2014 IL App (1st) 122271-U

SIXTH DIVISION
July 25, 2014

No. 1-12-2271



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 2565 |
| | ) | |
| LARRY HOLLINGSWORTH, | ) | Honorable |
| | ) | Evelyn B. Clay, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

**O R D E R**

¶ 1 ***Held:*** Where the court's oral pronouncement at sentencing reflected convictions for multiple crimes based on a single act of sexual penetration, despite the listing in the mittimus of a single conviction, the one-act, one-crime rule was violated, and a conviction on the most serious offense is affirmed.

¶ 2 Following a bench trial in 2012, defendant Larry Hollingsworth was convicted of criminal sexual assault, aggravated criminal sexual abuse, and sexual relations within families. The trial court sentenced defendant to 12 years on the criminal sexual assault count and to

concurrent 5-year sentences on the remaining counts. On appeal, defendant contends his convictions for aggravated criminal sexual abuse and sexual relations within families should be vacated because those convictions rested on the same physical act as his conviction for criminal sexual assault. He also asserts the evidence did not support a conviction for sexual relations within families because that offense requires the complainant to be 18 years of age or older. We affirm in part and vacate in part.

¶ 3 Defendant was indicted on a total of six counts, including four counts of criminal sexual assault (720 ILCS 5/12-13(a) (West 2008)). Those four counts, which were listed as counts 1 through 4 in the indictment, were based on: (1) penetration by the use or threat of force; (2) penetration where the offender knows the victim is unable to understand the nature of the act; (3) penetration where the offender knows the victim is unable to give consent, and (4) penetration where the victim was under 18 years of age and the offender was a family member. Defendant also was charged with one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)), based on penetration where the victim was between the ages of 13 and 17 and the offender was at least 5 years older than the victim. In addition, defendant was charged with one count of sexual relations within families (720 ILCS 5/11-11 (West 2008)), based on penetration where the victim was related to the defendant. All of those counts were based on contact between defendant and D.R., his stepdaughter, on October 24, 2008.

¶ 4 At trial, D.R. testified that on the date of the offense, she was 14 years old and lived with her mother, defendant and her brother. D.R. testified she was home from school that day and defendant was the only other person home. At about 11 a.m., defendant entered D.R.'s bedroom wearing boxer shorts and touching his penis. Defendant asked D.R. to touch his penis, and she said no. Defendant pushed her down onto the bed and removed her pajama bottoms and

underwear. D.R. testified defendant inserted his penis into her vagina. Defendant told D.R. that if she told her mother what happened, he would say that D.R. "gave it to him." After defendant left the room, D.R. locked the door and put her underwear and pajamas back on.

¶ 5 The parties stipulated that semen matching the DNA profile of defendant was found on D.R.'s underwear and pajamas. Defendant testified the semen stains occurred when he masturbated and wiped his penis on clothing from the hamper.

¶ 6 At the close of evidence, the court ruled "there's a finding of guilty." At sentencing, the court expressly imposed sentences on each count. The court merged the four criminal sexual assault counts and imposed a 12-year prison term for "one felony offense *** of criminal sexual assault." The court stated: "Those are 1, 2, 4 counts at that [*sic*]. And those counts merge." The court also imposed a concurrent five-year prison term for the single count of aggravated criminal sexual abuse. In addition, the court imposed a concurrent five-year term on the single count of sexual relations within families. The court also noted separate parole terms of two years for the criminal sexual assault and one year for the other counts, to be served concurrently.

¶ 7 The mittimus lists a conviction on count 1, the Class 1 felony of criminal sexual assault. The mittimus does not refer to the additional counts or sentences. Defendant filed a notice of appeal in which he named all three offenses and the 12-year sentence.

¶ 8 On appeal, defendant contends his convictions for aggravated criminal sexual abuse and sexual relations within families should be vacated because they are based on the same physical act as the criminal sexual assault conviction. He asserts those convictions violate the one-act, one-crime doctrine enunciated in *People v. King*, 66 Ill. 2d 551 (1977). Defendant points out the different counts allege the same conduct of vaginal penetration, and D.R. testified that only one such act occurred. The State concedes defendant's surplus convictions should be vacated

because they are predicated on the same act that formed the basis for the criminal sexual assault conviction.

¶ 9 We review *de novo* the issue of whether a violation of the one-act, one-crime rule has occurred. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 17. The one-act, one-crime doctrine prohibits multiple convictions for the same physical act. *King*, 66 Ill. 2d at 566; see also *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 10 The record reflects that at sentencing, the court orally imposed three sentences on three separate offenses, including parole terms for all three offenses. In contrast, the mittimus includes a conviction on only one offense, criminal sexual assault, and the mittimus lists count 1 as the basis for that conviction. Where, as here, the oral pronouncement and the mittimus conflict, the oral pronouncement controls. *People v. Lewis*, 379 Ill. App. 3d 829, 837 (2008). Accordingly, the trial judge convicted defendant of three offenses for one physical act.

¶ 11 When a defendant is convicted of more than one crime arising out of the same physical act, the court must impose sentence on the more serious offense and vacate the less serious conviction. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). In determining which offense is more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense. *Id*.

¶ 12 In this case, the more serious offense is criminal sexual assault. That offense is a Class 1 felony with a sentencing range of 4 to 15 years in prison. 720 ILCS 5/12-13(b)(1) (West 2008); 730 ILCS 5/5-8-1(a)(4)(West 2008). Aggravated criminal sexual abuse is a Class 2 felony with a sentencing range of 3 to 7 years in prison (720 ILCS 5/12-16(g) (West 2008)); 730 ILCS 5/5-8-1(a)(5) (West 2008)), and sexual relations within families is a Class 3 felony with a sentencing range of 2 to 5 years in prison. 720 ILCS 5/11-11(b) (West 2008); 730 ILCS 5/5-8-1(a)(6) (West

2008). Accordingly, we vacate defendant's convictions and sentences for aggravated criminal sexual abuse and sexual relations within families. Defendant's conviction and sentence for criminal sexual assault are affirmed.

¶ 13 Defendant also argues on appeal that the State did not prove his guilt of sexual relations within families beyond a reasonable doubt because the elements of that offense require the victim to be older than 18 years of age. We have already concluded that defendant's conviction for that offense should be vacated pursuant to the one-act, one-crime rule. However, it is necessary to point out that the prosecution did not prove the age-related element of the offense of sexual relations within families. That offense requires proof that the victim was 18 years of age or older when the act was committed. 720 ILCS 5/11-11(a)(2)(iii) (West 2008). D.R. testified that she was 14 at the time of the offense. Therefore, the State failed to prove that element of the offense of sexual relations within families.

¶ 14 In conclusion, defendant's conviction and sentence for criminal sexual assault are affirmed. Defendant's convictions and sentences for aggravated criminal sexual abuse and sexual relations within families are vacated as violative of the one act, one crime doctrine. Moreover, the State failed to prove defendant's guilt of the offense of sexual relations within families.

¶ 15 Affirmed in part; vacated in part.