FOURTH DIVISION
May 14, 2015

1-13-2369

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. 11 CR 15352
	)	
RICHARD STRUM,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court of Cook County's judgment convicting defendant of one count aggravated driving under the influence resulting in death and sentencing defendant to 15 years' imprisonment is affirmed, and defendant's remaining convictions and sentences arising out of the same single act of driving under the influence are vacated under the one-act, one-crime rule.

¶ 2 The State indicted defendant, Richard Strum, on multiple counts of aggravated driving under the influence of a drug (DUI) and reckless homicide based on a single automobile

accident that caused the death of two individuals and seriously injured three other individuals. All five of the victims were passengers in a car which was struck by a car being driven by defendant. At the time of the accident, defendant had a metabolite of cannabis in his blood. Following trial before a jury, the circuit court of Cook County entered judgment on the jury's verdict of guilty on two counts of aggravated driving under the influence resulting in the death of another person, two counts of reckless homicide, and three counts of aggravated DUI resulting in great bodily harm or permanent disability or disfigurement to another. The court sentenced defendant to 15 years' imprisonment on each count of aggravated DUI resulting in death, 15 years' imprisonment on each count of reckless homicide, and 10 years' imprisonment on each count of aggravated DUI resulting in great bodily harm or permanent disfigurement. The court ordered that all sentences were to run concurrently.

¶ 3 Defendant appeals, arguing (1) four of the five convictions for aggravated DUI must be vacated under the one-act, one-crime rule and the cause should be remanded for resentencing in light of the trial court's mistaken belief defendant had five aggravated DUI convictions; (2) the cause must be remanded for resentencing because the court entered sentences for reckless homicide outside the statutory sentencing range; and (3) he is entitled to an additional two days of credit against his sentence for time spent in presentence custody.

¶ 4 For the following reasons, we affirm in part and reverse in part.

¶ 5 BACKGROUND

¶ 6 The facts are not in dispute and require only a brief summation. On August 9, 2011, at approximately 8 a.m., Claudia Delia was driving a vehicle, and Bryan Delia, Zachary Marvin, Hawk Marvin, and Christian Diaz were her passengers. Bryan was in the front

passenger seat. Hawk was two-years old at the time and was in a car seat between Zachary and Christian in the back seat. Their vehicle stopped at the intersection of Sunnyside and Austin in Chicago. Defendant was driving southbound on Austin. Moments after Claudia's vehicle entered the intersection after stopping at the stop sign, defendant's vehicle struck Claudia's vehicle and forced it into a light pole. Claudia and Bryan were killed. Zachary, Hawk, and Christian all suffered serious injuries.

¶ 7 On September 27, 2011, the State filed a 16-count indictment against defendant for, *inter alia*, aggravated driving while having any amount of a drug, substance, or compound in his blood, breath, or urine resulting from the unlawful use or consumption of cannabis during the commission of which he was involved in a motor vehicle accident that resulted in the death of Claudia Delia (aggravated DUI resulting in death) in violation of section 11-501(a)(6), (d)(1)(F) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(a)(6), (d)(1)(F) (West 2010)), a Class 2 felony 625 ILCS 5/11-501(d)(2)(G) (West 2010) (count I); aggravated DUI resulting in the death of Bryan Delia (count II); reckless homicide for causing the death of Claudia Delia in violation of section 9-3(a) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/9-3(a) (West 2010)) (count V); reckless homicide for causing the death of Bryan Delia (count VI); aggravated driving while having any amount of a drug, substance, or compound in his blood, breath, or urine during the commission of which he was involved in a motor vehicle accident that resulted in great bodily harm to Christian Diaz (aggravated DUI resulting in great bodily harm) in violation of section 11-501(a)(6), (d)(1)(C) of the Vehicle Code (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2010)) (count VII); aggravated DUI resulting in great bodily harm to Zachary Marvin (count VIII); aggravated DUI resulting in great bodily

harm to Hauk Marvin [*sic*] (count IX); and aggravated DUI resulting in permanent disfigurement to Zachary Marvin in violation of section 11-501(a)(6), (d)(1)(C) of the Vehicle Code (625 ILCS 5/11-501(a)(6), (d)(1)(C) (West 2010)) (count XI). The indictment charged that counts VII through IX and count XI violated section 11-501(d)(2)(F) of the Vehicle Code (625 ILCS 5/11-501(d)(2)(F) (West 2010)) resulting in a potential sentence of imprisonment of one to 12 years. Although not specifically charged in the indictment, because defendant's conduct resulted in the death of two individuals, the sentencing range for the Class 2 felony of aggravated DUI resulting in death was six to 28 years. 625 ILCS 5/11-501(d)(2)(G)(ii) (West 2010).[1]

¶ 8 At defendant's trial, the State presented evidence that defendant's urine contained a THC metabolite, which is a metabolite of cannabinoid. The evidence included testimony that a THC metabolite can only come from cannabis. The State also presented evidence of the surviving victims' injuries. The jury returned verdicts of guilty on the charges of aggravated DUI resulting in great bodily harm to Christian Diaz, aggravated DUI resulting in permanent disfigurement to Zachary Marvin, aggravated DUI resulting in great bodily harm to Hawk Marvin, aggravated DUI resulting in the death of Bryan Delia, aggravated DUI resulting in the death of Claudia Delia, reckless homicide for causing the death of Claudia Delia, and reckless homicide for causing the death of Bryan Delia.

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[1] The State specifically charged defendant with a Class 2 felony and informed the trial court of the appropriate sentencing range at the sentencing hearing. Defendant has raised no challenge to the sufficiency of the charging instrument. Nor do we find that the charging instrument prejudiced defendant in any way.

¶ 9 During defendant's sentencing hearing, the trial court asked the assistant state's attorney what she was suggesting the sentencing range is on the two counts of reckless homicide. The assistant state's attorney responded that because there are two or more deceased victims the sentencing range was six to 28 years. At the conclusion of the sentencing hearing the trial court stated that for the three counts of aggravated DUI causing either great bodily harm or personal disfigurement each sentence will be 10 years in the penitentiary; for the aggravated DUI causing the death of Claudia Delia and Bryan Delia, and the reckless homicide counts, the sentence will be 15 years; and that all sentences will be concurrent. The trial court's sentencing order awarded defendant 697 days credit against his sentence for time spent in presentence custody.

¶ 10 This appeal followed.

¶ 11 ANALYSIS

¶ 12 Defendant raised three issues on appeal. Defendant argued that the trial court erred in sentencing him to 15 years' imprisonment for the two reckless homicide convictions because the appropriate sentencing range for reckless homicide is two to five years and defendant is not eligible for extended-term sentencing on those convictions because reckless homicide is not the most serious offense for which he was convicted. The State did not respond to defendant's argument the trial court imposed a statutorily unauthorized sentence for the reckless homicide convictions because, the State argued, this court should vacate those convictions under the one-act, one-crime rule. The State argued defendant's reckless homicide convictions should be vacated because they are based on the exact same physical act as defendant's aggravated DUI resulting in death convictions--specifically, driving his vehicle

into Claudia's car and causing her and Bryan's deaths--and aggravated DUI resulting in death is the greater offense. Defendant then agreed with the State.

¶ 13 Our supreme court has held that a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act. *People v. Harvey*, 211 Ill. 2d 368, 389-90 (2004) (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). There are two steps to a *King* analysis: first, the court ascertains whether the defendant's conduct consisted of a single physical act or separate acts. *Id.* "Multiple convictions are improper if they are based on precisely the same physical act. [Citation.]" *Id.* If the defendant committed multiple acts, the court moves on to the second step and determines whether any of the other offenses are lesser-included offenses. *Id.* "If any of the offenses are lesser-included offenses, then, under *King*, multiple convictions are improper. [Citation.] If none of the offenses are lesser-included offenses, then multiple convictions may be entered." *Id.* In this case, defendant did not raise a one-act, one-crime argument in the court below. However, it is well-established that "an alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule." *Id.* at 389. "The parties' respective arguments on the one-act, one-crime rule present a question of law that we review *de novo*." *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 14 We agree that defendant's reckless homicide convictions must be vacated under the one-act, one-crime rule. Both of defendant's reckless homicide convictions are based on the exact same physical act as defendant's aggravated DUI resulting in death convictions. Thus, multiple convictions are improper. *Harvey*, 211 Ill. 2d at 389-90.

¶ 15 Defendant also argued that under the one-act, one-crime rule, four of his convictions for aggravated DUI must be vacated because they are all based on the same physical act of driving a vehicle with a substance in his urine resulting from the unlawful consumption of cannabis, and only one conviction on the most serious count--Class 2 felony aggravated DUI resulting in death--may stand. In a companion argument to this point, defendant argued this cause should then be remanded for resentencing on the Class 2 offense because the trial court sentenced defendant under the erroneous belief he had five aggravated DUI convictions.

¶ 16 The State agreed that one of defendant's convictions for aggravated DUI resulting in death should be vacated. The trial court sentenced defendant pursuant to section 11-501(d)(2)(G) of the Vehicle Code, which provides that the sentencing range for aggravated DUI resulting in death is six to 28 years "if the violation resulted in the deaths of 2 or more persons." 625 ILCS 5/11-501(d)(2)(G) (West 2010). The State argued the aggravated DUI resulting in death statute subjects defendant to a sentencing range of six to 28 years' imprisonment for causing the death of two people (625 ILCS 5/11-501(d)(2)(G) (West 2010)), and defendant can only be convicted of one count of causing two deaths. Defendant agreed that one conviction for aggravated DUI resulting in death should stand.

¶ 17 However, the State did not agree that the remaining three convictions for aggravated DUI resulting in great bodily harm or permanent disfigurement had to be vacated under the one-act, one-crime rule. The State asserted that numerous crimes can arise from one course of conduct when more than one individual is a victim of the conduct. The State conceded that defendant committed only one course of conduct--driving his car into the victims' car--but argued that because there were different victims, there were different offenses.

¶ 18 Defendant premised his argument primarily on our supreme court's decision in *People v. Lavallier*, 187 Ill. 2d 464 (1999). In *Lavallier*, the issue was whether the defendant's two convictions for aggravated DUI could stand when both stemmed from a single act of driving under the influence of alcohol. *Id.* at 468. The State also argued in that case that "multiple convictions are justified when there is more than one victim." *Id.* To answer the question, our supreme court turned to the language of section 11-501(d)(1)(C) of the Vehicle Code. *Id.* at 468-69. The statute construed by the court provided as follows:

> "(a) A person shall not drive *** any vehicle within this State while:
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> (1) the alcohol concentration in the person's blood or breath is 0.10 or more ***;
>
> (2) under the influence of alcohol;
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> * * *
>
> (d)(1) Every person convicted of committing a violation of this Section shall be guilty of aggravated driving under the influence of alcohol *** if:
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> * * *
>
> (C) the person in committing a violation of paragraph (a) was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the

> injuries[.] 625 ILCS 5/11–501 (West 1994)." (Internal quotation marks omitted.) *Id.* at 467-68.

¶ 19 Our supreme court found that the language of the statute made clear that an enhanced penalty is available when a person "commits some misdemeanor DUI, in violation of paragraph (a), and aggravating circumstances are present." *Id.* at 469. Our supreme court found that "the focus of section 11-501(d)(1)(C) is on punishing those who both drive under the influence of alcohol in violation of paragraph (a) and have an accident resulting in a motor vehicle accident with injuries to another, rather than on punishing the offender for each individual injured in the accident." *Id.* The legislature only intended to enhance the offense of misdemeanor DUI to a felony if that offense resulted in an accident causing great bodily harm or permanent disfigurement to another regardless of the number of individuals injured. *Id.* Therefore, while the occurrence of great bodily harm or permanent disfigurement aggravates the underlying DUI offense from a misdemeanor to a felony, it does not constitute a separate offense for each person injured. *Id.* The court vacated one of the defendant's convictions and sentences for aggravated DUI. *Id.* at 471.

¶ 20 Regardless of whether there are multiple victims, in an aggravated DUI prosecution "the essential and underlying criminal act remains the same: driving while under the influence." *Id.* at 469. Our supreme court was clear in its instruction that the existence of multiple victims from a single act of driving under the influence as defined in subsection (a) of the DUI statute does not give rise to multiple offenses and cannot sustain multiple convictions. *Id.* at 470-71. In this case the State argues that "it is unclear whether the *Lavallier* decision is an accurate reflection of the present day statute" because numerous amendments to

the DUI statute have occurred since that decision. The rationale underlying the *Lavallier* decision is that the DUI statute creates a misdemeanor offense, and that offense is punished more severely if certain specific circumstances exist: specifically if the person committing the misdemeanor offense "was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the injuries." (Internal quotation marks and citation omitted.) *Id.* at 468 (quoting 625 ILCS 5/11-501 (West 1994)).

¶ 21 In this case, the version of the statue in effect on August 9, 2011, created a misdemeanor offense for driving with "any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis." 625 ILCS 5/11-501(a)(6), (c)(1) (West 2010). [2] That misdemeanor offense could be enhanced to a Class 4 felony if certain specific circumstances exist: specifically if the person committing the misdemeanor offense "was involved in a motor vehicle accident that resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was a proximate cause of the injuries." 625 ILCS 5/11-501(d)(1)(C), (d)(2)(A) (West 2010).[3]

¶ 22 From the language of the statute there is no discernible difference in the underlying purpose of the legislation now than existed when our supreme court decided *Lavallier*. The

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[2] Section 11-501(c)(1) provides: "Except as otherwise provided in this Section, any person convicted of violating subsection (a) of this Section is guilty of a Class A misdemeanor." 625 ILCS 5/11-501(c)(1) (West 2010).

[3] Section 11-501(d)(2)(A) provides: "Except as provided otherwise, a person convicted of aggravated driving under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof is guilty of a Class 4 felony." 625 ILCS 5/11-501(d)(2)(A) (West 2010).

purpose of the legislation remains, as it was for the *Lavallier* court, "to enhance the misdemeanor offense of driving under the influence of alcohol to a felony if that offense resulted in an accident causing great bodily harm or permanent disability or disfigurement to another, regardless of the number of individuals injured." *Lavallier*, 187 Ill. 2d at 469. The offense with which defendant in this case was charged is not defined in terms of bodily injury to an individual, but rather is defined in terms of driving while intoxicated, and that offense is aggravated by the occurrence of a motor vehicle accident that results in great bodily harm or permanent disfigurement to another. See *Id.* at 470. The State's argument that we should not follow our supreme court's direction and find that defendant's single act--becoming involved in a motor vehicle accident resulting in death, great bodily harm, and permanent disfigurement while driving with a substance in his urine resulting from the consumption of cannabis--can support multiple convictions for each injured party is unpersuasive.

¶ 23 Nor do the State's other arguments persuade us that all of defendant's convictions for aggravated DUI may stand. The State cites *People v. Shum*, 117 Ill. 2d 317, 363 (1987), for the proposition that separate victims require separate convictions and sentences. The defendant in *Shum* was charged with murder, feticide of the murder victim's unborn child, attempted murder, and rape of the murder and attempted-murder victims. *Shum*, 117 Ill. 2d at 332. The defendant argued his feticide conviction must be reversed because it arose from the single physical act of killing the fetus's mother. *Id.* at 363. The *Shum* court did state that "it is well settled that separate victims require separate convictions and sentences." *Id.* at 363. But that was not the end of the analysis. The feticide statute at issue in *Shum* provided that:

> "[a] person commits the offense of feticide who causes the death of a fetus if, in performing the acts which caused the death, he, without lawful justification:
>
> (1) either intended to kill or do great bodily harm to the mother carrying the fetus or knew that such acts would cause death or great bodily harm to the mother; or
>
> (2) he knew that his acts created a strong probability of death or great bodily harm to the mother; or
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> (3) he was attempting or committing a forcible felony against the mother other than voluntary manslaughter; and
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> (4) he knew, or reasonably should have known under all of the circumstances, that the mother was pregnant." *Id.* at 357.

¶ 24 As the *Shum* court found:

> "[t]he feticide statute *** seeks to protect a pregnant mother and her unborn child from the intentional wrongdoing of a third party. In accomplishing this purpose, the legislature has chosen to punish the third party not only for any injury to the woman but also for the death of her viable fetus." *Id.* at 359.

¶ 25 As demonstrated in *Lavallier*, the legislature intended to enhance the misdemeanor offense of DUI when certain circumstances exist, but did not intend to punish the offender for each individual injured in an accident. *Lavallier*, 187 Ill. 2d at 469-71. The legislative

intent behind the feticide statute is clearly different. In enacting the feticide statute, the legislature did intend to protect multiple victims of the defendant's act.

¶ 26 The State argues this case is similar to *People v. Fish*, 381 Ill. App. 3d 911, 915 (2008). We disagree. In *Fish*, the defendant had two prior convictions for reckless homicide stemming from a DUI accident where the defendant killed two people in another vehicle. *Id.* at 912. The defendant argued the trial court could not use one of those convictions to upgrade his misdemeanor DUI to a Class 3 felony and use the other reckless homicide conviction to find his sentence on the DUI charge extended-term eligible because those two convictions arose from the same act. *Id.* at 913. Again, the fact that different statutes are involved in *Fish* and in this case renders the holding in *Fish* inapposite. The *Fish* court found that "the situation that presented itself in *Lavallier* with regard to the aggravated DUI statute is distinguishable from that which presents itself when the reckless homicide statute is involved." *Id.* at 915. The *Fish* court noted that under *Lavallier*, the aggravated DUI statute punishes the act of driving under the influence and "any deaths or injuries that resulted from the single act of driving under the influence constituted an aggravating factor that, while it would serve to enhance the offense from a misdemeanor to a felony, nevertheless did not allow the State to charge multiple counts of aggravated DUI for each injury or death." *Id.* at 915 (citing *Lavallier*, 187 Ill. 2d at 469). In contrast, "[t]he thrust and purpose of the reckless homicide statute *** is that it is a crime against an individual and the focus is on the death of the victim or the result of the offender's act." *Id.*

¶ 27 The State's argument ignores the basis of the decision in *Lavallier*--the legislative intent behind the aggravated DUI statute. This is also why the State's reliance on *People v. Grover*,

93 Ill. App. 3d 877, 880 (1981), *People v. Mercado*, 119 Ill. App. 3d 461 (1983), and *People v. Pryor*, 372 Ill. App. 3d 422 (2007), is misplaced. The *Grover* court rejected the defendant's argument that because a death and several injuries resulted from his single act of driving his separate convictions for reckless conduct had to be vacated. *Grover*, 93 Ill. App. 3d at 879. The *Lavallier* court distinguished *Grover* on the grounds that "[i]n contrast to the crime of reckless conduct, which is defined in terms of bodily injury or endangerment to an individual, the offense of aggravated DUI is defined in terms of driving while intoxicated and is aggravated by the occurrence of injury to another." *Lavallier*, 187 Ill. 2d at 470. *Mercado* similarly involved a prosecution for reckless homicide (*Mercado*, 119 Ill. App. 3d at 463), and in *Pryor*, the defendant was convicted of aggravated vehicular highjacking and vehicular hijacking (*Pryor*, 372 Ill. App. 3d at 424).

¶ 28 The defendant in *Pryor* argued that "since he took only one car, one time, one of his two convictions was improper. *Pryor*, 372 Ill. App. 3d at 433. The defendant in *Pryor* attempted to apply the rationale behind *Lavallier* and argued that the vehicular highjacking statute focuses on the taking of a particular type of property, a motor vehicle, rather than the person from whom the property is taken, and that it is the act of taking under specified circumstances that constitutes the offense. *Id.* at 435. The court disagreed with the defendant's reading of the statute, holding that the defendant's argument might have merit if the statute were written differently. *Id.* at 435-36. But, "[t]he plain language of the vehicular hijacking statute is phrased as being committed against an individual." *Id.* at 436. The court held that because crimes were committed against two separate individuals, the defendant's two separate convictions under the vehicular highjacking statute would stand. *Id.* at 437. Unlike

the statute in *Pryor*, the aggravated DUI statute is phrased in terms of driving under the influence, not in terms of being committed against an individual, and that offense is enhanced based on certain specified circumstances.

¶ 29 We hold that pursuant to our supreme court's holding in *Lavallier*, one of defendant's convictions for aggravated DUI resulting in death and defendant's convictions for aggravated DUI resulting in great bodily harm and permanent disfigurement[4] cannot stand under the one-act, one-crime rule. "Under the one-act, one-crime doctrine, a defendant may not be convicted of more than one offense for the same physical act and the sentence should be imposed on the more serious offense and the less serious offense should be vacated. [Citation.]" *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 46. Accordingly, defendant's convictions for aggravated DUI resulting in the death of Bryan Delia (count II) and the Class 4 felonies of aggravated DUI resulting in great bodily harm and permanent disfigurement (counts VII, IX, and XI) are vacated. We order defendant's mittimus corrected to reflect one conviction for aggravated DUI under count I of the indictment. See *People v. Gordon*, 378 Ill. App. 3d 626, 642 (2007) (where all three of the defendant's convictions were based on the same underlying act of driving under the influence of alcohol, two counts should merge with one, and ordering the mittimus corrected to reflect a single conviction and the merger of the other counts).

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[4] The mittimus reflects that defendant was convicted of count VIII of the indictment for aggravated DUI resulting in great bodily harm to Zachary Marvin. The jury actually convicted defendant of count XI, aggravated DUI resulting in permanent disfigurement to Zachary Marvin. To the extent necessary in light of this court's disposition, the mittimus is ordered corrected to reflect a conviction on count XI of the indictment instead of count VIII.

¶ 30 The only remaining issue is whether to remand the cause for defendant to be resentenced with the knowledge that he has only one conviction for aggravated DUI (count I). We will not remand this matter for resentencing. It is clear from the record that the trial court sentenced defendant for the offenses separately. The court ordered all sentences to run concurrently and nothing in the record suggests that the other convictions, which should have merged into count I, affected the trial court's sentencing decision on count I. Therefore, remand for resentencing is not warranted. *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 49 ("It is therefore clear from the record that defendant was sentenced separately on each of the four counts and that the one improper conviction for bribery did not affect the duration or severity of his sentence."). Defendant's reliance on *People v. Nunez*, 263 Ill. App. 3d 740, 757 (1994), is misplaced because in that case the court remanded for resentencing because "the record is not clear as to which offense the defendant was sentenced." Here, the trial court made clear what sentence it imposed for what offense. This case is also distinguishable from *People v. Smith*, 275 Ill. App. 3d 207, 213-14 (1995), where "the order of sentence and commitment shows a single sentence of 30 years' imprisonment based on one count of armed robbery and three counts of home invasion," but two of the home invasion counts had to be vacated. In this case, the trial court did not impose a single sentence on all counts including the counts that must now be vacated. The trial court entered separate sentences on each count, including a separate sentence on count I. Moreover, the sentence on count I is within the statutory range of six to 28 years. "[W]hen a sentence falls within the statutory guidelines, it is presumed to be proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate

to the nature of the offense." *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. There has been no showing a sentence of 15 years' imprisonment is at variance with the purpose and spirit of the law or that it is manifestly disproportionate to the nature of defendant's offense. The trial court's sentence on count I is affirmed.

¶ 31 The clerk of the circuit court is ordered to correct defendant's mittimus to reflect that the convictions on counts II, V, VI, VII, IX, and XI are merged into defendant's conviction on count I. *Petermon*, 2014 IL App (1st) 113536, ¶ 46 ("This court has the authority to order the mittimus to be corrected without remanding."). The trial court's sentence of 15 years' imprisonment on count I is affirmed. Defendant argued he is entitled to an additional two days' credit against his sentence for time spent in presentence custody. The State agreed with defendant. The clerk is also directed to correct the mittimus to reflect the additional two days' presentence credit.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the trial court's judgment is affirmed in part, and reversed in part.

¶ 34 Affirmed in part, reversed in part, mittimus corrected.