

MERGING CONVICTIONS

(Note: Not entering a conviction - or vacating a conviction - does not appear to be considered the same as entering an acquittal. If the defendant is found guilty of two offenses, one of which is a lesser included offense, the caselaw suggests that a sentence should only be entered on the greater offense. The guilty finding on the lesser offense is not vacated nor is an acquittal of the charge required. A guilty finding without a sentence is NOT considered a legally defined "conviction.")

In *People v. Campbell*, 609 N.E.2d 704, the following was stated:

Defendant next contends that the court should vacate his conviction for aggravated criminal sexual abuse. Specifically, defendant contends that the trial court improperly entered judgment against defendant for aggravated criminal sexual assault and aggravated criminal sexual abuse, a lesser included offense, in violation of the "one act-one crime" rule. However, at sentencing the court stated there will be no sentence on the aggravated criminal sexual abuse conviction because for purposes of sentencing, it merged with the conviction for aggravated criminal sexual assault. While it is axiomatic that there is no final judgment in a criminal case until the imposition of sentence, and, in the absence of a final judgment, an appeal cannot be entertained. It does not follow, however, that the conviction must be vacated. Thus, there can be no appeal of defendant's conviction of aggravated criminal sexual assault in view of the absence of an imposition of sentence.

As the trial court entered conviction only on aggravated robbery, the unlawful-restraint conviction is not before us. See *People v. Childress*, 321 Ill.App.3d 13, 26, 254 Ill.Dec. 26, 746 N.E.2d 783 (2001) ("There is no final judgment in a criminal case until the imposition of a sentence, and, in the absence of a final judgment, an appeal cannot be entertained."). Accordingly, we express no opinion on whether counsel's ineffectiveness could have affected this count. If the day should ever come that defendant is sentenced on the unlawful-restraint conviction, that conviction will become a final judgment subject to appeal. See, e.g., *People v. Zazzetti*, 69 Ill.App.3d 588, 593, 26 Ill.Dec. 458, 388 N.E.2d 82 (1979).

People v. Lucious, 2016 IL App (1st) 141127, ¶ 63, 63 N.E.3d 211, 222

We now consider what happened in the trial court. While the trial court found defendant guilty of both aggravated robbery and unlawful restraint at the conclusion of the trial, the court only sentenced defendant on the aggravated-robbery count. The court's oral pronouncement of defendant's sentence contains no mention of the unlawful-restraint count at all. Instead, the court's oral pronouncement only reflects a sentence for the greater offense, which is precisely what should have occurred pursuant to the one-act, one-crime doctrine

People v. Lucious, 2016 IL App (1st) 141127, ¶ 59, 63 N.E.3d 211, 222

In People v. Bush, 2024 IL App (1st) 230728-U, the following was stated:

As noted above, when convictions violate the one-act, one-crime rule, the convictions for the less serious offenses must be vacated. Johnson, 237 Ill. 2d at 97. Here, the offenses alleged in counts III, V, and X are all Class X crimes. However, count V is the most serious count because it includes the allegation that defendant personally discharged a firearm, and thus carries a greater possible punishment than counts III and X. See 720 ILCS 5/8-4 (c)(1)(C) (West 2022). Where count V carries the greatest possible punishment, and given the parties' agreement and the interests of judicial economy, we vacate defendant's sentences on counts III and X.

¶ 49 The trial court's guilty findings on counts III and X will merge with the conviction for attempted first degree murder entered on count V. See 730 ILCS 5/5-1-12 (West 2022) (a conviction requires both a finding of guilt and a sentence); People v. Gordon, 378 Ill. App. 3d 626, 642 (2007) (where multiple convictions violated the one act, one crime rule, this court ordered correction of the mittimus to reflect a single conviction and merged the other counts). We order the mittimus corrected to reflect convictions only on counts V (attempted first degree murder while personally discharging a firearm) and count XI (attempted armed robbery with a firearm).

DEFINITION OF CONVICTION

Effective: to December 31, 2024

§ 2-5. "Conviction". "**Conviction**" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

720 Ill. Comp. Stat. Ann. 5/2-5

Effective: January 1, 2025

§ 2-5. "Conviction". "**Conviction**" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. If judgment is withheld, the plea, verdict, or finding of guilty is not a conviction under Illinois law unless and until judgment is entered.

720 Ill. Comp. Stat. Ann. 5/2-5

5/5-1-12. Judgment

§ 5-1-12. Judgment. "Judgment" means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

730 Ill. Comp. Stat. Ann. 5/5-1-12
