2018 IL App (1st) 160270-U

No. 1-16-0270

October 24, 2018

Third 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. 15 CR 284
	)	
TREMAIN MOORE,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated discharge of a firearm. Where there is no conflict in the sentencing statute, defendant is not entitled to receive day-for-day credit on his sentence. The mittimus is corrected to accurately reflect the name of the crime defendant committed. Defendant's *pro se* supplemental brief is stricken.

¶ 2 Following a bench trial, defendant Tremain Moore was convicted of aggravated discharge of a firearm and sentenced to six years in prison. On appeal, defendant challenges the sufficiency of the evidence, arguing that his conviction was based solely on the incredible

testimony of two biased witnesses. Defendant also contends that the statutory "good time" provisions for the offense of aggravated discharge of a firearm are in conflict, and that therefore, the conflict should be resolved in his favor and he should receive day-for-day credit toward his sentence. Finally, defendant contends that the mittimus must be corrected to accurately reflect the name of the offense of which he was convicted. For the reasons that follow, we affirm and correct the mittimus.[1]

¶ 3 Defendant's conviction arose from events that occurred in Chicago on November 1, 2014. Following his arrest, defendant was charged by information with three counts of attempted first degree murder and one count of aggravated discharge of a firearm. The alleged victim was Johnny Petty (hereinafter Petty), husband of Larea Petty (née Larea Taylor; hereinafter Larea).

¶ 4 Larea Petty was not a witness to the shooting at issue, but her testimony served to set the scene for a conflict between defendant and Johnny Petty. In short, Larea testified that prior to her marriage to Johnny Petty, she dated defendant and had a daughter with him. Their relationship came to a "rocky end" right around their daughter's first birthday. According to Larea, after she no longer lived with defendant, he would call and text both Larea's and Larea's mother's phones every day in order to harass them.

¶ 5 Larea testified that around 1 p.m. on the day in question (about half an hour before the shooting), Petty drove her to her parents' house. As they pulled up, Larea saw defendant in his conversion van. Defendant drove past them, made a u-turn, and came back to where Larea and Petty were parked. Defendant asked Petty why Petty was watching defendant's van. Petty

[1] Defendant's appeal from the denial of his *pro se* "Petition Challenging the Constitutionality of the Aggravated Discharge of a Firearm Sentencing Provision, Pursuant to 735 ILCS 5/2-1401(F)" is pending before this court in case No. 1-16-1716.

responded, "Why you stalking me?" Defendant replied, "I'm not stalking you," said he was going to blow Petty's brains out, and drove off.

¶ 6 On cross-examination, Larea admitted that when she first met defendant, she falsely told him her name was Tiffany. She did not reveal her actual name to him until about two years later, "probably" a month before she gave birth to their daughter. Larea further acknowledged that she was present in November 2013 when defendant and Petty fought at a gas station. According to Larea, she was in a vehicle with Petty when defendant came up to them and disrespected her. Petty asked defendant why he was bothering them and requested that he leave them alone, but defendant kept threatening them, and "[t]hat's when they got into a physical altercation."

¶ 7 On redirect, Larea explained that she initially told defendant her name was Tiffany because she met him late at night as she was walking home, and he was a "strange guy" following her in a car. When asked why she waited two years to tell him her real name, she answered, "I don't know, I didn't think it was going to really work out like that." Larea also testified that she currently had an order of protection against defendant.

¶ 8 Johnny Petty testified that around 1 p.m. on the day in question, he drove Larea to her parents' house, which was in the vicinity of Grenshaw Street and Pulaski Road. As Petty pulled over to park on the street, he noticed defendant driving a conversion van. Defendant drove past, made a u-turn, came back, and stopped so that the two vehicles were driver's side to driver's side. Defendant said, "Don't be watching my van," to which Petty replied, "You stalking me." Defendant responded, "Don't worry about it. I'm going to blow your bitch ass brains out." Defendant then drove off and Larea went inside her parents' house. Petty drove to the barber

shop where he worked, which was about three blocks away, and parked in the lot on the side of the building.

¶ 9 Around 1:30 p.m., Petty's niece, Jennifer Warfield, came to the barber shop to borrow his car. The two went outside, where Petty explained to her that he could not let her borrow the car because he "just got into it" with defendant. Petty happened to look up during the conversation and noticed defendant sneaking up on him in the parking lot, holding a black .357 revolver. Defendant, who was three to five feet from Petty, said, "I told you I'm going to blow your bitch ass brains out." Warfield jumped in front of Petty and implored defendant not to shoot her uncle. Petty described what happened next: "He threw the gun up towards my head. I went up with my left hand and blocked it. I knocked his hand down with the gun and I took off between two cars."

¶ 10 Petty testified that as he ran into the street, he heard two gunshots. Petty was not hit, and although he saw Warfield run, he did not know where she went. He also did not know where defendant went. Petty ran inside a gas station on the corner and called the police.

¶ 11 By the time the police arrived a few minutes later, Petty had returned to the barber shop. He told the police what had happened and related to them that Larea would know where to find defendant. Then, while he was in a police car, going over "the story" with an officer, the officer wrote out a report.

¶ 12 On cross-examination, Petty reiterated that he told Warfield about defendant threatening him after she arrived at the barber shop, not earlier on the phone. He acknowledged that when he heard the gunshots, he did not see who was firing the gun or where it was being pointed. He also acknowledged that when he spoke with the police, he did not tell them defendant had threatened him earlier in the day. When asked whether he told the police that Warfield "was a witness to

this case," Petty answered, "Yes. I told them my niece was out there with me." Counsel then asked Petty whether he told the police Warfield "was a witness to the shooting," and Petty answered, "No." Petty stated that he gave the police Warfield's name, but did not point her out to them or give them her address or phone number. Petty also denied telling the police that he saw defendant pull the revolver out of his waistband. He further testified that defendant had been near his car in the parking lot, and that "after all this had happened," he discovered his car's windshield was cracked.

¶ 13 Defense counsel asked Petty about his testimony at a preliminary hearing that took place about seven weeks after the shooting. Specifically, counsel questioned Petty as follows:

"Q. Was this question asked of you and did you give this answer on page five of that preliminary hearing:

'QUESTION: When you came into contact with the defendant, was it inside of the barber shop or outside of the barber shop?

ANSWER: Outside of the barber shop.

QUESTION: Were you alone when you first came into contact with the defendant?

ANSWER: Yes.'

Q. Were you asked that question and did you give that answer?

A. When they asked me that question --

Q. Were you asked that question and did you give that answer, that's all I'm asking you?

A. Yes, I did."

¶ 14 On further cross-examination, Petty spoke about an incident that occurred in November 2013, about a year before the shooting. Petty was at a gas station with Larea when defendant approached their car and called them bitches. Petty and defendant then got into a fist fight. Petty acknowledged that a man he knew as Big Homie was present at the gas station, but denied that he was "with" Big Homie. Petty further stated that over the course of the next year, he sometimes saw defendant in his van, but did not see defendant following him.

¶ 15 On redirect, Petty stated that on the day of the shooting, he told the police that Warfield was present during the shooting. He also stated that when he first spoke with the police, he was upset about what had just happened, and was "tore up," "broke down," and "a mess."

¶ 16 Jennifer Warfield testified that about 1:30 p.m. on November 1, 2014, she went to the barber shop where Petty worked in order to borrow his car. Because it was loud inside the shop, they went outside to talk. Petty told Warfield that she could not use the car, and explained his reasons to her. As they were talking, Warfield noticed defendant, whom she had never seen before but identified in court, approaching from the parking lot next to the shop. Defendant had a black gun in his hand and was pointing it at Petty. Warfield moved in front of Petty so that the gun was aimed at her, and repeatedly pleaded with defendant not to shoot her uncle. Defendant pointed the gun at Petty's head. At this point, Petty slapped defendant's hand, Warfield ran into the barber shop, and Petty ran. Once inside the shop, Warfield looked back through the glass door. She saw defendant, who was "right there on the sidewalk," point the gun and fire a shot at Petty. Warfield ducked down, along with everyone else who was in the shop. In all, Warfield heard two gunshots. Once everything was quiet, she went outside.

¶ 17 Sometime after the police arrived, Warfield went looking for Petty and learned he was inside a squad car, talking to the police. Since Petty was "fine, in the police car," Warfield decided to leave the scene and go to a hair appointment she had scheduled. When asked whether she herself spoke with the police at the scene, Warfield answered, "No. I thought I did, but they was so busy, trying to find him, you know, everybody so worked up, I end up leaving." About six weeks later, on December 17, 2014, Warfield met with a detective at the police station. She viewed a lineup and identified defendant as the person who pointed a gun at Petty.

¶ 18 On cross-examination, Warfield admitted that she drove to trial with Petty and Larea, but denied that they talked about the case in the car. Warfield also denied ever talking about the case with Petty, other than when he called to tell her the police wanted to question her and she had to view a lineup related to "this gun pulling incident." Although Petty and Larea drove Warfield to the police station to view the lineup, Warfield maintained that they did not talk about defendant or what he looked like.

¶ 19 Warfield further testified on cross-examination that Petty had told her over the phone that she could not use his car, but that she went to the barber shop anyway. She explained, "Because I wanted to see what was going on. My uncle, he told me his life was threatened. I love my uncle. He told me something going on with him. *** I took it upon myself to go check on him." With regard to the shooting, Warfield testified that she heard one shot as she was running into the barber shop, and then, through the shop's glass door, saw defendant fire a second shot while pointing the gun in the direction Petty had run. She admitted that she could not see Petty when defendant fired the second shot, but insisted defendant aimed that shot at Petty because "My uncle ran that way. That's the only person he had the gun on," and "That's the only person that

he was pointing at before my uncle ran. So, it had to be my uncle." Warfield also testified that she told police officers at the scene that she "had got in front of the gun with my uncle," and that she thought one of the police officers took down her name.

¶ 20 Chicago police officer Joseph Antico testified that shortly after 1:30 p.m. on November 1, 2014, he responded to a call of shots fired near 1145 South Pulaski Road. When he arrived, there were multiple police units and multiple civilians on the scene, which he described as chaotic. Antico located Johnny Petty and, due to the nature of the scene, asked him to step into his squad car to talk. According to Antico, Petty was "pretty shaken" and visibly upset. Antico also spoke with other civilians on the scene, but he did not write down any of their names or addresses because he only spoke with them for the limited purpose of trying to ascertain who the victim was.

¶ 21 On cross-examination, Antico testified that Petty did not calm down during their 20- to 30-minute conversation in the squad car, but rather, remained "pretty upset" the whole time. However, Antico acknowledged that he did not write in his case report that Petty was upset or emotionally distraught. Antico did not recall Petty saying anything about a niece being present during the incident, and agreed that if Petty had done so, he would have noted it in his report. Antico also agreed that if Petty had reported a person named Jennifer Warfield was a witness, it would have been noted in his report, which it was not. Antico did not see any spent shell casings at the scene, or any evidence of a gun being fired, such as a broken window or a building with a bullet in it. He did not recall whether Petty reported that defendant threatened him earlier in the day, or that his windshield was broken. Antico did recall that Petty said defendant pulled the gun from his waistband.

¶ 22 Defendant made a motion for a directed finding, which the trial court denied.

¶ 23 Defendant testified that he and Larea, whom he knew as Tiffany Taylor, began living together shortly after they met. With regard to dates, he stated that they lived together at his mother's home in 2010 and 2011, that she gave birth to their daughter in 2011, and that they shared two apartments from 2011 to 2013.

¶ 24 According to defendant, Larea went into labor one night while he was at work. She called him from the hospital to report that their daughter had been born, but also said that she did not want him to come to the hospital right away. The next day, he went to the hospital's front desk, asked for the room number for Tiffany Taylor, and was told there was no one there by that name. Defendant went out to his car and called Larea, who said she would send her sister down to meet him. Defendant and the sister then went back to the front desk, and when defendant asked for Tiffany Taylor again, the sister said, "No, her name is Larea Taylor."

¶ 25 Defendant testified that in November 2013, he was at a gas station when he was approached by Larea and Petty. Defendant related that the following exchange occurred as he pumped gas into his vehicle: "He saying she said this and that. I'm like I don't know you. I know she's a liar. I don't want nothing to do with that. *** He's saying he's a man, and the other guy, a big guy with him, saying let's beat him and this and that." One of the men blocked the driver's door, so defendant went around to the passenger side. Petty followed, the "big guy" told Petty to swing at defendant, and a short physical fight ensued. Defendant felt he got the best of Petty, and testified he was not angry about the fight.

¶ 26 With regard to the day in question, November 1, 2014, defendant testified that about 11 a.m., he dropped off his girlfriend at her job and then went home. He stayed at home until about

4 or 4:30 p.m. Defendant denied going to 1145 South Pulaski Road, pulling a gun on Petty, and shooting at him.

¶ 27 On cross-examination, defendant maintained that he had no contact with Larea or Petty after the fist fight at the gas station in November 2013. Rather, he stated that a year after the fist fight, "I find myself being arrested."

¶ 28 After the defense rested, the parties stipulated that defendant had been convicted of delivery of a controlled substance in 2014.

¶ 29 Following closing arguments, the trial court found defendant guilty of aggravated discharge of a firearm. In the course of doing so, the court stated it was difficult to give much credence to Larea's testimony, as she had demonstrated her capability of being deceptive by giving defendant a false name and perpetuating that ruse for over a year. The court also stated that it did not put stock into the testimony regarding the "drama" between defendant and Larea. However, the court found Petty and Warfield to be credible despite minor impeachment, and stated that it would be a "grand conspiracy" if the police were called about shots fired when, in reality, nothing happened and defendant was nowhere nearby.

¶ 30 Defendant filed a posttrial motion, arguing that the State failed to prove him guilty beyond a reasonable doubt. After a hearing, the trial court denied the motion. Defendant also filed a "Motion for 50% Sentence Calculation," asserting that the Truth in Sentencing Law contained an internal inconsistency regarding sentencing credit, and that the law should be construed in his favor. At sentencing, the court imposed a term of six years in prison, to be served at 85%. Defendant thereafter filed a motion to reduce sentence, reasserting his arguments

that he was entitled to day-for-day sentencing credit. The court denied the motion. This appeal followed.

¶ 31 On appeal, defendant first challenges the sufficiency of the evidence to sustain his conviction. When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Id*. Rather, reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses, must decide whether any fact finder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283.

¶ 32 Defendant contends that his conviction must be reversed where it was based "solely on the incredible testimony of two biased witnesses," that is, Petty and Warfield. He asserts that

Petty was biased and had a motive to lie because of the longstanding dispute between defendant and Larea about their daughter, and that Petty's testimony was impeached both by his failure to mention Warfield to the police and by his prior testimony that he was alone when he first came into contact with defendant outside the barber shop. Defendant argues that Warfield was biased by loyalty to her uncle, and that her testimony that she witnessed the shooting was incredible where she did not give a statement to the police immediately after the shooting. Defendant further argues that inconsistencies between Petty's and Warfield's testimonies raise questions about whether Warfield was at the barber shop on the day in question. Specifically, he notes that Petty testified he told Warfield about defendant's threats after she arrived at the barber shop, but that Warfield testified Petty told her over the phone that she could not use his car because his life had been threatened, but she went to the barber shop anyway. Finally, defendant argues that Warfield's lineup identification was not corroborating where it occurred more than six weeks after the shooting, giving her "plenty of time" to receive information about defendant from Petty and Larea, and where her failure to give a description of the shooter to the police immediately after the shooting makes it impossible to measure whether the lineup identification was based on the shooting alone.

¶ 33 Defendant's arguments involve matters of credibility that are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). As noted above, it is the trier of fact who assesses the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence, and who resolves conflicts or inconsistencies in the evidence. *Id.*; *Brooks*, 187 Ill. 2d at 131.

¶ 34 Here, the trial court heard Petty and Warfield testify and was well aware of defendant's position that they were untruthful. In closing arguments, defense counsel insisted Petty had a natural bias against defendant because he and Larea did not want him to exercise visitation, and suggested that Petty was "doing her bidding." Counsel argued that Petty was "smart enough to know he needs a witness to corroborate," so he got Warfield involved. Counsel noted that Petty and Warfield contradicted each other regarding whether it was on the phone or in person that he told her she could not borrow his car, and mused that it was odd neither Petty nor Warfield told the police at the scene that Warfield was a witness to the crime. Counsel also questioned Warfield's testimony that she did not talk about defendant with Petty and Larea while they were on their way to the lineup. He concluded, "Judge, there is no independent, unbiased witness that can establish [defendant] pulled a gun and tried to shoot Johnny Petty." Later, when arguing the posttrial motion, defense counsel noted Petty's prior inconsistent testimony that he was alone when he encountered defendant outside the barber shop, observed that Warfield did not surface as a witness until after defendant was arrested, and asserted Warfield "was not there and that she wasn't telling the truth."

¶ 35 Despite these arguments, the court stated at the close of trial that it had the opportunity to observe Petty and Warfield closely and found them credible. The court observed that there had been "minor impeachment," but stated it "believed [Warfield] was present at the time and that the defendant walked up and pointed a gun at her and her uncle." The court addressed the issue of corroboration, stating, "This is corroborated by [Warfield's] identification of the defendant in the lineup. It is corroborated by Officer Antico, who testified to [Petty's] very upset demeanor when he was interviewed directly after the fact." Thus, the trial court specifically addressed

Petty's and Warfield's credibility and found them credible despite the concerns defendant is now raising on appeal. We will not substitute our judgment for that of the trial court on this question of credibility. *Brooks*, 187 Ill. 2d at 131.

¶ 36 The evidence supporting defendant's conviction could reasonably be accepted by the trial court, who saw and heard Petty and Warfield testify. This is not a case in which the witnesses' description of the crime was incredible on its face. See *Cunningham*, 212 Ill. 2d at 284. Having heard the evidence, the trial court was convinced of defendant's guilt beyond a reasonable doubt. After reviewing the evidence in the light most favorable to the prosecution, which we must, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 37 Defendant's second contention on appeal is that the two statutory "good time" provisions for the offense of aggravated discharge of a firearm are in conflict, that the conflict should be resolved in his favor, and that therefore, and he should receive day-for-day credit toward his sentence rather than serve his sentence at 85%.

¶ 38 The statute at issue is section 3-6-3(a)(2) of the Unified Code of Corrections (Code), which provides, in relevant part, as follows:

> "(2) The rules and regulations on sentence credit shall provide, with respect to offenses listed in clause (i), (ii), or (iii) of this paragraph (2) committed on or after June 19, 1998 or with respect to the offense listed in clause (iv) of this paragraph (2) committed on or after June 23, 2005 (the effective date of Public Act 94-71) ***, the following:

***

> (iii) that a prisoner serving a sentence for *** aggravated discharge of a firearm *** when the court has made and entered a finding, pursuant to subsection (c-1) of Section 5-4-1 of this Code, that the conduct leading to conviction *** resulted in great bodily harm to a victim, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment;
>
> (iv) that a prisoner serving a sentence for aggravated discharge of a firearm, whether or not the conduct leading to conviction for the offense resulted in great bodily harm to the victim, shall receive no more than 4.5 days of sentence credit for each month of his or her sentence of imprisonment[.]" 730 ILCS 5/3-6-3(a)(2) (West 2014).

If clause (iii) applies to a defendant, he will receive day-for-day credit unless the trial court specifically finds his conduct resulted in great bodily harm. If the court makes such a finding, the defendant will be required to serve at least 85% of his sentence, *i.e.*, he could only receive a maximum of 4.5 days of credit per month. In contrast, if clause (iv) applies to a defendant, he would need to serve at least 85% of his sentence regardless of whether the trial court makes a finding of great bodily harm. See *People v. Williams*, 2017 IL App (1st) 150795, ¶ 52.

¶ 39 Here, the trial court made no finding of great bodily harm. Defendant argues that because the offense occurred on November 1, 2014 – a date which falls within both ranges articulated in the statute – and because the addition of subsection (iv) did not repeal subsection (iii), his offense falls within both subsections. He maintains that where both subsections use the

mandatory word "shall," they are in direct conflict. As such, he asserts that the conflict must be resolved in his favor, entitling him to day-for-day good conduct credit pursuant to clause (iii).

¶ 40 These exact arguments have been considered and rejected by this court on two prior occasions. *Williams*, 2017 IL App (1st) 150795, ¶¶ 50-54; *People v. Williams*, 2015 IL App (1st) 130097, ¶¶ 59-62. We decline defendant's invitation to depart from the reasoning of those opinions. As in *Williams* and *Williams*, we find no ambiguity or conflict in the statute. The plain language of the statute provides that if the crime was committed between June 19, 1998, and June 22, 2005, then clause (iii) applies and the defendant could receive day-for-day credit unless the trial court made a finding of great bodily harm, but, if the crime was committed on or after June 23, 2005, then clause (iv) applies and there would be no day-for-day credit regardless of whether the conduct resulted in great bodily harm. *Williams*, 2017 IL App (1st) 150795, ¶¶ 50-54. In light of *Williams* and *Williams*, we reject defendant's arguments regarding sentencing credit. Because defendant committed aggravated discharge of a firearm after June 22, 2005, clause (iv) applies and he is required to serve at least 85% of his sentence.

¶ 41 Defendant's third contention on appeal is that the mittimus should be corrected to reflect that he was convicted of aggravated discharge of a firearm directed at a person, as opposed to aggravated discharge of a firearm directed at an occupied vehicle. The mittimus correctly indicates defendant was convicted of violating section 24-1.2(a)(2) of the Criminal Code of 2012, which provides that a person commits aggravated discharge of a firearm when he or she knowingly or intentionally "discharges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person." 720 ILCS 5/24-1.2(a)(2) (West 2014). However, the mittimus describes defendant's offense as

"AGG DISCHARGE FIREARM/OCC VEH," which is not entirely accurate since, as defendant observes, his crime was discharging a firearm in the direction of another person, not an occupied vehicle. The State agrees with defendant that the "verbiage" of the mittimus should be changed.

¶ 42 We agree with the parties that the description in the mittimus should be corrected to accurately reflect the conduct for which the defendant was convicted. Therefore, pursuant to Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we order that the description in the mittimus be corrected to read: "AGG DISCHARGE FIREARM/ANOTHER PERSON." See *People v. Blakney*, 375 Ill. App. 3d 554, 560 (2007) (appellate court may, without remand, correct the mittimus to accurately reflect the name of the offense for which a defendant has been convicted, even where the statutory citation is correct).

¶ 43 Finally, we note that after the filing of the opening brief in the instant case, this court granted defendant's *pro se* "Motion for Leave to Supplement Opening Brief Filed by Assistant State Appellate Defender." However, it is well-settled that a defendant has no right to both self-representation and the assistance of counsel. See *People v. Thompson*, 331 Ill. App. 3d 948, 951 (2002). "If a defendant is represented by appellate counsel, whether appointed or privately retained, he has no right to a 'hybrid appeal' in which he alternates between being represented by counsel and proceeding *pro se* through the filing of a supplemental *pro se* brief." *Id.* at 951-52. Here, defendant is represented by the State Appellate Defender, and, therefore, has no right to a hybrid appeal. As such, we strike defendant's supplemental *pro se* brief on our own motion. See *People v. Woods*, 292 Ill. App. 3d 172, 179 (1997) ("on this court's own motion, we strike defendant's *pro se* brief and decline to address it or consider it in any way").

¶ 44 Even if we were not to strike defendant's supplemental *pro se* brief, it would fail on its merits. In the brief, defendant argues he was denied equal protection of the law, as he has been treated unequally to others in the same suspect class. Specifically, defendant asserts that he is similarly situated to a man named Jeffrey Avery. In an unrelated case, No. 09 CF 275, Avery was convicted of aggravated discharge of a firearm. According to defendant, Avery committed his crime after June 22, 2005, and there was no finding of great bodily harm, but, nevertheless, he was sentenced at 50% as opposed to 85%. Defendant argues that where he is similarly situated to Avery, this court should also grant him day-for-day credit against his sentence. Defendant's *pro se* argument relies on the "comparative sentence approach," which has been roundly denounced as fundamentally flawed. See, *e.g.*, *People v. Fern*, 189 Ill. 2d 48, 55 (1999); *People v. Ramos*, 353 Ill. App. 3d 133, 138 (2004). As such, were the *pro se* brief not stricken, we would reject its arguments challenging defendant's sentence.

¶ 45 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus.

¶ 46 Affirmed; mittimus corrected.