

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).

2016 IL App (4th) 160031-U

NO. 4-16-0031

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 24, 2016

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
MELVIN J. TURNER,)	No. 12CF596
Defendant-Appellant.)	
)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's sentence on his conviction for armed robbery.

¶ 2 In July 2013, a jury found defendant, Melvin J. Turner, guilty of (1) home invasion (720 ILCS 5/12-11(a)(2) (West 2010)) (count II), (2) armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)) (count III), and (3) criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2010)) (count V).

¶ 3 Prior to his sentencing hearing, defendant sent a letter to the trial court, raising several claims regarding the effectiveness of his trial counsel. At an August 2013 hearing, the court conducted an inquiry into defendant's ineffective-assistance-of-trial-counsel claims as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. Based on that inquiry, the court found that defendant failed to allege a credible claim that would have enti-

tled him to the appointment of new counsel. Immediately thereafter, the court conducted a sentencing hearing, during which it merged defendant's convictions on counts III and V with count II. On count II, the court sentenced defendant to 25 years in prison.

¶ 4 Defendant appealed, arguing that the trial court erred by failing to conduct an adequate *Krankel* hearing. In that appeal, defendant conceded the State's claim that the court should have imposed a sentence on his armed robbery conviction. This court reversed the trial court's denial of defendant's ineffective-assistance-of-counsel claims and remanded with directions that the court (1) conduct an adequate *Krankel* hearing and (2) sentence defendant on his armed robbery conviction. *People v. Turner*, 2015 IL App (4th) 130855-U (hereinafter, *Turner D*).

¶ 5 Upon remand, the trial court appointed counsel to represent defendant and conducted a *Krankel* hearing in October 2015. At the conclusion of the hearing, the court discussed each of defendant's claims and found that no sufficient basis shown for finding that trial counsel provided ineffective assistance of counsel. The court then raised the question of whether a new sentencing hearing needed to be held and ultimately concluded that the court did not need to do so.

¶ 6 On December 2, 2015, the trial court then imposed a sentence of 25 years in prison upon defendant's armed robbery conviction and directed that it be served concurrently with his 25-year sentence on home invasion. On December 4, 2015, the court entered a sentencing order consistent with the court's aforementioned judgment.

¶ 7 On February 24, 2016, the trial court entered an amended sentencing order that, in addition to the two convictions for home invasion and armed robbery, also included a conviction for criminal trespass to a residence and a four-year concurrent sentence on that conviction.

¶ 8 Defendant appeals, arguing that (1) the trial court erred when it failed to allow any evidence or argument at defendant's sentencing hearing on armed robbery; (2) the trial court did not have jurisdiction to issue an amended sentencing order on February 24, 2016; and (3) this court should vacate the criminal-trespass-to-a-residence conviction under the one-act, one-crime doctrine. We affirm defendant's armed robbery sentence and vacate the conviction and sentence for criminal trespass to a residence.

¶ 9 I. BACKGROUND

¶ 10 Because of the limited nature of the issues defendant raises on appeal, we will discuss only briefly the evidence presented at defendant's July 2013 jury trial.

¶ 11 A. The Evidence Presented at Defendant's Jury Trial

¶ 12 Evony Jackson testified that on December 2, 2012, she was at home with her boyfriend, Bryson Newsome, and their three-year-old daughter. After Jackson put her daughter to bed, she was in a different bedroom studying for a nursing exam when she heard a knock at the door. Jackson saw Newsome, who was in the living room, walk toward the door. Thereafter, Jackson heard more than one voice order, "Get on the ground. Get on the ground." At that moment, Jackson got up and saw several men. Jackson immediately locked her bedroom door and called 9-1-1. While on the phone, Jackson opened the bedroom door and saw one of the intruders enter her daughter's bedroom. As that man exited, Jackson saw his face but did not recognize him. The intruders left abruptly after realizing that Jackson had called the police.

¶ 13 After the police arrived, Jackson told an officer that she could not identify any of the intruders. Newsome later told Jackson that he recognized one of the intruders. Afterward, Jackson identified defendant as the person she saw exiting her daughter's bedroom, noting that defendant and she had attended the same middle school and high school.

¶ 14 Newsome testified that on the evening of December 2, 2012, he was at Jackson's home when he heard a knock at the back door. Newsome approached the door, opened the blinds covering the window, and saw defendant—whom Newsome knew—accompanied by another man who had his back to the window. When Newsome "cracked the door open," defendant pushed open the door and the other man struck Newsome in his left eye with a gun. The unknown intruder took at least \$300 from Newsome's pocket and threw him to the ground. While on the ground, Newsome saw three men. One stood over him, telling him not to move, while defendant and the other man moved about the house. Defendant told the person standing over Newsome, "Keep the .40 on him." Newsome then heard defendant say, "[Newsome's] girlfriend is in the bedroom calling the police. Let's go." Newsome observed that in addition to the money, the intruders also took an electronic gaming system and a laptop computer.

¶ 15 Newsome explained that he had known defendant for about 10 years, noting that they were former classmates. Earlier in the day, Newsome saw defendant at a local gas station. Newsome agreed to give defendant a ride but stopped en route to buy cannabis. Newsome realized that defendant saw the cash he possessed when he purchased the cannabis.

¶ 16 Defendant did not present any evidence.

¶ 17 B. Posttrial Proceedings

¶ 18 As mentioned earlier, after the trial court on remand conducted the *Krankel* hearing in October 2015 and concluded that trial counsel did not provide ineffective assistance, the court raised the question of whether a new sentencing hearing needed to be held. At that hearing, the court quoted from paragraph 41 of this court's decision in *Turner I*, as follows:

"[D]efendant concedes the State is correct [that a sentence on defendant's armed robbery conviction needs to be imposed] but re-

quests that this court enter a 25-year sentence on defendant's armed robbery conviction, which defendant claims is consistent with the trial court's intent. We accept defendant's concession but decline to impose a 25-year sentence on defendant's armed robbery conviction. Instead, because this court has already remanded this case for a *Krankel* hearing, we leave it to the sound discretion of the trial court to impose the appropriate sentence." *Id.* ¶ 41.

¶ 19 Defendant's new defense counsel informed the trial court that he would be requesting an entirely new sentencing hearing so that he could "lay out what has happened since the time this [offense] occurred." In response, the court expressed some uncertainty about whether defendant was entitled to an entirely new sentencing hearing, and if so, whether defendant was entitled to include information regarding any activities since his original sentence that he might seek to use as mitigating evidence. The trial court noted that this court said clearly that the one 25-year sentence remained (which, we note, was the sentence for home invasion), so the court stated that the question was whether the appellate court wanted the trial court to separate the sentences so that defendant would receive two separate sentences. The court noted that any sentence imposed on armed robbery would not "touch the original 25-year sentence."

¶ 20 At the next hearing, in December 2015, the trial court informed the parties that after conducting research on the question, the court believed neither a basis nor a need existed for a full-blown sentencing hearing and that if the court imposed any sentence other than the 25-year sentence, it would only be creating more issues than those which already existed. "So it would be the court's intention to simply follow the mandate of the appellate court, impose a conviction on the armed robbery count, count III, impose a concurrent 25[-]year sentence since I felt

that was the appropriate sentence at the time, and in the opinion of the court essentially the appellate court is taking us back to that point in time and saying resentence [defendant]. *** I don't think anything more than 25 years was appropriate or I would have sentenced him accordingly, nor did I think anything less than 25 years was appropriate or I would have sentenced him accordingly."

¶ 21 The trial court concluded by stating that based upon the mandate of the appellate court, the trial court would sentence defendant on armed robbery to 25 years in prison, with that sentence to run concurrently with the sentence in count II, home invasion, for which defendant was serving a 25-year prison term. This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant's primary argument is that the trial court erred on remand when it failed to allow any evidence or arguments at defendant's sentencing hearing on armed robbery. We disagree but understand the context for defendant's argument. Essentially, defendant argues that because this court in *Turner I* remanded this case to the trial court, leaving "it to the sound discretion of the trial court to impose the appropriate sentence," a new sentencing hearing was required. *Id.*

¶ 24 In retrospect, we now recognize that the problems in this case were caused by this court and that we should never have remanded the case for a new sentencing hearing on armed robbery. In other words, as we have already noted, defendant, in *Turner I*, conceded that the State was correct that he needed to be sentenced upon his armed robbery conviction and requested that this court enter a 25-year sentence on that conviction. We could have and should have done so, thereby avoiding any further issue on remand besides having the trial court conduct an appropriate *Krankel* hearing. With our apologies to all concerned for having wasted their time, it

