



"would have to be discarded," and the defendant "would not be subject to consecutive sentences."

¶ 4 In February 2011, the cause proceeded to a bench trial, where the victim testified that sometime during the early morning hours of April 13, 2009, the defendant, who was 23 at the time, had forced her to have sex with him in the front seat of his car. In his defense, the defendant testified that the victim had voluntarily given him a "hand job," but they had not engaged in sexual intercourse. The defendant also testified that when later questioned by the Richland County sheriff, he was "scared" and had thus claimed that he had never met the victim and that she had never been in his car. Notably, the victim's account of what had occurred was supported by the testimony of numerous corroborative complaint witnesses (see 725 ILCS 5/115-10 (West 2008)) and was further supported by the State's physical evidence. Stating, *inter alia*, that it "did not find [the defendant's] testimony believable or credible," the trial court ultimately found the defendant guilty on both counts of the State's amended information and entered judgments of conviction on both counts.

¶ 5 In August 2011, the cause proceeded to a sentencing hearing, where the trial court heard extensive testimony regarding the negative effects that the incident at issue has had on the victim and her family. In her victim impact statement, the victim concluded that the defendant had "made [her] hate [herself]." The court also heard evidence that while "exposing himself," the defendant had tried to convince a 14-year-old girl to have sex with him on numerous occasions while they were in a brief "dating relationship" in the winter of 2009.

¶ 6 The defendant's mother testified that the defendant is a loving, caring person who suffers from "ADHD" and is not "capable of rape." The defendant's stepfather provided similar testimony. Two teenaged daughters of one of the defendant's friends testified that they had frequently interacted with the defendant while they were neighbors, and he had

never made inappropriate advances towards them or had otherwise made them feel "uncomfortable."

¶ 7 In allocution, the defendant stated that he was sorry for what he had done and was sorry for what he had put the victim and her family through. Referencing his five-year-old son, who he described as a "big part of [his] life," the defendant indicated that he would use his time in prison to improve himself so that upon his release, he would be a better father.

¶ 8 In its sentencing argument, the State noted that the defendant's criminal history included a 2008 conviction for attempted criminal sexual abuse. The State also referenced the defendant's sex-offender evaluation, which concluded that he fell "within the moderate to high level to sexually re-offend" and "should receive sex[-]offender specific therapy." The State maintained that the defendant should be given a 50-year sentence on count I. The State did not argue for a sentence with respect to count II but agreed that the sentences on both counts "should and must run concurrently."

¶ 9 Characterizing the defendant's conduct with the victim as "stupid," defense counsel argued that the defendant was "not a sexual predator in the true sense of the word." Defense counsel argued that the defendant had not been "seeking out children to victimize" and that "the victim in this case had a part to play" in what had happened. Noting that the trial court had the discretion to impose a sentence of 6 to 60 years, counsel urged the court to find that several statutory factors in mitigation were applicable under the circumstances. Suggesting that the defendant needed to "learn a lesson" about "using good judgment around young girls," counsel maintained that "any sentence in excess of 16 years would be too severe given the facts of this case." Counsel agreed that any sentence imposed on count II "should run concurrent" with the sentence imposed on count I.

¶ 10 When imposing sentence, the trial court stated that it had considered the nature and circumstances of the offense in light of the evidence adduced at trial and the evidence

presented at the sentencing hearing. The court also discussed the statutory factors in aggravation and mitigation that it found applicable under the circumstances. See 730 ILCS 5/5-5-3.1(a), 5-5-3.2(a) (West 2008).

¶ 11 Observing that both of the defendant's convictions arose from a single incident, the trial court agreed that the defendant's "sentences should run concurrently." Referencing Illinois's "truth-in-sentencing law" (*People v. Stewart*, 381 Ill. App. 3d 200, 201 (2008)), the trial court noted that even "if he were given maximum good[-]conduct credit," by statute, the defendant would still have to serve 85% of any sentence imposed (see 730 ILCS 5/3-6-3(a)(2)(ii) (West 2008)). After calculating the time that the defendant had already spent in custody, the court twice emphasized that it was "very important" to consider the time that the defendant would "actually serve" on his convictions.

¶ 12 The court ultimately ordered the defendant to serve a 19-year sentence on count I and a concurrent 15-year sentence on count II. The court estimated that in addition to his time served prior to sentencing, the defendant would actually serve "almost 14 years," at which time the victim would be "almost 30 years of age." The court expressed its hope that "by that time[,] [the victim would be able to] put the memory of the [d]efendant behind her." The defendant subsequently filed a timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 Under the one-act, one-crime rule, "[m]ultiple convictions are improper if they are based on precisely the same physical act." *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). "Thus, if a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). "The application of the one-act, one-crime rule is a question of law, which we review *de novo*." *Id.*

¶ 15 On appeal, the defendant first argues that his conviction and 15-year sentence on

count II must be vacated under the one-act, one-crime rule. Acknowledging that both counts of its amended information were based on a single act of penetration and that criminal sexual assault is a less serious offense than predatory criminal sexual assault, the State concedes that the defendant's conviction and sentence on count II must be vacated. We accept the State's concession and accordingly vacate the defendant's conviction and sentence on count II. See *People v. Lush*, 372 Ill. App. 3d 629, 633 (2007).

¶ 16 The defendant next argues that "because it cannot be determined if the trial judge's view that [the defendant] was guilty of two felonies in this case was a significant factor in the decision to impose the 19-year term of imprisonment for the more serious offense," his cause should be remanded for resentencing on count I. The State counters that a remand for resentencing on count I is not necessary, because "[f]rom the trial judge's comments and sentences, it is evident that the court's sentencing decision for predatory criminal sexual assault was not influenced by [the] defendant's conviction for criminal sexual assault." We agree with the State.

¶ 17 Where a reviewing court cannot be certain whether a conviction vacated on appeal may have improperly influenced the trial court's sentencing judgment, a remand for resentencing is appropriate. See *People v. Taylor*, 114 Ill. App. 3d 265, 271 (1983); *People v. Alejos*, 104 Ill. App. 3d 414, 416 (1982). However, "remand for resentencing is not required where: (1) the circuit court sentenced defendant separately on each conviction; and (2) the record does not otherwise show that the court considered the vacated convictions in imposing sentence on the remaining convictions." *People v. Hurry*, 2012 IL App (3d) 100150, ¶ 21; see also *People v. Lawrence*, 254 Ill. App. 3d 601, 614 (1993); *People v. Poe*, 121 Ill. App. 3d 457, 463 (1984). It is the defendant's burden to establish that the trial court's sentencing judgment was improperly influenced by the existence of a conviction that has been vacated on appeal. *Lawrence*, 254 Ill. App. 3d at 614.

¶ 18 Here, the trial court imposed separate sentences on each of the defendant's convictions, and the record fully supports the conclusion that the sentence imposed on count I was in no way influenced by the defendant's conviction on count II. Throughout the proceedings below, the parties agreed that consecutive sentences were not a possibility and that both counts of the State's amended information were based on the same physical act. Moreover, at sentencing, the 6-to-60-year sentence that the defendant was to receive on count I was the only sentence that the trial court was asked to consider. We also note that when imposing sentence, the trial court repeatedly referenced the time that the defendant would "actually serve," and it is apparent that the court had a specific sentence in mind, *i.e.*, one that would keep the defendant incarcerated until the victim was "almost 30 years of age." Under the circumstances, a remand for resentencing is not required. See *People v. Radford*, 359 Ill. App. 3d 411, 419 (2005); *People v. Barraza*, 253 Ill. App. 3d 850, 858 (1993); *People v. Martin*, 121 Ill. App. 3d 196, 215 (1984); *People v. Mercado*, 119 Ill. App. 3d 461, 464 (1983).

¶ 19

#### CONCLUSION

¶ 20 For the foregoing reasons, we vacate the defendant's conviction and sentence on count II of the State's amended information and affirm his conviction and sentence on count I.

¶ 21 Affirmed in part and vacated in part.