STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 20, 2011
v CHARLES JUDSON PHILLIPS, Defendant-Appellant.	No. 296261 Genesee Circuit Court LC No. 09-025251-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v CHARLES JUDSON PHILLIPS, Defendant-Appellant.	No. 296262 Genesee Circuit Court LC No. 09-025421-FC

Before: M.J. KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

Defendant was charged with several sexual offenses in two separate cases that were consolidated for a jury trial. In LC No. 09-025251-FC, defendant was convicted of four counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(a), and two counts of second-degree CSC, MCL 750.520c(1)(a), for sexually abusing DL, a friend of defendant's son, between December 2006 and February 2009. Defendant was acquitted of two additional counts of first-degree CSC. In LC No. 09-025421-FC, defendant was convicted of two counts of first-degree CSC, three counts of second-degree CSC, one count of child sexually abusive activity, MCL 750.145c(2), and one count of accosting a child for immoral purposes, MCL 750.145a, in connection with sexual offenses involving three brothers, AB, TB, and ZB, who were defendant's neighbors. In LC No. 09-025251-FC, defendant was sentenced to life imprisonment for two of the first-degree CSC convictions, 480 to 800 months' imprisonment for the other two first-degree CSC convictions, and 75 to 180 months each for the second-degree CSC convictions, all sentences to be served consecutively. In LC No. 09-025421-FC, defendant was sentenced to life imprisonment for one count of first-degree CSC, and concurrent prison terms of

600 to 900 months for the other first-degree CSC conviction, 75 to 180 months for each second-degree CSC conviction, 75 to 240 months for the child sexually abusive activity conviction, and 24 to 48 months for the accosting a child for immoral purposes conviction. Defendant now appeals his convictions and sentences in each case as of right. We affirm in both appeals, but remand for a correction of the judgment of sentence in LC No. 09-025251-FC.

All of the child victims were friends of defendant's son, but defendant's son had a closer friendship with DL and TB. The three brothers, AB, TB, and ZB, lived next door to defendant's house. DL and TB frequently spent time at defendant's house because of their friendship with defendant's son, and they also frequently spent time with defendant, who was involved with the children's Cub Scout troop. The offenses involving DL were allegedly committed between December 2006 and February 2009. The offenses involving AB, TB, and ZB were allegedly committed between June 2007 and February 2009.

The testimony at trial indicated that defendant sexually abused recurrent sexual abuse between December 2006 and February 2009

I. APPELLATE COUNSEL'S ISSUES

A. DEFENDANT'S STATEMENT

Defendant first argues that the trial court erroneously denied his motion to suppress statements that he made during a third custodial interview, in which he admitted to sexually abusing at least two of the child victims and admitted that it was possible that he had sexually abused other children as well. Defendant argues that he was not properly advised of his constitutional rights before giving the statements, and that the statements were involuntary. The trial court denied defendant's motion after conducting an evidentiary hearing. We find no error.

"On appeal from a ruling on a motion to suppress evidence of a confession, deference must be given to the trial court's findings." *People v Kowalski*, 230 Mich App 464, 471; 584 NW2d 613 (1998). This Court reviews the record de novo, but any factual findings by the trial court will not be disturbed unless they are clearly erroneous. *Id*. at 472. Clear error exists when this Court is left with a definite and firm conviction that a mistake has been made. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008).

Statements of an accused made while in custody are not admissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *People v Harris*, 261 Mich App 44, 55; 680 NW2d 17 (2004). The prosecutor must establish a valid waiver by a preponderance of the evidence. *Id*. Before a custodial statement may be used against a defendant, he must be warned of his right to remain silent, that his statements could be used against him, and that he had the right to retained or appointed counsel before being questioned. *Id.*

Initially, we find no merit to defendant's argument that his statements in his third custodial interview were not admissible because he was not advised of his *Miranda*[1] rights before the third interview. The record discloses, and defendant does not dispute, that he was properly advised of his *Miranda* rights when he was first questioned on February 2, 2009. He was verbally advised of his rights and also provided with a written advice-of-rights form that he was allowed to read, and he signed the form indicating that he understood his rights. Although the police did not readvise defendant of those rights before the third interview on February 4, 2009, the police are not obligated to readvise a defendant of his rights during subsequent questioning. *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992); *People v Godboldo*, 158 Mich App 603, 605; 405 NW2d 114 (1986). The record indicates that defendant was told before the third interview that his rights still applied and defendant indicated that he understood that. Thus, the only question is whether, viewing the totality of the circumstances, defendant's statements during his third interview were voluntary. *Id*. at 606.

The voluntariness of a defendant's statement is determined by examining the conduct of the police. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). "[T]he voluntariness prong cannot be resolved in defendant's favor absent evidence of police coercion or misconduct." *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). In *Tierney*, 266 Mich App at 708, this Court stated:

> In determining voluntariness, the court should consider all the circumstances, including: "[1] the age of the accused; [2] his lack of education or his intelligence level; [3] the extent of his previous experience with the police; [4] the repeated and prolonged nature of the questioning; [5] the length of the detention of the accused before he gave the statement in question; [6] the lack of any advice to the accused of his constitutional rights; [7] whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; [8] whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; [9] whether the accused was deprived of food, sleep, or medical attention; [10] whether the accused was physically abused; and [11] whether the suspect was threatened with abuse." *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). No single factor is determinative. *Sexton, supra* [461 Mich] at 753. "The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Cipriano, supra* at 334.

Defendant argues that he was not "clear-headed" by the time of the third interview because he had not taken his prescription medication for depression for two or three days, he had refused to eat the food he was served while in jail the previous two days, and he had been unable to sleep during the previous two or three days. In addition, he had been placed on a suicide watch while in jail and he claimed that he was intimidated and badgered by the detective during the interview. The trial court found that any discomfort defendant was feeling from a lack of

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

sleep or lack of food did not affect his ability to voluntarily participate in the interview process. The court also found no evidence of police coercion. Those findings are not clearly erroneous. Indeed, at the conclusion of the third interview, which lasted approximately two hours, defendant told the interviewing officer, Detective Gilbert, that he had been "very fair" and "very professional" during his questioning.

The trial court found that the primary factor bearing on the voluntariness of defendant's statements was that he had not taken his medication for depression for two or three days, but determined that this factor did not prevent defendant from voluntarily giving a statement. Once again, the record supports the trial court's finding. Detective Gilbert testified that the lack of medication did not appear to affect defendant's condition. Further, defendant admitted that he never requested or sought any assistance during the relevant period related to his physical condition. Defendant also admitted that there had been other times when he did not take his medication and he was still able to go to work and maintain his responsibilities during those times.

Considering the totality of the circumstances, the trial court did not err in finding that defendant's statements during his third custodial interview were voluntarily given. Accordingly, the trial court did not err in denying defendant's motion to suppress.

B. DEFENDANT'S RIGHT TO A POLYGRAPH EXAMINATION

Defendant next argues that his statutory right to a polygraph examination, MCL 776.21(5), was violated when his pretrial request for a polygraph examination was not honored. We conclude that this issue is waived. Defendant asserted his right to a polygraph examination shortly before trial and was told that an examination could not be conducted before the scheduled date of trial. The trial court advised defendant that it was not going to adjourn the trial for a polygraph examination and defense counsel expressed his agreement with that decision. By agreeing that trial should not be adjourned so that a polygraph examination could be scheduled, defendant waived his right to a polygraph examination. A waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Even if the issue were not waived, however, relief is not warranted for any violation of MCL 776.21(5). The results of any examination would not have been admissible at trial. Further, this case did not involve a one-on-one credibility contest between defendant and a single victim. Rather, several child victims had accused defendant of sexual abuse and there were many witnesses to several of the charged offenses. In addition, defendant gave a statement in which he admitted to sexually abusing several children. It is not more probable than not that the failure to administer a polygraph examination was outcome determinative. *People v Phillips*, 469 Mich 390, 395-397; 666 NW2d 657 (2003).

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next argues that trial counsel was ineffective for failing to move to strike allegedly improper testimony from three witnesses, or move for a mistrial on the basis of the improper testimony. Because defendant did not raise an ineffective assistance of counsel claim

below, our review of this issue is limited to errors apparent from the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Johnnie Johnson, Jr*, 451 Mich 115, 124; 545 NW2d 637 (1996). Defendant must also overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

A mistrial is warranted only when an error or irregularity in the proceedings prejudices the defendant and impairs his ability to receive a fair trial. *People v Waclawski*, 286 Mich App 634, 708; 780 NW2d 321 (2009). A mistrial should be granted only when the prejudicial effect of an error cannot be removed in any other way. *People v Horn*, 279 Mich App 31, 36; 755 NW2d 212 (2008). A witness's unresponsive, volunteered answer to a proper question is generally not grounds for granting a mistrial. *Waclawski*, 286 Mich App at 710.

Defendant argues that three witnesses were improperly allowed to comment on the credibility of the victims' allegations. We disagree. Defendant relies on *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), in which our Supreme Court held that it is improper to ask a witness to comment on the credibility of another witness. The Court reasoned that matters of credibility are for the trier of fact to determine, and that a witness's personal opinion of another witness's credibility is not probative of any matter. *Id.*

In this case, witness Jeanette Merrill was asked whether she contacted the police after speaking to TB. She stated that she "believed him enough," so she called the police department. The challenged response was volunteered by the witness and was not the result of the prosecutor's specific question. Thus, the comment did not support granting a mistrial. *Waclawski*, 286 Mich App at 710. Moreover, Merrill's testimony was offered to explain why she contacted the police; it was not offered as a comment on TB's credibility in general or in an attempt to bolster TB's credibility. Under the circumstances, defense counsel was not ineffective for failing to object to the testimony or request a mistrial.

A review of Kelly Palmer's testimony reveals that it did not involve her opinion on the credibility of the children's statements or testimony. She merely stated that the children's statements were consistent. This testimony did not invade the jury's role of determining the credibility of those statements. Further, as with Merrill, the testimony was offered to explain why Palmer acted on the allegations. Counsel's failure to object or request a mistrial was not objectively unreasonable.

Lastly, defense counsel did object when TB's mother was asked whether she believed TB's accusations and the trial court sustained the objection. Although counsel did not move to strike the testimony or move for a mistrial, it was not objectively unreasonable for counsel to conclude that his successful objection was sufficient to cure any prejudice. Accordingly, defendant has failed to establish that defense counsel was ineffective.

D. SENTENCING

Defendant raises two issues regarding sentencing. He first argues that defense counsel was ineffective for not objecting when the trial court agreed to allow the investigating police officer to briefly address the court at sentencing. Defendant contends that because the officer is not within the class of persons permitted to address the court at sentencing under MCR 6.425(E)(1)(c), and is not properly considered a "victim" under the Crime Victim's Rights Act, MCL 780.751 *et seq.*, the officer had no right to address the trial court at sentencing. We disagree.

MCL 780.765 provides that a victim of a crime "has the right to appear and make an oral impact statement at the sentencing of the defendant." MCR 6.425(E)(1)(c) provides that a sentencing court must give "the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence." Although MCR 6.425(E)(1)(c) mandates who must be permitted to address the court at sentencing, nothing in that court rule, or MCL 780.765, restricts the trial court from considering information from other persons. As this Court recognized in *People v Albert*, 207 Mich App 73, 74; 523 NW2d 825 (1994), "a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence." Thus, in *Waclawski*, 286 Mich App at 692, this Court concluded that it was not improper for the sentencing court to allow the victims' mothers to give victim impact statements at sentencing even though they were not direct victims. Thus, the trial court had discretion to allow the investigating officer to address the court at sentencing. Further, the officer did not provide any information that had not already been presented to the court, either through the testimony at trial or from others who had already addressed the court at sentencing. Under these circumstances, defense counsel was not ineffective for not objecting to the officer's comments at sentencing.

Defendant also argues that the trial court was not authorized to order consecutive sentences in LC No. 09-025251-FC. Defendant did not object when the prosecutor informed the court at sentencing that consecutive sentences could be imposed under MCL 750.520b(3), nor did he object when the court imposed consecutive sentences. Accordingly, this issue is unpreserved. This Court reviews unpreserved claims of sentencing error for plain error affecting a defendant's substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

A consecutive sentence may be imposed only if specifically authorized by law. *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003). Subsection (3) of the first-degree CSC statute, MCL 750.520b(3) provides:

> The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

Contrary to what defendant asserts, subsection (3) was added by 2006 PA 169, effective August 28, 2006. Because each of the charged offenses in LC No. 09-025251-FC occurred after August 28, 2006, MCL 750.520b(3) is applicable to those offenses. Thus, the trial court was authorized to order defendant's first-degree CSC sentences to be served consecutively to each other and consecutively to the sentences for the second-degree CSC convictions. We agree with

defendant, however, that the trial court was not authorized to order his two second-degree CSC sentences to be served consecutively to "each other." MCL 750.520b(3) applies only to "a term of imprisonment imposed under this section." Defendant's two second-degree CSC sentences in LC No. 09-025251-FC were not imposed under MCL 750.520b(3). Further, the second-degree CSC statute, MCL 750.520c, does not contain a similar consecutive sentencing provision. Therefore, the trial court was not authorized to order the two second-degree CSC sentences to be served consecutively to "each other." Although the second-degree CSC sentences could be ordered to be served consecutively to the first-degree CSC sentences, it was plain error to order them to be served consecutively to each other. This error affects defendant's substantial rights because the imposition of consecutive sentences that are not authorized by law subjects defendant to a greater period of incarceration than permitted by law. Accordingly, we remand for modification of the judgment of sentence in LC No. 09-025251-FC to specify that defendant's two second-degree CSC sentences are to be served concurrently with each other.

II. DEFENDANT'S STANDARD 4 BRIEF

Defendant raises several additional issues in a pro se supplemental brief filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, none of which have merit.

A. DEFENDANT'S STATEMENT

Defendant first argues that his statements during his third interview with the police should have been suppressed because his physical and mental condition at the time of the interview rendered his statements involuntary. We previously addressed this argument in part I(A) and concluded that the trial court did not err in finding that defendant's statements were voluntarily made. Therefore, we reject this first claim of error.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant raises several ineffective assistance of counsel claims, most of which cannot succeed because defendant has failed to overcome the presumption of sound trial strategy or the requisite factual support is lacking. As previously explained, because defendant did not raise an ineffective assistance of counsel claim in the trial court, appellate relief is limited to errors apparent from the record. *Matuszak*, 263 Mich App at 48.

Defendant raises multiple issues relating to trial counsel's examination of witnesses and presentation of evidence. "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Defendant must overcome the strong presumption that counsel exercised sound trial strategy. *Id.* This Court is reluctant to substitute its judgment for that of trial counsel in matters of trial strategy and ineffective assistance of counsel will not be found merely because a strategy backfires. *People v Duff*, 165 Mich App 530, 545-546; 419 NW2d 600 (1987).

Defendant argues that defense counsel should have cross-examined RB, the father of three of the victims, to elicit testimony that he did not suspect that his children were being sexually abused by defendant. However, the record discloses that defense counsel cross-

examined RB on that subject. Counsel established that RB was aware of the children's allegations against defendant, that the children recanted those allegations to RB, that the children did not make any further allegations to RB, and that RB did not notice any changes in their behavior, so he had no reason to believe that anything was wrong with the children. Defendant has not shown that counsel's strategy in questioning RB was deficient or unsound.

Defendant also claims that RB should have been asked whether he overheard the children state that they had fabricated the allegations against defendant. However, defendant has not shown that any such statement would have been admissible for its truth under an exception to the hearsay rule.

Defendant also argues that counsel should have tried to admit evidence that one of the children had sexually abused his siblings. Apart from defendant's failure to establish the factual predicate for this claim, he has not overcome the presumption that counsel's failure to pursue this issue was reasonable trial strategy. Evidence that one of the children committed acts of sexual abuse against his younger siblings would not necessarily have be inconsistent with defendant's guilt. On the contrary, it could have supported an inference that the child was exposed to sexual abuse and thereby lend support to the child's testimony that he was sexually abused by defendant.

Defendant also argues that counsel was ineffective for not arranging a polygraph examination for himself and the victims' father, RB. As previously indicated, counsel did request a polygraph examination for defendant, but it could not be timely arranged. Regardless, there is no basis for concluding that the failure to timely request a polygraph affected the outcome of this case. The case did not involve a one-on-one credibility contest between defendant and a single victim, or involve an offense for which there were no other witnesses. Rather, because of the number of victims who made accusations against defendant, the existence of witnesses to many of the offenses, and the fact that defendant gave a statement in which he admitted to sexually abusing children, there is no reasonable probability that a polygraph examination could have led to dismissal of the charges or a favorable plea agreement. Further, even if defendant had passed a polygraph examination, the results would not have been admissible at trial. Defendant does not cite any authority that would have allowed him to compel a polygraph examination of RB. Under the circumstances, counsel's failure to pursue a polygraph examination for either person was neither objectively unreasonable nor prejudicial.

Defendant also argues that counsel should have investigated the family who lived in his house before defendant's family moved in to determine whether the victims' family had made similar allegations against them. Because defendant has not provided any evidence that any such similar situation existed with the previous residents, this ineffective assistance of counsel claim cannot succeed.

Defendant argues that counsel did not properly confront certain witnesses. He argues that counsel should have cross-examined DB, the mother of three of the victims, to establish her children's sexual behavior within the family home. Counsel may have reasonably declined to pursue this subject matter because of its tendency to support an argument attributing the alleged sexual dysfunction to the children's experiences with defendant. Defendant has not overcome the presumption of sound strategy.

Defendant also argues that counsel should have questioned two other boys about inconsistencies in statements they had given. However, neither of those boys testified at trial. Thus, there is no merit to this claim.

Defendant next argues that counsel was ineffective for failing to call an expert witness to testify regarding his mental condition at the time of his third police interview. However, defendant has not presented any offer of proof in support of this claim. Because defendant has failed to factually support his claim and the substance of any expert testimony is not otherwise apparent from the record, this claim cannot succeed.

Defendant also argues that counsel should have obtained a medical examination of DL to determine whether he had been anally penetrated. Even assuming that defendant could have compelled DL to submit to an examination, defendant has not submitted any offer of proof indicating that there was any likelihood that an examination could have established whether the child had been sexually penetrated. Furthermore, even if an examination could have been obtained and there was a possibility that it could have revealed something probative, counsel reasonably may decided not to pursue it as a matter of trial strategy to avoid the risk of damaging results. For these reasons, this ineffective assistance of counsel claim cannot succeed.

We find no merit to defendant's argument that trial counsel was ineffective for not pursuing an interlocutory appeal after defendant had been convicted. After his convictions, defendant had the right to pursue an appeal as of right, which he later exercised. Further, trial counsel had not been appointed to pursue an appeal, and defendant had the right to request the appointment of appellate counsel to represent him on appeal. Appellate counsel was later appointed and filed an appeal on defendant's behalf. Defendant has not established any basis for further relief with respect to this issue.

Next, defendant argues that counsel was ineffective for not requesting that the children submit to independent psychological evaluations. A psychological examination of a victim is only permissible where there is a compelling reason for the examination. *People v Graham*, 173 Mich App 473, 478; 434 NW2d 165 (1988). Defendant has not shown any reason why psychological evaluations of the victims were necessary. Accordingly, he cannot establish that counsel's failure to request psychological evaluations was objectively unreasonable, or that he was prejudiced by counsel's failure to file the request.

Next, the record does not support defendant's argument that counsel was ineffective for not eliciting information regarding the involvement of Children's Protective Services in the interviews of the children. Although defendant suggests that it was possible that Detective Gilbert influenced the children through improper questioning during interviews, the testimony at trial established that Kelly Palmer, an investigator with Children's Protective Services, conducted forensic interviews of the children on the day defendant was arrested. Detective Gilbert was present for the interviews, but they were conducted by Palmer. Further, the record discloses that defense counsel cross-examined Palmer at trial regarding her interview techniques and adherence to forensic protocols. Defendant has not shown that counsel's performance in this regard was objectively unreasonable.

Defendant next argues that counsel was ineffective for failing to call three witnesses, Kevin Ogle, Connie Ogle, and Terry Jackson, who could have provided favorable character testimony. Because this issue was not raised in the trial court, there is no record of what testimony the witnesses actually could have provided. Without a record of the witnesses' proposed testimony, defendant cannot establish that he was prejudiced by counsel's failure to call the witnesses, or overcome the presumption that counsel's decision not to call the witnesses was sound trial strategy. *Davis*, 250 Mich App at 368.

Defendant has not shown that he was denied the effective assistance of counsel.

C. DEFENDANT'S RESENTENCING

Finally, defendant argues that the trial court erred when it summoned him back for resentencing after it originally imposed a sentence for some of his convictions that contained a minimum of a term of years and a maximum of life. We disagree.

Although a trial court generally may not modify a valid sentence once it has been imposed, it may correct an invalid sentence. *People v Wybrecht*, 222 Mich App 160, 168-169; 564 NW2d 903 (1997); *People v Catanzarite*, 211 Mich App 573, 582; 536 NW2d 570 (1995); see also MCR 6.429(A).

Under MCL 750.520b(2)(b), defendant was subject to a penalty of "imprisonment for life or any term of years, but not less than 25 years." MCL 769.9(2) provides:

> In all cases where the maximum sentence in the discretion of the court may be imprisonment for life or any number or term of years, the court may impose a sentence for life or may impose a sentence for any term of years. If the sentence imposed by the court is for any term of years, the court shall fix both the minimum and the maximum of that sentence in terms of years or fraction thereof, and sentences so imposed shall be considered indeterminate sentences. The court shall not impose a sentence in which the maximum penalty is life imprisonment with a minimum for a term of years included in the same sentence.

Because defendant's original sentences contained a minimum of a term of years and a maximum of life, they were invalid. *People v Parish*, 282 Mich App 106, 107; 761 NW2d 441 (2009). A sentence that violates MCL 769.9(2) is wholly invalid and must be vacated in its entirety. *Id.* at 108. Accordingly, the trial court did not err by vacating defendant's invalid sentences and resentencing him for those offenses.

Affirmed and remanded for correction of the judgment of sentence in LC No. 09-025251-FC to specify that defendant's two second-degree CSC sentences are to be served concurrently with each other. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Donald S. Owens
/s/ Stephen L. Borrello