

SIXTH DIVISION
March 13, 2015

No. 1-13-2564

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 1724
)	
MARTIN SOTELO,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

- ¶ 1 *Held:* When the trial court acted outside the scope of this court's mandate on remand, the court's order is void and must be vacated; the cause must be remanded for compliance with this court's mandate.
- ¶ 2 Following a bench trial, defendant Martin Sotelo was found guilty, under an accountability theory, of four counts of home invasion, four counts of armed robbery, and four counts of unlawful restraint. He was sentenced to eight years' imprisonment for the home invasion and armed robbery convictions, and to three years' imprisonment for the unlawful

restraint convictions. All sentences were to run concurrently. On appeal, this court reduced one armed robbery conviction to attempted armed robbery, vacated three home invasion convictions and four unlawful restraint convictions pursuant to the one-act, one-crime rule, and remanded the cause for resentencing as to the remaining convictions. See *People v. Sotelo*, 2012 IL App (1st) 103294-U, ¶ 77. Specifically, this court ordered, *inter alia*, that the clerk of the circuit court correct defendant's mittimus to reflect that his remaining conviction for home invasion was pursuant to section 12-11(a)(1) of the Criminal Code of 1961 (the Code) (see 720 ILCS 5/12-11(a)(1) (West 2010)), rather than section 12-11(a)(6) (see 720 ILCS 5/12-11(a)(6) (West 2010)), as there was no evidence that a sex crime occurred during the offense (see *Id.*, ¶¶ 48-50), and that his conviction for count 8 should be reduced from armed robbery to attempted armed robbery (*Id.*, ¶ 47).

¶ 3 On remand, the trial court sentenced defendant to eight years in prison for each of the four home invasion convictions and to three years in prison for each of the four unlawful restraint convictions. The court also reduced the four armed robbery convictions to attempted armed robbery and sentenced defendant to eight years in prison for each of those four convictions. All sentences were to run concurrently. Defendant now appeals, contending that the trial court's sentencing order is void because it did not comply with this court's mandate. He also contends that he was denied the effective assistance of counsel when counsel failed to ensure that the trial court complied with this court's mandate. We vacate the trial court's order and remand this cause for resentencing.

¶ 4 When a court of review issues a mandate, it vests the trial court with jurisdiction to take only such action as conforms to the mandate, and the trial court has no authority to act beyond

the scope of the mandate. *People v. Abraham*, 324 Ill. App. 3d 26, 30 (2001). As a result, any order issued by the trial court outside the scope of its authority is void for lack of jurisdiction (*People v. Ruiz*, 177 Ill. 2d 368, 382 (1997), citing *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276-77 (1982)), and must be reversed and vacated (*People v. Bosley*, 233 Ill. App. 3d 132, 137 (1992)).

¶ 5 Here, defendant contends that this cause must be remanded for resentencing a second time because the trial court failed to comply with this court's mandate as stated in *People v. Sotelo*, 2012 IL App (1st) 103294-U, ¶ 77. The State argues that the trial court followed the mandate of this court, but requests that we correct the mittimus. Inherent in this request is an acknowledgement that the trial court did not follow our mandate; if it had, there would be no errors in the mittimus to correct.

¶ 6 In defendant's prior appeal, this court vacated three home invasion convictions and four unlawful restraint convictions, reduced one armed robbery conviction to attempted armed robbery, ordered that the mittimus be corrected to reflect the proper statutory citation for the remaining home invasion conviction, and remanded the cause for resentencing. See *Sotelo*, 2012 IL App (1st) 103294-U, ¶ 77. The trial court's reduction of all four armed robbery convictions to attempted armed robbery is outside the scope of the remand, and, thus, void for lack of jurisdiction. *Ruiz*, 177 Ill. 2d at 382. The trial court also improperly resentenced defendant on the seven convictions that were vacated by this court. See *In re K.S.*, 365 Ill. App. 3d 566, 577 (2006) (a vacated judgment is nullified, canceled and void). As the trial court did not comply with this court's mandate as stated in *People v. Sotelo*, 2012 IL App (1st) 103294-U, ¶ 77, the court's order resentencing defendant must be vacated, and the cause remanded for compliance

with this court's mandate (*Bosley*, 233 Ill. App. 3d at 137). We remand the cause for resentencing, because, as we determined in our prior appeal, we cannot determine from the record whether defendant's sentence was influenced by the improper convictions. See *Sotelo*, 2012 IL App (1st) 103294-U, ¶¶ 47, 69. As we remand this cause for resentencing based upon the trial court's failure to comply with our mandate, we need not reach defendant's assertion that the cause should be remanded because he was denied the effective assistance of counsel.

¶ 7 Accordingly, we vacate the trial court's resentencing order, and remand for compliance with our mandate in defendant's prior appeal. See *Sotelo*, 2012 IL App (1st) 103294-U, ¶ 77. We instruct the clerk of the circuit court to correct defendant's mittimus by: (1) vacating the four unlawful restraint convictions; (2) vacating three of the home invasion convictions; (3) indicating that defendant was convicted of home invasion under section 12-11(a)(1) of the Code (720 ILCS 5/12-11(a)(1) (West 2010)); and (4) reducing defendant's conviction for armed robbery (count 8) to attempted armed robbery. This cause is remanded for resentencing as to the remaining convictions, that is, three counts of armed robbery (counts 5, 6, and 7), one count of attempted armed robbery (count 8), and one count of home invasion (count 1).

¶ 8 Vacated; remanded.