Received 11/26/2019

SUPREME COURT OF ILLINOIS

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November 26, 2019

In re: People State of Illinois, respondent, v. James Heard, petitioner.
Leave to appeal, Appellate Court, First District.
125309

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 12/31/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

2019 IL App (1st) 162302-U

No. 1-16-2302

Order filed August 30, 2019

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 17869
	)	
JAMES HEARD,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for unlawful use of a weapon by a felon (possession of firearm) is vacated because that conviction was for the same act as defendant's armed habitual criminal conviction. The case is remanded for sentencing on the remaining conviction for unlawful use of a weapon by a felon (possession of ammunition), which was improperly merged into the vacated conviction and upon which the circuit court did not impose a sentence. The judgment of the circuit court is otherwise affirmed, as the circuit court did not rule on defendant's request to proceed *pro se*, and defendant later acquiesced to representation by counsel. Illinois Supreme Court Rule 472 prevents this court from addressing defendant's challenge to the fines and fees order.

¶ 2 Following a bench trial, defendant James Heard was convicted of armed robbery with a firearm, armed habitual criminal, and unlawful use of a weapon by a felon. He received concurrent sentences of 23 years' imprisonment for armed robbery, 8 years for armed habitual criminal, and 5 years for unlawful use of a weapon by a felon. On appeal, he argues that (1) the circuit court erred by denying his request to proceed *pro se*, (2) his convictions for unlawful use of a weapon by a felon and armed habitual criminal violate the one-act, one-crime rule, and (3) he was wrongfully assessed a $5 electronic citation charge, a $5 court system charge, and various fines that were subject to presentence credit. We affirm in part, vacate in part, and remand.

¶ 3 Defendant was charged by information with one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2014)) (count I), one count of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)) (count II), four counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) (counts III through VI), four counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (3)(A-5); (a)(1), (3)(C); (a)(2), (3)(A-5); (a)(2), (3)(C) (West 2014)) (counts VII through X), and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2014)) (count XI), arising from an incident in Chicago on September 26, 2014. Count III was for unlawful use of a weapon by a felon alleged possession of a firearm, while count IV was for unlawful use of a weapon by a felon alleged possession of ammunition. The State nol-prossed counts V and VI for unlawful use of a weapon by a felon and proceeded on the remaining counts.

¶ 4 On October 17, 2014, defendant's first court date, the trial court asked defendant if he had an attorney, and defendant responded, "Not today." An assistant public defender told the court, "I spoke with his family. They're planning on hiring counsel for him but have not done so

yet." The court asked defendant to repeat himself, and defendant stated, "I said not today." Then, the court appointed the public defender "for today's purpose."

¶ 5 At a pretrial hearing on January 27, 2015, the assistant public defender told the court that defendant wanted to represent himself. Then, the following colloquy occurred:

"THE COURT: Are you an attorney?

THE DEFENDANT: No.

***

THE COURT: How far did you go in school?

THE DEFENDANT: I'm good enough to represent myself.

THE COURT: I didn't ask you that. I'm sorry, you must have misunderstood. You don't decide. I decide. How far did you go in school?

THE DEFENDANT: 11th, 12th grade.

THE COURT: You don't know?

THE DEFENDANT: 12th grade.

THE COURT: A second ago it was 11th.

THE DEFENDANT: I forgot already.

THE COURT: So, you did not complete high school. Did you go to college?

THE DEFENDANT: No.

THE COURT: Did you go to law school?

THE DEFENDANT: No.

THE COURT: And so you have a, at best, junior year level of high school education, is that correct?

THE DEFENDANT: Yes.

THE COURT: And, sir, if you do represent [yourself], you are held to the same standard as a licensed attorney in the State of Illinois. You are expected to know all the rules of evidence, as well as legal and technical requirements that you are obligated to follow. I will not appoint stand-by Counsel at this time. Do you understand the charges against you?

THE DEFENDANT: Yes.

THE COURT: *** Why are you of the opinion that you can represent yourself?

THE DEFENDANT: Because I feel I have the knowledge.

THE COURT: Really? You are not a licensed attorney.

THE DEFENDANT: I don't—

THE COURT: I'll take this under advisement. I'm not sure he understands. Is there family here for Mr. Heard? Come in, Ma'am.

UNIDENTIFIED: Good morning.

THE COURT: Ma'am, did you hire a private attorney?

UNIDENTIFIED: We tried to get one, your Honor.

THE COURT: At this point I'm not going to allow you to represent yourself. You are going to hire one?

UNIDENTIFIED: Yes.

THE COURT: [Assistant public defender], you remain on this until then."

¶ 6 At the next appearance on February 17, 2015, the assistant public defender moved for leave to withdraw, and a private defense attorney moved for leave to file an appearance. The trial court asked defendant whether he wanted the assistant public defender to withdraw, and for the private attorney to represent him. Defendant answered, "Yes." The court granted both attorneys' motions.

¶ 7 At a later hearing on April 27, 2015, the private defense attorney moved for leave to withdraw because defendant had "failed to fulfill the agreement *** regarding the defense of this case." The court asked defendant if he wished for his counsel to withdraw, and he answered affirmatively. The court granted the motion and asked if defendant had another attorney, or if any family members were hiring another attorney. Defendant answered, "No, ma'am," and so the court stated it would appoint the public defender. Defendant proceeded to trial represented by an assistant public defender, and a different judge tried the case.

¶ 8 We set forth a brief summary of the facts adduced at trial. Alex Rhodes testified that on September 26, 2014, at about 10 a.m., he was on the southbound Green Line train in Chicago. Three other people were in the train car, including defendant. Defendant stood by the doors in the middle of the train car, observed Rhodes for less than a minute, and sat down a few inches from Rhodes's left side. Then, defendant pulled a firearm from his waist, pointed it at Rhodes, and said, "Give me your phone and what's in your pockets." Rhodes gave defendant an iPhone and wallet, and defendant exited the train. Rhodes exited at 63rd Street and Cottage Grove Avenue, and called the police at his mother's workplace.

¶ 9 When the police arrived, Rhodes told Officer John Block and Sergeant Paz what happened, and they used an application on Paz's phone to determine the location of Rhodes's

iPhone. Block drove Rhodes until Rhodes saw defendant and identified him to Block. Then, police officers arrested and searched defendant, and recovered Rhodes's iPhone and wallet. Rhodes confirmed that surveillance footage from the train car, which the State published, depicted defendant robbing him.

¶ 10 The testimony of Block and Chicago police officer Andrews largely corroborated Rhodes's account. Andrews added that he took defendant to the police station, gave him *Miranda* warnings, and spoke with him in the presence of Block, Paz, and Officer Rivera. Defendant told Andrews that he robbed Rhodes with a firearm and then left the firearm at his girlfriend's sister's residence. Andrews went to the residence and found a loaded firearm in what appeared to be a "tote or *** clothes bin."

¶ 11 Chicago police detective Catherine Crow testified that at about 5:30 p.m., she gave defendant *Miranda* warnings and spoke with him regarding the events from that morning. Defendant told Crow a story similar to the one he told Andrews. Then, an assistant state's attorney arrived and typed defendant's statement. Defendant made corrections to the statement and signed it.

¶ 12 The State entered defendant's statement into evidence, along with photographs of the firearm and the footage from the Green Line. Additionally, the State entered a certified letter stating defendant lacked both a Firearms Owner's Identification card and concealed carry license, and certified copies of two of defendant's prior convictions.

¶ 13 The court found defendant guilty of one count of armed robbery (count I), one count of armed habitual criminal (count II), two counts of unlawful use of a weapon by a felon (counts III

and IV), and four counts of aggravated unlawful use of a weapon by a felon (counts VII through X), but acquitted him of one count of aggravated unlawful restraint (count XI).

¶ 14 At a post-trial hearing, defendant informed the court that he wanted to proceed *pro se* on his posttrial motion. After extensive questioning, the court granted defendant's request, finding it was made knowingly and intelligently. During the hearing on defendant's motion for new trial, defendant alleged, in relevant part, that the judge who presided over pretrial proceedings had denied his right to self-representation. Defendant argued that the previous judge "addressed" his request to proceed *pro se* but determined it was not in his "best interest" to represent himself and asked his mother to hire an attorney for him. Defendant explained that he had learned from research that he was "not supposed to continue to go back and forth about the denial," so when the judge denied his request, he "didn't keep arguing or dispute it." Rather, defendant "just went along with it and preserved the issue on the record." The judge continued the hearing to obtain a transcript of the pretrial proceedings.

¶ 15 On a later court date, defendant argued that the pretrial judge erroneously denied his right to proceed *pro se* because he made his request of his "freewill," and therefore, his "technical knowledge bears no relevance on [his] right to represent [himself]." The State maintained defendant's request was equivocal, and noted that after the court took the matter under advisement, defendant did not raise the issue again, and instead, proceeded to trial with counsel.

¶ 16 The court reviewed the pretrial transcript and observed that the previous judge "was under the impression that [defendant] didn't understand what was going on that day and held it to a future day for family or someone to hire *** a private attorney." The court then noted that defendant later hired a private attorney and did not request to proceed *pro se* again until

receiving a conviction. The court concluded that defendant did not unequivocally request to represent himself, and denied his motion for new trial.

¶ 17 During sentencing, the court vacated defendant's four convictions of aggravated unlawful use of a weapon, and merged defendant's conviction of unlawful use of a weapon by a felon based on possession of ammunition (count IV) into the conviction of unlawful use of a weapon by a felon based on possession of a firearm (count III). The court imposed concurrent sentences of 23 years' imprisonment for armed robbery, which included a 15-year firearm enhancement; 8 years' imprisonment for armed habitual criminal; and 5 years' imprisonment on count III for unlawful use of a weapon by a felon. The court did not impose a sentence on count IV for unlawful use or possession of a weapon by a felon, and the State did not object to its merger into count III. The fines and fees order charged defendant a total of $544 and reflected 747 days of available presentence credit.

¶ 18 On appeal, defendant first argues that the court committed structural error by denying his request to proceed *pro se*. The State responds that the court did not deprive defendant of his right to self-representation where his request to proceed *pro se* was not unequivocal, the court did not rule on his request when it was made, and defendant abandoned the request when he later agreed to be represented by counsel.

¶ 19 Under the sixth amendment to the United States Constitution, a criminal defendant has a right to self-representation. *Faretta v. California*, 422 U.S. 806, 819-20 (1975); see U.S. Const., amend. VI. However, "in order to represent himself, the accused must knowingly and intelligently forgo" the relinquished benefits traditionally associated with the right to counsel. (Internal quotation marks omitted.) *Faretta*, 422 U.S. at 835. Specifically, the accused "should

be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." (Internal quotation marks omitted.) *Id.* A defendant's assertions of his right to self-representation "must be clear and unequivocal, not ambiguous," and a defendant waives that right "unless he articulately and unmistakably demands to proceed *pro se*." (Internal quotation marks omitted.) *People v. Burton*, 184 Ill. 2d 1, 21-22 (1998). The purpose of requiring an unequivocal request is to "(1) prevent the defendant from appealing the denial of his right to self-representation or the denial of his right to counsel, and (2) prevent the defendant from manipulating or abusing the system by going back and forth between his request for counsel and his wish to proceed *pro se*." (Internal quotation marks omitted.) *People v. Baez*, 241 Ill. 2d 44, 116 (2011).

¶ 20 In determining whether a defendant's request for self-representation is clear and unequivocal, "a court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation." *Id.* The determination turns on "the particular facts and circumstances of [the] case, including the background, experience, and conduct of the accused." *People v. Lego*, 168 Ill. 2d 561, 565 (1995). "Courts must 'indulge in every reasonable presumption against waiver' of the right to counsel." *Baez*, 241 Ill. 2d at 116 (quoting *Brewer v. Williams*, 430 U.S. 387, 404 (1977)). Even where a defendant gives "some indication" that he wishes to proceed *pro se*, he may later acquiesce to representation by counsel "by vacillating or abandoning an earlier request to proceed *pro se*." *Burton*, 184 Ill. 2d at 23.

¶ 21 The denial of a defendant's right to self-representation is a structural error that requires automatic reversal, regardless of prejudice. *People v. Pitchford*, 401 Ill. App. 3d 826, 836-37

(2010). We review a trial court's denial of that right for abuse of discretion. *Baez*, 241 Ill. 2d at 116.

¶ 22 *Baez* is instructive in applying these principles to this case. There, the defendant requested to proceed *pro se*, and the trial court advised against it, but told the defendant, "if you decide to represent yourself against my advice, *** that's what you will do." (Internal quotation marks omitted.) *Id.* at 65-66. The trial court then told the defendant to discuss the case once more with his counsel, and if he still wished to proceed *pro se* on the next court date, the court would admonish him and allow him to do so. (Internal quotation marks omitted.) *Id.* at 67. At a later appearance, the trial court did not ask defendant whether he still wished to proceed *pro se*, but defendant stated, "And I agree to have counsel represent me." (Internal quotation marks omitted.) *Id.* at 68.

¶ 23 On appeal, the supreme court rejected the defendant's argument that the trial court should have granted his request for self-representation immediately. *Id.* at 117. Rather, the supreme court stated that "the [trial] court had an obligation to make defendant aware of the dangers and disadvantages of self-representation," and "did not abuse its discretion when it asked defendant to meet with his attorney again before making a final decision." *Id.* The supreme court also observed that defendant later withdrew his request and acquiesced to representation by counsel, and did not make further requests to proceed *pro se*. *Id.* at 118-19. Accordingly, the supreme court concluded that the trial court did not abuse its discretion by failing to allow defendant to represent himself. *Id.* at 119.

¶ 24 Here, on defendant's first court date, October 17, 2014, the court asked if he was represented by counsel, and he stated, "Not today." An assistant public defender told the court

that defendant's family was planning on hiring an attorney but had not done so yet. Later, on January 27, 2015, defendant requested to represent himself, and the trial court questioned him regarding his legal training and whether he understood the professional standards to which he would be held. Defendant responded that he did not have a legal education but could represent himself because he felt he "[has] the knowledge." Then, the trial court took the request under advisement, stating, "I'm not sure he understands." Defendant's family member informed the trial court she intended to hire a private attorney to represent defendant. The court told defendant, "*At this point* I'm not going to allow you to represent yourself." (Emphasis added.) The court knew that defendant had waited more than three months for his family to hire a private attorney, and it was reasonable for the court to ensure defendant's request was not rash or merely the result of frustration. Therefore, the court acted appropriately where, as in *Baez*, it declined to immediately determine whether defendant truly wanted to represent himself. *Id.* at 117-18 (" '[T]he trial court made a reasonable presumption against defendant's desire to waive counsel and not grant his request to proceed *pro se* until it was sufficiently satisfied that those were in fact defendant's wishes.' " (quoting *People v. Mayo*, 198 Ill. 2d 530, 539 (2002))).

¶ 25 Notably, at another appearance, the assistant public defender sought leave to withdraw, and a private defense attorney sought leave to file an appearance. Defendant affirmatively agreed to the private defense attorney's representation and therefore, as in *Baez*, acquiesced to representation by counsel. *Id.* at 118-19. Further, when the private attorney sought to withdraw due to defendant's failure "to fulfill the agreement," defendant did not seek to proceed *pro se*, but rather, allowed the court to appoint him an assistant public defender. Accordingly, the court did not abuse its discretion by not granting defendant's request for self-representation

immediately, and the record shows that defendant abandoned the request when he later acquiesced to representation by two different attorneys.

¶ 26 Next, defendant argues, and the State concedes, that his convictions for unlawful use of a weapon by a felon and armed habitual criminal violate the one-act, one-crime rule.

¶ 27 Defendant did not raise his one-act, one-crime claim in the circuit court, and has therefore forfeited the issue. *People v. Harvey*, 211 Ill. 2d 368, 388-89 (2004) (finding a one-act, one-crime claim was forfeited where the argument was raised for the first time on appeal). Nonetheless, an alleged one-act, one-crime violation "affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule." *Id.* at 389. Accordingly, the plain-error exception to the forfeiture rule applies to violations of the one-act, one-crime rule. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). We therefore consider defendant's claim on the merits.

¶ 28 Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses "based on precisely the same physical act." *Harvey*, 211 Ill. 2d at 389 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). We must first determine whether "defendant's conduct consisted of separate acts or a single physical act," as multiple convictions based on the same physical act are improper. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). If the defendant committed multiple acts, we must then determine whether any of the offenses are lesser included offenses and, if so, multiple convictions are improper. *Id.* The proper remedy for a one-act, one-crime rule violation is to vacate the less serious offense, and impose sentence on the more serious offense. *Samantha V.*, 234 Ill. 2d at 379. We review an alleged one-act, one-crime violation *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 29 We agree with the parties that defendant's armed habitual criminal conviction (count II) and his conviction for unlawful use of a weapon by a felon conviction (count III) violate the one-act, one-crime rule, as both convictions are based upon defendant's possession of the same firearm. *People v. West*, 2017 IL App (1st) 143632, ¶ 25 (finding an armed habitual criminal conviction and aggravated unlawful use of a weapon by a felon conviction violated the one-act, one-crime rule where they were based on the defendant's possession of the same firearm). "In determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Defendant's conviction for armed habitual criminal is more serious because it is a Class X felony, while his conviction for unlawful use of a weapon by a felon is a Class 2 felony. 720 ILCS 5/24-1.7(b) (West 2014) (armed habitual criminal); 720 ILCS 5/24-1.1(e) (West 2014 (unlawful use of a weapon by a felon). Therefore, his conviction for unlawful use of a weapon by a felon (count III) must be vacated.

¶ 30 In this case, the circuit court merged defendant's conviction for unlawful use of a weapon by a felon predicated on possession of ammunition (count IV) into his conviction on count III, unlawful use of a weapon by a felon predicated on possession of a firearm. Because count IV was based on an act of possession separate from the act underlying the armed habitual criminal count and count III for unlawful use of a weapon by a felon, it does not violate the one-act, one-crime rule. Consequently, the merger of count IV into count III was improper. *Almond*, 2015 IL 113817, ¶ 48 (finding convictions for the possession of a firearm and the possession of ammunition concerned separate acts and did not violate the one-act, one-crime rule).

¶ 31 The parties dispute the proper remedy for this circumstance. The State argues that upon vacating the judgment on count III, we should remand the case with instructions for the court to impose sentence on count IV. In his reply brief, defendant asserts that this court lacks jurisdiction to order the entry of judgment on count IV, which was not part of the final order on appeal.

¶ 32 Illinois Supreme Court Rule 615(b)(2) (eff. Jan. 1, 1967) provides that a reviewing court may "set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken." Generally, the appellate court's jurisdiction "extends only to final judgments," and "there is no final judgment in a criminal case unless sentence has been imposed." *People v. Releford*, 2017 IL 121094, ¶ 71. Thus, in *Releford*, the defendant appealed from both sentenced and unsentenced convictions, and the supreme court found the appellate court lacked jurisdiction to rule on the validity of the defendant's unsentenced convictions. *Id.* ¶ 75. However, *Releford* recognized an exception to this principle, established in *People v. Dixon*, 91 Ill. 2d 346 (1982), where a trial court determines, "albeit incorrectly," that a sentence could not be imposed on a lesser offense, which the court erroneously merged into another offense. *Relerford*, 2017 IL 121094, ¶ 74. In such a case, a reviewing court's jurisdiction is "limited to ordering a remand for imposition of sentences on the lesser convictions," so long as the reviewing court is not deciding "the validity of defendant's unsentenced convictions." *Id.* ¶ 75.

¶ 33 In *Dixon*, the trial court merged two of the defendant's convictions into two other, more serious convictions, but did not impose sentence on the lesser offenses. *Dixon*, 91 Ill. 2d at 349. The defendant only appealed the sentenced convictions. *Id.* at 353. The appellate court reversed

in part and affirmed in part, but refused to remand the case for sentencing on the two merged convictions. *Id.* at 349. Before the supreme court, the State argued that the appellate court should have remanded for sentencing on the merged convictions. *Id.* at 351. The defendant argued that a reviewing court lacked jurisdiction to entertain the State's argument, as the convictions that merged were nonfinal orders. Because the defendant had not challenged their propriety, he asserted that remanding "would effectively broaden the right of the State to appeal." *Id.* at 351, 353.

¶ 34. The supreme court in *Dixon* noted that "the trial judge's failure to impose sentence on defendant's convictions for mob violence and disorderly conduct stemmed from his belief that they merged into the other two offenses upon which he did impose sentence." *Id.* at 353. The counts that were merged and the counts that were sentenced "arose from a series of separate but closely related acts," and "the failure to impose sentences upon the two unappealed convictions had been intimately related to and 'dependent upon' the appealed convictions within the meaning of Rule 615(b)(2)." *Id.* The court additionally noted that barring the appellate court from remanding the cause for sentencing on the merged counts "could have mischievous consequences," as the merged crimes "could go unpunished." *Id.* at 354. Accordingly, the court in *Dixon* concluded that the appellate court "was authorized to remand the cause for imposition of sentence." *Id.* at 353-54.

¶ 35 Here, the trial court sentenced defendant on count III, but merged count IV without imposing a sentence on it. However, counts III and IV were not based on the same act, as they respectively concerned the possession of a firearm and ammunition. *Almond*, 2015 IL 113817, ¶ 48. Therefore, as in *Dixon*, the merger was improper. Also as in *Dixon*, counts III and IV

concerned separate but closely related acts, and the court's failure to impose a sentence on the count IV conviction was "intimately related to and 'dependent upon' the appealed convictions within the meaning of Rule 615(b)(2)." *Id.* at 353. Although the State did not raise the improper merger before the trial court, and therefore forfeited the issue, forfeiture is a limitation on the parties and not a reviewing court. See *People v. Yaworski*, 2011 IL App (2d) 090785, ¶ 10 (reinstating a conviction that was improperly merged despite the State's forfeiture). Accordingly, we remand the case for sentencing on the count IV conviction for unlawful use of a weapon by a felon predicated on possession of ammunition.

¶ 36 Notwithstanding, defendant relies on *People v. Castleberry*, 2015 IL 116916, for the assertion that the State lacks standing to seek the imposition of a new sentence on appeal. In *Castleberry*, the defendant appealed the imposition of a 15-year enhancement on one of his two convictions, and the State argued that both convictions should have received the enhancement. *Id.* ¶ 5. This court ordered the trial court to enter the mandatory sentence enhancement as requested by the State. *Id.* The Supreme Court held that the State's argument amounted to a *de facto* cross-appeal from defendant's sentence, which, under Illinois Supreme Court Rule 604(a) (eff. July 1, 2017), the State cannot attack on either appeal or cross-appeal. *Id.* ¶¶ 21-22. Additionally, the court observed that Rule 615(b) "cannot be read as granting a plenary power to the appellate court to increase criminal sentences." *Id.* ¶ 24. Considering these principles, the supreme court held that the appellate court "had no authority *** to vacate the circuit court's sentencing order" in response to the State's request to increase the defendant's criminal sentence. *Id.* ¶ 25.

¶ 37 We note that *Castleberry* expressly distinguished itself from *People v. Scott*, 69 Ill. 2d 85 (1977), which is much more similar to the case at hand. In *Scott*, the circuit court merged the defendant's aggravated kidnaping conviction into his rape conviction without imposing a sentence on the merged conviction. *Id.* at 86. The appellate court remanded the case for sentencing on the aggravated kidnaping conviction after determining it did not concern the same conduct as the rape conviction. *People v. Scott*, 45 Ill. App. 3d 487, 491, 493 (1977). The supreme court found that "in ordering the imposition of a sentence on the conviction on which no sentence had previously been imposed the appellate court did not increase the defendant's punishment." *Scott*, 69 Ill. 2d at 88. Rather, the supreme court held that "[t]he effect of the remanding order for the imposition of sentence is to complete the circuit court's order and render the judgment final." *Id.* at 89. Accordingly, the supreme court affirmed the appellate court's order remanding the case for sentencing on the merged conviction. *Id.*

¶ 38 Here, we are not increasing defendant's sentence, as the reviewing court in *Castleberry* did when it ordered the circuit court to impose sentence enhancements on the defendant. *Castleberry*, 2015 IL 116916, ¶¶ 6, 20, 24-25. Rather, the effect of this order "is to complete the circuit court's order" (*Scott*, 69 Ill. 2d at 89), as the trial court did not impose a sentence on count IV based on its belief that count IV had been merged (*Dixon*, 91 Ill. 2d at 353). In keeping with *Dixon* and *Scott*, we find the proper remedy is to remand the case for sentencing on count IV, so that defendant's judgment may be rendered final. *Scott*, 69 Ill. 2d at 89. Accordingly, we vacate defendant's conviction for unlawful use of a weapon by a felon predicated on possession of a firearm (count III), and remand the case for sentencing on his conviction for unlawful use of a weapon by a felon predicated on possession of ammunition (count IV).

¶ 39 Lastly, defendant asserts that he was wrongfully assessed a $5 electronic citation charge (705 ILCS 105/27.3e (West 2016)) and a $5 court system charge (55 ILCS 5/5-1101(a) (West 2016)). He also asserts that he was entitled to presentence credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2016)) for the following charges: a $50 court system charge (55 ILCS 5/5-1101(c) (West 2016)), a $15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)), a $25 clerk automation charge (705 ILCS 105/27.3a(1) (West 2014)), a $2 Public Defender Records Automation Fund charge (55 ILCS 5/3-4012 (West 2016)), a $2 State's Attorney Records Automation Fund charge (55 ILCS 5/4-2002.1(a) (West 2016)), a $15 document storage charge (705 ILCS 105/27.3c(a) (West 2014)), and a $190 felony complaint filed charge (705 ILCS 105/27.2a(w)(1)(A) (West 2014)).

¶ 40 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and assessments or costs." Ill. S. Ct. R. 472(a)(1) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a

motion pursuant to this rule," raising the alleged errors regarding fines and fees. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 41 In summary, we vacate defendant's conviction for unlawful use of a weapon by a felon predicated on possession of a firearm (count III), remand the case for sentencing on his conviction for unlawful use of a weapon by a felon predicated on possession of ammunition (count IV), and affirm the circuit court's judgment in all other respects.

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

Received 1/9/2020

SUPREME COURT OF ILLINOIS

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CAROLYN TAFT GROSBOLL
Clerk of the Court

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January 09, 2020

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John Richard Breffeilh
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In re: People v. Heard
125309

Today the following order was entered in the captioned case:

Motion by Petitioner for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Denied.

Order entered by the Court.

The mandate of this Court shall issue forthwith to the Appellate Court, First District.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
State's Attorney Cook County