

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230466-U
NOS. 4-23-0466, 4-23-0512 cons.

FILED
March 22, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Winnebago County
JUAN BARRADAS-FERRAL,)	No. 15CF661
Defendant-Appellant.)	
)	Honorable
)	John S. Lowry,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Cavanagh and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court had jurisdiction to amend clerical errors in the written sentencing judgment but not an alleged substantive error.

¶ 2 In December 2021, the State filed a motion to correct the “mittimus” relating to the sentences of defendant, Juan Barradas-Ferral. In March 2023, defendant filed *pro se* a motion to strike the State’s motion, which the Winnebago County circuit court denied on May 15, 2023. After a hearing, the court granted the State’s motion to correct the written sentencing judgment and filed an amended written sentencing judgment on May 25, 2023. Defendant appeals, asserting the circuit court lacked jurisdiction of the State’s motion because the State sought to substantively change the oral pronouncement of defendant’s sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2015, a grand jury indicted defendant on two counts of aggravated

criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2014)) for alleged actions in March 2015 and four counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) for alleged actions during the period of September 2014 to March 2015. We note the indictment cited “720 ILCS 5/11-1.4(a)(1)” for the predatory criminal sexual assault of a child counts. After a lengthy bench trial at which defendant proceeded *pro se*, the circuit court found defendant guilty of one count of aggravated criminal sexual abuse and all four counts of predatory criminal sexual assault of a child. In March 2019, the court held defendant’s sentencing hearing, at which defendant was represented by counsel. In pronouncing defendant’s sentence, the court stated the following:

“Based on the foregoing and consideration of the Courts [*sic*]—the factors of mitigation and aggravation, as for Count 1, the Court sentences the defendant to three years Department of Corrections followed by two years mandatory supervised release. This sentence for aggravated sexual abuse, Count 1, should be served at 50 percent day-for-day eligibility. The sentence on Count 1 shall run consecutive to the sentences for Counts 3, 4, 5 and 6, predatory criminal sexual assault, Class X felony, not probationable. Counts 3, 4, 5 and 6 are consecutive to each other.

For each of the Counts 3, 4, 5 and 6, the Court sentences the defendant on each of these counts to eight years Department of Corrections. That’s eight years to run consecutive. And on those cases, those convictions shall be served at 85 percent. This sentence shall be followed by three years to natur[al] life registration as a sex offender.

So the aggregate on the Class X charges, Counts 3 through 6 is 32 years.

The sentence for the Class 1 is three years. The sum total sentence is 35 years Department of Corrections.”

¶ 5 On March 26, 2019, the circuit court filed the written sentencing judgment. The judgment stated the three-year aggravated criminal sexual abuse sentence was to run consecutive to four eight-year concurrent terms for the predatory criminal sexual assault of a child counts. The statutory citation for the predatory criminal sexual assault of a child counts was listed as “720 ILCS 5/11-1.4(a)(1).” Defendant filed an appeal, which was dismissed on defendant’s motion in July 2019. *People v. Barradasferral*, No. 2-19-0268 (July 12, 2019) (motion order).

¶ 6 On December 6, 2021, the State filed its motion to correct the “mittimus,” asserting the imposition of concurrent sentences for predatory criminal sexual assault of a child violated section 5-8-4(d)(2) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(2) (West 2014)), which required such sentences to be served consecutively. It also contended the predatory criminal sexual assault of a child sentences should run concurrently to the aggravated criminal sexual abuse sentence. Additionally, the State noted the mittimus for each predatory criminal sexual assault count listed the statutory citation as “720 ILCS 5/11-1.4(a)(1),” when it should be “720 ILCS 5/11-1.40(a)(1).” Attached to the motion was a copy of the court’s March 26, 2019, written sentencing judgment.

¶ 7 On March 14, 2023, defendant filed *pro se* a motion to strike the State’s motion to correct the written sentencing judgment, contending the circuit court lacked jurisdiction. On May 12, 2023, the court held a hearing on defendant’s motion to strike. Defendant’s attorney refused to represent him on the motion because counsel believed the court had jurisdiction of the State’s motion under Illinois Supreme Court Rule 472(a)(4) (eff. May 17, 2019). The State agreed it was seeking relief under Rule 472(a)(4) and argued it was simply attempting to correct

a scrivener's error, noting the court's language on page 11 of the transcripts for the March 26, 2019, hearing at which the court announced defendant's sentence. The court found the State's motion was not an attempt to alter, modify, or amend the actual sentence as pronounced, or stated, by the court at the time of sentencing and concluded it had jurisdiction based on Rule 472(a)(4).

¶ 8 After denying the motion to strike, the circuit court heard the State's motion to correct the written sentencing judgment. As to the predatory criminal sexual assault of a child counts, the State contended it was merely seeking to enforce the sentence set forth at the sentencing hearing. Regarding the aggravated criminal sexual abuse count, the State believed the sentencing court could only order that count to be consecutive if the court found defendant inflicted severe bodily injury, and the record did not show that finding. Defense counsel objected to any correction to the written sentencing judgment because defendant relied on the written sentencing judgment in determining whether to proceed with his direct appeal. The court continued the hearing to May 25, 2023. On that date, defense counsel did not object to the aggravated criminal sexual abuse sentence running concurrently with the sentences for predatory criminal sexual assault of a child. The court ultimately granted the State's motion. That same day, the court entered a corrected written sentencing judgment. The corrected judgment stated defendant received a sentence of three years for aggravated criminal sexual abuse to run concurrently to four consecutive eight-year terms for predatory criminal sexual assault of a child. The corrected sentencing judgment still included the incorrect statutory citation for predatory criminal sexual assault of a child.

¶ 9 On June 9, 2023, defendant filed a timely amended notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017) listing the appealed

judgment as the circuit court's May 25, 2023, order granting the State's motion to correct the written sentencing judgment. See Ill. S. Ct. R. 472(b) (eff. May 17, 2019) (providing Rule 303 applies when an order is entered under Rule 472 and that order is 30 days after the final judgment). This court docketed that appeal as appellate court case No. 4-23-0466. Thus, we have jurisdiction of defendant's appeal in case No. 4-23-0466 under Rule 472(b). On defendant's motion, this court consolidated that appeal with the appeal in appellate court case No. 4-23-0512, which was an appeal from the order denying defendant's motion to strike the State's motion. While that order is not appealable on its own, we still have jurisdiction of it because a notice of appeal confers jurisdiction on the reviewing court to consider the specified judgment along with any orders constituting steps in the procedural progression toward such judgment. *In re Ja. P.*, 2021 IL App (2d) 210257, ¶ 27, 191 N.E.3d 771.

¶ 10

II. ANALYSIS

¶ 11 Defendant's sole argument on appeal is the circuit court lacked jurisdiction to consider the State's request to correct the written sentencing judgment three years after it was filed. The State asserts defendant has forfeited this issue because his counsel conceded the court had jurisdiction. However, the court allowed defendant to argue on his own the court lacked jurisdiction. Thus, we disagree with the State defendant forfeited this issue based on counsel's statement.

¶ 12 Under supreme court rules, a circuit court loses jurisdiction to hear a cause after the expiration of the 30-day period following the entry of a final judgment. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. However, Illinois Supreme Court Rule 472(a)(4) (eff. May 17, 2019) provides the circuit court retains jurisdiction to correct "[c]lerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the

actual judgment of the court.” Additionally, clerical errors may be corrected with a *nunc pro tunc* order. *Peraino v. County of Winnebago*, 2018 IL App (2d) 170368, ¶ 16, 101 N.E.3d 780. The use of *nunc pro tunc* orders is limited to incorporating into the record something that the circuit court actually did but inadvertently was omitted due to a clerical error. *People v. Melchor*, 226 Ill. 2d 24, 32, 871 N.E.2d 32, 36 (2007). “It may not be used for supplying omitted judicial action, or correcting judicial errors under the pretense of correcting clerical errors.” *Melchor*, 226 Ill. 2d at 32-33, 871 N.E.2d at 36.

¶ 13 Here, the transcripts of the May 2023 hearings in this case indicate the State was seeking an amended written sentencing judgment to reflect the circuit court’s oral pronouncement of defendant’s sentence as to the four predatory criminal sexual assault of a child counts. The transcript of the sentencing hearing clearly shows the court had ordered defendant’s four eight-year prison terms for predatory criminal sexual assault of a child to run consecutively to each other. However, the March 2019 written sentencing judgment set forth four concurrent sentences for those counts. “When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls.” (Internal quotation marks omitted.) *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87, 35 N.E.3d 649. As such, the oral pronouncement was the actual sentencing judgment of the court, and the State’s request was for an amendment to the written sentencing judgment for it to correctly reflect the court’s actual sentencing judgment. In other words, the State requested the correction of a clerical error for the four predatory criminal sexual assault of a child sentences. Accordingly, the court had jurisdiction under Rule 472(a)(4) to amend the written sentencing order to reflect the sentences for the four counts of predatory criminal sexual assault of a child were to run consecutively to each other.

¶ 14 Additionally, the State made a separate point it was unaware of the statutory basis

for the sentencing court to have imposed a consecutive sentence for the aggravated criminal sexual abuse sentence and suggested that sentence should have been ordered to run concurrently to the predatory criminal sexual assault of a child sentences. However, the transcript at the March 2019 sentencing hearing clearly indicates the court ordered the three-year aggravated criminal sexual abuse sentence to run consecutively to the four predatory criminal sexual assault of a child sentences. Thus, the State's point raised a substantive error and not a clerical one. As such, we find the circuit court lacked jurisdiction to address that alleged error.

¶ 15 Accordingly, we find the circuit court erred in granting *in toto* the State's motion to correct the written sentencing judgment because it lacked jurisdiction to amend the aggravated criminal sexual abuse sentence. Thus, we remand the cause for the issuance of a corrected sentencing judgment stating the aggravated criminal sexual abuse sentence should run consecutively to the four predatory criminal sexual assault of a child counts, which run consecutively to each other. The court should also correct the citation for the predatory criminal sexual assault of a child counts.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the Winnebago County circuit court's judgment in part, reverse the judgment in part, and remand the cause for a new written sentencing judgment consistent with this order.

¶ 18 Affirmed in part and reversed in part; cause remanded with directions.