

No. 1-11-1250

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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 Cook County
Plaintiff-Appellee,)	
)	
v.)	06 CR 19581
)	06 CR 19582
WILLIAM SHERROD,)	
)	
Defendant-Appellant.)	Honorable
)	Thomas V. Gainer,
)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

¶ 1 HELD: (1) Trial court properly dismissed defendant's postconviction petition; and (2) defendant's concurrent sentences were not authorized under the relevant sentencing statutes and the case is remanded to determine whether defendant's sentence can be reconfigured in accordance with applicable statutes and his plea agreement.

¶ 2 Defendant William Sherrod appeals *pro se* from the summary dismissal of his *pro se* postconviction petition. On appeal, defendant argues that the trial court erred in dismissing his petition because his guilty plea is void for the following reasons: (1) his guilty plea lacked a

factual basis; (2) defendant did not enter his guilty plea knowingly and voluntarily; (3) counsel was ineffective at defendant's guilty plea hearing and the hearing on his motion to withdraw the guilty plea; (4) the trial court lacked personal jurisdiction over defendant; (5) the trial court lacked subject matter jurisdiction over defendant; and (6) the trial court entered an impermissible sentence.

¶ 3 The facts relevant to the current appeal are as follows. In 2006, defendant was charged with several counts of criminal sexual assault and aggravated criminal sexual abuse based on contact between defendant and two minor girls who attended the church at which defendant was an associate pastor. He initially pled not guilty to the charges. On March 27, 2007, the trial court held a bond hearing at the request of defense counsel. In response to defense counsel's request for defendant's bond to be lowered, the State explained:

"At the time he came in contact with both of these female victims through his job as a director of the Care Club at the Moody Bible Church. The children befriended the defendant because of his job as a director.

The first victim on several occasions, from approximately January 23rd of 2006 continuing through May 27th of 2006, the victim would go to the defendant's home. At times, the defendant's wife would also be in the home sleeping while these acts occurred.

The defendant committed numerous acts of sexual contact and sexual penetration, including fondling the victim's breasts,

inserting his finger into her vagina, putting his penis into her vagina, and he attempted to put his penis into her anus.

Your Honor, regarding that incident and regarding all these incidents, this defendant would tell these victims that he was trying to test them to see if they liked him as a father figure. At one point in time, he actually took one of the children's church rings that was a symbol of virginity in order to see if she was appropriately responding to the test that he was giving them when he was physically assaulting them.

This victim cried out to a church camp counselor, and that's why these incidents came to light.

Regarding the second victim, she is also a member of the Living Faith Community Church and a member of the Kids Club. She came in contact with this individual, again, through his role as the director of the Kids Club.

Between June 1st and June 24th of 2006, she was at the victim's house. And the defendant committed again numerous acts of sexual conduct and penetration, fondling her breasts, inserting his finger into her vagina and putting his penis in her vagina. This child also cried out to the pastor of the Living Faith Church.

Regarding corroboration, this defendant made admissions to his pastor about some of the acts that occurred with the first victim that I spoke of, Judge."

¶ 4 On June 5, 2007, following a conference pursuant to Illinois Supreme Court Rule 402, defendant entered a fully-negotiated plea of guilty to one count of criminal sexual assault and one count of aggravated criminal sexual abuse, and received concurrent sentences of five-and-a-half years to be followed by a two-year term of mandatory supervised release (MSR). Defendant indicated he understood the nature of the charges against him, the minimum and maximum sentences, the consequences of the guilty plea, and that he would be waiving his right to a jury trial and his right to confront the witnesses against him. The court also ensured that defendant was not pleading guilty due to a threat. After defendant pled guilty, both parties stipulated that a sufficient factual basis supported each charge. The court then explained, "the matters were conferenced on May 24th where the court did learn of the factual basis and the defendant's criminal history." The trial court accepted defendant's plea of guilty.

¶ 5 On July 3, 2007, defendant filed a motion to withdraw his guilty plea and vacate the judgment pursuant to Illinois Supreme Court Rule 604(d), arguing the trial court accepted his guilty plea without determining whether there was a factual basis for the plea and that the court failed to properly admonish defendant of his rights. After a hearing, the trial court denied the motion.

¶ 6 On August 20, 2008, defendant filed a *pro se* motion for relief from judgment pursuant to

section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). In it, defendant alleged multiple constitutional violations, including his actual innocence and ineffective assistance of counsel. In denying relief to defendant, the trial court stated, "to the extent that this purports to be a motion for post-conviction relief *** it is patently frivolous and without merit."

¶ 7 Defendant appealed and contended that the trial court erred in dismissing his petition without informing him that it intended to recharacterize his pleading as a petition for postconviction relief and not giving him the opportunity to amend or withdraw the pleading, pursuant to *People v. Shellstrom*, 216 Ill. 2d 45 (2005). This court remanded defendant's case to the trial court "to admonish defendant pursuant to *Shellstrom* and allow defendant to withdraw or amend his pleading to include any additional claims." *People v. Sherrod*, No. 1-08-2539 (2010) (unpublished order under Supreme Court Rule 23).

¶ 8 Upon remand, the trial court informed defendant it was recharacterizing defendant's section 2-1401 petition as a postconviction petition and admonished defendant pursuant to *Shellstrom*. The court then asked defendant whether he wanted to withdraw or amend his petition. Defendant chose to withdraw his petition. Defendant then filed a "Motion for *Sua Sponte* Vacation of Void Conviction." In it, defendant alleged that his conviction was void because: (1) his guilty plea was not entered knowingly or voluntarily and was therefore void; (2) the trial court lacked personal jurisdiction over defendant and subject matter jurisdiction over the charges; (3) defendant received ineffective assistance of counsel; and (4) there was no factual basis for his guilty plea and therefore his conviction was based on a void plea agreement.

Defendant demanded that the trial court vacate his void conviction and immediately release him from prison. In support of his petition, defendant attached the trial transcripts from two separate court dates. After reading defendant's motion, the trial court informed defendant it would treat the motion as a postconviction petition. On March 25, 2011, the trial court denied defendant's postconviction petition as frivolous and patently without merit in a written order.

¶ 9 This appeal follows.

¶ 10 Defendant first contends that his guilty plea is void because he did not enter into it knowingly or voluntarily. Specifically, defendant claims that because no factual basis was given for his plea, he could not have entered into the plea intelligently, and therefore his conviction is void. A void judgment is not subject to procedural bars and may be attacked at any time. *People v. Marshall*, 242 Ill. 2d 285, 302 (2011).

¶ 11 The Illinois Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 through 122-8 (West 2004)) provides a tool by which those under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both. 725 ILCS 5/122-1(a) (West 2004); *People v. Coleman*, 183 Ill. 2d 366, 378-79 (1998). At the first stage of proceedings, a petition will only be dismissed if it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008); *People v. Brown*, 236 Ill. 2d 175, 184 (2010). A petition is considered frivolous or patently without merit only if it has "no arguable basis either in law or fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). Petitions based on a meritless legal theory or fanciful factual allegations will be dismissed. *Hodges*, 234 Ill. 2d at 16. Furthermore, summary

dismissal is proper if the allegations in the petition are positively rebutted by the record. *People v. Rogers*, 197 Ill. 2d 216, 222 (2001). The summary dismissal of a postconviction petition is reviewed *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 12 Because a guilty plea involves the waiver of several constitutional rights, due process requires that the record affirmatively reflects the plea was entered into knowingly and voluntarily. *People v. Jones*, 174 Ill. App. 3d 794, 798. Supreme Court Rule 402(c) states that a trial court "shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea." Ill. S. Ct. R. 402(c) (eff. July 1, 1997). Only substantial compliance is required for Rule 402(c). *People v. Vinson*, 287 Ill. App. 3d 819, 821 (1997). Moreover, the rule is satisfied if "there is a basis anywhere in the record *** from which the judge could reasonably reach the conclusion that the defendant actually committed the acts *** to which he is pleading guilty." *Vinson*, 287 Ill. App. 3d at 821.

¶ 13 The record before us affirmatively shows that the trial court complied with Rule 402(c). During a bond hearing, the State presented a summary of the basis for the charges against defendant. The State explained that defendant was the director of a club at the victims' church. Both victims were under the age of 18 at the time they were assaulted by defendant. Defendant took each victim to his home on separate occasions, where he fondled the victim's breasts, and penetrated the victim's vagina with his finger and his penis. Furthermore, after defendant pled guilty, and both parties had stipulated to the existence of a factual basis for the plea, the court said, "the matters were conferenced on May 24th where the court did learn of the factual basis and the defendant's criminal history." In addition, just before entering judgment on the guilty plea, the trial court described the

charges to which defendant was pleading guilty based on the indictment. We believe this is more than sufficient to show the trial court complied with Rule 402(c). See *People v. Doe*, 6 Ill. App. 3d 799, 801 (1972) (where the trial court stated that it was "satisfied from our [plea discussion] conference that there is certainly a factual basis for the plea of guilty with respect to this defendant," referred to facts of the case before imposing sentence, and suggested that the facts had been discussed at "great length," the trial court fully complied with Rule 402(c)).

¶ 14 Defendant next asserts that his plea was not knowing or voluntary. Specifically, defendant claims that his plea was unknowing and involuntary because (1) he was unaware of the factual basis to support his plea, (2) he was not informed that the trial court could reject the plea, (3) the prosecutor pursued charges without any "evidence of record," and (4) his attorney did not protect his rights. The record refutes defendant's claims.

¶ 15 Illinois Supreme Court Rule 402(a) requires the trial court to admonish defendant of four points: the nature of the charges; the minimum and maximum sentence provided under the law for each charge and the penalty applicable, including consecutive sentences; the defendant has a right to plead not guilty; and "if he pleads guilty there will not be a trial of any kind, so that by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he waives the right to a trial by jury and the right to be confronted with any witnesses against him who have not testified." Ill. S. Ct. R. 402(a) (eff. July 1, 1997).

¶ 16 The trial court properly admonished defendant pursuant to Rule 402(a). As previously discussed, the record established that the trial court admonished defendant of the charges against him

and the factual basis for those charges. The court also admonished defendant of the minimum and maximum sentence for each charge for which he was pleading guilty, he has a right to plead not guilty, and that his guilty plea waived his right to a jury trial and to confront witnesses against him. Moreover, in compliance with Rule 402(b), the trial court also questioned defendant about the voluntariness of his plea. Defendant responded that he was pleading guilty of his own free will and he had not been promised anything beyond the agreed sentence nor had he been threatened. The court stated on the record that defendant understood his rights and that his plea was voluntary. Defendant's claims that his plea was not knowing and voluntary have no merit.

¶ 17 Next, defendant argues that his plea is void because he received ineffective assistance of counsel. Specifically, defendant asserts that his attorney was ineffective because defense counsel failed to inform defendant of the evidence to support the charges, failed to inform defendant of the discussion at the Rule 402 conference, knew defendant was innocent but allowed him to plead guilty, stipulated to a nonexistent factual basis in violation of due process, and the charges were not supported by evidence.

¶ 18 Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court delineated a two-part test to use when evaluating whether a defendant was denied the effective assistance of counsel in violation of the sixth amendment. Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v.*

Edwards, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not ever consider the quality of the attorney's performance. *Strickland*, 466 U.S. at 697.

¶ 19 At the first stage of postconviction proceedings, a petition alleging ineffective assistance of counsel may not be dismissed if: (1) counsel's performance arguably fell below an objective standard of reasonableness; and (2) the petitioner was arguably prejudiced as a result. *Hodges*, 234 Ill. 2d at 17.

¶ 20 Further, it is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, including constitutional errors. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann*.” *Tollett v. Henderson*, 411 U.S. 258, 267, 36 L. Ed. 2d 235, 243, 93 S. Ct. 1602, 1608 (1973), citing *McMann v. Richardson*, 397 U.S. 759, 25 L. Ed. 2d 763, 90 S. Ct. 1441 (1970) (defendant must show that advice was not “within the range of competence demanded of attorneys in criminal cases”).

¶ 21 Defendant is unable to establish a claim of ineffective assistance of counsel. We have already concluded the record shows that defendant entered into his guilty plea both knowingly and voluntarily. Moreover, defendant has offered neither argument nor facts to suggest he would have gone to trial but for counsel's actions and has thus forfeited the argument on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and pages of the record relied on"). Further, defendant's "bare allegation that [he] would have pleaded not guilty and insisted on a trial if counsel had not been deficient is not enough to establish prejudice." *People v. Hall*, 217 Ill. 2d 324, 336 (2005). Therefore, defendant has failed to show his counsel was ineffective or that he suffered prejudice as a result.

¶ 22 Defendant next contends that because there was no evidence of record to support his conviction, the trial court did not have personal jurisdiction over his person. In support, defendant cites *People v. Rodriguez*, 355 Ill. App. 3d 290 (2005), which can be easily distinguished from the present case.

¶ 23 In *Rodriguez*, the juvenile defendant's conviction was void because his transfer to the criminal court was invalid. There, the defendant had been found guilty of unlawful delivery of a controlled substance. His transfer to the criminal court was based on the incorrect determination that the location of the commission of the crime, the parking lot of a gas station, was part of the public way. The reviewing court found the parking lot was not a public way and the transfer was not authorized under the Juvenile Court Act. *Rodriguez*, 355 Ill. App. 3d at 291-96.

¶ 24 "A judgment is void (as opposed to voidable) only if the court that entered it lacked

jurisdiction." *Rodriguez*, 355 Ill. App. 3d at 296 (citing *People v. Davis*, 156 Ill. 2d 149, 155-56 (1993)). "The jurisdictional failure can be the court's lack of (1) personal jurisdiction or (2) subject matter jurisdiction, but it can also be (3) that the court lacked the power to render the particular judgment or sentence." *Rodriguez*, 355 Ill. App. 3d at 296 (citing *Davis*, 156 Ill. 2d at 155-56). The *Rodriguez* court concluded that the defendant's conviction was void because the trial court was without jurisdiction to render judgment and sentence after the invalid transfer to the criminal court. Defendant's reliance on *Rodriguez* is misplaced because the reviewing court did not hold that the trial court lacked personal jurisdiction.

¶ 25 "In Illinois, jurisdiction is conferred by the constitution." *People v. Raczkowski*, 359 Ill. App. 3d 494, 497 (2005) (citing *People v. Gilmore*, 63 Ill. 2d 23, 26 (1976)). "Pursuant to article VI, section 9, of our constitution, the circuit courts have jurisdiction over all justiciable matters (Ill. Const.1970, art. VI, § 9), and a trial court obtains personal jurisdiction over a defendant when he appears before it." *Raczkowski*, 359 Ill. App. 3d at 497. " 'Generally, once a court has acquired jurisdiction, no subsequent error or irregularity will oust the jurisdiction thus acquired. Accordingly, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law, or both.' " *Raczkowski*, 359 Ill. App. 3d at 497 (quoting *Davis*, 156 Ill. 2d at 156).

¶ 26 Here, once defendant appeared in these proceedings, the court had personal jurisdiction and defendant's claim is without merit.

¶ 27 Defendant also contends that the trial court lacked subject matter jurisdiction because there was no evidence to support his guilty plea. "A court's subject matter jurisdiction relates to 'the power of a court to hear and determine cases of the general class to which the proceeding in question

belongs.' " *People v. Hughes*, 2012 IL 112817, ¶ 20 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002)). Under the Illinois constitution, circuit courts have original jurisdiction over all justiciable matters brought before it. *Hughes*, 2012 IL 112817, ¶ 20. The supreme court has defined "justiciable matter" as " 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *Hughes*, 2012 IL 112817, ¶ 20 (quoting *Belleville Toyota*, 199 Ill. 2d at 335).

¶ 28 In this case, the sexual offenses alleged in the indictment fall within the general class of cases that the circuit court has the power to hear and determine under the Criminal Code of 1961, which invoked the circuit court's subject matter jurisdiction over a justiciable criminal matter. Accordingly, we reject defendant's challenge of the court's subject matter jurisdiction.

¶ 29 Finally, defendant argues for the first time on appeal that he should be permitted to withdraw his guilty plea because his sentences are void. As part of his negotiated guilty plea, defendant received concurrent 5 1/2 year terms for one count of criminal sexual assault in 06 CR 19581 and one count of aggravated criminal sexual abuse in 06 CR 19582. Defendant asserts that these sentences are void because under section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4 (West 2006)), the trial court was required to sentence defendant to consecutive sentences. Although defendant raises this issue for the first time on appeal, as we previously noted, a void sentence may be attacked at any time. *Marshall*, 242 Ill. 2d at 302.

¶ 30 In 06 CR 19581, defendant pled guilty to one count of criminal sexual assault. Criminal

sexual assault is a class 1 felony (720 ILCS 5/12-13 (West 2006)¹), with a sentencing range of not less than 4 years and not more than 15 years (730 ILCS 5/5-8-1(5) (West 2006)²). In 06 CR 19582, defendant pled guilty to one count of aggravated criminal sexual abuse. Aggravated criminal sexual abuse is a class 2 felony (720 ILCS 5/12-16 (West 2006)³), with a sentencing range of not less than 3 years and not more than 7 years (730 ILCS 5/5-8-1(a)(5) (West 2006)⁴). As part of his negotiated plea agreement, the trial court sentenced defendant to concurrent sentences of 5 1/2 years followed by two years of mandatory supervised release (MSR).

¶ 31 Defendant now contends that this sentence was void because he was subject to a mandatory consecutive sentence. Section 5-8-4(a) directs the trial court to impose consecutive sentences when multiple sentences of imprisonment are imposed at the same time and the defendant was convicted of a specified triggering offense, including criminal sexual assault. 720 ILCS 5/5-8-4(a)(ii) (West 2006). The supreme court has held that concurrent sentences are void when consecutive sentences were required under the sentencing statutes. *People v. Bishop*, 218 Ill. 2d 232, 254 (2006). Since defendant pled guilty to the triggering offense of criminal sexual assault, the trial court should have imposed consecutive sentences pursuant to section 5-8-4(a). We must next determine the proper remedy to be employed when the parties to a negotiated plea agreement made a mutual mistake on the statutorily-required sentence.

¹ Now codified at 720 ILCS 5/11-1.20 (West 2010).

² Now codified at 730 ILCS 5/5-4.5-30 (West 2010).

³ Now codified at 720 ILCS 5/11-1.60 (West 2010).

⁴ Now codified at 730 ILCS 5/5-4.5-35 (West 2010).

¶ 32 The Illinois Supreme Court recently addressed this issue in *People v. Donelson*, 2013 IL 113603. There, the defendant pled guilty to first degree murder, aggravated criminal sexual assault, and home invasion. In exchange, the defendant agreed to a sentence of concurrent prison terms of 50, 30, and 30 years respectively; for a total of 50 years' imprisonment. *Donelson*, 2013 IL 113603, ¶ 8. However, under section 5-8-4, the conviction for aggravated criminal sexual assault triggered mandatory consecutive sentences and the trial court should have imposed consecutive sentences for the murder and aggravated criminal sexual assault convictions. *Donelson*, 2013 IL 113603, ¶ 15. The appellate court held that the sentencing structure was void, but declined to void the plea agreement. Instead, the appellate court found that the plea agreement and the intent of the parties could be implemented by resentencing the defendant in accordance with the plea agreement and the applicable sentencing statutes. *Donelson*, 2013 IL 113603, ¶ 13.

¶ 33 On appeal to the supreme court, the defendant contended that his plea agreement was void and the agreement included a negotiation for specific sentences, not a sentencing cap. The State responded that the remedy implemented by the appellate court would give the defendant the essential terms of his bargain, a total sentence of 50 years. The State further noted that it would be prejudiced if forced to try the defendant's case more than 14 years after he committed the crimes.

"The State notes that 'plea agreements, like all contracts, occasionally include mistakes of law or fact,' and suggests that the 'equitable solution' reached by the appellate court in this case makes way for reformation of the parties' agreement in such a way as to give both parties the benefits of their bargain." *Donelson*,

2013 IL 113603, ¶ 17.

¶ 34 The supreme court agreed with the State, recognizing the importance of negotiated plea agreements in the criminal justice system. *Donelson*, 2013 IL 113603, ¶ 18.

"Where a plea rests in any significant degree upon a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration for the plea, that feature of the agreement must be fulfilled. *Hughes*, 2012 IL 112817, ¶ 68. The principal inquiry, in that respect, is whether the defendant has received the benefit of his bargain. *Hughes*, 2012 IL 112817, ¶ 69. Though rarely emphasized in this court's jurisprudence, the other half of the contractual equation is the benefit of the bargain accruing to the State, a consideration that looms larger as the temporal gap between the commission of the offenses and attempts to withdraw the guilty plea widens." *Donelson*, 2013 IL 113603, ¶ 19.

¶ 35 The *Donelson* court observed that both the State and the defendant were mistaken in their belief that the defendant's sentences could be imposed to run concurrently. "However, pursuant to contract principles, contracting parties' mutual mistake may be rectified by recourse to contract reformation (*Czarobski v. Lata*, 227 Ill. 2d 364, 371-72 (2008)), where they are in actual agreement and their true intent may be discerned (*Wheeler-Dealer, Ltd. v. Christ*, 379 Ill. App. 3d 864, 869 (2008))." *Donelson*, 2013 IL 113603, ¶ 20. The supreme court detailed the procedural history of

defendant's case and found his claim that he negotiated for specific sentences to "ring[] hollow." The court concluded that the defendant's plea can be fulfilled and remanded to the trial court for resentencing in accordance with the plea agreement and applicable statutes. *Donelson*, 2013 IL 113603, ¶¶ 28-29.

¶ 36 Here, the State argues that defendant's plea agreement is not void and we should remand for resentencing. The State maintains that the essential terms of defendant's plea agreement were his pleas and sentences, which are not inconsistent with the statutory guidelines. Defendant pled guilty to one count of criminal sexual assault and his 5 1/2 year sentence was within the 4 to 15-year sentencing range for a class 1 felony. See 720 ILCS 5/12-13 (West 2006); 730 ILCS 5/5-8-1(5) (West 2006). Defendant also pled guilty to one count of aggravated criminal sexual abuse, in which defendant was eligible for a sentence of probation. See 720 ILCS 5/12-16 (West 2006); 730 ILCS 5/5-5-3(b)(1), (c)(2) (West 2006). The State asserts that defendant could be resentenced consistent with the terms of his plea agreement, a total sentence of 5 1/2 years with 2 years of MSR. The State notes that defendant conceded that he received the benefit of his bargain in the plea agreement and he has completed the agreed 5 1/2 year sentence and period of MSR.

¶ 37 Under section 5-8-4(a), defendant was subject to mandatory consecutive sentences. Since the negotiated plea agreement was premised on the mutual mistake as to the applicable sentence, the remedy set forth in *Donelson* is to attempt to reform the plea agreement so that each party can receive the benefit of the original bargain. Based on *Donelson's* holding, we remand the case to the trial court for a hearing to determine whether defendant's sentences can be reconfigured in accordance with the plea agreement and the applicable statutes.

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¶ 38 For on the foregoing reasons, we affirm defendant's convictions, vacate his sentences and remand for a new sentencing hearing consistent with this order.

¶ 39 Affirmed in part and vacated in part; cause remanded.