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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 06 CR 8798
)	
LATHERN LAMPKINS,)	The Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.
)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Lampkins is not entitled to a new sentencing hearing. We decline to rule on his ineffective assistance of counsel claim, but correct the mittimus.

¶ 2 When Lathern Lampkins was 17 years old he committed an aggravated criminal sexual assault against K.B., after holding K.B.'s boyfriend at gunpoint and robbing him. Lampkins's initial sentence for the aggravated criminal sexual assault was 27 years, which included a 15-year enhancement for using a firearm. We vacated that sentence because the enhancement was unconstitutional and remanded for resentencing. On remand, despite the absence of the

enhancement, the trial court again sentenced Lampkins to 27 years of imprisonment for the aggravated criminal sexual assault (consecutive to an 8-year term for his other crimes).

¶ 3 Lampkins argues that he is entitled to another sentencing hearing based on changes to the juvenile sentencing statutes, but our supreme court recently rejected that argument. Lampkins also argues that his trial counsel was ineffective at his resentencing hearing, but the record is insufficient to rule on the claim. Finally, Lampkins and the State agree that the mittimus does not reflect the crimes for which he was actually convicted. We correct the mittimus.

¶ 4 Background

¶ 5 In *People v. Lampkins*, 2015 IL App (1st) 123519, we summarized the facts underlying Lampkins's conviction. In 2006, 17-year-old Lampkins and codefendant Robert Falls saw Kevin Porter leave his home and walk towards the street. *Id.* Lampkins and Falls approached Porter, held him at gunpoint, and demanded his wallet, which Porter said he did not have. *Id.* Lampkins and Falls continued to hold Porter while they searched his car and then forced him to open the door to his house. *Id.* Lampkins and Falls stole several items from the house, including bank cards and jewelry, then Lampkins pointed his gun at Porter's girlfriend, K.B., and sexually assaulted her. *Id.* Lampkins and Falls took Porter to a bank and forced him to withdraw money for them, and released him. *Id.* Meanwhile, K.B. had called police and Lampkins and Falls were arrested shortly afterwards. *Id.*

¶ 6 The mittimus stated that Lampkins was convicted of aggravated criminal sexual assault with a firearm, two counts of home invasion, armed robbery with a firearm, and vehicular hijacking. In the presentence investigation report, Lampkins stated that he dropped out of school after eighth grade due to lack of interest, and once belonged to a gang. He had been diagnosed with depression and a behavior disorder, and had been prescribed medication which he ceased

taking because of the side effects. He also reported that he begun using alcohol and marijuana at age 13. The trial court sentenced him to 27-years of imprisonment for aggravated criminal sexual assault, which included a 15-year enhancement because he was armed with a firearm. The 27-year sentence would run consecutively to concurrent eight-year sentences for the remaining convictions.

¶ 7 The judgment was affirmed on direct appeal, but in a postconviction proceeding, Lampkins argued, and the State agreed, that the aggravated criminal sexual assault sentence was void because the 15-year enhancement was unconstitutional. *Id.* ¶¶ 3, 8. We vacated the sentence and remanded for resentencing. *Id.* ¶ 15.

¶ 8 The trial court ordered a new presentence investigation report, which was slightly different than the first: it did not include information about his drug or alcohol use, gang affiliation, or mental health. Lampkins’s attorney did not present any additional mitigating evidence, but argued that Lampkins was now much older than he had been at the time of the offense, and a 12-year sentence (consecutive to his other 8-year sentence) would be sufficient. In allocution, Lampkins stated that he had matured since committing the crime.

¶ 9 The trial court noted that there was “not much” mitigating evidence in the report, and that the facts of the current case were “very memorable” because of the “callousness” and “depravity” demonstrated to the victims. As to Lampkins’s age, the trial court stated that the original sentence had been selected to “protect society for a reasonable period of time” while also giving Lampkins “a chance to make amends and do something with your life, but after a very, very significant period of incarceration.” Regardless of the firearm enhancement, the court had “designed [the sentence] in such a way to accomplish a particular number, which I felt was appropriate then and I feel is appropriate now,” and had lessened the sentences on the other

counts to achieve that goal. The trial court resentenced Lampkins to 27 years of imprisonment for aggravated criminal sexual assault.

¶ 10 The new mittimus reflected a conviction on Count 8 for aggravated criminal sexual assault with a firearm, with a sentence of 27 years. It also included convictions on Counts 13 and 14 for home invasion; Count 15 for armed robbery with a firearm; and count 20 for vehicular hijacking; the last four counts included a concurrent eight-year sentence, consecutive to Count 8. Lampkins received an aggregate sentence of 35 years imprisonment.

¶ 11 Analysis

¶ 12 Lampkins is Not Entitled to a New Sentencing Hearing

¶ 13 Lampkins argues that he is entitled to a new sentencing hearing under recently-amended provisions to the juvenile sentencing code. See 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016). This law was signed before Lampkins's resentencing, but became effective after the trial court imposed his new sentence. Lampkins argues that the new law applies to him retroactively. During the pendency of this appeal, however, our supreme court rejected Lampkins's argument in *People v. Hunter*, 2017 IL 121306. So Lampkins is not entitled to a new sentencing hearing.

¶ 14 The Record is Insufficient to Rule on the Ineffective Assistance Claim.

¶ 15 Lampkins next argues that his resentencing attorney was ineffective for failing to present mitigating evidence related to his youth, mental health, family background, and social and educational history. But the record is not sufficiently developed to allow us to determine whether Lampkins was prejudiced by his counsel's alleged failures (i.e., whether there is a reasonable probability that Lampkins would have received a more lenient sentence if his counsel had investigated and presented further mitigating evidence). A postconviction proceeding would allow Lampkins to present a full accounting of his background, including an explanation of any

discrepancies between the first and second presentencing reports. We decline to rule on this issue; Lampkins may pursue this claim in a postconviction petition.

¶ 16 Corrected Mittimus

¶ 17 Finally, the parties agree that the mittimus should be corrected, because it does not accurately reflect some of the charges for which Lampkins was convicted. Based on the trial court's verdict, Lampkins was actually convicted of Count 8 (aggravated criminal sexual assault), Count 13 (home invasion), Counts 15 and 16 (armed robbery), and Count 39 (aggravated vehicular hijacking), and was not convicted of Count 14 (home invasion) and Count 20 (vehicular hijacking).

¶ 18 Where the mittimus conflicts with a court's oral pronouncement, the reviewing court may correct the mittimus without remand. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). We order the mittimus be corrected to reflect convictions for Counts 8, 13, 15, 16, and 39.

¶ 19 The parties differ on whether the phrase "with a firearm" should be added to counts 8, 15, 16, and 39. Lampkins's sentence will not be affected either way, as it will not include the since-held-unconstitutional firearm enhancements.

¶ 20 The State correctly points out that the phrase "with a firearm" is not only a reason to enhance the sentence, but part of the statute under which Lampkins was charged and which is listed on the mittimus. For example, Count 8 is listed under 720 ILCS 5/12-14(a)(8), which states that a person commits aggravated criminal sexual assault if they commit criminal sexual assault while armed with a firearm. The phrase "with a firearm" is not meaningless or easily deleted, as "with a firearm" transforms the crime from criminal sexual assault to *aggravated* criminal sexual assault. The same applies to Count 39, aggravated vehicular hijacking: the presence of the firearm aggravates the crime. 720 ILCS 5/18-4(a). And to Counts 15 and 16,

armed robbery: a robbery committed while armed with a firearm. 720 ILCS 5/18-2(a)(2). If we deleted “with a firearm,” the reader would not know why Lampkins was convicted of armed robbery rather than robbery.

¶ 21 Lampkins relies on *People v. Hampton*, 406 Ill. App. 3d 925 (2010), where a court vacated sentences for aggravated criminal sexual assault and remanded for resentencing without the firearm enhancements. But *Hampton* concerned sentencing consequences, not the words on the mittimus.

¶ 22 Accordingly, we affirm the trial court’s judgment and order the clerk of the circuit court to correct Lampkins’s mittimus to reflect convictions for: Count 8, aggravated criminal sexual assault with a firearm; Count 13, home invasion; Counts 15 and 16, armed robbery with a firearm; and Count 39, aggravated vehicular hijacking with a firearm.

¶ 23 Affirmed; mittimus corrected.