2019 IL App (1st) 160337-U

No. 1-16-0337

Order filed February 15, 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 12303
	)	
ALUNTEA LINDSEY,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery with a firearm is affirmed over his challenge to the sufficiency of the evidence. The trial court did not abuse its discretion when it sentenced defendant to 12 years in prison for aggravated battery with a firearm and 8 years for aggravated discharge of a firearm after considering the evidence presented in aggravation and mitigation. Defendant's mittimus must be corrected to reflect the accurate amount of presentence custody credit.

¶ 2 Following a bench trial, defendant Aluntea Lindsey was found guilty of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)), and two counts of reckless discharge of a firearm (720 ILCS 5/24-1.5(b) (West 2014)). He was sentenced to 12 years in prison for aggravated battery with a firearm, 8 years for aggravated discharge of a firearm, and to two 3-year terms for reckless discharge of a firearm. All sentences were to be served concurrently. On appeal, defendant contends that his conviction for aggravated battery with a firearm must be reversed because the evidence at trial did not prove, beyond a reasonable doubt, that he shot the victim or, in the alternative, that he was accountable for whoever actually shot the victim. He further contends that his sentences for aggravated battery with a firearm and aggravated discharge of a firearm are excessive. Defendant finally contends that his mittimus must be corrected to reflect 564 days of presentence custody credit. We affirm, and correct the mittimus.

¶ 3 Defendant was arrested and charged with attempted first degree murder, aggravated battery, and aggravated discharge of a firearm following a May 29, 2014 incident in Chicago during which the victim, Latrail Baker, suffered a gunshot wound to the chest.

¶ 4 At trial, Rebecca Cowell, the principal at Kipp Ascend Middle School, testified that around 3 p.m. on May 29, 2014, she was outside the school when she heard screaming and observed children running toward her. When Cowell turned around, she saw a "shooter" fire three shots. She described this person as an African-American man around six feet tall with a slender build, between 14 and 20 years of age. The man was wearing a white t-shirt and jeans or jean shorts and had dreadlocks. Cowell also saw a person on the ground. On June 12, 2014,

Cowell viewed two photographic arrays at a police station. She did not identify anyone, as she only observed the shooter's profile and not his face.

¶ 5 Latrail Baker testified that at the time of trial he was in Cook County boot camp due to a conviction for possession of a stolen motor vehicle. He also had a prior conviction for the manufacture and delivery of a controlled substance. On the afternoon of May 29, 2014, he was waiting outside his eight-year old sister's school at 16th and Avers talking to friends, when he saw people coming from the other side of the street.[1] Although everyone in the group was wearing a hoody, Baker recognized defendant and "a couple of his friends." At trial, Baker identified defendant. Baker then testified that a fight then broke out between Baker's group and defendant's group. Defendant did not join the fight; rather, he stood with another person on the corner, watching and looking around. After a few minutes, Baker heard someone yell " 'they got a gun' " and he ran away. When he looked back, he saw defendant shooting at him from five or six car lengths away. He knew that defendant was the person firing a gun because he saw sparks and smoke coming from the gun. After hearing the "last" shot, Baker felt a "little punch" to the back and knew that he had been shot. Baker ran for "a little bit more" and then felt "woozy," so he stopped and flagged down his friends. He then walked up to a woman's car and "told" her to take to him a hospital. She declined and he collapsed. When Baker opened his eyes, his friend Emanuel Black was holding him. He later learned that he was shot in the chest. As a result, he had a lung removed and at least three surgeries. Baker further testified that on May 30, 2014, he identified defendant in a photographic array.

[1] Baker testified that his sister's elementary school shared a building with Kipp Ascend Middle School.

¶ 6 During cross-examination, Baker testified that prior to leaving home on the afternoon of May 29, 2014, he smoked cannabis. As defendant's group approached, they did not look angry; rather, they all looked high. When the fight broke out, Baker started to run away. Although he saw defendant with a gun, he did not see defendant draw it. He also saw Lavae Baker with a gun. Baker stated that he saw both Lavae Baker and defendant firing weapons. Counsel then asked whether Baker knew who actually shot him. Baker answered that he did, and that he did not see Lavae Baker firing a gun. He knew the boys in the other group and thought that a few of them robbed him in a dice game a few days earlier. Defendant was one of the boys who took money from him. During re-direct examination, Baker testified that he only saw defendant and Lavae Baker with guns.

¶ 7 The trial court then asked Baker how, since two people were shooting, he knew who shot him. Baker answered that defendant shot him. The trial court then asked how Baker knew this. Baker responded that when he turned around, the "last person" that he saw still running toward him was defendant. Defendant was pointing a gun. The other person was still standing on the corner shooting in the same direction.

¶ 8 Emanuel Black testified that he was on his way home from school when he saw a group of "like" 20 men, heard gunshots, turned around, and ran away. Black heard three or four gunshots. Black then heard Baker say that he had been shot. When Black turned around, Baker was on the ground, bleeding from the chest.

¶ 9 Chicago police officer Maggie Gutierrez testified that on the afternoon of May 29, 2014, she was working as "security" for the gas company. At one point, the truck she was in stopped and she observed a fight on a street corner and saw defendant, whom she identified in court, in a

headlock. Defendant then pulled a gun from his waistband, and Gutierrez heard four gunshots, but did not see defendant fire the gun. Gutierrez then "got a little closer because cars were moving," and observed defendant fire the gun twice toward some people who were running. She did not see anyone else with a gun. She later identified defendant in a photographic array and in a line-up. During cross-examination, Gutierrez testified that she called 911 and described the shooter as wearing a black hoody and jeans. When she observed defendant in a headlock, he was being punched by several people.

¶ 10 Chicago police department evidence technician Terrance McKitterick testified that four shell casings fired from a .25 automatic were recovered from the scene of the shooting. No firearm was produced at trial.

¶ 11 Chicago police detective Eugene Schleter testified that during the course of his investigation he spoke with John Smith, who was beaten "when the incident was going down." Schleter then became aware of a possible suspect, Lupe Orlande. After speaking to Baker at a hospital, defendant was taken into custody, but released without being charged. Schleter also spoke to Gutierrez during the course of the investigation. He then determined that there was a video of this incident from the King Legacy Apartments and obtained a copy of the video which was played for the court. Schleter testified that after collecting the video and speaking to Gutierrez, defendant was arrested again. The video is contained in the record on appeal, and shows groups of people running.

¶ 12 When making its findings, the trial court stated, in pertinent part, that Baker came to court, indicated that it was defendant who shot him, and testified as to the circumstances "beforehand" between he and defendant regarding the dice game. The court noted that Baker

indicated that two people were shooting, and that he believed that defendant was the person who shot him. The court also noted that defendant was identified by Officer Gutierrez. The trial court found defendant not guilty of attempted first degree murder, but found him guilty of aggravated battery with a firearm, aggravated discharge of a firearm, and two counts of the lesser-included charge of reckless discharge of a firearm. Defendant filed a motion for a new trial, which the court denied. The matter then proceeded to sentencing.

¶ 13 At sentencing, the State argued that this was a daylight shooting and that the victim, "she," was "truly an innocent victim." The court then asked whether this was the "shooting into a car of girls," and requested that the State refresh the court regarding the facts of the case. The State responded that in this case the female victim observed defendant "pointing a handgun in her direction" at 16th and Avers, that multiple shots were fired, and that there were nonlife-threatening gunshot wounds to the body. The court then asked whether the victim was shot five times, and the State responded that Latrail Baker was the victim. The State added that defendant's criminal history included drugs and was now "putting into the story a gun." The State concluded that defendant's criminal history included a felony drug conviction and two escape convictions, his criminal activity was "getting worse," and the community needed to be protected from him.

¶ 14 The defense argued in mitigation that "Mr. Baker," the victim, was a twice-convicted felon who was not an innocent bystander; rather, he was "out there" looking for a fight. When the court asked what kind of fight, the defense answered that it did not know. The defense acknowledged that Baker was not found with a weapon, but argued that no one knew if his friends had weapons, since they all "fled." The defense noted that Baker had been shot once, not

five times, and further argued that it was not credible that Baker was there to pick up his sister. The defense finally argued that defendant had "one drug case" in his background but that the other two convictions were "simply" electronic monitoring issues, and that he had a daughter and a "strong family situation."

¶ 15 Defendant's mother then addressed the court and asked for leniency. The court also received a letter from defendant's sister. Defendant stated that although he was found guilty of something that he did not do, he learned from other people's mistakes and was "going to take it one day at a time."

¶ 16 In sentencing defendant, the court stated that defendant was "out there with a gun," and that there was "some" cannabis involved "but there was only one gun brought to this matter, and that was against Ms. Lasinski (phonetic) and it was fired and everyone is fortunate" that things were not worse because multiple people could have been injured. The court indicated that it had "looked carefully" at the presentence investigation report (PSI), which showed that defendant was 20 years old at the time of the offense, "considered the facts of the case," and was being "as moderate" as it could. Accordingly, the court sentenced defendant to 12 years in prison for aggravated battery with a firearm, 8 years for aggravated discharge of a firearm, and to two 3-year prison terms for reckless discharge of a firearm. All sentences were to be served concurrently. Defendant filed a motion to reconsider sentence alleging that his sentences were excessive. The trial court denied the motion.

¶ 17 On appeal, defendant challenges the sufficiency the evidence solely as to his conviction for aggravated battery with a firearm, arguing that the evidence at trial did not establish, beyond

a reasonable doubt, that he shot Baker. In the alternative, defendant argues that the State failed to establish that he was accountable for the actions of whoever actually shot Baker.

¶ 18 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Id*. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt. *Id.*

¶ 19 In the case at bar, to establish that defendant committed aggravated battery with a firearm, the State had to prove that in committing a battery, defendant knowingly discharged a firearm and caused injury to another person. 720 ILCS 5/12-3.05(e)(1) (West 2014).

¶ 20 Here, taking the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found that the State proved beyond a reasonable doubt that Baker was shot in the chest when defendant knowingly discharged a firearm. Specifically, Baker testified that he was speaking with friends when he saw a group including defendant on the other side of the street, that a fight broke out between the two groups, and that Baker ran when he heard that someone had a gun. Baker testified that defendant had a gun and that he knew that

defendant was firing the gun because he observed sparks and smoke coming from the gun. Although defendant is correct that during cross-examination, Baker testified that he also saw Lavae Baker firing a gun, Baker later testified that he did not see Lavae Baker firing a gun. However, the mere fact that there is conflicting evidence at trial does not require us to reverse defendant's conviction. *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67. Rather, discrepancies in the testimony are a question for the trier of fact, who is free to accept or reject as much of a witness's testimony as it desires. *Id.* Upon questioning by the court as to how Baker knew that it was defendant that shot him, Baker testified that the last person he saw running toward him was defendant, and that defendant was pointing a gun. Baker further testified that the other person remained on the corner shooting in the same direction. Gutierrez also testified that defendant pulled a gun from his waistband and fired it twice. Given this evidence, we cannot say that no rational trier of fact could have found that Baker suffered a gunshot wound to the chest because defendant knowingly discharged a firearm. *Brown*, 2013 IL 114196, ¶ 48.

¶ 21 Defendant, however, argues that no physical evidence tied his gun to the bullet that injured Baker, and notes that because two people were shooting, it is unclear who actually fired the bullet that injured Baker.

¶ 22 Defendant's arguments on appeal are, essentially, a request to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Collins*, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of the [reviewing] court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."). In the case at bar, the court heard from two witnesses who testified that defendant was present on the street firing a gun, and Baker testified that he believed that defendant was the

person who shot him because he saw defendant running toward him and observed smoke coming from defendant's weapon. Moreover, only shell casings from a .25 automatic were recovered from the scene of the shooting. Ultimately, in the case at bar, the evidence was not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. We therefore affirm defendant's conviction for aggravated battery with a firearm and need not reach his further contention that he was not proven guilty under a theory of accountability.

¶ 23 Defendant next contends that his sentences for aggravated battery with a firearm and aggravated discharge of a firearm are excessive and should be reduced because the trial court misapprehended the facts of the case and considered a factor inherent in the offenses. Defendant further contends that the trial court failed to consider certain mitigating evidence at sentencing. In the alternative, defendant contends that this cause should be remanded for resentencing.

¶ 24 Defendant acknowledges that his motion to reconsider sentence did not specifically argue that the trial court misapprehended the facts of the case or that the court improperly considered a factor inherent in the offenses. To the extent that these arguments were not properly preserved (see *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (when a defendant fails to raise a claim before the trial court, he forfeits the claim on appeal)), he asks that we review them pursuant to the plain error doctrine. In the alternative, defendant contends that he was denied the effective assistance of counsel when counsel failed to include these arguments in the motion to reconsider sentence.

¶ 25 The plain error doctrine permits a reviewing court to consider unpreserved errors when either " 'the evidence in a criminal case is closely balanced or *** the error is so fundamental and of such magnitude that the accused was denied a right to a fair trial.' " *People v. Harvey*, 211

Ill. 2d 368, 387 (2004) (quoting *People v. Byron*, 164 Ill. 2d 279, 293 (1995)). The first step in plain error review is to determine whether any error occurred. See *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 26 "A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). This broad discretion means that this court cannot substitute its judgment simply because it may weigh the sentencing factors differently. *Id*. at 212-13. A trial court abuses its discretion in determining a sentence where the sentence is greatly at variance with the spirit and purpose of the law or if it is manifestly disproportionate to the nature of the offense. *Id.* at 212.

¶ 27 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The trial court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, a court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id*. In the absence of evidence to the contrary, we presume that the sentencing court considered the mitigating evidence presented. *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51.

¶ 28 In the case at bar, we cannot agree that the trial court abused its discretion when sentencing defendant. Here, defendant was convicted of the Class X offense of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1), (h) (West 2014)), and the Class 1 offense of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2), (b) (West 2014)). The sentencing range for a Class X offense is between 6 and 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2014)), and the sentencing range for a Class 1 offense is between 4 and 15 years in prison (730 ILCS 5/5-4.5-30(a) (West 2014)). We cannot say that sentences of 12 and 8 years were an abuse of discretion when defendant fired a handgun on the street in the afternoon, hitting Baker in the chest. See *Alexander*, 239 Ill. 2d at 212-13.

¶ 29 Defendant, however, contends that that his sentences are excessive because the trial court misapprehended the facts of the case and relied upon improper factors in aggravation.

¶ 30 In determining the propriety of a sentence, we must consider the record as a whole and not focus on a few words or statements made by the trial court. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 30. When the trial court mentions an improper factor, but gives insignificant weight to that factor, and it does not result in a greater sentence, the case need not be remanded for resentencing. *Id*. Whether the trial court considered an improper factor at sentencing is reviewed *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 49.

¶ 31 To the extent that defendant contends that the trial court misapprehended the facts of the case, the record reveals that after the State characterized the victim as female, the court asked whether the case involved gunshots to a car and requested that the State refresh the court as to the facts of the case. The State responded that the female victim observed defendant pointing a handgun in her direction at 16th and Avers, that multiple shots were fired, and that there were

gunshot wounds to the body. The State then clarified that Latrail Baker was the victim and argued that defendant's criminal history, which had previously included drugs, now included a gun-related offense and was "getting worse." The defense noted that the victim, "Mr. Baker," was a twice-convicted felon who was "out" looking for a fight, and that defendant had only one drug case in his criminal background and strong family support.

¶ 32 Although defendant is correct that, in imposing sentence, the trial court referred to the gunshot victim as "Ms. Lasinski," the court's recollection of the other facts of the case was generally correct. The court correctly noted that: (1) there was cannabis involved as Baker testified that he smoked cannabis before leaving to pick up his sister, and (2) defendant was "out there with a gun." Further, as noted, defense counsel corrected the State and court's statements regarding the circumstances of the offense and the identity of the victim. The trial court also stated that "only one gun" was brought against the victim, that it was fired, and that it is "fortunate" that the situation was not worse. While defendant is correct that Baker testified that both defendant and Lavae Baker had guns, Baker's testimony as to whether Lavae Baker fired that gun was contradictory. Ultimately, as Baker's testimony that defendant shot him was based upon the facts that defendant was the last person running toward him and he saw sparks and smoke coming from defendant's gun, the court's statement that one gun was brought against the victim in this case was not completely contradicted by the record. Viewing the record as a whole, it is apparent that the trial court was apprised of the relevant facts and any material mistakes had been corrected by the parties. We cannot, therefore, agree with defendant's conclusion that the trial court misapprehended the facts of the case.

¶ 33 Defendant further contends that the trial court improperly considered the fact that he possessed a gun as an aggravating factor at sentencing when the possession of a firearm is inherent to the offenses of aggravated battery with a firearm and aggravated discharge of a firearm.

¶ 34 The trial court is generally prohibited from considering a factor implicit in the offense as an aggravating factor at sentencing. *People v. Phelps*, 211 Ill. 2d 1, 11 (2004). In other words, one factor cannot be used as both an element of the offense, and as a basis for imposing a sentence that is harsher than what might otherwise have been imposed. *Id*. at 11-12. The court may, however, consider the nature of the offense when imposing a sentence, including the circumstances and extent of each element as committed. *People v. Robinson*, 391 Ill. App. 3d 822, 842 (2009).

¶ 35 Here, in sentencing defendant, the court stated that defendant was "out there with a gun" which he fired at the victim, that drugs were involved, and that it was "fortunate" that things were not worse. The trial court did not improperly rely on a factor implicit in the offenses when sentencing defendant. Rather, when read in context, the trial court commented on the circumstances of the offenses and defendant's conduct in the commission of those offenses, that is, defendant was on the street with a gun and it was "fortunate" that the damage caused by shooting a gun on a crowded street was not worse as more people could have been injured. The court's statement regarding defendant's possession of a gun was also brief, as the court immediately turned to a discussion of the nature of defendant's actions. Accordingly, defendant cannot meet his burden of proof that the trial court's reference to his possession of a firearm led to a greater sentence. As defendant has failed to establish that an error occurred as to either the

trial court's alleged misapprehension of the facts or a double enhancement, his plain error argument must fail. See *Herron*, 215 Ill. 2d at 187 (the first step of plain-error review is determining whether any error occurred).

¶ 36 Moreover, because there was no error, defendant cannot demonstrate that he was prejudiced by his trial counsel's failure include these arguments in the motion to reduce sentence. To establish ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance was fundamentally deficient and that, but for counsel's deficient performance, the result of the proceeding would have been different. *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984)). As defendant's sentences were not excessive, his claim of ineffective assistance of counsel lacks merit. *People v. Patterson*, 217 Ill. 2d 407, 438 (2005) (the failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel).

¶ 37 Defendant further contends that the trial court failed to consider, in mitigation, that he fired his weapon "in response to being beaten up," had a nonviolent criminal history, had a supportive family, and was young with the potential for rehabilitation.

¶ 38 Defendant essentially asks this court to reweigh the evidence presented in mitigation and come to a different conclusion. That is not a proper exercise for a court of review. "[T]he mere fact that a reviewing court might have weighed the factors differently than the trial court does not justify an altered sentence." *Raymond*, 404 Ill. App. 3d at 1069. Moreover, it is presumed that the court properly considered the mitigating factors presented at sentencing and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specifically stated that it had considered the PSI and

the facts of the case, and was being as "moderate" as it could be. The mere fact that the trial court did not afford the same weight to the evidence presented in mitigation as defendant thinks the court should have does not amount to an abuse of discretion. See *Jones*, 2014 IL App (1st) 120927, ¶ 55 (because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence).

¶ 39 Defendant further contends that the trial court erred by not considering his youth and potential for rehabilitation. He notes that the United States Supreme Court has found that young people lack maturity and reasoned judgment and recognized that they have a greater potential for rehabilitation. See, *e.g.*, *Miller v. Alabama*, 567 U.S. 460, 474 (2012) (the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children").

¶ 40 In ruling the eighth amendment forbids mandatory life sentences for juvenile offenders who are convicted of homicide, the Supreme Court in *Miller* explained that a court must take into account how children are different from adults for purposes of sentencing and that an offender's youth and attendant characteristics must be considered before imposition of life imprisonment without the possibility of parole. *Id.* at 480, 483.

¶ 41 However, unlike *Miller*, in the instant case defendant was not a minor and was not sentenced to a mandatory life sentence; rather, he received sentences only six and four years above the statutory minimums. See 730 ILCS 5/5-4.5-25(a) (West 2014) (the sentencing range for a Class X offense is between 6 and 30 years in prison); 730 ILCS 5/5-4.5-30(a) (West 2014)

(the sentencing range for a Class 1 offense is between 4 and 15 years in prison). We also note that defendant was not a juvenile at the time of the offenses; rather, he was 20 years old. Moreover, at sentencing, the trial court was able to take into account defendant's age at the time of the offenses, his mother and sister's evidence in mitigation, and the circumstances of the case when exercising its discretion to craft sentences.

¶ 42 Defendant finally contends that his mittimus must be corrected to reflect 564 days of presentence custody credit. The State concedes error and asks this court to correct defendant's mittimus to reflect five additional days of presentence custody credit. Whether a mittimus should be corrected is a question of law that we review *de novo. People v. Anderson*, 2012 IL App (1st) 103288, ¶ 35. A defendant is entitled to credit for any part of a day he spends in presentence custody, excluding the day of sentencing. *People v. Williams*, 239 Ill. 2d 503, 509 (2011).

¶ 43 Here, defendant was taken into custody on June 1, 2014, and released on June 3, 2014. Defendant was taken into custody a second time on June 25, 2014, and sentenced on January 7, 2016. He is, therefore, entitled 564 days of presentence custody credit. Pursuant to Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we order the mittimus corrected to reflect 564 days of presentence custody credit.

¶ 44 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County and order that the mittimus be corrected.

¶ 45 Affirmed; mittimus corrected.