FOURTH DIVISION
August 18, 2016

No. 1-14-0208

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 4410
	)	
OBBIE SANDERS,	)	Honorable
	)	Larry G. Axelrood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Conviction for armed habitual criminal affirmed. Attempted armed robbery was proper predicate felony to establish that offense. Conviction for unlawful use of weapon by felon vacated under one-act, one-crime doctrine. Sentence affirmed, as trial court did not consider improper factors or placed minimal weight on any improper factors.

¶ 2 After police found a handgun and ammunition in his home, defendant Obbie Sanders was charged with one count of being an armed habitual criminal (AHC) and two counts of unlawful use of a weapon by a felon (UUWF).[1] Following a bench trial, the trial court found defendant guilty of each of those counts. Defendant's AHC conviction was predicated on his prior

[1] The State also charged defendant with possession of a controlled substance, but defendant was acquitted of that charge.

convictions for UUWF and attempted armed robbery. See 720 ILCS 5/24-1.7(a) (West 2010) (defining AHC as possession of firearm by person who has been convicted of two or more specified felonies). The trial court sentenced defendant to seven years' incarceration on the AHC count and three years' incarceration on each of the UUWF counts.

¶ 3 On appeal, defendant argues: (1) that we should reverse his AHC conviction because the State failed to establish that his conviction for attempted armed robbery was a "forcible felony" under the AHC statute (720 ILCS 5/24-1.7(a)(1) (West 2010)); (2) that we should vacate one of his UUWF convictions because it was predicated on the same act as his AHC conviction (*i.e.*, possessing the handgun); and (3) we should remand for resentencing where the trial court improperly considered factors inherent in the offense of AHC to aggravate defendant's sentence and improperly disregarded the mitigating evidence he presented at his sentencing hearing.

¶ 4 We affirm defendant's AHC conviction. Attempted armed robbery was a proper predicate for AHC, because a person who commits attempted armed robbery necessarily intends to take property from another by the use or threat of force while armed with a dangerous weapon. Such an intent, coupled with the presence of a weapon, shows that a person convicted of attempted armed robbery contemplates the use of physical force or violence, which fits the Illinois Supreme Court's definition of a forcible felony.

¶ 5 We vacate one of defendant's convictions for UUWF, however, because it was predicated on the same act the formed the basis of the AHC charge—his possession of a handgun.

¶ 6 Finally, we affirm defendant's sentence for AHC, because the trial court did not consider improper factors or disregard defendant's mitigating evidence. And to the extent the trial court considered improper aggravating factors, the record shows that the court placed little weight on

them, as defendant received a sentence only one year greater than the minimum sentence despite his history of felony convictions.

¶ 7 I. BACKGROUND

¶ 8 We briefly summarize the evidence at trial, as the facts are not in dispute and a lengthy recitation of the facts is unnecessary to decide defendant's claims on appeal.

¶ 9 On February 25, 2011, several police officers executed a search warrant at defendant's home on the 7200 block of South Peoria Avenue in Chicago. After pulling over defendant in his car near the home, the officers used defendant's keys to enter his house.

¶ 10 Once inside, the officers read defendant his *Miranda* rights, and defendant admitted that there was a gun on top of a cabinet in his kitchen. One of the officers retrieved a sock that contained a silver, .40-caliber handgun that was loaded with 12 bullets. A different sock recovered nearby also contained 15 additional rounds of ammunition.

¶ 11 Defendant admitted to the officers that he owned the gun. He said that he needed it for protection given how "many times [he had] been shot." The officers who testified at defendant's trial knew that he had been shot several times in the past, and that he was in a wheelchair due to a gunshot wound.

¶ 12 For purposes of establishing the predicate felonies for the AHC charge, the State introduced two certified copies of defendant's prior convictions for UUWF in Cook County Case No. 97 CR 27630 and for attempted armed robbery in Cook County Case No. 03 CR 10249. The State presented no other evidence regarding defendant's prior convictions.

¶ 13 Defendant elected not to present any evidence on his behalf.

¶ 14 The trial court found defendant guilty of AHC, UUWF premised on defendant's possession of the handgun, and UUWF premised on defendant's possession of the ammunition.

¶ 15 At the sentencing hearing, the State pointed out that defendant had six prior felony convictions, including the two convictions that it had used to establish the AHC charge. Defense counsel noted that defendant had been the victim of violence in the past, "ha[d] been shot many times," and "may spend the rest of his life in a wheelchair." Defense counsel requested the minimum sentence, noting, "There's no reason for giving any substantial time." The trial court responded, "When you say there's no reason, he has six prior felony convictions. Am I not to consider that?"

¶ 16 The trial court made the following comments before sentencing defendant on the AHC count:

> "[A]s to that count, I take in mind that he has six prior felony convictions. I also take into consideration everything that was in the pre-sentence investigation [report], the facts and circumstances of this case, the fact that he has a close, in his words, wonderful relationship with his four year old daughter.
>
> I am mindful of the fact that he has been shot on multiple separate occasions, the last of which has left him appearing in Court in a wheelchair.
>
> Certainly, he has been engaged in and the victim of violent acts more than anybody that I've ever encountered. I don't know what to make of that, so I won't put much stock in that one way or the other.
>
> The defendant's life has brought him here. I do not believe that it's appropriate for me in any manner, shape, or form to give him the minimum sentence.
>
> However, the facts and circumstances of this case but for his criminal history are not as egregious as some of the other cases that I've seen.

> I'm mindful that the [AHC] made this criminal conduct a Class X felony, which in fact enhanced it because of his prior criminal history. So, I'm weighing all those factors. And I believe the appropriate sentence on Count 1 will be seven years in the Illinois Department of Corrections."

The court also sentenced defendant to three years' incarceration on each of the UUWF counts, to be served concurrently with his sentence for AHC.

¶ 17 Defendant filed this appeal.

¶ 18 II. ANALYSIS

¶ 19 A. Attempted Armed Robbery as Predicate for AHC

¶ 20 Defendant first argues that the State failed to prove him guilty of AHC, because his attempted armed robbery conviction was not a "forcible felony" that could serve as a predicate felony for AHC. 720 ILCS 5/24-1.7(a) (West 2010). Defendant notes that the State did not present any evidence to prove that his attempted armed robbery conviction involved the use or threat of force, and that a conviction for attempted armed robbery would not necessarily require the use or threat of force. The State contends that, in the abstract, attempted armed robbery involves the contemplation of the use of force, which is sufficient to establish it as a forcible felony.

¶ 21 The parties agree that this question involves statutory interpretation, which is a question of law we review *de novo*. *Landis v. Marc Realty, LLC*, 235 Ill. 2d 1, 6 (2009); see also *People v. Thomas*, 407 Ill. App. 3d 136, 139 (2011) (applying *de novo* standard of review to question of whether attempted murder could be forcible felony for purposes of AHC statute).

¶ 22 To prove a defendant guilty of AHC under section 24-1.7(a)(1) of the Criminal Code of 1963 (720 ILCS 5/24-1.7(a) (West 2010)), the State must prove that the defendant received, sold,

possessed, or transferred a firearm after having been convicted at least twice of "a forcible felony as defined in Section 2-8" of the Criminal Code of 1963 (720 ILCS 5/2-8 (West 2010)). 720 ILCS 5/24-1.7(a) (West 2010). In turn, section 2-8 defines "forcible felony" as:

> "[T]reason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and *any other felony which involves the use or threat of physical force or violence against any individual*." (Emphasis added.) 720 ILCS 5/2-8 (West 2010).

¶ 23 Attempted armed robbery is not one of the specifically enumerated offenses in section 2-8. Thus, the parties agree that, in this case, the State was required to prove that attempted armed robbery fell under section 2-8's residual clause. See *People v. White*, 2015 IL App (1st) 131111, ¶ 30 (where predicate offense not specifically listed in section 2-8, "it must fall within section 2-8's residual clause in order to satisfy the forcible felony statute and in turn, the [AHC] statute").

¶ 24 To show that an offense falls within section 2-8's residual clause, one of two circumstances must be present: (1) "the record must show that the specific circumstances of [the] defendant's *** conviction fall under the residual clause"; or (2) the predicate felony "must inherently be a forcible felony under the residual clause." *Id.* ¶ 33. In this case, the State did not present any evidence of the circumstances underlying defendant's attempted armed robbery conviction, so the only question is whether attempted armed robbery is inherently forcible. See, *e.g.*, *id.* (where State "presented no evidence at trial concerning the circumstances surrounding [the] defendant's prior conviction," only question was whether predicate felony was "inherently forcible").

¶ 25 A person commits armed robbery when he or she knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force and:

> "(1) he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm; or
>
> (2) he or she carries on or about his or her person or is otherwise armed with a firearm; or
>
> (3) he or she, during the commission of the offense, personally discharges a firearm; or
>
> (4) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person." 720 ILCS 5/18-2(a) (West 2010).

A person commits attempted armed robbery when, with the intent to commit armed robbery, he or she takes a substantial step toward the commission of that offense. 720 ILCS 5/8-4(a) (West 2010); *People v. Robinson*, 92 Ill. App. 3d 397, 399 (1981).

¶ 26 Defendant argues that attempted armed robbery is not inherently a forcible felony because it may not necessarily involve the use or threat of physical force or violence. For example, a person may commit attempted armed robbery by lying in wait with a weapon. See, *e.g.*, *People v. Terrell*, 99 Ill. 2d 427, 433 (1984) (affirming attempted armed robbery conviction where defendant "concealed himself in the weeds in close proximity to a service station, which was about to open, while in possession of a stocking mask and a fully loaded revolver").

¶ 27 While we recognize that not every attempted armed robbery will actually result in the use or threat of physical force or violence, our supreme court has held that "[i]t is the *contemplation*

that force or violence against an individual *might be* involved combined with the implied willingness to use force or violence against an individual that makes a felony a forcible felony under the residual category of section 2-8." (Emphases added.) *People v. Belk*, 203 Ill. 2d 187, 196 (2003). So the question is whether attempted armed robbery fits within *Belk*'s definition—whether it contemplates that force might be used along with the implied willingness to use it.

¶ 28 We hold that it does. As we have just noted, an individual who commits attempted armed robbery must have the intent to commit armed robbery—and armed robbery, by definition, includes the use or threat of physical force or violence. Simply stated, anyone who *intends* to use force or the threat of imminent force must, obviously, be *contemplating* the use of force.

¶ 29 Moreover, a person who commits attempted armed robbery necessarily shows the requisite "implied willingness to use force or violence" (*id.*), because he or she must intend to commit the robbery while armed with a firearm or other dangerous weapon. 720 ILCS 5/18-2(a) (West 2010). In *Belk*, the supreme court wrote that the fact that an individual is armed "necessarily implies that [he or she] contemplated that the use of force or violence against an individual might be involved and that they were *willing* to use such force or violence ***." (Emphasis in original.) *Belk*, 203 Ill. 2d at 196. Because a defendant who commits attempted armed robbery intends to commit a robbery using a firearm or other dangerous weapon, he or she also has the requisite willingness to use force or violence as set out in section 2-8.

¶ 30 Defendant acknowledges the standard set out in *Belk* but notes that *Belk* involved the felony-murder doctrine, not the offense of AHC. Defendant argues that this distinction is important because felony murder is concerned with foreseeability, whereas there is no element of foreseeability in the AHC statute. See *People v. Lowery*, 178 Ill. 2d 462, 469 (1997) (defendant

is guilty of felony murder where death is "a direct and foreseeable consequence" of forcible felony).

¶ 31 We disagree that this distinction makes a difference in this case. In *Belk*, the supreme court interpreted when a felony constitutes a "forcible felony" under section 2-8 (*Belk*, 203 Ill. 2d at 193, 196), the same statutory provision expressly referenced in the AHC statute. 720 ILCS 5/24-1.7(a) (West 2010). We can think of no reason why section 2-8's definition of "forcible felony" should vary depending on which statute or statutes happen to incorporate it; the incorporating statutes may be different, but section 2-8 obviously remains the same. Courts have routinely applied *Belk*'s interpretation of section 2-8 in the context of AHC cases like this one. See, *e.g.*, *White*, 2015 IL App (1st) 131111, ¶ 30 (citing *Belk* in determining whether offense of domestic battery was proper predicate felony under AHC statute); *Thomas*, 407 Ill. App. 3d at 140 (relying on *Belk*'s interpretation of section 2-8 in determining whether attempted murder constituted forcible felony for purposes of AHC statute); *People v. Sanderson*, 2016 IL App (1st) 141381, ¶ 5 (relying on *Belk* in determining whether attempted residential burglary qualified as predicate forcible felony for AHC statute).

¶ 32 Moreover, had the General Assembly, in adopting the AHC, wished to apply a different interpretation of "forcible felony" than the one in section 2-8, it could have supplied a different definition within the language of the AHC. To the contrary, not only did the General Assembly expressly incorporate section 2-8 into the AHC, but we must further presume that it intended to adopt *Belk*'s *interpretation* of section 2-8 when it did so. *Belk* was decided in 2003, and the legislature created the offense of AHC in 2005. See Pub. Act 94-398 (eff. Aug. 2, 2005) (adding 720 ILCS 5/24-1.7). "Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *People v.*

Hickman, 163 Ill. 2d 250, 262 (1994). Thus, we presume that the General Assembly intended to apply *Belk*'s definition to the predicate felonies for AHC.

¶ 33 Defendant also contends that the "contemplation" standard outlined in *Belk*, 203 Ill. 2d at 196, conflicts with the plain language of section 2-8, which says that a forcible felony is one that "*involves* the use or threat of physical force or violence against any individual." (Emphasis added.) 720 ILCS 5/2-8 (West 2010). Defendant argues that the statute demands more than the mere contemplation of the use or threat of force or violence; the word "involves" signals that force or violence must actually be used or threatened. What defendant is saying here is that *Belk* was wrongly decided, but we are bound by our supreme court's interpretation of section 2-8 and will not second-guess it. See *People v. Artis*, 232 Ill. 2d 156, 164 (2009) ("The appellate court lacks authority to overrule decisions of this court, which are binding on all lower courts.").

¶ 34 Finally, defendant claims that attempted armed robbery is not inherently a forcible felony because the phrase "physical force or violence" in section 2-8 requires a predicate felony to be capable of causing serious physical pain or bodily injury. Defendant cites *Thomas*, 407 Ill. App. 3d 136, in support of this argument. In *Thomas*, this court held that attempted murder was inherently a forcible felony under section 2-8. *Id.* at 137. Defendant directs us to the first part of *Thomas*'s analysis on that question, where the court sought guidance from the federal Armed Career Criminal Act of 1984 (ACCA) (18 U.S.C. § 924(e)(1) (2006)), which, like the AHC statute, imposed enhanced penalties for the possession of firearms by individuals who had been convicted of violent felonies. *Thomas*, 407 Ill. App. 3d at 139. And violent felonies were those that involved the " 'use, attempted use, or threatened use of physical force against the person of another.' " *Id.* (quoting 18 U.S.C. § 924(e)(2)(B)(i) (2006)). The court cited United States Supreme Court case law interpreting the phrase "physical force" to mean " 'violent force—that

is, force capable of causing physical pain or injury to another person.' " *Thomas*, 407 Ill. App. 3d at 139 (quoting *Johnson v. United States*, 559 U.S. 133, 140 (2010)). Based on that interpretation, the court in *Thomas* found that, "under [section 2-8], a felony involves 'physical force or violence' if the felony can cause serious physical pain or bodily injury to another person." *Thomas*, 407 Ill. App. 3d at 140 (quoting 720 ILCS 5/2-8 (West 2006)).

¶ 35 The court, citing *Belk* and focusing on the language of the AHC statute, then stated "that a felony involves the threat of physical force or violence if the felon 'contemplated that violence might be necessary' to carry out the crime." *Thomas*, 407 Ill. App. 3d at 140 (quoting *Belk*, 203 Ill. 2d at 194). The court held that attempted murder was inherently a forcible felony "[b]ecause every attempted murder involves a specific intent to cause death," which necessitates a finding that "the guilty person contemplated the use of sufficient force to cause very serious injury, injury that can lead to death." *Thomas*, 407 Ill. App. 3d at 140.

¶ 36 Defendant argues that, pursuant to *Thomas*, a person who commits a forcible felony must contemplate more than the mere use or threat of force; he must contemplate using or threatening force sufficient to cause "serious physical pain or bodily injury to another person." *Thomas*, 407 Ill. App. 3d at 140. And, defendant contends, a person who commits attempted armed robbery does not necessarily contemplate inflicting serious physical pain or bodily injury; attempted armed robbery may be committed merely with the intent to use or threaten "force." 720 ILCS 5/18-1(a) (West 2010); see also *People v. Houston*, 151 Ill. App. 3d 718, 721 (1986) ("[A]n act may constitute robbery where a struggle ensues, the victim is injured in the taking, *or* the property is so attached to the victim's person or clothing as to create resistance to the taking." (Emphasis added.)).

¶ 37 Defendant's analysis overlooks the fact that he was convicted of attempted *armed* robbery, not attempted robbery. A person convicted of attempted armed robbery must intend to use or threaten force while armed with a firearm or other dangerous weapon, and such weapons are certainly capable of inflicting "serious physical pain or bodily injury." *Thomas*, 407 Ill. App. 3d at 140. Again, as the supreme court explained in *Belk*, the fact that an individual is armed when he commits a felony "necessarily implies that [he or she] contemplated that the use of force or violence against an individual might be involved and that they were willing to use such force or violence." (Emphasis omitted.) *Belk*, 203 Ill. 2d at 196. We fail to see how a conviction for attempted armed robbery does not involve contemplating using or threatening physical force or violence, when an attempted armed robbery requires an intent to be armed with a dangerous weapon.

¶ 38 We hold that attempted armed robbery is inherently a forcible felony under section 2-8. Thus, the State presented sufficient evidence that defendant had committed two forcible felonies that support his conviction for AHC.

¶ 39 B. One-Act, One-Crime

¶ 40 Next, defendant contends, and the State agrees, that we should vacate one of his convictions for UUWF because it was based on the same act as his conviction for AHC—possessing the handgun found in his house. Under the one-act, one-crime doctrine, multiple convictions may not be entered for the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). When two convictions are entered for the same act, "sentence should be imposed on the more serious offense and the less serious offense should be vacated." *Artis*, 232 Ill. 2d at 170.

¶ 41 Here, both the AHC count (count 1) and one of the UUWF counts (count 2) were based on defendant's possession of a single firearm, and the trial court sentenced defendant on each

count. We vacate defendant's conviction for UUWF under count 2, as it was the less serious offense. See *People v. Bailey*, 396 Ill. App. 3d 459, 465 (2009) (convictions for UUWF and AHC based on possession of same firearm could not both stand; UUWF conviction vacated).

¶ 42 C. Sentencing

¶ 43 Finally, defendant challenges his seven-year sentence for AHC on two grounds: (1) that the trial court improperly considered the same felonies used to prove AHC as aggravating factors and considered aggravating factors that were not supported by any evidence; and (2) that the trial court improperly disregarded his mitigating evidence, including the evidence that he had been shot and was in a wheelchair. The State first claims that defendant forfeited this issue by failing to raise it in his post-sentencing motion. Defendant acknowledges that he did not file a motion to reconsider his sentence, which would ordinarily result in forfeiture of his claims, but argues that we should reach the merits of this issue because the trial court failed to admonish him in compliance with Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001), because the trial court's errors constituted plain error exempt from forfeiture, and because his counsel was ineffective for failing to file a postsentencing motion.[2]

¶ 44 We do not need to dive into questions of forfeiture and plain error because, even if defendant had forfeited the issue, our first consideration would be whether the trial court erred. See *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010) ("The first step in plain-error analysis is to

[2] The State kicks off its argument on this issue with the heading, "This Court Should Decide Defendant's Sentencing Challenge on the Merits and Affirm His Seven-Year Sentence." We assume that the State meant to say that we should *not* decide the issue on the merits based on forfeiture, given its fairly extensive discussion of forfeiture that followed the heading. Defendant does not argue otherwise in his reply brief.

determine whether a clear or obvious error occurred."). And for reasons explained below, we find no error in the trial court's sentencing.

¶ 45 We review a sentence that falls within statutory limits for an abuse of discretion. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56. A trial court abuses its discretion when it considers an improper factor in aggravation. *People v. McAfee*, 332 Ill. App. 3d 1091, 1096 (2002).

¶ 46 Double enhancement of a sentence occurs when either "(1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself." *People v. Guevara*, 216 Ill. 2d 533, 545 (2005). Thus, the trial court may not use a prior conviction to enhance a sentence when that prior conviction is also an element of the offense. See, *e.g.*, *People v. Hall*, 2014 IL App (1st) 122868, ¶¶ 10, 13 (improper double enhancement where prior conviction for aggravated criminal sexual assault was element of offense and was used to justify imposition of elevated sentence).

¶ 47 In this case, defendant was convicted of AHC, an element of which is that the defendant has been convicted of two prior forcible felonies. 720 ILCS 5/24-1.7(a) (West 2010). The State used defendant's prior convictions for UUWF and attempted armed robbery to prove the AHC charge. The presentence investigation report (PSI) that the court reviewed at sentencing reflects defendant's six prior felony convictions, including the prior convictions used to prove the AHC charge.

¶ 48 Defendant argues that the following three comments by the trial court showed that it improperly considered the prior convictions used to prove AHC as aggravating factors:

1. When defense counsel argued that there was "no reason" to give defendant a substantial sentence, the court replied, "When you say there's no reason, he has six prior felony convictions. Am I not to consider that?"

2. During the judge's findings, he said, "Count 1, which is the [AHC], as a Class X offender, as to that count, I take in mind that he has six prior felony convictions."

3. During the judge's findings, he also said, "I'm mindful that the [AHC] made this criminal conduct a Class X felony, which in fact enhanced it because of his prior criminal history."

¶ 49 From these statements, we cannot determine whether the trial court relied on all of defendant's convictions. The third statement, which came just before the court imposed defendant's sentence, shows that the trial court recognized that defendant's sentence was already enhanced by his "prior criminal history" simply by virtue of the AHC conviction. The court made that statement *after* it had mentioned defendant's "six prior felony convictions," showing that the court recognized that defendant's sentence should not have been enhanced by the same convictions used to prove AHC.

¶ 50 Moreover, even assuming for the moment that the court improperly considered defendant's UUWF and attempted armed robbery convictions, the court appeared to place little weight on them. Where a trial court considers an improper factor in aggravation, we must order resentencing only if we cannot determine the weight that the trial court gave to the aggravating factor. *McAfee*, 332 Ill. App. 3d at 1096-97. But where the trial court appears to place minimal emphasis upon an improper factor, a new sentencing hearing is not required. See, *e.g.*, *People v. Bourke,* 96 Ill. 2d 327, 332 (1983) (where record "adequately demonstrate[d] that the weight placed on the improperly considered aggravating factor was so insignificant that it did not result

in a greater sentence," remand for new sentencing was unnecessary); *People v. Gomez*, 247 Ill. App. 3d 68, 74 (1993) (declining to order resentencing where trial court simply mentioned defendant's arrests in passing).

¶ 51 In this case, the court sentenced defendant to seven years' incarceration, just one year above the statutory minimum. See 720 ILCS 5/24-1.7(b) (West 2010) (AHC is Class X felony); 730 ILCS 5/5-4.5-25(b) (West 2010) (Class X felonies have sentencing range of 6 to 30 years' incarceration). And defendant had four other prior felony convictions, including another conviction for unlawfully possessing a firearm, which the trial court properly considered in aggravation. In light of defendant's other prior convictions, which were proper aggravating factors, as well as the trial court's apparent understanding that his sentence had already been enhanced by his UUWF and attempted armed robbery convictions, it appears that the trial court placed little weight on those two prior convictions, if it considered them at all.

¶ 52 Defendant acknowledges that his sentence was only one year above the minimum but argues that we should remand for resentencing because "it could have been lower." Defendant cites *People v. Minter*, 2015 IL App (1st) 120958, ¶ 153, where we remanded for resentencing due to the trial court's improper consideration of bare arrests, even though the defendant only received a sentence two years above the minimum. But in *Minter*, the defendant's only other criminal history was an adjudication of delinquency for battery entered when the defendant was 16 years old. *Id.* And the trial court expressly said that the improper factor "did not 'go well for' [the] defendant." *Id.* Thus, in *Minter*, the existence of only a "few aggravating factors," along with the court's express statement that defendant's arrests worked against him, showed that the trial court placed some emphasis on the improper factor. *Id.* By contrast, in this case, it is not clear that the court even considered the two improper factors, as the court recognized that

defendant's AHC conviction was premised on two of his prior convictions. And defendant had a much more substantial criminal history than the defendant in *Minter*, which supported the trial court's relatively minor sentence. Defendant's citation to *Minter* does not persuade us that resentencing is necessary.

¶ 53 Defendant also argues that the trial court improperly found that he had performed violent acts when there was no evidence presented to support such a finding. Defendant notes that the trial court said that defendant "ha[d] been *engaged* in and the victim of violent acts more than anybody that [the court had] ever encountered." (Emphasis added.) But even assuming the trial court improperly found that defendant had a history of violence, we would once again conclude that the trial court placed almost no weight on this improper factor. As we noted above, defendant's four other felony convictions supported giving defendant a sentence only one year greater than the minimum sentence, especially where the sentencing range was large (24 years). More importantly, the trial court expressly said that it did not "put much stock in that [factor] one way or another." The record thus shows that the trial court put little to no weight on any improper factors.

¶ 54 Defendant's last challenge to his sentence is that the trial court improperly disregarded his mitigating evidence. Specifically, defendant claims that the trial court disregarded evidence that defendant had been shot several times and was in a wheelchair.

¶ 55 The record does not support defendant's claim. The trial court expressly said that, in sentencing defendant, it was "mindful of the fact that [defendant] ha[d] been shot on multiple separate occasions, the last of which has left him appearing in Court in a wheelchair." Thus, the court considered defendant's injuries in fashioning his sentence.

¶ 56 Defendant notes that the trial court said that it did not "put much stock in" defendant's injuries, but that does not mean the trial court considered them. To the contrary, the court's use of the word "much" indicates that the court considered defendant's injuries, but did not ascribe substantial weight to them.

¶ 57 Because the trial court considered the mitigating evidence defendant claims he did not, defendant's argument is actually that the trial court should have placed greater weight on his injuries than it did. But a reviewing court may not simply reweigh the factors involved in a trial court's sentencing decision. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010).

¶ 58 And we again note that defendant was given a sentence very close to the minimum available sentence despite his having four prior felony convictions that were suitable for consideration in sentencing. The trial court showed considerable compassion for defendant and did not abuse its discretion in sentencing defendant to seven years' incarceration for AHC. We affirm defendant's sentence.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we vacate defendant's conviction for UUWF under count 2 but affirm his remaining convictions. We affirm defendant's sentence.

¶ 61 Affirmed in part, vacated in part.