

sentences for criminal sexual assault, child pornography, and weapons charges are to run concurrent with each other but consecutive to the sentence for aggravated criminal sexual assault. Thus, the court sentenced the defendant to a total of 22 years' imprisonment.

¶ 3 On appeal, the defendant argues that he was denied a fair trial by the improper joinder of the weapons charges with the charges for aggravated criminal sexual assault, criminal sexual assault, and child pornography. The defendant also argues that we should reduce his sentence or remand for a new sentencing hearing because the trial court improperly considered an element of the offense of criminal sexual assault as a factor in aggravation. In addition to responding to the defendant's arguments, the State argues that the defendant's sentence is void because it fails to comply with the mandatory consecutive sentencing statute, section 5-8-4 of the Unified Code of Corrections (the Code of Corrections) (730 ILCS 5/5-8-4(a)(ii) (West 2006) ("The court shall impose consecutive sentences if: *** (ii) the defendant was convicted of a violation of Section 12-13, 12-14, or 12-14.1 of the Criminal Code of 1961" (the Criminal Code))). We affirm the defendant's convictions, and we find no error in the court's consideration of factors in aggravation during the sentencing hearing. However, we find that the defendant's sentences of imprisonment are void for violating the mandatory consecutive sentencing statute.

¶ 4 BACKGROUND

¶ 5 The facts presented here are derived from the defendant's jury trial, which was conducted on July 26 and 27, 2010, from his sentencing hearing, which was conducted on October 1, 2010, and from the common law record. L.O. was born on September 24, 1989. When she was seven years old, her mother, Patricia, married the defendant. At that time, L.O., Patricia, the defendant, and W.M., L.O.'s three-year-old brother, lived in Anna, Illinois. A couple of years later, the family moved to Indiana. On August 20, 1998, J.M., the son of Patricia and the defendant, was born. L.O. testified that, on the night her mother was in the

hospital giving birth to J.M., the defendant began molesting her, and "[i]t progressed from that night on." L.O. explained that, when the defendant first began abusing her, he told her not to tell her mother because it would "hurt her [mother] to know" and that, if L.O. ever told anyone, her youngest brother, J.M., would be taken away.

¶ 6 L.O. testified that shortly after the defendant began molesting her, he "introduced" her to a vibrator. L.O. explained that she had been molested by another man when she was five years old. The defendant told her he knew what she was going through because he had also been molested when he was a child. She testified that he told her that she was going to experience "feelings and things" and that he was going to show her "ways to deal with the trauma" so that she would not become promiscuous later. She said that, in the beginning, the defendant convinced her that he was really going to help her. She testified that he "demonstrated" the vibrator on her. Patricia testified that she was aware that the defendant bought a vibrator for L.O. when she was nine, that the defendant told her that he knew what L.O. was going through, and that he "didn't want [L.O.] to hurt and go through the pain." Patricia testified that she was "thankful."

¶ 7 L.O. testified that, "a little later," she found a video camera in the bathroom, and she was very upset and scared, so she confronted the defendant about it. He said he was sorry and would never do that again. Sometime later, she found the video camera in the bathroom again. This time she threw it down and broke it. She testified that he began taking photographs of her, at first with her clothes on but in provocative poses. When she was about 12 years old, he began photographing her in the nude. Both L.O. and Patricia testified that the defendant viewed pornography of young girls on the Internet.

¶ 8 L.O. testified that when she was 13 years old, "the sexual penetration began." She said that he took her virginity and that the sexual molestation escalated from there to "everything you can imagine." When she was about 16 years old, the defendant started

giving her alcohol and taking her to parties with his friends. He also gave her "Seroquel" at night to help her sleep.

¶ 9 L.O. testified that when she was 16 years old, around July 2006, the family moved back to Union County to live with the defendant's mother and stepfather. Patricia testified that she knew the defendant was having sex with L.O. before they moved back to Illinois. L.O. turned 17 not long after she started school in Union County in 2006. L.O. testified that the defendant continued to molest her more frequently after they moved. She said, "It went from a couple times a week to an almost-daily thing." Patricia testified that, after they moved to Illinois, there were occasions when she came home from work and found L.O. and the defendant in a bedroom behind a locked door. Patricia said, "He [the defendant] would tell me that it wasn't like they were always having sex or anything," that sometimes they were just talking. Patricia did not tell anyone about this because she thought that was what L.O. "needed to keep her safe," and because she was concerned about her family being torn apart due to the defendant's threats. She testified, "He told me that nobody would ever take his boy away from him or somebody would die." Patricia testified that the defendant did not work for about seven years before his arrest, but she worked during that time.

¶ 10 L.O. testified that the defendant continued to take photographs of her "before, during and after intercourse." She said that on the defendant's birthday, in May 2007, he "wanted to camp out in the woods." She testified: "And we did because my mother was working a 16-hour shift at Choate. She was working overnight. So we camped in the woods, and for his birthday he wanted to perform anal sex on me." She explained the defendant's sexual molestation in detail. Patricia testified that she found out that the defendant and L.O. had been camping in the backyard when she got home the next morning.

¶ 11 L.O. testified that the defendant tried to convince her that she had a special relationship with him other than as his stepdaughter. She said, "He tried to convince me that he was in

love with me, and that if he could have two wives, he would marry me along with my mother." She stated that he gave her a gold and diamond ring one year on Valentine's Day. Patricia corroborated L.O.'s testimony about the ring. Patricia also testified that, when L.O. was 16, the defendant told Patricia that he "wished he could marry [L.O.] to keep her safe *** because he knew that she was going to choose somebody that would be abusive and hurt her and [be] bad for her." Patricia said that these words hurt her but that she still believed he was trying to protect L.O. and keep her from being abused.

¶ 12 L.O. testified that, in the months before the defendant's arrest, he began beating her severely. She testified that on September 27, 2007, the defendant kicked her, pushed her, and threw her through a screen door. She had several bruises and a sprained ankle "from that one." She said that she went to the emergency room after that incident, but she told them that she had fallen while moving a bookshelf into the house on her own. She explained that she told that story because that was what the defendant "came up with." Patricia also testified about this incident, saying that she was asleep upstairs after getting off work when she heard L.O. screaming. Patricia came downstairs and found the defendant hitting and kicking L.O. She got between them and pulled the defendant off of L.O. Patricia said that L.O.'s hand was swollen, her lip was busted, her back was bruised, and her ankle was swollen. Patricia took L.O. to the emergency room but did not tell the truth about what happened because she was afraid.

¶ 13 L.O. recounted another incident in which the defendant choked her "to the point of unconsciousness." She testified: "I'm not sure what lewd act he performed on me, but I know that—I don't know how long I was out, probably only a matter of seconds. But when I awoke, my pants and panties were both down, and I pulled them up, and he told me to pull them up like the little whore that I was." She said that the defendant had given her Seroquel on the night of this incident, and he woke her up from a "dead sleep" to yell at her, beat her, slap her

around, and then choke her.

¶ 14 L.O. testified that the defendant made her stop sleeping in her bedroom and start sleeping in the bedroom with him and her mother. She said that he made her drop out of high school. Patricia corroborated L.O.'s testimony about the sleeping arrangements and the defendant ordering L.O. to drop out of high school. L.O. testified that the defendant isolated her from "everybody," including her family and friends. Patricia corroborated that the defendant did not allow her to spend time alone with L.O. L.O. stated that the defendant kept a gun cabinet in her bedroom in which he had "several shotguns, rifles," and two pairs of brass knuckles. Patricia corroborated the testimony about the defendant's guns.

¶ 15 L.O. testified that, on the day the defendant was arrested, December 29, 2007, she told him that she did not love him. After that, the defendant loaded a shotgun in front of her and told her that he was going to kill her family, starting with her aunt and uncle, and that he was going to come back for her and the rest of her family. She testified that she believed he was serious. After he left, she retrieved a lockbox to which the defendant had given her the key the day before. She said that, after he gave her the key, she opened it and, inside, found "several sex toys" and several photographs of her. She "took the box and everything" to the police station. She stayed at the police station until the defendant was arrested because she was afraid he would kill her. She testified that she had never reported the abuse before because she feared a "big family split-up" similar to what had occurred when she was five years old and reported the sexual abuse by another man. L.O. identified the defendant's guns and the photographs of herself, including a photograph that depicted her and the defendant having sexual intercourse.

¶ 16 After the defendant's arrest, he consented to talk to the police and have that interview recorded. The court played the audiotape of the defendant's interview with Illinois State Police Sergeant Chad Brown for the jury to hear. In that interview, the defendant admitted

that he bought a vibrator for L.O., placed it in the bathroom, and "talked it over with her mother." The defendant said that Patricia "agreed." The defendant said that L.O. "was sixteen and we had sex in Indiana." He said that when they moved to Illinois, he told L.O. that he loved her and wanted to "work on making a new start." When Sergeant Brown showed the defendant the photograph of him and L.O. having sexual intercourse, he admitted that it was him in the photograph.

¶ 17 The court admitted into evidence a certified copy of the defendant's 1987 felony conviction for burglary, two rifles, two handguns, three shotguns, and three types of ammunition for those weapons. The court also admitted three boxes filled with "sex toys" and five photographs, including the photograph that the defendant admitted showed him having sexual intercourse with L.O. L.O. brought one of those boxes to the police station on the day of the defendant's arrest. All of the weapons, the ammunition, and the two other boxes of sex toys were found during the execution of a search warrant at the family's home later that day.

¶ 18 The jury found the defendant guilty of one count of aggravated criminal sexual assault, four counts of criminal sexual assault, one count of child pornography, and eight weapons counts. The jury found the defendant not guilty of four counts of child pornography and one weapons count. The defendant filed a posttrial motion, arguing that the State failed to prove him guilty beyond a reasonable doubt and that the jury's verdicts were inconsistent. The court denied the defendant's posttrial motion.

¶ 19 At the sentencing hearing, the court considered the presentence investigation report and the parties' arguments, including the State's argument that section 5-8-4 of the Code of Corrections mandated consecutive prison sentences for the defendant's convictions of aggravated criminal sexual assault and criminal sexual assault. The defendant's attorney asked the court to sentence the defendant to a total of no more than 10 years' imprisonment, 6 years for the aggravated criminal sexual assault conviction and 4 years for the criminal

sexual assault convictions. Evidently, the defendant believed that all four of the criminal sexual assault convictions should run concurrent with all of the convictions except aggravated criminal sexual assault.

¶ 20 In announcing the sentencing decision, the court stated in relevant part, as follows:

"On the Class X felony, Count I [aggravated criminal sexual assault], the possible penalty is between six to 30 years of incarceration ***. On each Class 1 felony, Counts II through V [criminal sexual assault], that carries with it a possible penalty between four to 15 years of incarceration. And you [the State] are exactly correct; pursuant to 730 ILCS 5/5-8-4, those do carry a mandatory consecutive sentence.

Obviously, pursuant to the statutes, the aggregate maximum with the Class 1 and the Class X felonies would be 45 total, 45 years total on those two alone. Okay? Those *** are both 85 percent *** time served.

Obviously, the Court will consider the arguments made by counsel as to the sentencing alternatives. As far as the factors in aggravation and mitigation, I do believe that the testimony bore out that there were threat[s] and violence that were occurring when these crimes were committed. I believe the testimony was there were threats made that if it was ever told to anybody, that the family would be broken up. I mean, that is a threat, and to a 13-, 14-, 15-year[-]old girl that is a very valid threat.

There was testimony that there was violence that occurred *** threats made with a gun.

I think probably most of all, when I've considered this case, I look at factor number *** (14): 'That the defendant held a position of trust or supervision such as, but not limited to, a family member.' And I won't go any longer than that. Mr.

McCord held that position of trust. He violated that position of trust. And it started when this young lady was nine years old when the testimony bore out that a sex toy was purchased for her. Okay? Mr. McCord can try to justify that and say it was for her own good based upon her unfortunate prior experience. I believe the testimony bore out that the sexual acts began, I believe, at about the age of 13 and continued from that time on ***. ***

*** I agree with [L.O.] that her childhood was taken away, and it is an unfortunate thing. And because of all that, as to Count I, I'm going to sentence Mr. McCord to 15 years of incarceration ***.

As to Counts II, III, IV, and V, I'm going to sentence Mr. McCord to seven years of incarceration ***. That would be 22 years total to be served at 85 percent."

The court also sentenced the defendant to five years of incarceration on the child pornography conviction and three years of incarceration on each of the weapons convictions, all to run concurrent with his sexual assault convictions. All of the defendant's sentences run concurrently with each other and consecutive to his sentence for aggravated criminal sexual assault. The court advised the defendant as to his appeal rights.

¶ 21 The State argued again that the court was "mandated by statute to run each of the sentences on the Criminal Sexual Assault charges consecutive to one another. *** [E]ach sentence that the Court imposes with respect to those offenses must run consecutively to one another." The court responded that it understood the State's argument, that "Counts II through V should be tacked on each and every one of them rather than running those concurrent with the overlying consecutive," but it did not change the sentence based on the State's argument.

¶ 22 The defendant filed a timely notice of appeal.

¶ 23

ANALYSIS

¶ 24

A. Joinder of Offenses

¶ 25 The defendant argues that he was denied a fair trial because the charges for the sexual offenses were improperly joined with the weapons charges. Since his attorney did not move to sever the sexual offenses from the weapons charges, he contends that his trial counsel was ineffective for that reason. The State points out that the defendant has forfeited this issue for failure to raise it in the trial court unless he can show that it is plain error. See *People v. Cosby*, 231 Ill. 2d 262, 271-72 (2008) (both a trial objection and a written posttrial motion raising the issue are required to preserve the issue on review unless plain error is shown). Illinois Supreme Court Rule 615(a) (eff. Aug. 27, 1999) provides the basis for plain error review: "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."

¶ 26 Fairness, not perfection, is the foundation of our plain error jurisprudence. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). The plain error doctrine does not allow the reviewing court to consider all forfeited errors, it is not a general savings clause for review of all errors affecting substantial rights, but it is a narrow and limited exception to the general rule of forfeiture. *Id.* The plain error doctrine allows a reviewing court to reach a forfeited error affecting substantial rights in one of two ways. *Id.* at 178. "First, where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citations.] Second, where the error is so serious that the defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process." *Id.* at 178-79. The ultimate issue of whether an otherwise forfeited argument can

be reviewed as plain error is a question of law that is reviewed *de novo*. *People v. Johnson*, 238 Ill. 2d 478, 485 (2010). The first step in plain error review is to consider whether any error occurred because, "[a]bsent reversible error, there can be no plain error." *Cosby*, 231 Ill. 2d at 273.

¶ 27 Joinder of offenses is governed by section 111-4 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure), which provides in relevant part as follows:

"(a) Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are based on the same act or on 2 or more acts which are part of the same comprehensive transaction." 725 ILCS 5/111-4(a) (West 2006).

Severance of charges for trial is governed by section 114-8(a) of the Code of Criminal Procedure, which provides as follows:

"(a) If it appears that a defendant or the State is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require." 725 ILCS 5/114-8(a) (West 2006).

¶ 28 "The consolidation of separately charged offenses for a single jury trial rests within the sound discretion of the trial court [citation], as does the decision whether to sever charges for trial." *People v. White*, 129 Ill. App. 3d 308, 315 (1984). The court's discretion on the issue of the joinder of charges is to be exercised "so as to prevent injustice." *Id.* There is no precise test for determining whether separate offenses are part of the same comprehensive transaction, and each case is to be decided largely on its facts. *Id.* Absent an abuse of the trial court's substantial discretion, the court's judgment on the issue of joinder will not be reversed. *Id.*

¶ 29 Generally, when deciding if joinder is proper, the question is whether the offenses "were of a similar nature or were part of a single transaction or common scheme." *People v. Quiroz*, 257 Ill. App. 3d 576, 586 (1993). "The most important factors in deciding whether offenses are a part of a comprehensive transaction is whether they are proximate in time and location and whether there is an identity of evidence between the offenses." *Id.* The factor of whether there is an identity of the evidence focuses on "whether the court can *identify* evidence linking the crimes." (Emphasis in original.) *People v. Walston*, 386 Ill. App. 3d 598, 605 (2008). The question of whether the offenses were part of a common scheme focuses on whether "each of the offenses supplies a piece of a larger criminal endeavor." *Id.* at 606-07. Regardless of the commonality of the evidence linking the offenses, a "defendant is not prejudiced by the improper joinder of charges if, had separate trials been given, defendant still would have been convicted." *People v. Gonzalez*, 339 Ill. App. 3d 914, 922 (2003).

¶ 30 Applying these principles to the facts of the instant case, we find no error in the sexual offenses being tried together with the weapons charges. In *Quiroz*, the court found that the trial court was within its discretion in allowing the State to try charges for the murder of one victim, the aggravated battery of another victim, and the armed robbery of a third victim. *Quiroz*, 257 Ill. App. 3d at 586. The court allowed the joinder because there was evidence showing that, within an hour of shooting two victims and stealing a third victim's car, the defendant attempted to flee the scene of the shooting and used a gun consistent with the murder weapon to steal the getaway car. *Id.* The court found that, under those facts, the trial court was within its discretion in allowing the State to try the case on the theory that the armed robbery of the third victim was a "direct outgrowth" of the defendant's need to flee the scene of the shooting of the first two victims, and all of the offenses were, therefore, part of a single transaction or common scheme. *Id.*

¶ 31 In *People v. Gapski*, a jury convicted the defendant of a sexual assault and unlawful possession of a weapon by a felon in the same trial. *People v. Gapski*, 283 Ill. App. 3d 937, 939 (1996). The court determined that, even if the charges for the sexual assault had been severed from the weapons offense, the evidence of the weapons offense would have been admissible on the sexual assault count because the defendant had threatened to kill the sexual assault victim's relative, so that the possession of the gun was "intricately related to the sexual assault count and constituted an admission against interest." *Id.* at 943-44.

¶ 32 The analyses in both *Quiroz* and *Gapski* support our conclusion that, under the facts of the instant case, no error occurred as a result of the sexual offenses being tried together with the weapons charges. As in *Quiroz*, the evidence in this case about the defendant's unlawful possession of weapons came to the authorities' attention because he threatened the victim and others with a weapon, prompting the victim to alert the authorities to his sexual offenses. Hence, the evidence about the defendant's possession of weapons was a direct outgrowth of his sexual abuse of L.O. and clearly part of a common scheme to continue that sexual abuse at all costs. As in *Gapski*, even if the sexual offense charges had been severed from the weapons offenses, the jury would have learned that the defendant possessed weapons because that evidence tied in with the defendant's threats to both L.O. and her mother over the course of almost a decade of sexual abuse. The defendant's use of a loaded gun to threaten L.O. and her family was the final straw that caused L.O. to report his sexual abuse for the first time, making the evidence of the number of guns and ammunition that he kept in L.O.'s room and elsewhere in the home relevant to the sexual offense charges.

¶ 33 Because we find no error in the joinder of the sexual offenses with the weapons offenses, we need not address the defendant's related argument that his attorney was ineffective for failing to move to sever the charges. In the case at bar, even if the defendant's attorney had filed a motion to sever the sexual offense charges from the weapons charges, the

trial court would have been well within its discretion to deny that motion. See *Gonzalez*, 339 Ill. App. 3d at 922. Accordingly, there is no error to support a claim of ineffectiveness.

¶ 34

B. Factors in Aggravation

¶ 35 The defendant next argues that, in sentencing, the trial court improperly gave substantial weight to an element of the offense of criminal sexual assault, specifically that the defendant is a family member of the victim. The defendant was convicted of four counts of criminal sexual assault pursuant to section 12-13 of the Criminal Code, which provides that a person commits criminal sexual assault if he "commits an act of sexual penetration with a victim who was under 18 years of age when the act was committed and the accused was a family member." 720 ILCS 5/12-13(a)(3) (West 2006). The defendant claims that, at his sentencing hearing, the court "considered in aggravation of sentence" that he is L.O.'s stepfather, which is an element of the offense that cannot also be considered as a factor in aggravation.

¶ 36 The State responds that the defendant has forfeited this argument because he did not raise it during the sentencing hearing or by filing a written motion attacking his sentence within 30 days after his sentence was imposed. We agree that the defendant has forfeited this argument. "It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); see also 730 ILCS 5/5-8-1(c) (West 2006) ("A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed within 30 days following the imposition of sentence."). "Consequently, we may review this claim of error only if defendant has established plain error." *Hillier*, 237 Ill. 2d at 545.

¶ 37 The defendant's status as L.O.'s stepfather qualifies him as a family member. Section 12-12 of the Criminal Code defines "family member" to include parents and stepparents. 720

ILCS 5/12-12(c) (West 2006). The defendant's status as L.O.'s stepfather was an element of the offense of criminal sexual assault because the evidence showed that he committed acts of sexual penetration with L.O. when she was under 18 years of age, and he, as her stepfather, was her family member. 720 ILCS 5/12-13(a)(3) (West 2006). However, the trial court properly considered as a factor in aggravation of his sentence the evidence that the defendant actively fostered a bond of trust between himself and L.O. from at least the time she was nine years old. The defendant's status as a family member is not the same as his position of trust.

¶ 38 The statute that lists the factors in aggravation states in pertinent part:

"The following factors shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence ***:

* * *

(14) the defendant held a position of trust or supervision such as, but not limited to, family member as defined in Section 12-12 of the Criminal Code ***, teacher, scout leader, baby sitter, or day care worker, in relation to a victim under 18 years of age, and the defendant committed an offense in violation of Section *** 12-13 [or] 12-14 *** against that victim[.]" 730 ILCS 5/5-5-3.2(a)(14) (West 2006).

¶ 39 The evidence was undisputed in the present case that the defendant was not only a family member by virtue of being L.O.'s stepfather, but he also went to great lengths over many years to develop a relationship of trust between himself and L.O. in order to more easily perpetrate sexual crimes against her. See *People v. Madura*, 257 Ill. App. 3d 735, 739 (1994) (it is "appropriate to consider the nature and degree of a defendant's position of trust or supervision regarding a child/victim, even when the criminal sexual assault charge requires proof of a familial relationship as an element of the crime"). The trial court committed no

error in considering the defendant's position of trust as a factor in aggravation of his sentence.

¶ 40

C. Necessity of Consecutive Sentences

¶ 41 The State argues that the defendant's sentence is void because it fails to comply with the mandatory consecutive sentencing statute. The defendant did not address this issue in his reply brief or during oral arguments. Not only does section 5-8-4(a) of the Code of Corrections mandate that the defendant's sentences be served consecutively, the cases construing that section firmly establish that where a defendant is convicted of one of the triggering offenses under sections 12-13 and 12-14 of the Criminal Code, as was the defendant in the present case, the trial court is required to impose consecutive sentences. *People v. Curry*, 178 Ill. 2d 509, 539 (1997). The trial court in this case sentenced the defendant to 15 years' imprisonment on the aggravated criminal sexual assault conviction, 7 years' imprisonment on each of the four criminal sexual assault convictions, 5 years' imprisonment on the child pornography conviction, and 3 years' imprisonment on each of the weapons convictions. The court ordered each of the sentences for criminal sexual assault, child pornography, and weapons convictions to run concurrent with each other and consecutive only to the sentence for aggravated criminal sexual assault. Thus, the court sentenced the defendant to a total of 22 years' imprisonment and required him to serve only the aggravated criminal sexual assault sentence consecutively to all of the remaining sentences, which all run concurrent with each other.

¶ 42 We note that we are authorized to recognize and correct this error *sua sponte* even if the State had not called it to our attention. See *People v. Arna*, 168 Ill. 2d 107, 113 (1995) (where the defendant's sentences were required to be served consecutively pursuant to section 5-8-4(a) of the Code of Corrections, concurrent sentencing was void, the appellate court had authority to correct the error at any time, and "the actions of the appellate court were not barred by our rules which limit the State's right to appeal and which prohibit the appellate

court from increasing a defendant's sentence on review"); *People v. Hestand*, 362 Ill. App. 3d 272, 282 (2005) (appellate court concluded, *sua sponte*, that concurrent sentences were void under section 5-8-4(a) of the Code of Corrections, vacated the sentences, and remanded for resentencing). The defendant's four convictions for criminal sexual assault and his conviction for aggravated criminal sexual assault must all be served consecutively to each other and to the child pornography and weapons charges, which may be served concurrently to each other after each of the consecutive sentences for the triggering offenses.

¶ 43 Since the defendant's sentences under section 12-13 of the Criminal Code run concurrently to each other and to the sentences for child pornography and the weapons charges, his overall sentence is void, and the cause must be remanded for resentencing. In *Curry*, the court explained that the triggering offenses listed in the consecutive sentencing statute must be "served prior to, and independent of, any sentences imposed for nontriggering offenses," and sentences "for multiple nontriggering offenses may be served concurrently to one another after any consecutive sentences for triggering offenses have been discharged." *Curry*, 178 Ill. 2d at 539. The purpose supporting this sentencing scheme is to "punish the commission of triggering offenses more harshly than the commission of other crimes." *Id.* at 538. "This legislative intent would be defeated if the triggering and nontriggering offenses were treated in a like manner." *Id.* Therefore, the trial court violated the mandate of the consecutive sentencing statute by ordering concurrent sentencing for all of the defendant's convictions except aggravated criminal sexual assault. Accordingly, we vacate the defendant's sentences, and we direct the trial court to conduct a new sentencing hearing. On remand, the trial court must order the defendant's sentences for aggravated criminal sexual assault and each of the sentences for criminal sexual assault to run consecutively to each other and to the sentences for child pornography and the weapons conviction. Only the sentences for child pornography and the weapons charges may run concurrent with each other. In all

other respects, we affirm the judgment of conviction.

¶ 44

CONCLUSION

¶ 45 For the reasons stated, we affirm the defendant's conviction, vacate the defendant's sentence as void, and remand for a new sentencing hearing.

¶ 46 Conviction affirmed; sentence vacated; cause remanded for new sentencing hearing.