convictions.

¶ 9 We agree that the trial court erred when it convicted and sentenced defendant on the aggravated reckless driving conviction. Defendant's conviction for aggravated reckless driving was based on the same physical act that provided the basis for his aggravated driving under the influence of alcohol conviction, *i.e.*, striking the victim with a vehicle while driving recklessly due to the consumption of alcohol. Defendant may only be convicted and sentenced on the most serious offense where multiple charges arise out of the same act. See *People v. King*, 66 Ill. 2d 551 (1977). Therefore, we reverse defendant's conviction and sentence for aggravated reckless driving.

¶ 10 Next, we examine defendant's argument that remand for resentencing is required. We afford great deference to the trial court's judgment on matters of sentencing. *People v. Bone*, 103

Ill. App. 3d 1066 (1982). When we cannot determine the amount of weight given to an improper factor in sentencing, we will remand the case to the trial court for resentencing. *People v. Durdin*, 312 Ill. App. 3d 4 (2000). However, we will affirm the trial court's sentence if it placed insignificant weight on the improper factors, such that they did not result in a greater sentence. *People v. Bourke*, 96 Ill. 2d 327 (1983).

¶ 11 We find that the trial court did not improperly consider defendant's reversed conviction in sentencing. At the sentencing hearing, the trial court specifically noted that its sentence was based on the statutory factors in aggravation and mitigation. The court announced defendant's sentence for each conviction individually and declined to impose consecutive sentencing terms. Furthermore, the court expressed the most concern for defendant's repeated disregard for the law and the severity of the victim's injuries and not defendant's aggravated reckless driving conviction. Thus, we conclude that the court placed little weight on the reversed conviction.

¶ 12 We affirm defendant's convictions and sentences for aggravated driving under the influence of alcohol and driving while license was revoked, and we reverse defendant's conviction for aggravated reckless driving.

¶ 13 **CONCLUSION**

¶ 14 For the foregoing reasons, the judgment of the circuit court of Putnam County is affirmed in part and reversed in part.

¶ 15 Affirmed in part and reversed in part.