



¶ 3 Defendant appeals, arguing that (1) his consecutive sentences are void because the trial court did not find that he inflicted severe bodily injury and (2) his convictions are void because the record does not show that the grand jury that indicted him was sworn. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant's estranged wife, Amy Bahler, testified at defendant's bench trial that on the evening of April 29, 2003, she was residing with her eight-year-old daughter, Courtney, in an apartment in Bloomington. She went to bed about 9:30 p.m. but was awakened when she heard her door open and saw defendant standing in her bedroom doorway holding a crowbar. He told her he was there to kill her with the crowbar. Amy grabbed her cordless phone, but she was unable to dial 9-1-1 when defendant began beating her on her head and shoulders with the crowbar.

¶ 6 After initially beating Amy, defendant lost his cellular phone and cigarettes and wanted to find them. He took Amy into the hallway as he looked for them, and when she started to scream and beat on another apartment door, defendant hit her even harder with the crowbar. He then took her back into her apartment. At one point, Amy fell on the floor, and defendant covered her mouth with one of his hands and started choking her. He also told her that if she tried to run again or scream, he would kill her.

¶ 7 Defendant then took Amy back to her bedroom and started beating her again with the crowbar. She begged him to stop. He responded that (1) they "can't talk anymore," (2) talking was not going to work, and (3) she had talked him "out of it" in the past, but this time he was "going to get the job done."

¶ 8 While defendant was beating Amy in her bedroom, Courtney yelled. Defendant

told Amy to get Courtney out of the apartment or he would kill Courtney. Amy went to Courtney and told her that they had to run for their lives. They both ran out the front door and down the hallway. Amy turned around and saw defendant chasing them while holding the crowbar in the air. Courtney then ran in one direction, and Amy in the other. Amy was trying to reach the apartment of Kay Kater, whom she believed would be able to help her. Amy got to Kater's door and banged on it, but defendant caught her and "really started beating" her. She tried to grab the crowbar so that defendant could not swing it, "but it was getting bloody, and [she] couldn't hold onto it anymore." Defendant then started kicking her.

¶ 9 At some point, defendant stopped beating Amy and ran away down the hallway. Amy ended up in Kater's apartment, but she did not remember how she got there. When the police arrived at Kater's apartment, they talked to Amy and took her to a hospital emergency room. She was admitted to the hospital, where she spent four days.

¶ 10 Courtney and Kater also testified, confirming Amy's story in all material respects. Kater testified that after hearing a loud commotion in the hallway, she opened her door and saw defendant beating Amy with a crowbar.

¶ 11 The physician who treated Amy in the emergency room testified that she had multiple lacerations on her face and the back of her head, as well as multiple bruises on her shoulders and arms. He prescribed pain medicine and stitched five lacerations on Amy's head. Because she had suffered a concussion, the physician admitted Amy to the hospital.

¶ 12 Following the bench trial, the trial court found defendant guilty of both attempt (first degree murder) and home invasion. The court explained its verdicts, in part, as follows:

"[T]he court notes that the defendant, as testified to by [Amy],

stated at the time of the incident that he came over to her home to kill her; he had purchased a crowbar and used that as a weapon to beat her about the head and body[.]

\*\*\*

The defendant's actions belie the argument that he did not intend to kill [Amy]. As the court mentioned, he bought and used a crowbar to beat her. He stated he was there to finish a job and to kill her. He had staked out or checked out her apartment building previously."

¶ 13 Defendant appealed, arguing only that the trial court erred by admitting certain videotape evidence that showed defendant purchasing the crowbar he used to beat Amy. This court rejected his arguments and affirmed. *People v. Bahler*, No. 4-04-0119 (Nov. 2005) (unpublished order under Supreme Court Rule 23).

¶ 14 In May 2006, defendant filed a petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-8 (West 2006)), alleging numerous violations of his constitutional rights. In September 2006, the State filed a motion to dismiss the petition. Following an October 2006 hearing, the trial court granted the State's motion and dismissed the petition. Defendant appealed, arguing in part that (1) the State improperly coached Courtney regarding her testimony and (2) his trial counsel was ineffective. We disagreed and affirmed. *People v. Bahler*, No. 4-06-0993 (Dec. 21, 2007) (unpublished order under Supreme Court Rule 23).

¶ 15 In December 2011, defendant filed a motion for leave to file successive

postconviction petition. The motion contained seven claims that defendant sought to raise. Among them were claims that (1) his convictions were void because there was no certificate establishing that the grand jury had been impaneled and (2) his consecutive sentences were void because the offenses occurred during a single course of conduct with no substantial change in the nature of the criminal objective. In May 2012, the trial court entered a written order denying defendant's motion for leave to file successive postconviction petition.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant makes two arguments in this appeal. First, he contends that the consecutive sentences the trial court imposed are void because the court did not find that he inflicted severe bodily injury. Second, defendant contends that his convictions are void because the record does not show that the grand jury that indicted him was sworn. Citing *People v. Croom*, 2012 IL App (4th) 100932, ¶ 23, 975 N.E.2d 1107, the State responds that we should affirm the denial of defendant's motion for leave to file a successive postconviction petition because it does not satisfy the cause-and-prejudice test. However, because defendant's arguments are based on his contentions that the court's orders are void, we will address them. *People v. Thompson*, 209 Ill. 2d 19, 27, 805 N.E.2d 1200, 1205 (2004). We first turn to defendant's sentencing claim.

¶ 19 A. Defendant's Consecutive Sentences

¶ 20 1. *The Applicable Statutes*

¶ 21 Following defendant's bench trial in September and October 2003, the trial court found him guilty of attempt (first degree murder) and home invasion. Each of these offenses was

a Class X offense (see 720 ILCS 5/8-4(c)(1), 12-11(c) (West 2002)), and they were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective. Under these circumstances, section 5-8-4(a)(i) of the Unified Code of Corrections (Unified Code) governed whether consecutive sentences could be imposed (730 ILCS 5/5-8-4(a)(i) (West 2002)). In 2003, when the charged offenses occurred, that section provided as follows:

"The court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, unless:

(i) one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury, \*\*\* *in which event the court shall enter sentences to run consecutively.*" (Emphasis added.) 730 ILCS 5/5-8-4(a)(i) (West 2002).

¶ 22

## *2. The Trial Court's Sentence*

¶ 23

In November 2003, defendant filed a posttrial motion in which he noted, in part, that the prosecutor requested the trial court find that defendant, while committing the offense of home invasion, "inflicted great bodily harm or serious and severe injuries upon the victim, Amy Bahler, and the [c]ourt so found[,] and defendant alleges that the court erred in so finding as a matter of law and as a matter of fact." At the hearing on defendant's posttrial motion, the

prosecutor addressed this portion of defendant's motion and mentioned that the reference to harm to the victim was for sentencing purposes. The prosecutor explained as follows:

"[T]here is also the fact that as a sentencing issue[,] Your Honor can find that a severe bodily injury occurred, thereby making these two Class X felonies mandatorily consecutive versus a concurrent sentence. I believed that when I asked for that finding of great bodily harm or severe bodily injury[,] which had been found to be similar or the same, that was the purpose in that. It was a sentencing issue."

¶ 24 After hearing further argument of counsel at the sentencing hearing, the trial court sentenced defendant, stating, in part, the following:

"The court has considered the evidence presented at the trial late last year [and] the evidence today presented in aggravation and mitigation, \*\*\*.

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The court believes the evidence shows that [defendant,] and the court stated this at the time of finding him guilty, that the defendant's intent was to kill Ms. Bahler on that night.

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The sentence to be imposed by the court must demonstrate to the defendant and to the public that this sentence is necessary to deter others from engaging in similar crimes and to deter the

defendant from ever considering engaging in the same conduct in the future.

The court will impose a sentence on count one, attempt murder, a term of twenty years in the Department of Corrections.

The court will impose on count two a sentence of twenty years, that would be on the home invasion count. *These sentences must be served consecutively.*" (Emphasis added.)

¶ 25 3. *Defendant's Contention That His Consecutive Sentences Are Void*

¶ 26 Defendant points out that section 5-8-4(a)(i) of the Unified Code (730 ILCS 5/5-8-4(a)(i) (West 2002)) prohibits consecutive sentences unless severe bodily injury was inflicted. He contends that because the trial court made no finding at the sentencing hearing that he inflicted severe bodily injury, consecutive sentences were prohibited. Accordingly, defendant concludes that because he received a sentence prohibited by law, his concurrent sentences are void. We disagree.

¶ 27 Several problems are present with this argument. The first derives from the holding of the Illinois Supreme Court in *People v. Hicks*, 101 Ill. 2d 366, 373, 462 N.E.2d 473, 476 (1984), where the trial court imposed consecutive sentences upon the defendant for his convictions of various serious felonies and the defendant contended that the court erred in doing so because the court did not specifically find that a consecutive sentence was required to protect the public from further criminal conduct by the defendant. Then-section 5-8-4(b) of the Unified Code (Ill. Rev. Stat. 1979, ch. 38, ¶ 1005-8-4(b)) provided, in part, that a court shall not impose a consecutive sentence unless the court is of the opinion that such a term is required to protect the

public from further criminal conduct by the defendant, "*the basis for which the court shall set forth in the record.*" (Emphasis added.) In rejecting this contention, the supreme court noted that the matter was not properly presented to the trial court because the defendant neither requested a specific finding nor complained that a basis for the required statutory finding was not sufficiently articulated. *Hicks*, 101 Ill. 2d at 374, 462 N.E.2d at 476. The supreme court further noted that while the better practice would be for the court to recite the language of the statute when imposing consecutive sentences, that recitation was not required. Instead, "[w]hat is required is that the record show that the sentencing court is of the opinion that a consecutive term is necessary for the protection of the public." *Hicks*, 101 Ill. 2d at 375, 462 N.E.2d at 477 (quoting *People v. Pittman*, 93 Ill. 2d 169, 442 N.E.2d 836, 840 (1982)).

¶ 28 We note that in a specially concurring opinion, Justice Simon wrote that the trial court "could not have more directly addressed the issues raised by section 5-8-4(b)[ of the Unified Code] then he did without employing the 'magic words' of the statute itself." *Hicks*, 101 Ill. 2d at 377, 462 N.E.2d at 478 (Simon, J., specially concurring).

¶ 29 In effect, the supreme court's decision in *Hicks* stands for the proposition that a defendant's failure to raise his concerns about the trial court's not using the statutory language of then-section 5-8-4(b) of the Unified Code that authorized the court to impose consecutive sentences amounted to forfeiture of that issue on appeal. Obviously, if a defendant can forfeit such a claim, a court's failure to use those "magic words" cannot render void the consecutive sentences it imposed. *Hicks* stands for the proposition that all the record need show is that (1) the court intended to impose a consecutive sentence and (2) the record supports the court's doing so.

¶ 30 We conclude that *Hicks* applies fully to the present one. The only difference between *Hicks* and this case is the nature of the finding that the trial court should make before imposing consecutive sentences. In *Hicks*, then-section 5-8-4(b) of the Unified Code required that when the court decided that a consecutive sentence is required to protect the public from further criminal conduct by the defendant, "the basis for [that decision] the court shall set forth in the record." Ill. Rev. Stat. 1979, ch. 38, ¶ 1005-8-4-(b). In the present case, section 5-8-4(a)(i) of the Unified Code required that the court find that defendant inflicted severe bodily injury before imposing consecutive sentences, and then the court *must* impose consecutive sentences. 730 ILCS 5/5-8-4(a)(i) (West 2002). We deem these differences to be without significance, and just like the defendant's failure in *Hicks* to raise his concerns about sentencing at the trial level amounted to forfeiture, defendant's failure here to raise his concerns about sentencing at the trial level amounted to forfeiture.

¶ 31 Second, this court rejected a similar argument in *People v. Johnson*, 368 Ill. App. 3d 1146, 1170, 859 N.E.2d 290, 310-11 (2006), where the defendant contended that his 85-year prison sentence for home invasion was improperly ordered to be served consecutively to his 60-year concurrent terms for attempt (first degree murder) because the trial court failed to articulate the basis for its determination that consecutive sentences were statutorily mandated. As in the present case, the defendant in *Johnson* argued on appeal that because the court failed to specify that the defendant inflicted severe bodily injury, section 5-8-4(a)(i) of the Unified Code prohibited the imposition of consecutive sentences. We rejected this argument, noting that the record clearly showed that the injuries suffered by one of the victims in *Johnson* constituted " 'severe bodily injury,' " for the purpose of consecutive sentencing under section 5-8-4(a)(i) of

the Unified Code. *Johnson*, 368 Ill. App. 3d at 1171, 859 N.E.2d at 311. Similarly, in the present case, the record clearly shows that the injuries suffered by Amy constituted "severe bodily injury" for purposes of that section—specifically, her concussion and the several days she spent in the hospital.

¶ 32 Last, we note that the State's final argument to the trial court at the sentencing hearing concerned precisely the issue now raised on appeal—namely, that the court needed to make a finding with regard to the severe bodily injury defendant inflicted upon Amy in order for consecutive sentences to be imposed. Then, at the end of the sentencing hearing, the court imposed a sentence of 20 years in prison on each felony conviction and concluded with these remarks: "These sentences must be served consecutively." Given that this matter was called to the court's attention a few minutes earlier and the context of the court's statement that consecutive sentences *must* be imposed, we have no doubt that the court understood the requirement that defendant must have inflicted severe bodily injury upon Amy before consecutive sentences could be imposed. We will presume that the court understood the applicable sentencing provision. See *People v. Sweeney*, 2012 IL App (3d) 100781, ¶ 42, 967 N.E.2d 876 (a trial court is presumed to know the law and how to properly apply it). The court's remarks about how it must impose consecutive sentences would otherwise make no sense.

¶ 33 In sum, as the supreme court stated in *Hicks*, it would be a "better practice" for the trial court here to have stated this finding explicitly, thereby avoiding the need for this court to have to address defendant's argument, but under the circumstances, we are satisfied that the court understood the law and acted accordingly. Further, under these circumstances, any deficiency in this sentencing record, again as in *Hicks*, amounts merely to an error of omission, which is



supreme court explained that "jurisdiction is not conferred by information or indictment, but rather by constitutional provisions. Accordingly, a charging instrument which fails to charge an offense does not deprive the circuit court of jurisdiction." Similarly, the absence of any document in the record showing that the grand jury was sworn does not deprive the trial court of jurisdiction. In support of this conclusion, we note the recent decision of the Third District Appellate Court in *People v. Bell*, 2013 IL App (3d) 120328, ¶ 8, 989 N.E.2d 1211, holding that an indictment is not required to show compliance with section 112-2 of the Code of Criminal Procedure of 1963 (725 ILCS 5/112-2 (West 1994)) that mandates that the grand jury be impaneled and sworn by the court.

¶ 37

### III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment as costs of this appeal.

¶ 39 Affirmed.