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NATURE OF THE ACTION

In August 2024, a Boone County jury found defendant Casey L. Ross guilty of driving while his driver’s license was revoked. C113-14; CI20.¹ Because this was defendant’s third or subsequent conviction for that offense, CI6, subsection 6-303(d-1) of the Illinois Vehicle Code required the court to sentence him to “a minimum term of imprisonment of 30 days or 300 hours of community service,” 625 ILCS 5/6-303(d-1). Over the People’s objection, the respondent judge, the Honorable C. Robert Tobin III, sentenced defendant to 14 days in county jail, with credit for one day served in pretrial custody, and eligibility for day-for-day good behavior credit. A16; C212. This Court granted the People’s subsequent motion for leave to file a mandamus complaint challenging the sentence as unauthorized and ordered briefing on the complaint. C217. No question is raised on the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether defendant’s 14-day term of imprisonment in county jail, with eligibility for day-for-day good behavior credit, is unauthorized under the Illinois Vehicle Code and the County Jail Good Behavior Allowance Act.

JURISDICTION

Jurisdiction lies under Supreme Court Rule 381 and article VI, section 4(a) of the Illinois Constitution. *See People ex rel. Birkett v. Jorgenson*, 216

¹ “C_” denotes the common law record, “CI_” the impounded common law record, “E_” the trial exhibits, and “A_” the appendix to this brief.

Ill. 2d 358, 362 (2005). On December 4, 2024, this Court granted leave to file a mandamus complaint and ordered briefing on the complaint.

STATUTES INVOLVED

The Illinois Vehicle Code, 625 ILCS 5/6-303, provides, in relevant part:

- (a) [A]ny person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit, or privilege to do so or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this Code or the law of another state . . . shall be guilty of a Class A misdemeanor.

* * *

- (d-1) Except as provided in subsections (a-7), (d-2), (d-2.5), and (d-3), any person convicted of a third or subsequent violation of this Section shall serve a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court.

The County Jail Good Behavior Allowance Act, 730 ILCS 130/3, provides, in relevant part:

The good behavior of any person who commences a sentence of confinement in a county jail for a fixed term of imprisonment after January 1, 1987 shall entitle such person to a good behavior allowance, except that: . . . (2) a person sentenced for an offense for which the law provides a mandatory minimum sentence shall not receive any portion of a good behavior allowance that would reduce the sentence below the mandatory minimum[.]

STATEMENT OF FACTS

A jury found defendant guilty of violating 625 ILCS 5/6-303(a), driving while his license was revoked. CI20. At sentencing, the parties agreed that because this was defendant's third or subsequent conviction of driving while

his license was suspended or revoked, *see* A2-3; CI6; E3-7, he had to serve “a minimum term of imprisonment of 30 days or 300 hours of community service,” 625 ILCS 5/6-303(d-1). Relying on *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358 (2005), the People argued that under subsection 6-303(d-1), when the court sentences a defendant to a term of imprisonment in jail rather than community service, the mandatory minimum term is 30 days, which cannot be reduced with good behavior credit under the County Jail Good Behavior Allowance Act (“Good Behavior Act”), 730 ILCS 130/3. A13-14. Accordingly, the People recommended that defendant be sentenced to either 60 days with eligibility for day-for-day good behavior credit, or 30 days with no credit eligibility. A4. Defendant similarly requested a sentence of “60 days, day-for-day, on electronic home monitoring” and agreed that “the 30 days minimum” applied. A5.

The respondent judge disagreed that the relevant sentencing provision provided a mandatory minimum jail term, relying instead on *People v. Smith*, in which two of the panel’s three justices concluded that when a sentencing statute gives the court discretion to impose either community service or a term of imprisonment (as opposed to a term of imprisonment alone), there is no “‘mandatory minimum’ sentence.” 2013 IL App (3d) 110477, ¶¶ 28-29; *see* A5-6, 15. Respondent noted that this analysis was “faulty” and led to absurd results but determined that because the General Assembly had not clarified after *Smith* that it “actually truly meant for the 30 days to be a mandatory

minimum,” its silence implied agreement with *Smith*’s conclusion. A6-7.

Respondent further found that this Court had signaled its approval of *Smith* when, in a different case, the Court had declined to grant mandamus review of this issue. A14. For these reasons, respondent determined pursuant to *Smith* that the 30-day minimum term of imprisonment stated in 625 ILCS 5/6-303(d-1) is a “fictitious mandatory minimum,” A9-10, because “in cases like this where there’s public service work as an option and there’s local jail time as another option, [then] the local jail time no longer [constitutes] a mandatory minimum,” A15. And, respondent observed, because subsection 6-303(d-1) does not provide a mandatory minimum sentence, the Good Behavior Act’s prohibition on day-for-day credit also did not apply. A15-16. Over the People’s objection, respondent sentenced defendant to 14 days in county jail, with credit for one day served in pretrial custody, and with eligibility for day-for-day good behavior credit. A16; C212.

STANDARD OF REVIEW

This Court reviews de novo the issues of statutory construction presented in this case. *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 363 (2005).

ARGUMENT

The respondent judge imposed a statutorily unauthorized sentence of 14 days in jail, with eligibility for day-for-day good behavior credit, despite the Vehicle Code’s mandate that a defendant convicted of a third or

subsequent offense of driving while his license was revoked “shall serve a minimum term of imprisonment of 30 days or 300 hours of community service.” 625 ILCS 5/6-303(d-1). Respondent erred by relying on inapposite dicta in *People v. Smith*, in which two justices of the appellate court concluded that, when a sentencing statute provides community service as an alternative to imprisonment, then there is no “mandatory minimum’ sentence” within the meaning of the Good Behavior Act. 2013 IL App (3d) 110477, ¶¶ 28-29. Although respondent believed that *Smith* authorized him to sentence defendant to a term of imprisonment below the Vehicle Code’s 30-day minimum, this was error: Defendant’s 14-day jail sentence contradicts subsection 6-303(d-1)’s clear and unambiguous language. Respondent further erred in awarding day-for-day credit eligibility under the Good Behavior Act, which prohibits such credit when it would reduce a sentence below the mandatory minimum.

This Court Should Issue a Mandamus Order Directing Respondent to Vacate Defendant’s Sentence and to Impose a Sentence Authorized by the Vehicle Code and the Good Behavior Act.

Defendant’s 14-day jail sentence falls below the 30-day mandatory minimum term of imprisonment prescribed by 625 ILCS 5/6-303(d-1) for his third or subsequent conviction of driving while his driver’s license was revoked. Accordingly, the Court should issue a mandamus order directing respondent to vacate the unauthorized sentence and impose a sentence that is authorized by the Vehicle Code and the Good Behavior Act.

Mandamus is a remedy “used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved.” *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶¶ 12-13 (citing *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 192-93 (2009)); *see also Jorgensen*, 216 Ill. 2d at 362. “Although *mandamus* generally provides affirmative rather than prohibitory relief, the writ can be used to compel the undoing of an act,” *Howard*, 2016 IL 120729, ¶ 12 (citation omitted), and “to compel compliance with mandatory legal standards,” *Konetski*, 233 Ill. 2d at 192-93. Thus, “[t]he remedy of *mandamus* . . . permits the State to challenge criminal sentencing orders where it is alleged that the circuit court violated a mandatory sentencing requirement[.]” *People v. Castleberry*, 2015 IL 116961, ¶ 27; *see also Jorgensen*, 216 Ill. 2d at 362 (mandamus available “to correct lower courts’ departures from mandatory sentencing schemes”); *People ex rel. Daley v. Strayhorn*, 199 Ill. 2d 331, 337 (1988) (mandamus appropriate to compel judge to follow sentencing statute).

Mandamus relief is appropriate here because defendant’s sentence violates the Vehicle Code’s mandatory sentencing scheme. In construing statutory provisions, such as the Vehicle Code provision at issue here, this Court “ascertain[s] and give[s] effect to the legislature’s intent, of which the best indicator is the statutory language, given its plain and ordinary meaning.” *Jorgensen*, 216 Ill. 2d at 363. When the statutory language is clear and unambiguous, there is no need to resort to other principles of

statutory interpretation, though the Court “always presume[s] that the legislature did not intend an absurd, inconvenient, or unjust result.” *Id.*

A. Defendant’s 14-day term of imprisonment is unauthorized because it is less than the 30-day minimum term required by the Vehicle Code.

Defendant’s 14-day sentence is unauthorized because the clear and unambiguous language of subsection 6-303(d-1) of the Vehicle Code requires a mandatory term of at least 30 days when the court imposes imprisonment rather than community service. 625 ILCS 5/6-303(d-1). This subsection provides that “any person convicted of a third or subsequent violation of this Section *shall* serve a minimum term of imprisonment of 30 days *or* 300 hours of community service, as determined by the court.” *Id.* (emphasis added). The provision thus provides two alternatives: The defendant shall serve *either* a term of imprisonment of no less than 30 days *or* community service of no less than 300 hours. Use of the word “shall” in a statute expresses a mandatory requirement. *Holly v. Montes*, 231 Ill. 2d 153, 160 (2008); *see also Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978) (“The use of the words ‘shall’ or ‘must’ is generally regarded as mandatory.”). And each alternative contains its own separate and independent requirements. *See People v. Howard*, 2017 IL 120443, ¶ 21 (“The word ‘or’ ordinarily is used in the disjunctive sense, meaning that the members of the sentence that it connects must be applied separately.”); *see also In re E.B.*, 232 Ill. 2d 459, 468 (2008) (“Generally, use of the disjunctive indicates alternatives and requires separate treatment of those alternatives, hence a clause *following* a disjunctive is considered

inapplicable to the subject matter of the *preceding* clause.” (emphasis in original and internal citation omitted)).

So, subsection 6-303(d-1)’s plain language requires that if the court imposes a term of imprisonment, then that term must be, at minimum, 30 days. Accordingly, although the court enjoys discretion to impose *either* imprisonment *or* community service, the court has no discretion to impose a term of imprisonment below the 30-day minimum. *See People v. Bradford*, 2023 IL App (4th) 220848-U, ¶ 31 (court properly admonished pro se defendant that if he pleaded guilty to driving while his license was suspended, he would be facing a “mandatory minimum sentence here of either 30 days in . . . jail, or 300 hours of community service work” at the court’s discretion).²

That community service is an available alternative to the 30-day minimum term of imprisonment does not change the fact that the General Assembly required a minimum term of imprisonment. Decisions interpreting the statutory sentencing scheme for a Class 2 felony are instructive. That statute provides a minimum three-year and maximum seven-year term of imprisonment, 730 ILCS 5/5-4.5-35(a), but also permits alternative sentences — such as periodic imprisonment, probation, or conditional discharge — for eligible defendants, *id.* §§ 5/5-4.5-35(b), (d). But, the appellate court has held,

² The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts’ website, at <https://www.illinoiscourts.gov/top-level-opinions/>.

where a term of imprisonment is imposed, the term must satisfy the mandatory minimum specified in the statute. *See, e.g., People v. Baker*, 33 Ill. App. 3d 898, 900 (3d Dist. 1975) (court had discretion to sentence defendant to either a term of imprisonment or probation and did not abuse its discretion by imposing “the minimum [prison term] provided by statute” rather than probation); *People v. Rice*, 2022 IL App (2d) 190662-U, ¶¶ 16, 18 (court properly admonished probation-eligible defendant that minimum prison sentence for Class 2 felony was three years, if probation was not imposed).

Respondent’s contrary interpretation leads to absurd and unintended consequences. For example, respondent’s interpretation would allow a court to sentence an adult Class 2 felony offender to six months of imprisonment, even though the General Assembly required a minimum three-year term of imprisonment, merely because the General Assembly also provided for a four-year term of probation as an alternative to imprisonment. *See* 730 ILCS 5/5-4.5-35(a), (d). But this would undo the General Assembly’s classifications of crimes based on their seriousness, allowing, for instance, a Class 2 felony offender to serve a Class 4 felony sentence despite the General Assembly’s determination that the Class 2 offense is more serious and warrants a greater minimum term of imprisonment. *Compare id.* (where alternatives not imposed, Class 2 felony requires prison term of 3 to 7 years, or extended term of 7 to 14 years), *with id.* § 5/5-4.5-45 (where alternatives not imposed,

Class 4 felony requires prison term of 1 to 3 years, or extended term of 3 to 6 years). There would be no reason for the General Assembly to have specified a minimum term of imprisonment if courts could ignore that term merely because the statute also provided a non-prison alternative. Thus, respondent's construction is not only inconsistent with subsection 6-303(d-1)'s plain language but would also lead to absurd and unintended consequences. *See Jorgensen*, 216 Ill. 2d at 363 (this Court "always presume[s] that the legislature did not intend an absurd, inconvenient, or unjust result").

Respondent's reliance on *People v. Smith*, 2013 IL App (3d) 110477, ¶¶ 28-29, *see* A6-7, was misplaced. In *Smith*, the defendant was convicted of obstructing a peace officer and sentenced under 720 ILCS 5/31-1(a-5), which required the court to impose a sentence of no less than 48 consecutive hours of imprisonment or no less than 100 hours of community service. 2013 IL App (3d) 110477, ¶ 26. The circuit court sentenced the defendant to 48 consecutive hours of imprisonment but did not award two days of presentence custody credit against that sentence because those days were not consecutive. *Id.* ¶ 24. Interpreting the presentence custody credit statute, 730 ILCS 5/5-4.5-100(b), *Smith* held that the defendant was entitled to the presentence custody credit. 2013 IL App (3d) 110477, ¶ 27.

Smith is inapposite. It did not construe the Vehicle Code provision at issue here. And, unlike here, the circuit court in *Smith* properly imposed the statutorily required minimum term of 48 hours of imprisonment. *Id.* At

issue was the presentence custody credit, which was required by statute but which the circuit court did not award. *Id.* Indeed, *Smith* noted that the circuit court was required to order the defendant to serve 48 consecutive hours of imprisonment under the applicable sentencing statute, and that the court had “complied with th[at] mandate.” *Id.* If anything, then, *Smith*’s construction of the sentencing statute at issue there underscores that respondent lacked authority to sentence defendant to less than the 30-day minimum term of imprisonment provided in subsection 6-303(d-1).

To be sure, two of the three justices in *Smith* went on to interpret the Good Behavior Act, and respondent appears to have relied on this part of *Smith* to depart from subsection 6-303(d-1)’s 30-day minimum term of imprisonment. *See* A9-10, 15-16; *Smith*, 2013 IL App (3d) 110477, ¶ 28. But the question whether defendant is entitled to credit under the Good Behavior Act is distinct from the question whether the Vehicle Code authorized defendant’s 14-day jail sentence; regardless of any credit, the 14-day term is unauthorized because it is below the 30-day minimum term of imprisonment.

Moreover, the part of *Smith* upon which respondent relied was dicta. After holding that the defendant was entitled to presentence custody credit, *id.*, the *Smith* majority noted its disagreement with the special concurrence’s view that the presentence-custody-credit issue should have been resolved under the Good Behavior Act, *id.* ¶ 28; *see also id.* ¶¶ 32-34 (Carter, J., concurring). In responding to the special concurrence, the *Smith* majority

reasoned that (1) analyzing the issue under the Good Behavior Act would be inappropriate because neither party had raised that provision; and (2) even if it were appropriate, the Good Behavior Act did not apply because the underlying sentencing statute allowed the court to impose community service instead of imprisonment, so “there is no ‘mandatory minimum’ sentence” for purposes of the Good Behavior Act. *Id.* ¶¶ 28-29. This was dicta, as it was neither “essential to the outcome of the case” nor “an integral part of the opinion.” *People v. Lighthart*, 2023 IL 128398, ¶ 50. Thus, respondent should not have relied on *Smith*’s discussion of the Good Behavior Act, which was neither persuasive nor controlling, to impose a sentence that must comply with the Vehicle Code’s requirements.

In sum, defendant’s 14-day jail sentence is unauthorized because it is below the 30-day minimum term of imprisonment mandated by subsection 6-303(d-1) of the Vehicle Code. Accordingly, the Court should issue a mandamus order directing respondent to resentence defendant in accordance with this provision.

B. The Good Behavior Act prohibits applying good behavior credit to reduce a sentence below the mandatory minimum.

Should the Court award mandamus relief and direct respondent to resentence defendant in accordance with the Vehicle Code, the question whether defendant is entitled to credit under the Good Behavior Act will arise. The Court should therefore also address that portion of respondent’s order and hold that *Smith*’s statement that a sentencing statute allowing a

court to choose among different types of sentences, including imprisonment, provides no “mandatory minimum sentence” for purposes of the Good Behavior Act, is incorrect. *See* 2013 IL App (3d) 110477, ¶ 29.

The Good Behavior Act applies, in relevant part, to “any person who commences a sentence of confinement in a county jail for a fixed term of imprisonment,” and it “entitle[s] such person to a good behavior allowance, except that: . . . (2) a person sentenced for an offense for which the law provides a mandatory minimum sentence shall not receive any portion of a good behavior allowance that would reduce the sentence below the mandatory minimum[.]” 730 ILCS 130/3. Construing the statute as a whole, then, good behavior credit is not available when “the law provides a mandatory minimum sentence [of confinement in a county jail for a fixed term of imprisonment].” *Id.*; *see Corbett v. County of Lake*, 2017 IL 121536, ¶ 27 (“words and phrases in a statute must be construed in light of the statute as a whole”).

Here, respondent sentenced defendant to a term of confinement in county jail under subsection 6-303(d-1) of the Vehicle Code, which requires that defendant “shall serve a minimum term of imprisonment of 30 days.” 625 ILCS 5/6-303(d-1). And this 30-day minimum term of confinement must be imposed when the court, as here, declines to impose the other type of sentence authorized by the statute — community service. *Id.* For purposes of the Good Behavior Act, then, the Vehicle Code requires a “mandatory

minimum sentence [of confinement in a county jail for a fixed term of imprisonment].” 730 ILCS 130/3. Accordingly, subsection 6-303(d-1)’s minimum term is a “mandatory minimum sentence” within the meaning of the Good Behavior Act, and, as such, it precludes good behavior credit that would reduce defendant’s sentence below the 30-day minimum. *Id.*

This Court’s decision in *Jorgensen* confirms this conclusion. The Vehicle Code provision at issue there provided that “any defendant convicted for a fourth time of driving while his license is revoked or suspended ‘must serve a minimum term of imprisonment of 180 days.’” *Jorgensen*, 216 Ill. 2d at 363 (quoting 625 ILCS 5/6-303(d-3) (2002)). *Jorgensen* held that this statutory language “unambiguous[ly],” *id.* at 363, “require[d] that a defendant must be incarcerated for at least a certain specified period of time,” and thus the statute created a “mandatory minimum sentence” for purposes of the Good Behavior Act, *id.* at 363-64. Like the provision at issue in *Jorgensen*, subsection 6-303(d-1) requires defendant to serve “a minimum term of imprisonment of 30 days,” i.e., requires him to be incarcerated for at least a specified period, *Jorgensen*, 216 Ill. 2d at 363 — when community service is not imposed.

To be sure, the provision *Jorgensen* construed did not include community service as an alternative sentence, as subsection 6-303(d-1) does. But that distinction is irrelevant because subsection 6-303(d-1) plainly requires a defendant to serve a minimum term of imprisonment when the

court chooses a sentence of confinement. In other words, subsection 6-303(d-1) provides a “mandatory minimum sentence [of confinement in a county jail for a fixed term of imprisonment],” 730 ILCS 5/130-3, when community service is not imposed. Accordingly, a defendant sentenced under subsection 6-303(d-1) may not be sentenced to a term of imprisonment that, with good behavior credit, would result in the defendant serving less than 30 days. *See* 730 ILCS 130-3; *Jorgensen*, 216 Ill. 2d at 364-65.

Not only is this result compelled by *Jorgensen* and the plain language subsection 6-303(d-1), but the legislative history of the Good Behavior Act also supports this construction, as *Jorgensen* explained. 216 Ill. 2d at 364-65. During the legislative debates, “Representative Countryman specifically noted the then-existing offenses to which the limitation on good behavior credit would apply: ‘DUI is one, and driving on a revoked or suspended license is the other[.]’” *Id.* at 365 (quoting 85th Ill. Gen. Assem., House Proceedings, May 18, 1987, at 85)). Thus, the General Assembly “was aware and intended that the Good Behavior Act’s limitation on good-behavior credit would apply to the mandatory minimum sentence imposed for driving on a suspended license,” *id.*, the offense of which defendant was convicted.

In sum, after respondent determined that community service was not appropriate, subsection 6-303(d-1) of the Vehicle Code required a “minimum term of imprisonment of 30 days,” and the Good Behavior Act precluded defendant from earning good behavior credit that would allow him to serve

less than that term. The Court should thus issue a mandamus order directing respondent to vacate the unauthorized sentence and resentence defendant in accordance with the Vehicle Code and the Good Behavior Act.

CONCLUSION

The People of the State of Illinois respectfully request that this Court enter a mandamus order directing respondent to vacate defendant's sentence and to resentence defendant in accordance with the Vehicle Code and the Good Behavior Act.

February 13, 2025

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

LAUREN E. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 505-5275
eserve.criminalappeals@ilag.gov

Counsel for Petitioner

RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.

/s/ Lauren E. Schneider
LAUREN E. SCHNEIDER
Assistant Attorney General

APPENDIX

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Sentencing Hearing Transcript, <i>People v. Ross</i> , No. 23 CF 80 (Boone Cnty. Cir. Ct. Oct. 7, 2024)	A1

1 IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
2 BOONE COUNTY, ILLINOIS

3 THE PEOPLE OF THE STATE)
4 OF ILLINOIS,)

5 Plaintiff,)

6 vs.) NO. 23-CF-80

7 CASEY ROSS,)

8 Defendant.) **SENTENCING HEARING**

9 REPORT OF PROCEEDINGS of the hearing before The
10 Honorable Judge C. ROBERT TOBIN, III, commencing on
11 October 7, 2024.

12
13 APPEARANCES:

14 ATTORNEY DESIREE SIERENS,

15 Assistant State's Attorney,
16 for the People of the State of Illinois;

17 ATTORNEY SETH WIGGINS,

18 for the Defendant.
19
20
21

22 RECORDING TRANSCRIBED BY:

23 Michele Fitch
24 Official Court Reporter

1 (WHEREUPON, the following
2 proceedings were held in open
3 court and transcribed from the
4 digital recording system,
5 commencing at 9:31 a.m.)

6 THE COURT: I'm going to call People versus Casey
7 Ross, 23-CF-80. We've got Mr. Ross here in person out of
8 custody with Attorney Wiggins, Attorney Sierens here.
9 It's set for -- did we set it for status of sentencing or
10 was it set for sentencing?

11 MS. SIERENS: Sentencing.

12 MR. WIGGINS: Sentencing, Judge.

13 THE COURT: Okay. State.

14 MS. SIERENS: Your Honor, the State would move to
15 admit People's Exhibit 1, which is an abstract ran for --
16 it was run December 10th, 2024.

17 THE COURT: Okay.

18 MS. SIERENS: And I think you said no objection.

19 MR. WIGGINS: No objection.

20 THE COURT: Otherwise, as to criminal history, would
21 they be -- would you guys be relying on the pretrial bond
22 report or do you got something different?

23 MS. SIERENS: No. I was going to rely on the
24 pretrial bond report, Your Honor.

1 THE COURT: Is there any disagreement, Counsel, as to
2 the pretrial bond report being an accurate depiction of
3 his criminal history?

4 MR. WIGGINS: No, Your Honor.

5 THE COURT: Okay. Go ahead, State. I'm sorry.

6 MS. SIERENS: Your Honor, the State is requesting
7 that Your Honor sentence the defendant to a term in the
8 Boone County Jail of 60 days, day for day, or more.
9 That's -- the State believes that's the floor of 60 days.

10 Looking at Subsection (d)(1) of the driving while
11 suspended revoked statute, if a person is found guilty or
12 pleads guilty and a conviction enters on a third or
13 subsequent offense, the defendant must serve 30 days jail
14 or 300 hours of public service work. If Your Honor does
15 want to sentence the defendant to electronic home
16 monitoring if you believe that he applied -- fulfills the
17 obligations of that, the State is asking that he be
18 placed -- well, let me start with the State is asking for
19 a conviction.

20 THE COURT: Is this similar to that *Smith* case
21 regarding the 300 -- 30 days or 300 public service work
22 hours?

23 MS. SIERENS: Correct. It's still the State's
24 belief, even though that case exists, and we did, as Your

1 Honor knows, try to mandamus that question --

2 THE COURT: Yes.

3 MS. SIERENS: -- but the State is asking -- the State
4 is asking that he not do public service work, that it be
5 a term of jail, and that that be 60 days, day-for-day, or
6 30, no day-for-day of electronic home monitoring applies.
7 And he does have credit for one day, Your Honor. If you
8 do any term of electronic home monitoring, the State is
9 asking that he be placed on conditional discharge just so
10 that he's on an order in case something happens with that
11 electronic home monitoring. If it's just a straight jail
12 sentence, the People are asking that just a conviction
13 enter.

14 The State would note, Your Honor, that he has
15 three driving while suspended convictions as well as one
16 no driver's license charge out of Wisconsin, which had
17 that been in Illinois, it would have been a driving while
18 suspended. He still has a suspended driver's license at
19 this point and the driver's license he did have expired
20 in 2010. It looks like there was a conviction for too
21 many moving violations that ultimately led to the
22 suspension and then it was financial responsibility after
23 that and then he just kept picking up driving while
24 suspended or no driver's license charges.

1 THE COURT: Attorney Wiggins, your thoughts.

2 MR. WIGGINS: Judge, if -- we would ask that a
3 conviction enter and -- conviction only as opposed to a
4 sentence. The 30 days -- I'm sorry -- 60 days,
5 day-for-day, on electronic home monitoring if eligible
6 would be the request. Mr. Ross's main concern is to be
7 home for -- with family and to still be able to run his
8 business. Understanding electronic home monitoring to
9 allow him outside of the hours of his work -- or require
10 him outside of the hours of his work to be at home would
11 be conducive to those goals to still keep his business
12 running and be able to employ those whom he employs while
13 also having atonement and accountability being confined
14 to his house for the 30 days. We believe that would be a
15 satisfactory sentence in this. I do believe that the
16 confinement would be better than the 300 hours public
17 service work. We would ask that that minimum though --
18 the 30 days minimum apply. If Your Honor would like
19 further argument as to that or if Your Honor upon State's
20 request of the minimum would be essentially saying that,
21 then I wouldn't waste further argument on the question.

22 THE COURT: Yeah. And I think -- I think if I recall
23 correctly -- and I want to say the name of the case was
24 *Smith*. I can't say that for certain.

1 MS. SIERENS: It was.

2 THE COURT: Okay. I think the analysis was faulty.
3 I realize that the appellate court doesn't care what I
4 think as a trial judge as to their analysis, but,
5 regardless, I think that they -- their analysis was that
6 public service work is a less -- is much less than even
7 one day in jail, and so by allowing for public service
8 work as an option, then there is no real mandatory
9 minimum as far as days go.

10 Under that theory, DOC cases would make no sense.
11 That would mean that instead of on a Class 3 and I
12 thought that prison was appropriate, that I really didn't
13 have to do two years of DOC. I could do one year of DOC
14 because certainly probation and local jail is less
15 than -- than DOC, but that's just not how it is. But,
16 regardless, I think that, at the very least -- that case
17 has been out for a while. The legislature is presumed to
18 know about these cases that the appellate court and
19 Supreme Court come down with and their interpretation --
20 and if the General Assembly felt otherwise, they could
21 certainly have amended that statute to reflect that they
22 actually truly meant for the 30 days to be a mandatory
23 minimum. They've chosen to do nothing, which means that
24 they -- very, very, very -- a light inference that they

1 actually agree with -- that that reading of the statute.

2 So I will show that -- or I'll continue to find I
3 guess that despite my thoughts about the appellate
4 court's analysis, it doesn't matter because the General
5 Assembly has, in essence, adopted that analysis by saying
6 or not saying -- it's not making any adjustments to the
7 statute.

8 Here's what I am going to do, though, is
9 considering all the factors in aggravation and mitigation
10 as well as the evidence at trial, his criminal history,
11 driving record -- he does have felonies in his past but
12 it was pretty distant past. A couple burglaries it looks
13 like, something that Wisconsin would call an illegal
14 entry, theft movable property. I assume that that also
15 is very similar to a burglary or some other sort of crime
16 against property. I'm not entirely sure what
17 classification or what that equivalent would be here. My
18 guess is it's probably pretty close to a burglary. But
19 again, those were some time ago.

20 Recently is just continuing to drive while
21 suspended, and, heck, in 2022, he didn't even care enough
22 to show up to court as an ex parte judgment. Horrible
23 record. And not only that, the nature of this offense.
24 He allowed people in the vehicle to be drinking alcohol

1 while he was driving and that's in aggravation here.

2 I'm going to order 14 days in jail. No electronic
3 monitoring. 14 days in jail. Day-for-day to apply.
4 Credit for the one day. And I'd give him --

5 Counsel, if you want to talk to him, I'd give him
6 up to 30 days to turn himself in. If you want to get a
7 turn-in date, I'd be happy to put that in there.

8 MS. SIERENS: So --

9 THE COURT: No electronic monitoring. 14 days, just
10 straight conviction.

11 MS. SIERENS: Day-for-day?

12 THE COURT: No day-for-day.

13 MS. SIERENS: Okay.

14 THE COURT: I'm sorry. No. I said day-for-day. I
15 apologize. Let me back up. Day-for-day to apply.

16 That's what I originally meant to say. What did I
17 say to begin with?

18 THE CLERK: Day-for-day.

19 THE COURT: Did I say day-for-day? Okay. Good. I
20 meant for day-for-day to apply, credit for one, and it's
21 14 days so --

22 MS. SIERENS: Your Honor, if I could just direct you
23 to Subsection (d)(1), which requires the 30 days or
24 300 hours of public service work, based on the number of

1 priors so do you want --

2 THE COURT: Isn't that what *Smith* told us, though, is
3 that public service work obliterated the minimum?

4 MS. SIERENS: So do you want 30 days day-for-day so
5 he would serve 15 --

6 THE COURT: No. I believe that *Smith* didn't say it's
7 an A or a B. I believe that *Smith*, if I'm not
8 mistaken -- and I'd be happy to hold this over to a date
9 so you don't get into your ability to appeal stuff. I
10 believe that it said that you didn't have to choose -- it
11 wasn't like a DOC sentence. It's either probation or
12 DOC, and if DOC, for example, on a Class 3, it has to be
13 two years, it can't be 18 months, but you don't have to
14 go DOC on something. It could be local. But if you do
15 choose, it's got to be at least two.

16 In fact, I think it was the opposite. I think
17 what that *Smith* case said -- again, it's been a while
18 since I've looked at it. Was that because there is the
19 lesser option of public service work, there is absolutely
20 no mandatory minimum; that 30 days is fictitious, in
21 essence.

22 MS. SIERENS: Okay. I thought it was just saying
23 that --

24 THE COURT: No. It's not either/or. The problem I

1 had -- I wouldn't have had a problem with the analysis by
2 that court if they said if you decide to go public
3 service work, it's got to be 300 hours, but if you are
4 going to go jail rather than public service work, it has
5 to be a minimum of 30 days. I would have been fine with
6 that because that's very consistent with how we look at
7 prison versus probation on felonies. Again, a Class 3,
8 you don't have to send the person to DOC for three
9 years -- I'm sorry -- for two years. You can go on local
10 time, on probation, but if you do send him to DOC, he's
11 got to at least be two years minimum. I read the *Smith*
12 one that it basically just said, listen, because
13 300 hours is less than one day of jail, then there is
14 no -- that 30 days is sort of a very fictitious mandatory
15 minimum.

16 That's -- I'd be happy -- I've got time. I'd be
17 happy to break and print you guys the case and let you
18 guys do arguments if you think otherwise.

19 MS. SIERENS: The State believes otherwise.

20 THE COURT: Let's just take a break then. Let me
21 print off for you -- luckily we've got time. I'll print
22 off that case and I can get it to you guys and then we
23 can kind of come back to see whether or not there is a
24 30 days or not, but let me -- let me step down and print

1 those cases for you.

2 MS. SIERENS: Okay. Thank you.

3 (Recess taken.)

4 (WHEREUPON, the case was recalled
5 and proceedings were held in open
6 court.)

7 THE COURT: All right. I'm going to recall People
8 versus Casey Ross, 23-CF-80.

9 We just took a break here. I provided a
10 transcript to the parties of arguments made I think on a
11 similar issue like four years ago. I haven't researched
12 that issue probably since then so I don't know if there's
13 any law -- case law that would support it or poke a hole
14 in it.

15 MS. SIERENS: Do you mind if we just reconvene at
16 11:00?

17 THE COURT: Absolutely. That's fine. I mean, I
18 don't mind.

19 MS. SIERENS: Okay. Thank you.

20 MR. WIGGINS: And no objection. I'd just like to
21 read thoroughly and I understand she has a Zoom call so
22 I --

23 THE COURT: Yeah. We'll reconvene at 11:00. Whoever
24 has got the transcript, just don't lose it because that's

1 my only --

2 MS. SIERENS: Oh. That's Attorney Wiggins.

3 MR. WIGGINS: I won't.

4 THE COURT: Thank you.

5 MS. SIERENS: Thank you.

6 (Recess taken.)

7 (WHEREUPON, the case was recalled
8 and proceedings were held in open
9 court.)

10 THE COURT: I am going to recall People versus Casey
11 Ross, 23-CF-80. We've got Mr. Ross still here.

12 Come on up by Attorney Wiggins who is here.

13 Attorney Sierens is here.

14 And I guess you guys know exactly what my
15 arguments were, what my rulings were before from the
16 transcripts. I can tell you I haven't seen them yet this
17 morning. You got copies -- did you guys get a chance to
18 read through those though?

19 MS. SIERENS: I know Attorney Wiggins did. I vaguely
20 remember them from the last time.

21 THE COURT: Yeah. I mean, there was a little part in
22 there I think that the -- all three people felt the need
23 to write a decision on that one. One was like three
24 sentences. But anyways I -- she indicated -- I think it

1 was a female justice when I say she, but I think it
2 was -- indicated almost at the very end of her part
3 saying, you know, because there's public service work,
4 there's really no mandatory minimum anyways. That's
5 paraphrasing. I think I latched on to that analysis.
6 And ultimately the third person said I agree with -- as
7 to the sentencing, I agree with first person so at least
8 there was two people that agreed with that proposition
9 that -- that there is no mandatory minimum jail if there
10 is the option of public service work. That was I think
11 my ruling back in summer of 2020.

12 I'm open to any arguments or cases. I briefly --
13 I don't even know if they call it shepardizing anymore --
14 but shepardized it. I didn't see anything that was even
15 remotely on point.

16 MS. SIERENS: Your Honor, the State didn't either. I
17 think they refer to in Paragraph 29 where it says "Hence,
18 there is no mandatory minimum and the Behavioral
19 Allowance Act is inapplicable."

20 The State disagrees. The State thinks that
21 Birkett and Jorgensen does apply and I know that Justice
22 Carter talked about that in his -- I believe that's a
23 male -- in his concurring opinion, but it didn't really
24 apply in the *Smith* case because the two days were already

1 satisfied.

2 But the State does believe that when there is
3 specifically a jail time or a public service time, there
4 are mandatory minimums that you can't go below. The
5 State believes that --

6 THE COURT: Akin to DOC versus probation.

7 MS. SIERENS: Right. And the State believes that the
8 jail time is no day-for-day, but the State does
9 understand that Your Honor wishes to follow the third.

10 THE COURT: I guess. I mean, it was one of those
11 things where I sort of felt obliged --

12 And, Attorney Wiggins, since you weren't around
13 for that one, I think the State even -- it was -- kind of
14 the equivalent of a friendly contempt type of situation
15 where they lined it up so that they could try to do a
16 mandamus to the Supreme Court forcing me to do what
17 should -- the proper sentencing. The best I could tell
18 is they just refused to even hear it.

19 MS. SIERENS: Correct. They declined to even hear
20 it. So the only place -- or only district I have found
21 that has weighed in on this issue is this *Smith* case. I
22 did shepardize it from -- to see if anyone had --

23 THE COURT: I looked and didn't see anything.

24 MS. SIERENS: No. And they did talk about Birkett

1 and Jorgensen in this case, but the State still believes
2 that that's what applies and not the *Smith* case.

3 THE COURT: Yeah. Mostly when I did shepardize it,
4 it looks like they were going more -- everybody seemed to
5 be citing that case regarding the actual stop itself.

6 MS. SIERENS: Correct, yes.

7 THE COURT: Nothing to do with the actual sentencing.

8 MS. SIERENS: That's what I saw too.

9 THE COURT: So I guess I probably -- since I haven't
10 heard anything else and the Supreme Court at least saw
11 what my ruling was and chose not to do anything with it,
12 I probably ought to stick with what I had and take the
13 position that in cases like this where there's public
14 service work as an option and there's local jail time as
15 another option, that the local jail time no longer has a
16 mandatory minimum because in their mind public service
17 work is less than -- or a lower sentence than actually
18 the jail time.

19 So again, I would love for them to either amend
20 the statute to say this is -- we really don't mean
21 30 days or amend it to say we do, but I think I've got to
22 stick with what I've -- I think I ought to stick with
23 what I ruled on in the summer of 2020. I don't think the
24 law has changed. And because the Supreme Court of

1 Illinois did not take the case and say that I was
2 completely wrong nor did they say I was right -- they
3 simply just kind of looked the other way I think -- I
4 stick with that.

5 So I'm going to find that there is no mandatory
6 minimum jail time if jail time is to be imposed. I am
7 going to impose 14 days jail, day-for-day to apply under
8 Good Behavior Act. Credit for that one day. And I would
9 be open to a turn-in time and date for him, but it needs
10 to be done sometime within the next 30 days so we should
11 probably establish that before the court date is over
12 here.

13 MR. WIGGINS: Thank you, Judge. Mr. Ross's
14 significant other and mother of children just had --
15 she's here present today, but she just had medical
16 surgery. Recovery end date is expected to be
17 November 13th so could we take that latest November 7th
18 date that Your Honor is offering?

19 THE COURT: Sure. So turn in by November 7th and we
20 always usually do it by 11:00 in the morning. That's
21 usually at least when we -- our former jail nurse, that's
22 when she kind of needed all of her medical stuff in
23 because our jail nurses are typically half time, not full
24 time. So bring all the medicals -- anything -- that's

1 why we have our turn-ins 11:00 o'clock in the morning so
2 it'd have to be by 11:00 o'clock that morning.

3 Otherwise, as far as fines and costs go, I don't
4 know of any mandatory minimum fine on that one.

5 MS. SIERENS: There's not.

6 THE COURT: I'd go with a hundred dollar fine and
7 then whatever the court costs are that are associated
8 with that. And this is an old case.

9 Is there even bail out there?

10 MS. SIERENS: There remains bail and 10 percent needs
11 to be taken.

12 THE CLERK: Correct.

13 THE COURT: I'll let you run that one up. It should
14 cover it I would think if there's a thousand dollars
15 sitting out there.

16 I'm going to go over some appeal rights right now
17 with you, Mr. Ross. Beginning today you have a right to
18 an appeal. You have a right to request the clerk to
19 prepare and file a notice of an appeal and the right if
20 indigent to be furnished to you without cost a transcript
21 of the proceedings of the trial and the hearings. If
22 you're indigent, you have a right to have counsel
23 appointed to assist you in that appeal.

24 The right to appeal the judgment of conviction

1 excluding the sentence imposed or modified will be
2 preserved only if a notice of appeal is filed in the
3 trial court within 30 days from the date on which the
4 sentence is imposed.

5 Prior to taking an appeal, if you seek to
6 challenge the correctness of the sentence or any aspect
7 of the sentencing hearing, you must file in the trial
8 court within 30 days of the date on which the sentence is
9 imposed a written motion asking to have me reconsider the
10 sentence I imposed or consider any challenges to that
11 sentencing hearing. And you have to set forth in that
12 motion all issues or claims of error regarding the
13 sentence imposed or the sentencing hearing.

14 Any issue or claim of error regarding the sentence
15 imposed or any aspect of the sentencing hearing that's
16 not raised in that written motion shall be deemed waived.
17 And, finally, in order to preserve your right to appeal
18 following the disposition of the motion to reconsider or
19 any challenges regarding the sentencing hearing, you must
20 file a notice of an appeal in the trial court within
21 30 days from the entry of the order that disposes of your
22 motion to reconsider the sentence or the order that
23 disposes of any challenges to that sentencing hearing.

24 If you have questions regarding your appeal

1 rights, please talk with Attorney Wiggins about those.
2 But again, just make sure that you do turn yourself in.

3 Now, failure to turn yourself in on time could
4 result in a new charge of escape. Escape is a Class 3
5 felony punishable by two to five years in the Department
6 of Corrections followed by six months of mandatory
7 supervised release. So definitely be there on time. So
8 with an 11:00 o'clock turn-in on that date, if you're
9 there at 10:55, you're in the clear. If you're there at
10 ten after 11:00, technically it's an escape so make sure
11 you're there early rather than late.

12 (End of proceedings.)
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1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
2 BOONE COUNTY, ILLINOIS

3 I, MICHELE A. FITCH, an Official Court Reporter
4 for the Seventeenth Judicial Circuit of Illinois, do
5 hereby certify that the foregoing Report of Proceedings
6 was electronically recorded and is a true, correct, and
7 complete transcript so taken at the time and place
8 hereinabove set forth to the best of my ability based on
9 the quality of the electronic recording.

10
11
12 *Michele Fitch*

13 _____
14 MICHELE FITCH
15 Official Court Reporter
16 IL License No. 084-00130

17
18
19
20
21
22
23 Dated this 4th day of November, 2024.
24

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 13, 2025, the foregoing **Brief and Appendix of Petitioner People of the State of Illinois** was filed with the Clerk of the Illinois Supreme Court using the Court's electronic filing system, and on the same date, the persons listed below were served by depositing a copy in a U.S. mailbox in Chicago, Illinois, with proper postage paid.

Hon. C. Robert Tobin III
Resident Circuit Judge, 17th Judicial Circuit
Boone County Courthouse
601 North Main Street
Belvidere, Illinois 61008

Seth Wiggins, Assistant Public Defender
Kathryn J. Cross, Public Defender
Boone County Public Defender
130 S. State St., Suite 311
Belvidere, Illinois 61008

/s/ Lauren E. Schneider
LAUREN E. SCHNEIDER
Assistant Attorney General

E-FILED
2/13/2025 9:59 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK