FIRST DIVISION
August 8, 2011

2011 IL App (1st) 080117-U
No. 1-08-0117

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. 03 CR 11466
	)	
ANTHONY WIGGINS,	)	Honorable
	)	Thomas R. Sumner,
Defendant-Appellant.	)	Judge Presiding.
	)	

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

O R D E R

HELD: (1) Defendant's jury waiver was not invalid as a result of defense counsel's alleged misstatement regarding defendant's potential sentence; (2) defendant was not entitled to the appointment of new counsel to argue the post-trial motion alleging ineffective assistance of trial counsel; and (3) three convictions listed in the mittimus violate the one-act one crime rule, and this cause is remanded for sentencing on one count of aggravated kidnapping.

¶ 1 After a bench trial, defendant Anthony Wiggins was convicted of two counts of aggravated criminal sexual assault, two counts of aggravated kidnapping, and one count of kidnapping. Because he had been previously convicted of aggravated criminal sexual assault, he was sentenced to mandatory natural life imprisonment.

¶ 2 On appeal, defendant contends: (1) his jury waiver is void because his trial counsel provided ineffective assistance when he erroneously informed defendant that he faced only a 6 to 30 year sentence rather than a term of mandatory natural life; (2) the trial court committed reversible error when it failed to appoint new counsel to argue defendant's post-trial motion alleging ineffective assistance of trial counsel; and (3) defendant's mittimus should be corrected either because the trial court meant to impose only one natural life sentence on a single count of aggravated criminal sexual assault, or because three counts in the mittimus violate the one-act, one-crime rule.

¶ 3 For the reasons that follow, we affirm the trial court's denial of defendant's post-trial motions concerning the jury waiver and the appointment of new counsel. However, we vacate the three convictions that violate the one-act, one-crime rule and remand this cause for sentencing on one count of aggravated kidnapping.

¶ 4 I. BACKGROUND

¶ 5 Defendant was arrested and charged with multiple counts alleging that he kidnapped and sexually assaulted the victim, L.W., on December 21, 2002. While this case was pending, defendant retained an attorney who eventually withdrew due to disagreements with defendant. Ultimately, defendant hired Frederick Cohn, and this matter proceeded to trial in October 2007. Following admonishments from the trial court, defendant waived a jury trial, and the court

conducted a bench trial.

¶ 6 L.W. testified for the State that, in 2002, she was a college student and worked at a department store. Her job required her to work early morning hours to set up the store before it opened. At approximately 3 a.m. on the date of the offense, she was waiting for a bus to go to work. It was cold, and she wore a jumpsuit and a hooded coat over her dress pants and shirt. When the bus did not arrive, she worried that she had missed it and would be late for work. After she declined offers of rides from a couple of unknown drivers, defendant pulled up and asked her where she was going. She responded that she was catching the bus to the train to go to work at a store. Defendant offered her a ride. She had never previously met defendant, but because she was running late and desperate to get to work, she entered defendant's car.

¶ 7 L.W. testified that defendant began driving toward the train station but then turned onto another street and pulled the car over. Defendant then demanded to see her vagina and told her the ride was not free. He reached for his left side and threatened to pull a gun on her. He said he would kill her if she did not comply with his demands. L.W. never saw whether defendant was actually carrying a gun. Defendant then stepped out of the car to urinate. Fearing that she would be shot if she attempted to escape, L.W. remained in the car. Another car, which defendant said belonged to his friend, pulled up behind defendant's car. L.W. feared that person would join the attack, but that car drove away.

¶ 8 Defendant drove slightly further down the street and told L.W. to remove her clothes. Fearing death, L.W. complied. Defendant did not wear a condom, and L.W. attempted to reposition herself to prevent his penis from entering her vagina. But defendant moved her hands out of the way and penetrated her. She testified that she would not have complied with

defendant's demands if she had not feared for her life.

¶ 9 Afterwards, defendant told L.W. that he was sorry, could not believe his actions, and that something was telling him not to hurt her. He also told her that now she knew not to get in a car with a stranger. Then, he offered to pay her the equivalent of her work wages that day if she would go to a hotel with him and have sex. L.W. refused, said she just wanted to go to the train station, and tried to convince him that she would not say anything to anyone. She tried to get defendant's phone number, hoping the police would be able to use it to find him. When he refused, L.W., who did not have a phone, offered him her roommate's phone number, hoping the police could trace the number if defendant called. Defendant accepted the number and drove her to the train station. She reported the incident to Chicago Transit Authority personnel and was taken to a hospital where medical personnel administered a sexual assault kit test.

¶ 10 Several months after the incident, L.W. saw defendant and his car around Chicago twice. Each time, she reported her sighting to the police. The second time, police tracked defendant to his home and arrested him. L.W. quickly arrived at the scene of the arrest and identified defendant as the perpetrator.

¶ 11 Vaginal swabs collected from L.W. were found to be positive for the presence of sperm. The male DNA profile present in the vaginal swab matched defendant's DNA profile to a reasonable degree of scientific certainty. The DNA profile would be expected to occur in 1 in 360 quadrillion unrelated black individuals.

¶ 12 Defendant testified at trial to a different version of the events. According to defendant, L.W. waved him down as he drove past and requested a ride to the train station. Defendant, suspecting L.W. was a prostitute, invited her into his car. He testified that this was the first time

he had ever attempted to solicit a prostitute. The two engaged in casual conversation. When he asked her what type of work she did, she responded, "You know, you know." The flirtatious nature of the conversation prompted defendant to ask her if she wanted to have sex. Defendant claimed L.W. consented to have sex with him in exchange for the ride.

¶ 13 Defendant penetrated L.W.'s vagina with his penis, did not use a condom, and L.W. did not suggest that he use one. According to defendant, he apologized to L.W. because the front seat of his car was not comfortable for having sex, but he denied suggesting going to a hotel to have sex. Defendant testified that L.W. neither asked for money in exchange for sex when she entered his car nor did she request money afterward. Defendant denied that she asked for his telephone number and claimed that she volunteered her telephone number without prompting. Defendant denied doing anything to threaten her, coerce her into having sex, or keep her in the car.

¶ 14 Defendant also denied that, after his arrest, he met and spoke with Chicago Police Detective Paul Spagnola about the charges defendant faced. On rebuttal, Detective Spagnola testified that when he advised defendant of the charges, defendant responded that he had no knowledge of the events at issue and never engaged in sexual intercourse with L.W.

¶ 15 The trial court stated that defendant's version of the events was "unbelievable" and found him guilty of two counts of aggravated criminal sexual assault, two counts of aggravated kidnapping, and one count of kidnapping.

¶ 16 Defendant's retained trial counsel Cohn filed a post-trial motion seeking a new trial. Cohn argued defendant's jury waiver was void because Cohn had rendered ineffective assistance when he misadvised defendant of his possible sentence. Specifically, Cohn allegedly told

defendant that he faced a sentence of only 6 to 30 year's imprisonment in this case, and defendant allegedly waived a jury trial on the basis of that erroneous information. Cohn also moved the trial court to appoint new counsel to represent defendant on his post-trial motion because Cohn faced a conflict of interest where he was expected to zealously argue that he had rendered ineffectiveness assistance.

¶ 17 When the trial court questioned defendant, he could not recall discussing his possible sentence with Cohn. Defendant nevertheless claimed that he would not have waived a jury trial if he had known he faced a natural life sentence. The trial court denied defendant's post-trial motions and sentenced him to natural life imprisonment.

¶ 18 Defendant's mittimus indicates that he received a natural life sentence for each of his five convictions. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Ineffective Assistance of Trial Counsel

¶ 21 Defendant contends his trial counsel was ineffective for erroneously advising him that he faced only a 6 to 30 year sentence, when the law mandated that he be sentenced to natural life. Defendant claims his decision to take a bench trial instead of a jury trial was consequently neither knowing nor voluntary. Defendant, therefore, requests that this court remand the case for a new trial.

¶ 22 The validity of a jury waiver presents a legal issue, which we review *de novo*. *People v. Daniels*, 187 Ill. 2d 301, 307 (1999). The question of whether defense counsel provided ineffective assistance is a mixed question of law and fact, such that "we defer to the trial court's findings of fact, but we make an independent judgment about the ultimate legal issue." *People v.*

Davis, 353 Ill. App. 3d 790, 794 (2004).

¶ 23 To obtain relief on a claim of ineffective assistance of counsel, defendant must demonstrate both (1) that counsel's performance was deficient by showing that counsel's representation fell below an objective standard of reasonableness, and (2) prejudice by showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984); *People v. Maxwell*, 148 Ill. 2d 116, 142 (1992). A reviewing court must consider the totality of the evidence before the fact finder in determining whether a defendant has established his attorney's unreasonable errors and the reasonable probability of a different result. *Strickland*, 466 U.S. at 695. The prejudice prong of the *Strickland* test may be satisfied if defendant can show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). The failure to satisfy either the performance or the prejudice prong of the *Strickland* test will preclude a finding of ineffective assistance of counsel. *People v. Johnson*, 368 Ill. App. 3d 1146, 1161 (2006).

¶ 24 Defendant fails to meet his burden under the prejudice prong of *Strickland*. See *People v. Lacy*, 407 Ill. App. 3d 442, 457 (2011) (reviewing courts do not need to consider the performance prong of the *Strickland* test when the prejudice prong cannot be satisfied). In the context of jury trial waivers, prejudice is established if "there exists a reasonable likelihood that the defendant would not have waived his jury right in the absence of the alleged error." *Maxwell*, 148 Ill. 2d at 142-43; see also *People v. McCarter*, 385 Ill. App. 3d 919, 943 (2008).

¶ 25 Defendant fails to show a reasonable probability that, absent counsel's alleged erroneous sentencing information, there was a reasonable probability defendant would not have waived a

jury trial. He fails to explain how the correctness of the sentencing information related by his trial counsel would have caused him to make a different jury waiver decision. Like the court in *People v. Bannister*, 232 Ill. 2d 52, 68-69 (2008), we fail to see how such information could have had any bearing on defendant's jury waiver. In non-death penalty cases, if a defendant is ultimately found guilty after a hearing, the sentence imposed by the judge is not a consequence of the defendant's choice between having a jury or a judge determine his guilt. *Bannister*, 232 Ill. 2d at 68-69. Moreover, the trial judge here had no discretion in sentencing defendant because his conviction mandated the imposition of a natural life sentence based on his criminal history. See 720 ILCS 5/12-14(d)(2) (West 2002) (a person who is convicted of a second or subsequent offense of aggravated criminal sexual assault shall be sentenced to a term of natural life imprisonment).

¶ 26 Furthermore, the trial court's inquiry into the basis of defendant's post-trial motion strongly undermined defendant's claim that he waived a jury trial based on incorrect sentencing information. Specifically, defendant repeatedly told the trial court that he did not recall asking trial counsel Cohn whether defendant faced a natural life sentence. At the post-trial motion hearing, the following colloquy occurred:

> "THE COURT: Six to 30 years that it was a Class X felony, is that correct? And that you asked him if you faced natural life. Did you ask him that[?]
>
> THE DEFENDANT: I don't recall me asking him.
>
> ***
>
> THE COURT: So you don't recall whether or not you asked him whether or not you faced a natural life sentence. You don't recall that conversation, do you?

THE DEFENDANT: Not that I recall.

THE COURT: And at which time he told you no, that you didn't face a natural life sentence. You don't recall that conversation, do you?

THE DEFENDANT: I don't recall.

THE COURT: But you do recall him telling you that it was a Class X felony an[d] the possibility [sic] sentence range was six to 30 years in the penitentiary.

THE DEFENDANT: I looked in the book and I seen [sic] that.

THE COURT: But did he tell you that, did you have a discussion about that?

THE DEFENDANT: I can't recall. He might have did [sic] but I really can't say."

If incorrect sentencing information had influenced defendant's decision to waive a jury trial, then he should have recalled some conversation with attorney Cohn regarding sentencing.

¶ 27 Additionally, the record establishes that, despite counsel's alleged error, defendant had all the information necessary to make a knowing and voluntary jury waiver. Unlike a defendant making a guilty plea, the trial court is not required to inform a defendant waiving his right to a jury trial of the minimum and maximum sentence prescribed by law, including any penalty to which the defendant may be subjected because of prior convictions or consecutive sentences. *Bannister*, 232 Ill. 2d at 66-71. Unlike a jury waiver situation, "sentencing is a consequence of the acceptance of a guilty plea. *Id*. at 68-69.

¶ 28 Although there is no precise formula for assessing the validity of a jury waiver (*In re R.A.B.*, 197 Ill. 2d 358, 364 (2001)), it is often sufficient for a court to ensure that a defendant "was aware of the difference between a jury and bench trial," knew "that he had a constitutional

right to a trial by jury," and that the decision was the product of the defendant's own volition. *People v. Tooles*, 177 Ill. 2d 462, 469-70 (1997); see also *McCarter*, 385 Ill. App. 3d at 942-44. According to the record, before the trial court accepted defendant's signed jury waiver, the trial judge questioned defendant, who affirmatively acknowledged that he understood he had a right to a jury trial, that he appreciated the difference between a jury trial and a bench trial, and that he made the decision on his own after consulting with counsel. Thus, defendant's jury waiver was knowing and voluntary.

¶ 29 Defendant, citing *People v. Dameron*, 196 Ill. 2d 156 (2001), argues that a trial counsel's ignorance of the law and erroneous advice to a defendant can render a jury waiver invalid in some instances. The *Dameron* court found that the defendant's sentencing jury waiver was invalid because the legal error in his case precluded his strategic goal. *Dameron*, 196 Ill. 2d at 170. *Dameron*, however, is inapposite. Unlike defendant's situation involving a jury trial waiver, *Dameron* was a death penalty case and involved the defendant's waiver of his right to a sentencing-phase jury based upon incorrect information from defense counsel, the State and the trial judge that the defendant was not entitled to instruct the sentencing jury that its options were limited to a life sentence or a death sentence. *Id*. at 166. We have already discussed that defendant's alleged lack of knowledge of his possible sentence could not have affected his strategic choice to waive his right to a jury trial because his possible sentence was the same regardless of who served as the trier of fact. See *Bannister*, 232 Ill. 2d at 69.

¶ 30 Unlike *Dameron*, the alleged error in defendant's case was limited to his trial counsel Cohn; neither the trial court nor the State compounded Cohn's alleged legal error. See *Dameron*, 196 Ill. 2d at 170-71. According to the record, count 11 of the indictment, which

charged defendant with criminal sexual assault, informed defendant that the State would seek to sentence him as a Class X offender based on his 1986 conviction of aggravated criminal sexual assault. Furthermore, the State mentioned several times in the presence of both defendant and his first attorney that defendant faced a natural life sentence. Specifically, at defendant's hearing on the motion to set bond, the State said:

> "This case is a mandatory natural life sentence if the defendant is in fact convicted. It is a presumptory [sic] no bail situation."

At the hearing on the motion to revoke bond, the State, in the presence of both defendant and his first attorney, said:

> "This Defendant has a previous conviction for aggravated criminal sexual assault from 1986, 86 CR 16352. If the Defendant is found guilty of this charge, it is a mandatory sentence of natural life."

The State repeated this information several times during that hearing. In addition, defendant urged the trial court to allow him to dismiss his first attorney and seek new counsel who would allow defendant's "input into the case" because defendant's "life [was] at stake."

¶ 31 Defendant cites *People v. Blackman*, 359 Ill. App. 3d 1013 (2005), and *People v. Aguilar*, 218 Ill. App. 3d. 1 (1991), for the proposition that a jury waiver may be invalid when a defendant is denied critical information about his case. In *Blackman* and *Aguilar*, the State's failure to disclose important evidence prejudiced the defendants, who might have opted for a jury trial based on the opportunity to use the undisclosed evidence to impeach key witnesses in front of the jurors. *Blackman*, 359 Ill. App. 3d at 1015-16 (State failed to disclose that a witness received a large payment for relocation expenses); *Aguilar*, 218 Ill. App. 3d at 9-10 (State failed

to disclose payment by the State to the witness for arranging drug transactions). *Blackman* and *Aguilar* are distinguishable, because defendant here had all the knowledge necessary to make an informed decision to waive a jury.

¶ 32 Defendant has not shown that there was a reasonable possibility he would have opted for a jury trial but for counsel's alleged error. Correct sentencing information would not have affected defendant's overall trial strategy, and the trial court's admonishments ensured that defendant's jury waiver was knowing and voluntary. Furthermore, the record suggests he was aware that he faced a natural life sentence. As a result, defendant's claim of ineffective assistance of counsel lacks merit.

¶ 33 B. Conflict of Interest

¶ 34 Defendant argues he was denied his constitutional right to conflict-free representation when the trial court denied his motion to appoint independent counsel to represent defendant on his post-trial motion alleging ineffective assistance of trial counsel. Defendant claims that, because his retained trial counsel Cohn was arguing in the post-trial motion the issue of his own ineffectiveness, Cohn was laboring under a *per se* conflict of interest, which is grounds for automatic reversal.

¶ 35 The State, citing *People v. Pecoraro*, 144 Ill. 2d 1, 14-15 (1991), argues the trial court was not required to appoint new counsel to represent defendant on his post-trial claim, which alleged trial counsel Cohn rendered ineffective assistance, because Cohn was privately retained by defendant and defendant's post-trial motion was not *pro se*. In *Pecoraro*, the defendant, who had retained private counsel to represent him at trial and for post-trial motions, made a *pro se* claim that counsel was ineffective for failure to make certain trial objections, impeach State

witnesses and call certain witnesses for the defense. *Id*. at 12. The court found the defendant had not established ineffective assistance of counsel, and added that the trial court was not authorized "to advise or exercise any influence or control over the selection of counsel by defendant, who was able to, and did, choose counsel on his own accord." *Id*. at 14-15.

¶ 36 We do not agree with the State's argument that a trial court may automatically deny a request for new counsel simply because the allegedly ineffective defense counsel was privately retained. See *People v. Johnson*, 227 Ill. App. 3d 800, 810 (1992), citing *Pecoraro*, 144 Ill. 2d at 21-23 (Clark, J., dissenting) (noting no difference between retained and appointed counsel in an ineffective assistance claim).

¶ 37 In reviewing defendant's conflict of interest representation claim, we first determine whether attorney Cohn labored under a *per se* conflict of interest. Conflicts of interest may be *per se* or actual. *People v. Taylor*, 237 Ill. 2d 356, 374 (2010). "A *per se* conflict of interest exists where certain facts about a defense attorney's status engender, by themselves, a disabling conflict." *Id*. A *per se* conflict is an oft-misused term of art that refers to when defense counsel has "a tie to a person or entity–either counsel's client, employer, or own previous commitments–which would benefit from an unfavorable verdict for the defendant." *People v. Spreitzer*, 123 Ill. 2d 1, 14-16 (1988).

¶ 38 *Per se* conflicts exist where defense counsel has a prior or contemporaneous association with the victim or prosecution, contemporaneously represents a prosecution witness, or was a former prosecutor and involved in the defendant's prosecution. *Taylor*, 237 Ill. 2d at374. "If a *per se* conflict is found, there is no need to show that the conflict affected the attorney's actual performance." *Id*. at 374-75. A *per se* conflict is grounds for automatic reversal unless the

defendant waived his right to conflict-free representation. *Id*. at 375.

¶ 39 A *per se* conflict of interest does not exist merely because a defendant questions his trial attorney's competence during post-trial proceedings and the attorney must argue his own ineffectiveness. *People v. Perkins*, No. 1-09-2335, slip op. at 13-14 (March 23, 2011). See also *People v. Nitz*, 143 Ill. 2d 82, 134-35 (1991) (there is no *per se* rule that new counsel must be appointed whenever a defendant presents a *pro se*, post-trial motion for a new trial alleging ineffective assistance of counsel). Rather, the underlying allegations of incompetence and the specific facts of each case determine whether either a *per se* or actual conflict of interest exists. *People v. Davis*, 151 Ill. App. 3d 435, 443 (1986); *Johnson*, 227 Ill. App. 3d at 811.

¶ 40 Here, trial counsel Cohn faced, at most, an actual conflict of interest. Nevertheless, such conflict neither directly nor adversely affected his performance where he voluntarily and zealously argued the ineffective counsel claim on behalf of defendant. Furthermore, the trial court properly conducted an inquiry on defendant's post-trial motion and correctly determined that there was no need to appoint independent counsel or grant a new trial on the grounds of ineffective assistance. As discussed above, defendant's ineffective assistance of counsel claim lacks merit because correct sentencing information would not have affected his decision to waive a jury trial. See *People v. Lawton*, 212 Ill. 2d 285, 302-304 (2004) (even though a conflict of interest existed where the defendant's lawyer was required to argue his own incompetence on appeal, the defendant was not entitled to relief from the judgment entered against him because his ineffective assistance of counsel claim was meritless). We conclude that defendant's right to conflict-free counsel was not violated by the trial court's denial of his motion to appoint independent counsel to argue the post-trial ineffective assistance of counsel motion.

¶ 41 C. Sentence

¶ 42 Defendant was found guilty of five counts at trial: two counts of aggravated criminal sexual assault, two counts of aggravated kidnapping, and one count of kidnapping. His mittimus states that he received a life sentence for each count. He argues that the trial court entered only a single natural life sentence on a single count of aggravated criminal sexual assault, and no sentence on the four remaining counts. Defendant contends that the mittimus should be corrected to reflect a single conviction and sentence for one count of aggravated criminal sexual assault. In the alternative, he argues that, in accordance with the one-act, one-crime rule, this court should vacate one count of aggravated criminal sexual assault, one count of aggravated kidnapping, and one count of kidnapping, and remand the case to the trial court for resentencing on the aggravated kidnapping charge within the proper range for a Class X felony.

¶ 43 When there is a "variance between the mittimus and the judgment, the latter will prevail." *People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002). When a mittimus does not reflect the trial court's oral pronouncement, it must be corrected to so conform. *People v. DeWeese*, 298 Ill. App. 3d 4, 13 (1998). When this court finds an error in the mittimus, we may correct it without remanding to the trial court. *People v. Mitchell*, 234 Ill. App. 3d 912, 922 (1992); Ill. S. Ct. Rule 615(b)(1).

¶ 44 Defendant argues that, at the sentencing hearing, the trial court simply stated that it was imposing "the sentence" of natural life without differentiating among the five separate counts of which he was found guilty. That statement, according to defendant, meant the court intended to impose only one natural life sentence for one count of aggravated criminal sexual assault because the court did not mention the kidnapping convictions or enter a separate sentence for

any of the kidnapping counts. We do not agree.

¶ 45 We have reviewed the trial court's sentencing ruling in context, and the record demonstrates that the trial judge spoke singularly of "the sentence" of natural life for aggravated criminal sexual assault because he was responding to defendant's arguments that a mandatory natural life sentence for aggravated criminal sexual assault was disproportionate under the eighth amendment of the U.S. Constitution and that mitigating circumstances were present. Specifically, the trial judge dismissed defendant's arguments and properly concluded that a mandatory life sentence for a second conviction of aggravated criminal sexual assault was appropriate. Accordingly, when the trial judge said "the sentence," he was referring to just the one specific count that was being discussed during that particular exchange. We do not presume that the trial judge purposely decided not to sentence defendant for the kidnapping convictions.

¶ 46 We agree, however, to vacate defendant's convictions for one count of aggravated criminal sexual assault, one count of aggravated kidnapping, and one count of kidnapping because those convictions violated the one-act, one crime rule. That rule provides that "[m]ultiple convictions are improper if they are based on precisely the same physical act," or if one offense is a lesser included offense of another. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996).

¶ 47 Both of defendant's aggravated criminal sexual assault convictions are premised on the same act of sexual penetration. Thus, one of these convictions must be vacated. We affirm the other remaining conviction for aggravated criminal sexual assault along with its accompanying natural life sentence. Likewise, one of defendant's aggravated kidnapping convictions must be vacated because both convictions are based on the same act of confining L.W. against her will.

Moreover, because the *prima facie* case for kidnapping contains all of the requisite elements of aggravated kidnapping, minus the additional aggravating element (720 ILCS 5/10-2(a) (West 2002); *People v. Dressler*, 317 Ill. App. 3d 379 (2000)), the lesser kidnapping conviction must be vacated as well.

¶ 48 Finally, we remand this case to the trial court for resentencing on the aggravated kidnapping charge within the proper range for a Class X felony. According to the mittimus, defendant received a life sentence for the single remaining aggravated kidnapping conviction. That sentence, however, exceeds the maximum sentence available for this offense. See 720 ILCS 5/10-2(a)(6), (b) (West 2002). Therefore, we vacate that sentence and remand the case to the trial court for resentencing on the aggravated kidnapping conviction.

¶ 49 III. CONCLUSION

¶ 50 We conclude that defendant knowingly and voluntarily waived his right to a jury trial and did not receive ineffective assistance of counsel. We also hold that a conflict of interest requiring a new trial did not exist where defendant was represented by trial counsel on his meritless post-trial motion alleging ineffective assistance. We vacate one aggravated criminal sexual assault conviction, one aggravated kidnapping conviction, and the kidnapping conviction because those convictions violated the one-act, one-crime rule. We otherwise affirm defendant's convictions for aggravated criminal sexual assault and aggravated kidnapping. We affirm his natural life sentence for aggravated criminal sexual assault but vacate his natural life sentence for aggravated kidnapping because it exceeds the maximum sentence allowed under the statute. We remand the case for the limited purpose of imposing a sentence within the permissible statutory limits for defendant’s aggravated kidnapping conviction.

¶ 51 Affirmed in part, vacated in part, and remanded.