

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-CF-3014
	)	
MATTHEW ROBERT MANGIARACINA,	)	Honorable
	)	John S. Lowry,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE McLAREN delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Defendant's convictions of aggravated DUI and aggravated reckless driving did not violate the one-act, one-crime rule, as they were based on different culpable acts; (2) the trial court did not abuse its discretion in sentencing defendant to eight years' imprisonment (on a 1-to-12 range) for aggravated DUI: despite the mitigating evidence, which the court considered, the sentence was justified by the seriousness of the offense and defendant's criminal history, the court's misstatement of which was harmless.

¶ 2 Defendant, Matthew Robert Mangiaracina, appeals his convictions and sentences for aggravated driving under the influence of drugs causing great bodily harm (DUI) (625 ILCS 5/11-501(d)(1)(C) (West 2014)) and aggravated reckless driving (*id.* 11-503(a)(1)) in connection

with a motor vehicle accident that caused great bodily harm to the victim, Amanda Sims. He contends that the convictions should have merged under the one-act, one-crime rule because they were based on the same act of driving and that his sentence for aggravated DUI was excessive. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 Defendant was charged with multiple counts of aggravated DUI, which alleged that, while under the influence of drugs or with any amount of drugs in his system, he was involved in a motor vehicle accident that caused great bodily harm to Sims. He was also charged with multiple counts of aggravated reckless driving, which alleged that he drove a vehicle with willful and wanton disregard for safety, at a speed at least 20 miles per hour over the posted speed limit, striking a tree head on and causing great bodily harm to Sims. In September 2015, a jury trial was held.

¶ 5 Evidence at trial showed that, on December 5, 2014, at around 3 p.m., defendant drove a vehicle owned by Sims, who was a passenger in the vehicle. Witnesses saw defendant speeding, and he nearly hit a vehicle driven by one witness before rear-ending another vehicle and hitting a tree. Defendant and Sims had to be extricated from the vehicle and both were severely injured. The driver of the vehicle that was rear-ended was also injured. An expert in accident reconstruction testified that the defendant's vehicle was traveling at least 77 miles per hour when it rear-ended the other vehicle and 79 miles per hour when it hit the tree without braking. The posted speed limit was 35 miles per hour.

¶ 6 Sims had no memory of the accident. She had fractures in her ribs, pelvis, femur, tibia, ankle, and foot, and she had significant head trauma and a brain bleed. She was required to use a wheelchair or walker. She had multiple surgeries and was left unable to take care of her

daughter, to cook or clean her house, or to shower. At sentencing, Sims' mother reported that Sims had the mentality of a 15-or-16-year-old.

¶ 7 When defendant was transported to a hospital after the accident, a syringe and needle fell from his pocket. His blood and urine tested positive for codeine and morphine indicative of heroin use. Defendant testified that, before the accident, he struggled with Sims while driving to try to prevent her from injecting something into her arm and that he was poked twice with the needle. He said that he did not know how fast he was driving and that he grabbed the syringe and needle and put them in his pocket. He then looked up, saw and struck a car, and hit a tree. He said that he remembered exactly what happened but told the police that he had no memory of the accident to get them to stop harassing him. Defendant had prior convictions of robbery and domestic battery that were admitted for impeachment.

¶ 8 Defendant was found guilty of six counts of aggravated DUI and four counts of aggravated reckless driving, and his motions for judgment notwithstanding the verdict and a new trial were denied. The presentence report listed a lengthy criminal history including robbery, criminal trespass, multiple convictions of battery, aggravated domestic battery, criminal sexual abuse, failure to register as a sex offender, driving under the influence, and multiple traffic offenses. He had previously violated probation and refused mental-health services. The report stated that defendant minimized his culpability when discussing his arrests. He reported a history of alcoholism but denied any abusive habit with drugs. Defendant had completed a number of programs while in custody awaiting trial, including twice completing a faith-based addiction program, Alcoholics Anonymous classes, and a men's focus group. He received certificates of completion for the Malachi Dads Program, the Retired Senior Volunteer Program, and the Lead Like Jesus Leadership Encounter. Defendant's father testified on his behalf, and

defendant gave a statement in allocution in which he apologized and expressed remorse. Sims' mother provided a statement about the difficulties the accident caused to Sims and her family.

¶ 9 The trial court discussed the aggravating and mitigating factors at length. Noting defendant's conduct while in custody, the court found that he had taken a step in the right direction, but it rejected the argument that his conduct was unlikely to recur. The court noted defendant's criminal history and found that it showed a pattern of not conforming to societal norms, though the court mistakenly stated that defendant first went to prison for violating probation when he actually first went to prison for robbery. The court also noted the need for deterrence and the seriousness of the offense. The court found defendant's statement in allocution genuinely remorseful, but stated that it could not wipe away or minimize his overall conduct.

¶ 10 The parties entered an agreed order that the aggravated DUI convictions and the aggravated reckless driving convictions merged into one count of each, and the court sentenced defendant to eight years' incarceration for aggravated DUI and a concurrent four-year term of incarceration for aggravated reckless driving. Defendant appeals.

¶ 11 **II. ANALYSIS**

¶ 12 Defendant contends that his conviction of aggravated reckless driving should be vacated under the one-act, one-crime rule because it was based on the same conduct of driving as his aggravated DUI conviction.

¶ 13 Defendant forfeited the matter by failing to raise it in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Indeed, he specifically agreed to the separate convictions at trial. However, the parties agree on appeal that a violation of the one-act, one-crime rule affects the integrity of the judicial process, such that second-prong plain error will apply. *People v.*

*Coats*, 2018 IL 121926, ¶ 10. But before considering plain error, we must determine whether error occurred. *Id.* ¶ 11.

¶ 14 Whether a violation of the one-act, one-crime rule has occurred is a question of law, which we review *de novo*. *Id.* ¶ 12.

“Analysis under the one-act, one-crime rule involves two steps: determining (1) whether the defendant’s conduct involved a single act (in which case multiple convictions are improper) or multiple acts, and, (2) if multiple acts, whether any of the offenses were lesser included offenses (in which case multiple convictions are improper).” *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 33.

Defendant does not argue that a lesser-included-offense analysis applies and instead argues only that the conduct was a single physical act.

¶ 15 The definition of an “act” is “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566 (1977). Under that definition, a defendant can be guilty of two offenses when an act is part of both offenses or when an act is part of one offense and the only act of the other offense. *Coats*, 2018 IL 121926, ¶ 15. “Under the one-act, one-crime rule, multiple convictions may not be based on the same physical act.” *People v. King*, 2017 IL App (1st) 142297, ¶ 22 (citing *King*, 66 Ill. 2d at 566). The acts to be considered in applying the one-act, one-crime rule are the defendant’s culpable acts as opposed to noncriminal acts. *People v. DiPace*, 354 Ill. App. 3d 104, 116 (2004).

¶ 16 Here, defendant argues that his crimes were both based on the same act of driving. But the one-act, one-crime rule looks to culpable acts, and there is nothing criminal *per se* in the act of driving. *Id.* Defendant’s act of driving while intoxicated was one criminal act, and his reckless driving at least 20 miles over the speed limit, causing him to hit another vehicle and a

tree, was a second, separate criminal act. Defendant was convicted on those two separate but simultaneous criminal acts, and not simply on his act of driving. See *id.*

¶ 17 Defendant relies on *People v. Latto*, 304 Ill. App. 3d 791, 806-07 (1999), and *People v. Quigley*, 183 Ill. 2d 1, 10-11 (1998) to argue that the underlying act of driving is sufficient to violate the one-act, one-crime rule. But in those cases, the defendants were charged with multiple offenses that shared the culpable act of driving while under the influence, not merely the act of driving. Here the culpable acts were separate. Accordingly, the one-act, one-crime rule did not apply.

¶ 18 Defendant next contends that his sentence of eight years' incarceration for aggravated DUI was excessive. He argues that the trial court failed to give adequate weight to his efforts toward recovery and misapprehended his criminal record.

¶ 19 “[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant.” *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 20 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances

of the case. *Id.* “The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors.” *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 21 Here, defendant was sentenced for aggravated DUI, with a sentencing range of 1 to 12 years’ incarceration (625 ILCS 5/11-501(d)(1)(C), (d)(2)(F) (West 2014)). The court’s statements make clear that it considered the factors in mitigation and defendant’s rehabilitative potential. Indeed, the court specifically noted the steps defendant had taken toward rehabilitation while in custody and that he expressed genuine remorse. But the court also noted the substantial aggravating evidence of the seriousness of the crime, with its devastating effects on Sims and her family; the need for deterrence; and defendant’s criminal history, which indicated a potential for recidivism. (The court’s misstatement of his history was tangential and clearly harmless.) Ultimately, the court sentenced defendant to a term four years below the maximum. We will not reweigh the court’s balancing of the mitigating and aggravating factors. Accordingly, the court did not abuse its discretion in sentencing defendant to a term of eight years’ incarceration.

¶ 22

### III. CONCLUSION

¶ 23 Defendant’s convictions did not violate the one-act, one-crime rule and his sentence was not excessive. Accordingly, the judgment of the circuit court of Winnebago County is affirmed. As part of our judgment, we grant the State’s request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 24 Affirmed.