2020 IL App (1st) 171513-U
Order filed: July 17, 2020

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-1513

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PRISCILLA LARKINS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 14 CR 14368 (01) Honorable Mauricio Araujo, Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant is not entitled to a new sentencing hearing on one of the counts where we found the trial court did not commit plain error by considering improper aggravating factors, there was no ineffectiveness of counsel, and the trial court did not abuse its discretion when it imposed a 12-year sentence. On the other count, defendant's sentence is reduced and the mittimus is corrected.

¶ 2 Following a jury trial, defendant-appellant, Priscilla Larkins, was found guilty of delivery of a controlled substance (Count IV) and possession of a controlled substance (Count III), and sentenced to 12 and 6 years' imprisonment, respectively. On appeal, defendant seeks a remand for a new sentencing on Count IV because she was denied a fair sentencing hearing and was given an excessive sentence. In the alternative, defendant argues that her trial counsel was ineffective. In addition, the defendant and the State agree that this court should reduce the sentence on Count III

and correct the mittimus to reflect the proper convictions. We affirm the trial court's sentence on Count IV, reduce the sentence on Count III, and correct the mittimus.[1]

¶ 3 Defendant was charged by indictment with four separate counts: possession of a controlled substance with intent to deliver within 1000 feet of a church (720 ILCS 570/407(b)(1)/401(d) (West 2014)) (Count I); delivery of a controlled substance within 1000 feet of a church (720 ILCS 570/407(b)(2)/401(d) (West 2014)) (Count II); possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2014)) (Count III, prior to amendment); and delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)) (Count IV). Prior to trial, the court granted the State's oral motion to dismiss Counts I and II. The court additionally granted, without objection, the State's motion to amend Count III to allege:

> "POSSESSION OF CONTROLLED SUBSTANCE *** in that she UNLAWFULLY AND KNOWINGLY POSSESSED *** LESS THAN 15 GRAMS *** OF A SUBSTANCE CONTAINING A CERTAIN CONTROLLED SUBSTANCE TO WIT: HEROIN *** IN VIOLATION OF [720 ILCS 570/402(C)]."

Count III, as amended, charged defendant with a Class 4 felony. Count IV, remained the same, charging defendant with a Class 2 felony.

¶ 4 The charges arose from the events of July 21, 2014. At trial, the State introduced evidence that on that date, a team of Chicago police officers conducted an undercover narcotics purchase. One of the officers asked Jason Bell[2], for "D," which is a street term for heroin. Bell led the officer to defendant. Defendant then accepted $10 prerecorded funds from the officer in exchange for a

---

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

[2] Bell, a co-defendant, pleaded guilty prior to trial.

yellow Ziploc bag holding "0.2 grams of powder containing heroin." After the purchase, another officer arrested defendant. The arresting officer searched defendant and found 15 yellow Ziploc bags, containing a total of 3.1 grams of heroin, and the prerecorded funds.

¶ 5 On January 25, 2017, the jury found defendant guilty of "possession of a controlled substance" and "delivery of a controlled substance," Counts III and IV. The criminal disposition sheet incorrectly stated that defendant was found guilty of Counts I and II and that Counts III and IV were "*nolle prosequi*."

¶ 6 On May 24, 2017, the trial court heard argument on defendant's motion to reconsider, and in the alternative, for a new trial. Defendant contended, *inter alia*, that the guilty verdicts of "delivery of a controlled substance" and "possession of a controlled substance" were against the manifest weight of the evidence. The court denied the motion and proceeded to a sentencing hearing.

¶ 7 During the sentencing hearing, the State asserted that, based on nine prior felony convictions, defendant was "Class X mandatory." In describing defendant's criminal background, the State remarked that "every time she has a bout with freedom, it is short lived and we're right back here." Defendant's nine prior convictions were narcotics related, dating back to 1994, and resulted in sentences ranging from probation to 10 years' imprisonment on her most recent conviction, a single Class X felony. Defendant's prior probation was violated and she was resentenced to a period of incarceration. The State also noted that at the time defendant committed this offense, she was on parole. Defense counsel acknowledged that defendant was eligible for Class X sentencing.

¶ 8 In aggravation, the State also offered evidence of defendant's conduct during the pendency of this case. Defendant was removed from two different drug treatment programs, violated

electronic home monitoring, and failed to show up to court, which resulted in the issuance of a bond forfeiture warrant. While on bond, defendant was charged with possession of a controlled substance, heroin, with intent to deliver. This new charge, according to the State, would also be eligible for Class X sentencing. The State claimed that her Class 2 conviction, Count IV, combined with her new possession of heroin charge, which the State was "burning" in aggravation in this case, would carry a minimum of 12 years' imprisonment if prosecuted together under Class X sentencing.

¶ 9 At this point, the trial court sought clarification.

> "THE COURT: Let's be clear; Count 2 in this was a Class 4 that you amended it down to?
>
> [THE STATE]: That's correct.
>
> THE COURT: She's extendible on that?
>
> [THE STATE]: And she's extendible on that as well, and obviously that would be concurrent with the Class 2 offense – the Class 2 charge, which would be sentenced as a Class X.
>
> ***
>
> [DEFENSE COUNSEL]: As a matter of correction, neither case was charged as a Class X offense, she is eligible for Class X sentencing in each case."

¶ 10 In mitigation, defense counsel argued that defendant had a significant substance abuse history, as evidenced by her several felony drug convictions, and was not a danger to anyone, but herself. He also argued that defendant's last sentence of 10 years was excessive. While in custody, defendant completed 120 days of a drug treatment program.

¶ 11 The trial court sought another clarification:

"THE COURT: Correct me if I'm wrong here just for a second; [defendant is] convicted on Count 1 and Count 2. Count 2 was amended down to a Class 4, but Count 1 is a Class X in and of itself?

[DEFENSE COUNSEL]: Judge, I don't believe it was proven that it was within 1,000 feet of a school.

THE COURT: is that was Count 1 is?

[THE STATE]: Non-probational Class 1. We did *nolle* the church charges.

THE COURT: Oh, it is, okay.

[DEFENSE COUNSEL]: So in fact, she was found guilty of a Class 1 and a Class 4.

THE COURT: sure."

Defense counsel requested the minimum six-year sentence.

¶ 12 The trial court in reaching its sentencing decision stated:

"Having now considered the trial evidence, the pre-sentence report, the addendums, the erratas, the history and character as to the defendant, the evidence and arguments and the statement of allocution presented, and having considered the statutory matters in aggravation and mitigation, having due regard to the circumstances of the offense: I find as follows:

In aggravation, received compensation for committing the offense, yes. Has a history of prior delinquency or criminal activity, yes. Sentence is necessary to deter others from committing the same crime, one would certainly hope so. I believe those are factors that apply.

In terms of mitigation, defendant's criminal conduct neither caused nor threatened serious physical harm to another. I think both State and Defense have demurred to say that

she's a harm to herself, although we can have the greater debate of drugs in society. So that applies to fact number two in that way, although some people may say factor number five, defendant's criminal conduct was induced or facilitated by someone other than defendant. Since we have [Bell], I think that's the idea that they talk about when they talked about this in that my co-conspirator helped me or anything like that. That's the idea of someone really induced somebody to do something that they weren't willing.

One I wish I can say, but cannot, defendant's criminal conduct was a result of circumstances unlikely to recur. Unfortunately, based on the history that we have, I can't believe that that's true. I would like to hope so, but I have seen nothing so far.

That character of the defendant indicates that she is unlikely to commit another crime. Again, I would hope so. I've seen nothing though. It seems like every time she gets out of IDOC or Cook County Jail she commits another crime.

Defendant particularly likely to comply with the terms of a period of probation. No, I can't say that either, but that's not even available.

Ms. Larkins, on Count 2, I sentence you to six years in the Department of Corrections, one-year mandatory supervised release, and waive the mandatory fines, fees, and costs, you have 897 days credit.

In terms of Count 1 which will be served concurrently with Count 2, it's definitely three years mandatory supervised release, again, I'm waiving mandatory fines, fees, and costs that might be associated with that, but the whole case, a total of 897 days credit.

I understand counsel's saying that Judge Haberkorn may be a harsh grader,[3] but maybe you shouldn't commit any crimes in Skokie, I get that. But yet, at the same time, I look back through the whole history and she has gotten time, and I understand that she's got a substance abuse problem, I really do. But she started with two years of probation, that was violated, she got three years IDOC, and then she got another – concurrent IDOC, a year – some people were being nice and gave her a year, and then they gave her probation again, violated that, gave her five years IDOC, 18 months, and then finally Judge Haberkorn gives her ten years.

I'm reminded of this thing kind of like where you ask people when they are going to finally learn, and they're not learning, what can you do other than to increase the penalties. And we can have a full philosophical debate about drug laws in this country, and I would be more than happy to have it with you, but 12 years IDOC, I'm sentencing her to X by history, recommending drug treatment."

¶ 13 In response, defense counsel stated that he was filing a written motion to reconsider the sentence and argued that defendant was not convicted of a violent offense, did not pose a danger to anyone but herself, and that the court may have improperly considered the case that the State "burned" in aggravation. The trial court denied this motion stating:

"I heard the State talk, but my sentence is based on the history in this case. Just the history in this case. I didn't come to that number lightly, I didn't come to that number easily.

[3] Judge Haberkorn sentenced defendant to 10 years' imprisonment for manufacture and delivery of a controlled substance.

Again, as I said, you want to have a discussion about the drug laws in this country and what the punishments are, I'd be more than happy to have that.

But when I look back through her prior history, I understand she's a danger, but she's a danger to other people also selling drugs on the streets of Chicago.

So your motion for new sentence will be denied."

¶ 14 The State *nolle prossed* the case which arose during the pendency of this matter to which it referred in aggravation.

¶ 15 The mittimus incorrectly shows that defendant was convicted under 720 ILCS 570/407 (B)(1) (Count I) as a Class X felony and 720 ILCS 570/407(B)(2) (Count II) as a Class 1 felony.

¶ 16 Defendant timely appealed.

¶ 17 On appeal, defendant argues the trial court committed plain error as to her sentence on Count IV as it misunderstood the underlying conviction as a more serious offense and considered an improper aggravating factor. Defendant also contends that trial counsel was ineffective for failing to correct the trial court, object during the sentencing hearing, and preserve these issues for appeal. In the alternative, defendant argues the 12-year sentence was excessive. As to Count III, defendant argues that the trial court erred when it issued an extended-term sentence and thus it should be reduced. Further, defendant argues that the mittimus should be corrected to reflect the proper convictions.

¶ 18 Defendant was convicted of possession of less than 15 grams of a controlled substance, (720 ILCS 570/402(C)), a Class 4 felony (Count III) and delivery of a controlled substance (720 ILCS 570/401(d)), a Class 2 felony (Count IV). Under Count III, defendant was subject to a sentencing range between one and three years' imprisonment (730 ILCS 5/5-4.5-45(a)) and was not eligible for an extended-term sentence (730 ILCS 5-5-8-2(a) (West 2014)). Under Count IV,

due to defendant's extensive criminal history, the trial court was mandated to sentence her under Class X provisions, with a sentencing range from 6 to 30 years' imprisonment. See 703 ILCS 5/5-4.5-25(a), 5-4.5-95(b) (West 2014).

¶ 19 Defendant concedes that she was eligible to be sentenced, under Count IV, as a Class X offender, but argues that she received harsher punishment, under the statutory range, due to the trial court's misunderstanding that Count IV was a Class 1 felony and its consideration of an improper aggravating factor.

¶ 20 Defendant acknowledges that these issues have not been preserved for our review. See *People v. Wooden*, 2014 IL App (1st) 130907, ¶ 10 (citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (a defendant must contemporaneously object to a sentencing error and raise it in a post-trial motion). Defendant contends that we may remand for a new sentencing hearing under the second prong of the plain error doctrine or based on his claim of insufficiency of trial counsel.

¶ 21 Under the plain error doctrine, in the sentencing context, a reviewing court may excuse a party's procedural default if a clear and obvious error has occurred and either: (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545 (citing *People v. Hall*, 195 Ill. 2d 1, 18 (2000)). The second prong applies only where an extraordinarily serious error has occurred. *People v. Johnson*, 2017 IL App (2d) 141241, ¶ 51. Defendant bears the burdens of persuasion as to the applicability of the plain error doctrine. *Wooden*, 2014 IL App (1st) 130907, ¶ 10. In applying any analysis of the plain error doctrine, we must first determine whether any error occurred. *People v. Walker*, 232 Ill. 2d 113, 124 (2009).

¶ 22 We review *de novo* whether a court relied on an improper factor in imposing a sentence. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8.

¶ 23 Under the Illinois Constitution, penalties are to be imposed both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. In determining the appropriate sentence the trial court must consider all of the relevant factors in aggravation and mitigation, including, the "nature and circumstances of the crime, the defendant's conduct in [the] commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). Generally, there is a presumption that the trial court considered all the relevant sentencing factors, and the court need not provide a detailed rationale for its sentencing decision. *People v. Evans, 373* Ill. App. 3d 948, 968 (2007).

¶ 24 We first address defendant's contention that the trial court misunderstood the underlying conviction as a Class 1 felony rather than a Class 2 felony, which caused the trial court to impose a harsher penalty on Count IV. The State argues that any confusion did not result in clear or obvious error affecting the fairness of defendant's sentencing hearing. We agree with the State.

¶ 25 "A misstatement of the understanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision." *People v. Eddington*, 77 Ill. 2d 41, 48 (1979); see also *People v. Hausman*, 287 Ill. App. 3d 1069 at 1071-72 ("A defendant is entitled to be sentenced by a trial judge who knows the minimum and maximum sentences for the offense.").

¶ 26 During the sentencing hearing, the trial court asked for clarification as to defendant's charges. Defense counsel ultimately stated that she was convicted of Class 1 and Class 4 felonies. The court responded "sure." However, instead under Count IV, defendant was convicted of a Class 2 felony. Under either Class 1 or 2, due to her extensive criminal history, the trial court was

required to sentence defendant as a Class X offender. See 703 ILCS 5/5-4.5-25(a), 5-4.5-95(b). Here, the record demonstrates that the trial court understood the applicable sentencing range as it specifically stated that defendant was to be treated as a Class X offender based on her criminal background. The court imposed a sentence in the mid-range of the Class X sentencing scheme and is presumed to be proper. See *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46 ("when a sentence falls within the statutory guidelines, it is presumed to be proper").

¶ 27 Nevertheless, defendant argues that the trial court may have sentenced her to a lesser term of imprisonment if it had known she was convicted of a less serious offense on Count IV. First, the record is not entirely clear as to whether the trial court was, in fact, mistaken as to the underlying conviction. Even assuming the trial court was confused, we find that by looking at the totality of the record, the trial court placed very little weight, if any, on the class of the underlying conviction. In its sentencing remarks, the trial court did not even mention the felony class of Count IV. Instead, the trial court focused on defendant's extensive criminal history and the lack of a potential for rehabilitation. The court was required to impose a Class X sentence if the underlying charge was a Class 1 or a Class 2 felony. Therefore, we find defendant has not shown clear and obvious error occurred. Even if the trial court was mistaken as to the class of the underlying conviction, defendant has not shown she was deprived of a fair sentencing hearing. Therefore, the second prong of plain error has not been met.

¶ 28 Defendant relies on *Hausman*, 287 Ill. App. 3d at 1069, where the trial court erroneously applied the sentencing range for a Class I felony when the conviction was subject to Class III sentencing. *Id.* at 1070. We find *Hausman* distinguishable as the trial court here applied the proper sentencing range. Defendant also relies on *People v. Carmichael*, 343 Ill. App. 3d 855 (2003), where the defendant was sentenced on a Class II felony rather than a Class III felony. *Id.* at 865.

Although, the defendant received a sentence within the applicable range for either class of felony, this court remanded for a new sentencing hearing, holding that it was unable to determine whether the trial court's mistaken belief affected the sentence it imposed. *Id.* at 862. Again, we find *Carmichael* distinguishable as the trial court here did not misunderstand the applicable Class X sentencing range and placed no weight on Count IV's class of felony.

¶ 29 Next, defendant contends that the trial court committed plain error when it improperly considered her receipt of compensation as an aggravating factor during sentencing. See *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 9 (citing *People v. Phelps*, 211 Ill. 2d 1, 12 (2004) (a trial court may not consider a factor implicit in the offense as an aggravating factor). We disagree.

¶ 30 Here, the trial court, in considering the statutory factors, improperly included that defendant received compensation as an aggravating factor. See *People v. McCain*, 248 Ill. App. 3d 844, 851 (1993) (holding that compensation is an implicit factor in most drug transactions and thus, receipt of compensation should not be considered as an aggravating factor); see also *Johnson*, 2017 IL App (4th) 160920, ¶¶ 46-47. However, from its sentencing remarks, we find that the trial court placed very little weight on compensation as it only mentioned it once and instead focused on defendant's criminal history and the evidence at the sentencing hearing which showed a lack of rehabilitation potential. Therefore, we find defendant has not shown that she was deprived of a fair sentencing hearing and therefore the second prong of plain error has not been met.

¶ 31 Even if we were to reach this issue, we would not remand this matter for resentencing. Where it can be determined from the record that the weight placed on an improper aggravating factor was so insignificant that it did not lead to a greater sentence, a remand is unnecessary. *People v. Bourke*, 296 Ill. 2d 327, 332 (1983). In making this assessment, a reviewing court will consider such facts as whether the trial court made any dismissive or empathetic comments regarding the

improper aggravation element and whether the sentence imposed was substantially less than the statutory maximum. *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 18; *People v. Scott*, 2015 IL App (4th) 130222, ¶¶ 55-56.

¶ 32 Here, the trial court did not emphasize the compensation factor in any way at arriving at its sentence. The court mentioned it only once as it reviewed the statutory aggravation factors. As discussed the trial court's primary focus was defendant's significant criminal background and her lack of rehabilitation potential. The sentence in this case was in the middle range of the Class X sentencing scheme and reflected that defendant was on parole from a 10-year sentence when she was charged in this case. We conclude that even if this issue had been preserved, a remand would not be necessary.

¶ 33 We turn to defendant's argument that trial counsel was ineffective by incorrectly informing the court that defendant's Count IV involved a Class 1 felony, failing to correct the trial court's consideration of compensation as an aggravating factor and failing to preserve the issues.

¶ 34 A defendant is deprived of effective assistance of counsel if counsel's performance was objectively unreasonable and prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Prejudice is established where there is a reasonable probability that the result of the proceeding would have been different absent counsel's deficient performance. *Id.* at 694. A claim of ineffective counsel may be resolved on the prejudice prong alone. *People v. Garcia*, 405 Ill. App. 3d 608, 618 (2010) (citing *Strickland*, 446 U.S. at 697).

¶ 35 We have found that any confusion as to the class of felony and the improper consideration of compensation did not necessitate remand or adversely impact the sentencing on Count IV. Thus, there is no reasonable probability that defendant's sentence would have been different absent any failures on the part of trial counsel. Defendant's claim of ineffective assistance of counsel fails.

¶ 36 Next, defendant argues that her 12-year prison sentence for Count IV was excessive. We disagree.

¶ 37 On review, the trial court's sentencing decision is granted substantial deference. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 9. A sentence within the proper statutory range is reviewed for an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000). A sentence imposed within the statutory range, will be presumed proper, unless it is manifestly disproportionate to the nature of the offense or greatly at variance with the spirit and purpose of the law. *Brown* 2018 IL App (1st) 160924, ¶ 9; *People v. Ressa*, 2019 IL App (2d) 170439, ¶ 52. This court cannot substitute our judgment simply because we may weigh the sentencing factors different. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010).

¶ 38 As discussed, defendant was a Class X offender based on her criminal background. Defendant's 12-year sentence fell well within the Class X range of 6 to 30 years' imprisonment and is presumed proper. In reaching this sentence, the trial court considered the PSI, evidence in mitigation and aggravation, defendant's criminal history, and the arguments of counsel. The trial court emphasized that its "sentence [was] based on the history in this case." Defendant had nine prior narcotics related felony convictions for which she received a wide range of sentences. Of significance to the court was defendant's most recent sentence of 10 years' imprisonment on one conviction as a Class X offender. Defendant was on parole from that sentence when she was arrested on these offenses. While on bond in this matter, defendant was removed from two drug treatment programs, violated her electronic monitoring, and failed to show up to court. In mitigation, the trial court empathized with her drug addiction and noted that she was not a harm to anyone but herself. However, in denying the motion to reconsider the sentence, the court considered that defendant was a danger to those to whom she sold drugs. The trial court concluded

that defendant lacked rehabilitation potential. We find that the trial court did not abuse its discretion in sentencing defendant to 12 years' imprisonment on Count IV.

¶ 39 Next, defendant argues, and the State agrees that the trial court erred in imposing an extended-term sentence on Count III, a Class 4 conviction where she was also convicted of a Class 2 felony. Defendant requests that her six-year sentence on Count III be reduced to three-years.

¶ 40 With respect to Count III, defendant was subject to a sentencing range of between one and three years' imprisonment (730 ILCS 5/5-4.5-45(a)) and was not eligible for extended term sentencing because an extended term may only be imposed for the most serious class of offense for which the defendant was convicted. 730 ILCS 5-5-8-2(a) (West 2014); *People v. Lashley*, 2016 IL App (1st) 133401, ¶ 74. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(4) (Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1967), we reduce the sentence on Count III, the Class 4 felony, from six years' to three years' imprisonment. See *Lashley*, 2016 IL App (1st) 133401, ¶ 74 (reducing defendant's sentence without remanding to the trial court)).

¶ 41 Lastly, defendant argues, and the State agrees that this court should correct the mittimus to reflect that the court sentenced defendant to 12 years as a Class X offender under 720 ILCS 570/401(d), a Class 2 offense, and to 6 years under 720 ILCS 570/402(c), a Class 4 offense.

¶ 42 Where there is "a variance between the mittimus and the judgment, the latter will prevail." *People v. Quintana*, 332 Ill. App. 96, 110 (2002). Under Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. 615(b)(1)(eff. Jan. 1, 1976)), we have the authority to correct the mittimus without remanding to the trial court. *People v. Mitchell*, 234 Ill. App. 3d 912, 922 (1992). Accordingly, we correct the mittimus to accurately reflect that defendant is sentenced to 3 years under 720 ILCS 570/402(C), a Class 4 felony, on Count III and 12 years under 720 ILCS 570/401(d), a Class 2 felony, sentenced as Class X on Count IV.

¶ 43 For the reasons stated above, we affirm defendant's convictions on Counts III and IV, the trial court's sentence on Count IV, reduce the sentence on Count III to three years' imprisonment, and correct the mittimus.

¶ 44 Affirmed in part; mittimus corrected.