FIRST DIVISION
June 29, 2016

No. 1-15-1775

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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. 11 CR 13562
	)	
MARTEL HALBERT,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Griffin concurred in the judgment.

O R D E R

Held: Defendant's conviction and sentence for armed habitual criminal are affirmed. His conviction for UUWF is reversed because it is, as the State concedes, a violation of the one-act one-crime doctrine.

¶ 1 The trial court convicted defendant Martel Halbert after a bench trial of one count of being an armed habitual criminal and one count of unlawful use or possession of a weapon by a felon (UUWF). Mr. Halbert received a sentence of eight years of imprisonment for the armed habitual criminal conviction and a concurrent term of seven years of imprisonment for the UUWF conviction. In this direct appeal, Mr. Austin asks us to reverse his conviction on both

charges or, alternatively, to reduce his sentence. Mr. Halbert makes the following arguments which we address in turn: (1) the evidence was insufficient, in that the State did not introduce a handgun into evidence and no physical evidence linked him to a handgun; (2) he was denied a fair trial when the trial court found that police officers recovered a "45-caliber" handgun without testimony to support that finding; (3) the State failed to prove the recidivism element of his armed habitual criminal conviction because he was sentenced on the same day for both of the predicate convictions and one of the predicate convictions was under a statutory provision found to be void *ab initio*; (4) his conviction for UUWF violates the one-act, one-crime doctrine; and (5) we should exercise our discretion under Supreme Court Rule 615(b) to reduce his sentence. The State concedes that Mr. Halbert's UUWF conviction violates the one-act, one-crime doctrine, but contests the other issues. For the following reasons, we reverse and vacate Mr. Halbert's UUWF conviction and affirm his conviction and corresponding eight-year sentence for being an armed habitual criminal.

¶ 2 I. BACKGOUND

¶ 3 On August 24, 2011, the State charged Mr. Halbert by information with being an armed habitual criminal, UUWF, and aggravated unlawful use of a weapon (AUUW). The State relied on two prior convictions as predicates for the armed habitual criminal charge: one for AUUW (case number 02 CR 496); and one for the manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance (case number 03 CR 13348).

¶ 4 Mr. Halbert moved to dismiss the armed habitual criminal charge because it was based on an earlier conviction for AUUW, under a portion of the AUUW statute our Supreme Court deemed to be void *ab initio* in *People v. Aguilar*, 2013 IL 112116 . The trial court denied his motion on November 20, 2013, finding that, although predicated on a void statutory provision,

the AUUW conviction had not been vacated and the court did not have jurisdiction to vacate a conviction in another case. Mr. Halbert waived his right to a jury trial and the case proceeded to a bench trial on October 29, 2014.

¶ 5 The State's sole witness at trial was Chicago police officer Alvin Dimalantia. Officer Dimalantia testified that, on August 10, 2011, at roughly 12:30 a.m., he and his partner were patrolling the area around the intersection of Ferdinand Street and Lawler Avenue in Chicago in a marked police vehicle. They were traveling eastbound on Ferdinand Street approaching Lawler Avenue—what Officer Dimalantia described as an area of high drug use, crime, gang activity, and weapons possession—when they saw an individual 30 feet ahead, standing in the street and talking to the right-side passenger of a white sedan. Officer Dimalantia identified the individual in court as Mr. Halbert and said he saw the passenger of the white sedan give Mr. Halbert paper money, at which point the officers stopped their vehicle directly behind the sedan at the northeast corner of the intersection. Officer Dimalantia exited the vehicle for a field interview and, when he was roughly five to ten feet away from Mr. Halbert, said "police, come over here."

¶ 6 Mr. Halbert turned right, ran around the white sedan and northbound on the Lawler Avenue sidewalk. Officer Dimalantia gave chase for the length of three houses, telling Mr. Halbert to stop, and remaining no more than ten feet behind Mr. Halbert the entire time. Officer Dimalantia testified that, after the third house, Mr. Halbert turned right and dropped "what appeared to be a chrome handgun" in the grass of a long, narrow yard between the third and fourth houses. Officer Dimalantia removed his police-issued taser and told Mr. Halbert to stop or he would tase him. Mr. Halbert kept running and the officer tased Mr. Halbert near the garage of the fourth house—roughly 30 feet from where he saw Mr. Halbert drop the handgun—and took Mr. Halbert into custody with the help of his partner. Approximately one to two minutes after

tasing Mr. Halbert, Officer Dimalantia recovered from the narrow yard what he described in court as a "Smith and Wesson blue steel handgun," loaded with five live rounds. Around the time he recovered the handgun, other officers arrived. Officer Dimalantia testified that he inventoried the handgun according to Chicago Police Department procedures, that it was in working order and, after his recollection was refreshed, that the handgun had a live round in the chamber. The recovered handgun was not sent for fingerprint testing, nor was it introduced as evidence at trial.

¶ 7 Counsel for Mr. Halbert impeached Officer Dimalantia during cross-examination on one basis and attempted to impeach on another. First, Officer Dimalantia was asked about his prior testimony in a preliminary hearing in which he was asked how long he continued to chase Mr. Halbert after seeing him drop the handgun, to which he had responded "[a]bout ten feet." During the bench trial, Officer Dimalantia clarified that he had meant ten yards, or 30 feet. In the second instance, Officer Dimalantia acknowledged that he reported on his transmitter to the OEMC headquarters that he had recovered a handgun roughly ten minutes after tasing Mr. Halbert, even though he testified at trial that he recovered it only one to two minutes after tasing him. When asked about this discrepancy, the officer testified that "[t]here was a lot going on at the block," including that the officers had heard shots fired in the neighborhood and the keys to their police vehicle were stolen during the arrest. The stolen keys were noted in a supplemental report.

¶ 8 The State introduced into evidence four images depicting the intersection of Ferdinand Street and Lawler Avenue from different angles. Officer Dimalantia marked these exhibits to locate the arrest, where the gun was dropped, and the path of the chase itself. The State also introduced a letter from the Illinois State Police certifying that, as of September 14, 2011, Mr. Halbert did not have a Firearm Owner's Identification (FOID) card. The State also presented copies of certified statements of disposition for Mr. Halbert's prior convictions for AUUW in

case number 02 CR 496, and for the manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance in case number 03 CR 13348.

¶ 9 The State rested its case-in-chief and Mr. Halbert moved for a directed finding, arguing there was no handgun admitted into evidence, no evidence (other than the officer's testimony) that he possessed a working handgun on the day of the arrest, and no documentation to support the officer's testimony that a recovered handgun was ever inventoried. The trial court denied the motion, stating in relevant part that, "[i]n the light most favorable to the State, the officer did testify about the gun," including that "there was a round in the chamber. I believe he said it was [a] 45-caliber Smith and Wesson. Court believes that testimony is sufficient."

¶ 10 Mr. Halbert elected not to testify in his own defense and, after admitting an additional exhibit depicting the place where the arrest occurred, he rested.

¶ 11 The trial court found Mr. Halbert guilty of one count of being an armed habitual criminal and one count of UUWF and acquitted him on the remaining charges. The court stated that it "observe[d] the officer's demeanor and obviously listened very closely," and "f[ound] this officer to be credible." As for the "ten-minute delay in reporting that the weapon was recovered" and the "10 yards or 30 feet and testimony from the preliminary hearing transcript" discrepancy, the court accepted Officer Dimalantia's explanation as reasonable and believed his testimony was otherwise consistent.

¶ 12 On May 5, 2015, the trial court denied Mr. Halbert's motion for a new trial and heard arguments for sentencing. The trial court declined to "specifically outline [the sentencing factors] and put certain weights on aggravation and mitigation," except to say that Mr. Halbert had violated probation for one of his earlier convictions and that his criminal record went back to 1999. It noted, however, that "his record is very old in this case [going] back to 2003, 2002," and

he had not been convicted of any crime since. The trial court sentenced Mr. Halbert to an eight-year term of imprisonment for the class X offense of armed habitual criminal and a concurrent term of seven years for the class 2 offense of UUWF. This appeal followed.

¶ 13 II. JURISDICTION

¶ 14 Mr. Halbert was sentenced on May 5, 2015, and timely filed his notice of appeal on May 29, 2015. On May 26, 2017, we granted him leave to amend his previously-amended notice of appeal to correct the descriptions of both offenses for which he was convicted and the exact terms of years in his sentence, which were unclear in the earlier notices. We have jurisdiction under article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 15 III. ANALYSIS

¶ 16 A. Sufficiency of the Evidence

¶ 17 When reviewing the sufficiency of the evidence to sustain a conviction, we ask whether, considering the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *People v. Brown*, 2013 IL 114196, ¶ 48. It is for the trier of fact to assess the credibility of witnesses, weigh and resolve conflicts in evidence, and draw reasonable inferences (*People v. Ward*, 2011 IL 108690, ¶ 48); it is not the function of this court to retry the defendant (*People v. Evans*, 209 Ill. 2d 194, 209 (2004)). The positive and credible testimony of a single witness is sufficient to convict a defendant (*People v. Siguenza-Brito*, 235 Ill. 2d. 213, 229 (2009)) and we will not overturn a conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt" (*People v. Schott*, 145 Ill. 2d 188, 203 (1991)).

¶ 18 A person commits the offense of being an armed habitual criminal if he "possesses *** any firearm after having been convicted of a total of 2 or more times of any combination" of specified offenses. 720 ILCS 5/24-1.7(a) (West 2010). He commits UUWF if he "knowingly possess[es] on or about his person *** any firearm *** if [he] has been convicted of a felony." 720 ILCS 5/24-1.1(a) (West 2010). Mr. Halbert argues that there was insufficient evidence that he possessed a firearm.

¶ 19 Mr. Halbert contends that no rational trial of fact would have found Officer Dimalantia's testimony credible on this point because: (1) the officer altered his testimony about the distance Mr. Halbert ran after dropping the handgun from 10 feet to 30 feet; (2) he failed "to report a gun for several minutes after recovering it"; (3) he "added testimony at trial that he saw Halbert pull the gun from his waistband"; (4) he did not preserve the handgun for fingerprint analysis; and (5) the State did not support Officer Dimalantia's account with corroborating testimony or by introducing the handgun into evidence.

¶ 20 It is well-settled that the testimony of a single witness, if positive and credible, is sufficient to convict. *Siguenza-Brito*, 235 Ill. 2d at 228. What Mr. Halbert invites us to do, then, is reweigh the evidence, which we decline to do. *Evans*, 209 Ill. 2d at 209; *Siguenza-Brito*, 235 Ill. 2d at 228 ("A reviewing court will not reverse a conviction simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible.").

¶ 21 Mr. Halbert identifies only a single point on which Officer Dimalantia was impeached on the stand. The officer testified at a preliminary hearing that he chased Mr. Halbert for 10 feet after the suspect dropped what appeared to be a handgun. That changed to 10 yards, or 30 feet, at the bench trial. Officer Dimalantia indicated that he misspoke earlier, that he meant 10 yards. The trial court—sitting as factfinder, charged with seeing and hearing the testimony and

assessing the officer's credibility—accepted the clarification and found his testimony was otherwise consistent throughout a thorough cross-examination. Construed in the State's favor (*Brown*, 2013 IL 114196, ¶ 48), we do not find that this discrepancy renders the officer's testimony incredible or creates reasonable doubt.

¶ 22 The trial court heard testimony regarding the time that elapsed between when the officers recovered the handgun and when they reported it, as well as the reason for that delay, that the officers at the scene heard shots fired in the neighborhood and that the keys to their police vehicle were stolen, a fact corroborated by the supplemental report that Mr. Halbert's counsel used to cross-examine Officer Dimalantia. Mr. Halbert is correct that Officer Dimalantia related one additional detail at trial—that he saw Mr. Halbert pull the recovered handgun from his waistband—but offering additional facts at trial does not undermine the officer's credibility.

¶ 23 While Mr. Halbert points to departmental policy requiring Officer Diamalantia to preserve the handgun for fingerprint analysis, the failure to do so does not render the evidence insufficient. See *People v. Bennett*, 154 Ill. App. 3d 469, 475 (1987) ("[T]he lack of fingerprint evidence does not necessarily raise a reasonable doubt as to guilt," rather "it is unnecessary and cumulative where there is eyewitness testimony."). Neither was the State obligated to corroborate his testimony with a handgun or another witness; such a requirement runs contrary to settled law that the testimony of a single eyewitness may be sufficient to establish guilt beyond a reasonable doubt. See *Siguenza-Brito*, 235 Ill. 2d at 228. Viewing the evidence in the light most favorable to the State, we are not left with a reasonable doubt of Mr. Halbert's guilt.

¶ 24 B. Fair Trial Claim

¶ 25 Mr. Halbert argues that he was denied his due process right to a fair trial because "the trial court may have found [him] guilty based on a misunderstanding of Dimalantia's testimony."

He claims that this misapprehension led the trial court to believe that the State's proof that the item Officer Diamalantia recovered was a firearm was stronger than it actually was. The basis for this claim is the fact that, when the trial court denied Mr. Halbert's motion for a directed finding, it briefly reviewed Officer Dimalantia's testimony and recalled the officer testifying that "there was a round in the chamber. I believe he said it was [a] 45-caliber Smith and Wesson." The recollection that the handgun was a "45-caliber" was erroneous. There was no testimony or other evidence as to the caliber of the gun. Mr. Halbert did not point out this mistake to the trial court at the time or in his post trial motion, although he did argue in that motion, as he argues on appeal, that there was insufficient proof that he possessed a firearm.

¶ 26 The State concedes that the trial judge's statement that the gun was a 45 caliber is wrong but argues that this misstatement was harmless error because there was ample evidence that the item recovered was a firearm. The State also suggests that Mr. Halbert may have forfeited this issue, because he did not raise a specific objection below. We do not agree that Mr.Halbert has forfeited this issue but do agree that the trial court's misstatement of the evidence does not raise a due process violation.

¶ 27 Due process requires that criminal defendants be afforded fair trials. U.S. Const., amend. XIV, § 1; Ill. Const. art. I, § 2; *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). "[T]he failure of the trial court to recall and consider evidence that is crucial to a criminal defendant's defense is a denial of the defendant's due process," (*People v. Williams*, 2013 IL App (1st) 111116, ¶ 75 (citing *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992))), which we review *de novo* (*Id.*).

¶ 28 We agree with Mr. Halbert that under *Williams* and *Mitchell* he was not required to correct or interrupt the court, or to point out the error in a post trial motion, in order to preserve a due process objection based on the trial court's misapprehension of the evidence. As we said in

Williams, 2013 IL App (1st) 111116, ¶ 107 (citing *Mitchell*, 152 Ill.2d at 324), "a defendant need not interrupt a trial court to correct a trial court's misapprehension, after defense counsel has just argued the same to the court." As those cases make clear, a defendant preserves this claim by a general objection in a posttrial motion—like Mr. Halbert's argument here that Officer Dimalantia's testimony was insufficient to establish that the object he claimed to have recovered was a firearm. *Id*. ¶ 108 (citing *Mitchell*, 152 Ill. 2d at 325). Thus, we will review Mr. Halbert's due process claim.

¶ 29 Mr. Halbert insists that "the trial court's misrecollection went to the crux of [his] defense, which was that the State had failed to prove that Dimalantia recovered a firearm." He draws our attention to the statutory definition of "firearm" (430 ILCS 65/1.1 (West 2010)), which provides that: " 'Firearm' means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." Mr. Halbert claims the trial court's erroneous description of the handgun's caliber "went directly to its evaluation of the strength of the State's proof that it was a 'firearm.' "

¶ 30 We fail to see how the trial court's mistaken belief about the handgun's caliber addressed "crucial" evidence under a due process analysis. The two offenses for which Mr. Halbert was convicted prohibit possession of "*any* firearm," regardless of its dimensions or the caliber of the projectile it fires. See 720 ILCS 5/24-1.7(a) (West 2010); 720 ILCS 5/24-1.1(a) (West 2010) (Emphasis added.). His defense at trial, consistent with his position on appeal, was that he never possessed a firearm at all, that police officers fabricated the possession after wrongfully tasing him. His citation to the statutory definition of "firearm" does not explain why the trial court's erroneous injection of "45-caliber" into its summary of the evidence makes this particular property of the recovered handgun "crucial" to his defense.

¶ 31 This case is very different from the *Williams* case on which Mr. Halbert relies. In contrast to *Williams*, the incorrect "45-caliber" remark was not crucial to Mr. Halbert's defense. The defendant in *Williams* was convicted of murder, home invasion, and armed robbery based on DNA evidence left at the scene and the testimony of a "jailhouse informant." *Williams*, 2013 IL App (1st) 111116, ¶¶ 1, 5. The DNA was tested by four forensic experts drawn from two different laboratories, each of whom concluded the DNA was a mixture from at least three individuals, but only one of which concluded that the defendant's DNA was a "match." *Id*. ¶ 6. The State relied on the expert that found a match, and the defendant provided one of the three disagreeing experts. *Id*. ¶¶ 36-40, 52-59. The defense expert testified that the DNA merely showed that defendant "could not be excluded," but the trial court misstated that testimony in finding that the expert had testified "that certainly it was still the defendant [who] was one of the individuals whose DNA was on those gloves." *Id*. ¶ 65.

¶ 32 We reversed, finding that the defendant's due process right to a fair trial had been violated by the trial court's erroneous finding, because "the mistakenly recalled fact concerned the primary issue in the case: was it 'certainly' defendant who committed the crime?" *Id*. ¶ 90. We found that "the trial court's failure to recall crucial testimony from the only defense witness was a due process violation" and was not "harmless beyond a reasonable doubt." *Id*. ¶¶ 86, 98.

¶ 33 Mr. Halbert's defense here was that he did not possess any handgun, a totally separate consideration from the caliber of the alleged handgun. In contrast to *Williams*, the mistaken description of the handgun as "45-caliber" did not speak directly to the primary issue in the case and was, therefore, not crucial to the defense. Therefore, Mr. Halbert was not denied a fair trial.

¶ 34 C. Predicate Convictions for Armed Habitual Criminal

¶ 35 Mr. Halbert challenges his conviction for being an armed habitual criminal on two bases:

first, he argues that the language of the armed habitual criminal statute cannot apply to him because he was sentenced on both of his predicate felonies on the same day; and second, that his earlier AUUW conviction cannot be the basis for an armed habitual criminal conviction because it was under a statutory provision later held to be void *ab initio* by our Supreme Court. We reject both of these arguments.

¶ 36 1. Sentences Entered on the Same Day

¶ 37 Mr. Halbert argues that the language of the armed habitual criminal statute mandating criminal liability for those "convicted a total of 2 or more times" of the specified felonies (720 ILCS 5/24-1.7(a) (West 2010)) is ambiguous and, therefore, must be construed in his favor. See *People v. Davis*, 199 Ill. 2d 130, 135 (2002) ("[C]riminal or penal statutes are to be strictly construed in favor of the accused."). He argues the reference to "2 or more times" must be read to require *sequential* convictions on separate days, and that the word "times" imparts a temporal property to the predicate offenses foreclosing convictions handed-down on the same day.

¶ 38 The State argues that the statute is not ambiguous, that the plain meaning of "times" requires only multiple convictions, and not multiple, sequential convictions separated in time. Even if the statute is subject to more than one interpretation, the State insists we should resolve the ambiguity by comparing the armed habitual criminal statute to similar statutes—namely the habitual criminal statute and the class X offender statute (730 ILCS 5/5-4.5-95(a), (b) (West 2010))—both of which explicitly require the first, second, and third convictions be entered sequentially within a given timeframe. The State argues that, "when the legislature wants to impose a particular restriction or condition on a statute, it knows how to do so."

¶ 39 We agree with the State that the armed habitual criminal statute's plain meaning is clear. The phrase "2 or more times" plainly applies to those offenders with multiple felony convictions,

and not exclusively to those with two or more felony convictions handed-down on different days. Even if we were to agree with Mr. Halbert that the word "times" is ambiguous, the State is correct that the contrasting language of other statutes clearly requiring sequential predicate convictions indicates that no such requirement was intended here.

¶ 40 2. Conviction Based on a Statutory Provision Held to Be Void *Ab Initio*

¶ 41 Mr. Halbert also argues that his conviction for being an armed habitual criminal is improperly based on a 2003 conviction for AUUW under a portion of the AUUW statute that our Supreme Court in *People v. Aguilar*, 2013 IL 112116, and *People v. Burns*, 2015 IL 117387, held was facially unconstitutional and void *ab initio*. The Supreme Court later considered the effect of its holding in *Aguilar* in *People v. McFadden*, 2016 IL 117424, finding that the burden is on a criminal defendant who has been convicted under this facially unconstitutional statute to clear his status as a felon through the judicial process to avoid future convictions predicated in part on that status. *Id*. ¶ 30. Mr. Halbert argues *McFadden* is different in that the "status-based" UUWF conviction at the heart of that case is distinguishable from his conduct-based "recidivist" conviction for armed habitual criminal. He then argues that, even if being an armed habitual criminal is a "status" offense, we should not follow *McFadden* because it was wrongly decided, in derogation of United States Supreme Court decisions in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718, 730 (2016) and *Ex parte Siebold*, 100 U.S. 371, 376-77 (1879).

¶ 42 We have recently had numerous occasions to consider these same arguments and, bound by *McFadden* and other controlling precedent, have rejected them. See *People v. Smith*, 2017 IL App (1st) 151643, ¶¶ 9-24, *reh'g denied* (Oct. 27, 2017), *appeal denied*, No. 122894 (Ill. Jan. 18, 2018), *cert. denied sub nom.* No. 17-8510 (U.S. May 14, 2018); *People v. McGee*, 2017 IL App (1st) 141013-B, ¶¶ 14-27, *appeal denied*, No. 122419 (Ill. Sept. 27, 2017), *cert. denied sub nom.*

No. 17-7148 (U.S. Jan. 22, 2018); *People v. Fields*, 2017 IL App (1st) 110311-B, ¶¶ 38-49, *appeal denied*, No. 122200 (Ill. Nov. 22, 2017); *People v. Perkins*, 2016 IL App (1st) 150889, ¶¶ 6-10, *appeal denied*, No. 121407 (Ill. Nov. 23, 2016), *cert. denied sub nom.* No. 16-8053 (U.S. June 26, 2017). Mr. Halbert's 2003 AUUW conviction could serve as a predicate for his current conviction for being an armed habitual criminal.

¶ 43 3. The Pretrial Motion to Dismiss

¶ 44 Mr. Halbert also makes an argument that the trial court should have vacated his 2003 AUUW conviction, prior to the trial in this case, based on his motion to dismiss. He argues that a void order may be attacked at any time or in any court, either directly or collaterally. However, the trial court was correct in finding it had no jurisdiction to vacate his prior conviction because "[t]o receive relief from his void conviction *** the only way to vacate a conviction after a judgment has been entered [is] through the filing of a section 2-1401 petition." *People v. Shinaul*, 2017 IL 120162, ¶ 14 (citing *McFadden*, 2016 IL 117424, ¶¶ 20, 31-32); 735 ILCS 5/2-1401 (West 2010).

¶ 45 Furthermore, the trial court properly denied Mr. Halbert's motion to dismiss for the same reason we decline to vacate his armed habitual criminal conviction. *McFadden* requires a criminal defendant with qualifying predicate felonies to take the affirmative steps necessary to have those prior convictions vacated through a section 2-1401 petition *before* possessing a firearm, and not after he is charged with being an armed habitual criminal. We acknowledge, as we stated in *Smith*, 2017 IL App (1st) 151643, ¶ 30, that convictions like Mr. Halbert's present a "troubling situation" that calls for a legislative solution. We are nonetheless bound to affirm that the trial court had no jurisdiction to vacate Mr. Halbert's AUUW conviction on a motion heard in another proceeding, and also that it correctly denied his motion to dismiss.

¶ 46 D. One-Act, One-Crime

¶ 47 Mr. Halbert's convictions for being an armed habitual criminal and UUWF are both based on the same physical act—his unlawful possession of a firearm on August 10, 2011. He argues, and the State concedes, that his conviction for UUWF should be vacated in accordance with the one-act, one-crime rule. We agree with the parties. When a defendant is convicted of more than one offense for the same physical act, a "sentence should be imposed on the more serious offense and the less serious offense should be vacated." *People v. Artis*, 232 Ill. 2d 156, 170 (2009). We will address the modification of the mittimus below, as part of our consideration of his sentence.

¶ 48 E. Sentence Reduction under Rule 615(b)

¶ 49 Having vacated Mr. Halbert's conviction for UUWF, we address his request that we exercise our discretion to reduce his sentence solely as it pertains to his armed habitual criminal conviction. "The Illinois Constitution requires that '[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 41 (quoting Ill. Const. 1970, art. I § 11). The trial court has broad discretion to balance the two factors—the seriousness of the offense and the rehabilitative potential of the offender—when fashioning a sentence, although a defendant's potential for rehabilitation is not given greater weight than the seriousness of the crime. *Id*. ¶ 41-42. A sentence that reflects both factors will be upheld unless the sentence was unlawful or an abuse of the trial court's discretion. *Id*. When reviewing an unlawful sentence or one abusing the trial court's discretion, Supreme Court Rule 615(b)(4) authorizes us to "reduce the punishment imposed by the trial court." Ill. S.Ct. R. 615(b)(4) (eff. Jan. 1, 1967).

¶ 50 "Our supreme court has cautioned that courts of review should proceed with care and

great caution when reviewing a sentencing decision" (*Brown*, 2015 IL App (1st) 130048, ¶ 42 (citing *People v. Streit*, 142 Ill.2d 13, 19 (1991))) and "[w]e will not substitute our judgment for that of the trial court merely because we would have weighed the appropriate factors differently (*Id*.)." A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 51 Mr. Halbert first argues that the seriousness of his offense "called for nothing beyond a minimum sentence" for a class X conviction, or six years, given that "there was nothing to show that [he] carried a gun for any reason beyond protecting himself" in a dangerous neighborhood. As for his rehabilitative potential, he argues that he "worked hard to restore himself to useful citizenship" after his release from prison, including through education, continued employment, and licensure for commercial truck driving and metalwork. He insists the trial court abused its discretion in that "no reasonable person would have placed greater weight on a criminal history that was more than 13 years old than on the significant steps Halbert had taken since [his 2005 release from prison] to restore himself to useful citizenship."

¶ 52 As an initial matter, we note that Mr. Halbert's eight-year sentence was not only within the statutory range (6 to 30 years of imprisonment) for a class X armed habitual criminal conviction, but near the low end of that range. See 720 ILCS 5/24-1.7(b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). Although the trial court did not list all of Mr. Halbert's efforts to better himself, it did acknowledge that his criminal record was "very old in this case," [going] back to 2003, 2002," thereby acknowledging the long, law-abiding period in Mr. Halbert's life. It also noted Mr. Halbert had violated probation on an earlier conviction. We decline to substitute our judgment for that of the trial court. *Brown*, 2015 IL App (1st) 130048, ¶ 42. We do not find

that the eight-year sentence was an abuse of discretion.

¶ 53 Pursuant to Supreme Court Rule 615(b), we may also correct the mittimus. *Smith*, 2017 IL App (1st) 151643, ¶ 32. Accordingly, we vacate Mr. Halbert's conviction for UUWF and correct the mittimus to reflect a single conviction for armed habitual criminal and a corresponding sentence of eight years of imprisonment. As there is nothing in the record indicating that the vacated conviction had any effect on the separate sentence Mr. Halbert received for being an armed habitual criminal, it is unnecessary for us to remand for resentencing. *People v. Shelton*, 252 Ill. App. 3d 193, 209 (1993).

¶ 54 IV. CONCLUSION

¶ 55 For the foregoing reasons, Mr. Halbert's UUWF conviction is vacated and the judgment of the trial court is affirmed in all other respects.

¶ 56 Affirmed in part, reversed in part.