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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-2982
)	
SCOTT J. GATES,)	Honorable
)	Brian F. Telander,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's consecutive sentences did not violate the one-act, one-crime rule, and his failure to include transcripts of the sentencing hearing precluded review of his remaining arguments. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Scott J. Gates, was convicted of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)) and four counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)). He was sentenced to a total of 46 years' imprisonment. In defendant's direct appeal, we agreed with his argument that the trial court improperly considered its personal opinion of child abusers in sentencing him. We

therefore reversed defendant's sentences and remanded for a new sentencing hearing. *People v. Gates*, 2017 IL App (2d) 150748-U.

¶ 3 On remand, defendant was sentenced to a total of 30 years' imprisonment; defendant challenges his new sentences on appeal. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The predatory criminal sexual assault charges of which defendant was convicted alleged that on or about June 11, 2011, defendant put his finger and his mouth on the sex organ of V.M., a child under 13 years of age. One of the aggravated criminal sexual abuse charges of which defendant was convicted also alleged contact with V.M. on the same date, specifically touching her chest for sexual arousal or gratification. The other three aggravated criminal sexual abuse charges which led to convictions involved N.Z., also a child under 13 years of age. The charges alleged that between April 16, 2010, and April 15, 2011, in three separate acts, defendant touched N.Z.'s sex organ for sexual arousal or gratification. We provided a detailed description of the evidence presented at defendant's trial in our previous disposition (see *Gates*, 2017 IL App (2d) 150748-U), and we need not restate the evidence here.

¶ 6 The trial court sentenced defendant to 18 years' imprisonment on each of the predatory criminal assault convictions and 10 years' imprisonment on each aggravated criminal sexual abuse conviction. The 18-year sentences and the first 10-year sentence were consecutive, with the remaining 10-year sentences to run concurrently. Thus, defendant received a total of 46 years' imprisonment.

¶ 7 In his direct appeal, defendant argued that: (1) there was insufficient evidence to find him guilty of the three counts of aggravated criminal sexual abuse against N.Z.; (2) at sentencing, the trial court improperly relied on its own personal beliefs and did not sufficiently

consider defendant's rehabilitative potential and other substantial evidence in mitigation; and (3) the trial court exceeded its statutory authority in imposing an extended term sentence for one of the aggravated criminal sexual abuse convictions. We affirmed defendant's convictions of aggravated criminal sexual abuse against N.Z. *Gates*, 2017 IL App (2d) 150748-U, ¶ 58. However, we agreed with defendant that the trial court improperly expressed its personal opinion in sentencing him, so we reversed defendant's sentence and remanded for resentencing before a different trial judge. *Id.* ¶¶ 50, 58. We also addressed defendant's third argument because it was likely to recur on remand, concluding that the trial court erred in imposing an extended-term sentence on the aggravated criminal sexual abuse conviction involving V.M. *Id.* ¶ 56.

¶ 8 Upon remand, on December 20, 2017, the trial court re-sentenced defendant to 12-year consecutive sentences on the two predatory criminal sexual assault of a child convictions. It sentenced him to six years of each of the four aggravated criminal sexual abuse convictions, which were to run concurrent with each other but consecutive to the sentences for predatory criminal sexual assault of a child. Defendant's sentences therefore totaled 30 years' imprisonment.

¶ 9 Defendant filed a motion to reconsider the sentences, which the trial court denied on March 9, 2018. Defendant timely appealed.

¶ 10

II. ANALYSIS

¶ 11 Defendant first argues that the State indoctrinated the jury during *voir dire*, necessitating a new trial. However, he then states: "This argument was presented in the original appeal, Case No. 2-15-0748. It is repeated here solely for the purpose of preserving Supreme Court review." We note that defendant did not actually raise this argument in his direct appeal. See *Gates*, 2017 IL App (2d) 150748-U. However, based on defendant's explicit statement that he is including the

argument in his brief solely to preserve it for supreme court review, we do not address whether the argument is forfeited, nor do we reach its merits.

¶ 12 Defendant next argues that he was not found guilty of the charges beyond a reasonable doubt. He again states that this argument was presented in his original appeal, and that he is repeating it now solely for preserving supreme court review. In his direct appeal, defendant challenged only his convictions regarding N.Z., and not those relating to V.M. See *id.* Still, because defendant does not seek our review of this argument, we do not address whether he has forfeited the argument, and we do not resolve the argument's merits.

¶ 13 Defendant's third argument on appeal challenges the sentences that the trial court imposed upon remand. He initially argues that consecutive sentences for the crimes involving V.M. violate the one-act, one-crime rule enunciated in *People v. King*, 66 Ill. 2d 551 (1977).

¶ 14 The State maintains that defendant has forfeited his sentencing arguments by failing to cite the record in the argument section of his brief (see Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017)) and by not including a transcript of the sentencing hearing or the hearing on his motion to reconsider the sentences.

¶ 15 Defendant's failure to cite the record in the argument section does not warrant forfeiture of his sentencing argument. Further, the issue of whether the one-act, one-crime rule has been violated is a question of law that we review *de novo* (*People v. Coats*, 2018 IL 121926, ¶ 12), so the lack of a report of proceedings does not hinder our review of this particular issue. That being said, we admonish defense counsel for his failure to adequately comply with the requirements of Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017) throughout his brief. See *Bright v. Dicke*, 166 Ill. 2d 204, 210 (the supreme court rules are not aspirational but rather have the force of law).

¶ 16 Returning to the one-act, one-crime issue, in general, the trial court is required to impose consecutive sentences for convictions of predatory criminal sexual assault of a child. See 730 ILCS 5/5-8-4(d)(2) (West 2016). Consecutive sentences are mandatory whether or not the offenses were committed in a single course of conduct. *People v. Phippen*, 324 Ill. App. 3d 649, 655 (2001). Still, under the one-act, one-crime rule, multiple convictions may not be based on the exact same physical act. *People v. Kuntu*, 196 Ill. 2d 105, 130 (2001).

¶ 17 Defendant argues that his convictions regarding V.M. fall within the category of a single act and a single crime because they all took place on June 11, 2011, “within an exceptionally brief period of time as to the duration of which there was conflicting testimony.” Defendant maintains that treating the various types of penetration and sexual conduct as distinct acts and crimes therefore violates the one-act, one-crime rule. Defendant cites *People v. James*, 362 Ill. App. 3d 250, 256 (2005), where the court stated that for multiple convictions to be sustained, an indictment must indicate that the State intends to treat the defendant’s conduct as multiple acts. The court stated that the defendant had committed a series of closely-related but separate acts when he stabbed the victim, but because the State used language in the indictment that did not treat each stab as the basis of a separate crime, it failed to charge the defendant’s actions as multiple acts. *Id.*

¶ 18 In determining whether a one-act, one-crime error has occurred, we must first ascertain if the defendant’s conduct involved multiple physical acts or a single physical act; a defendant may not receive multiple convictions based on the exact same physical act. *People v. Coats*, 2018 IL 121926, ¶¶ 11-12. Second, if the conduct involves multiple acts, we must determine whether any of the offenses are lesser-included offenses; multiple convictions are improper if an offense is a lesser-included offense. *Id.* ¶ 12.

¶ 19 An “act” is “any overt or outward manifestation which will support a different offense.” *King*, 66 Ill. 2d at 566. Here, one count of predatory sexual assault alleged that defendant placed his finger in the sex organ of V.M., and the second count alleged that he placed his mouth on her sex organ. The charge of aggravated criminal sexual abuse as to V.M. alleged that he touched her chest with his hand for the purpose of sexual arousal or gratification. Thus, unlike *James*, here the State clearly charged defendant with separate acts/crimes.

¶ 20 At trial, V.M. testified that she woke up to defendant touching her over her underwear and saw flashes of light, like he was taking a picture. She testified that defendant then removed her pants and underwear, licked her vagina for 20 or 30 minutes, and put his hand up her shirt. V.M. further testified to feeling a fingernail inside her vagina. *Gates*, 2017 IL App (2d) 150748-U, ¶ 14. V.M.’s sister, A.M., who was sleeping on the couch with her, testified that she woke up when she saw flashes of light from a camera phone directed at V.M. A.M. testified that she closed her eyes for about five minutes but then saw defendant kneeling between V.M.’s legs, touching her vagina. According to A.M., when she asked defendant what he was doing, he tried to get between them and said that he was waiting for their mom. The girls then ran upstairs. *Id.* ¶ 13. As such, there was evidence that defendant committed distinct physical acts against V.M., as charged in the indictments. See *People v. Marzonie*, 2018 IL App (4th) 160107, ¶ 34 (multiple convictions are permissible where a defendant has committed separate acts, despite their interrelationship). We recognize that the trial testimony conflicted as to whether defendant’s actions took place over about five minutes or about 30 minutes, but separate acts do not become one act because of proximity of time and location. *Id.*

¶ 21 The second step of the one-act, one-crime analysis is to determine whether there are any lesser-included offenses. However, as defendant bases his challenge only on the issue of

whether there were distinct acts against V.M., we do not address the subject of lesser-included offenses.

¶ 22 Defendant next argues that his sentences are excessive in that they fail to take into account his employment history and childhood trauma. He argues that the length of the sentences also minimizes any meaningful probability of restoring him to useful citizenship, and that the sentences are out of proportion to the seriousness of the offenses. Defendant argues that the sentences therefore violate the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, §11) and the prohibition against cruel and unusual punishment under the eight amendment (U.S. Const., amend. VIII).

¶ 23 As the State points out, defendant has failed to include in the record on appeal transcripts from the sentencing hearing and the hearing on his motion to reconsider his sentences. The appellant has the burden to provide a sufficiently complete record of the trial proceedings to support his claims of error, and we must resolve any doubts arising from the lack of a complete record against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In such a situation, we will presume that the trial court's order was entered in conformity with the law and had a sufficient factual basis. *Id.* Due to the lack of transcripts, there is no basis for concluding that the trial court abused its discretion in sentencing defendant, or that the sentences violate defendant's constitutional rights.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the Du Page County circuit court. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 26 Affirmed.