No. 127169

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) On Appeal From the Appellate Court of Illinois, Third Judicial District, No. 3-18-0344 |
| Respondent-Appellant, | ) |
| v. | ) There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 01-CF-344 |
| ANGELA J. WELLS, | ) The Honorable Paul P. Gilfillan, |
| Petitioner-Appellee. | ) Judge Presiding. |

# REPLY BRIEF OF RESPONDENT-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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**ORAL ARGUMENT REQUESTED**

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The People's brief established that petitioner's 735 ILCS 5/2-1401 petition was incurably time-barred and meritless, and, therefore, the procedural due process violation that resulted from the trial court's premature dismissal of her petition was harmless. Petitioner's arguments do not warrant a different outcome.

### I. Petitioner's § 2-1401 Petition Is Time-Barred and She Cannot Excuse Her Untimeliness.

In January 2018, petitioner filed a § 2-1401 petition seeking relief from the trial court's October 2001 sentencing order. C553-90.[1] But her petition was untimely because she filed it more than two years after entry of the judgment and there was no basis in law to find it timely. *See* Peo. Br. 18-19 (collecting cases). Petitioner's contrary arguments disregard the General Assembly's intent as expressed in § 2-1401's plain language and improperly ask this Court to substitute its policy choices for those of the General Assembly.[2]

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[1] "Peo. Br. __" and "A__" refer to the People's opening brief and appendix; and "Pet. Br. __" refers to petitioner's brief. Citations to the record appear as stated in footnote one of the People's opening brief.

[2] Contrary to petitioner's assertion, Pet. Br. 36, the People do not contend that petitioner's timeliness arguments are not properly before this Court.

### A. Section 2-1401's statute of limitations applies to petitions seeking relief under subsection (b-5).

The People's brief established that the statute of limitations for § 2-1401 petitions applies to petitions seeking relief under subsection (b-5). *See* Peo. Br. 18-23. Petitioner's contention that subsection (b-5) "creates a stand-alone collateral remedy" not subject to any time limit, Pet. Br. 18, is contrary to the plain language and structure of § 2-1401. Indeed, the General Assembly plainly did *not* create a standalone remedy, given that it placed (b-5) *within* § 2-1401.

"[O]ne of the fundamental principles of statutory construction is to view all the provisions of a statute as a whole." *Bd. of Educ. v. Moore*, 2021 IL 125785, ¶ 40. "[S]ections of the same statute should be considered so that each section can be construed with every other part or section of the statute to produce a harmonious whole." *Id.* And "words and phrases must be construed in relation to other relevant statutory provisions and not in isolation." *Id.*

Section 2-1401 "constitutes a *comprehensive statutory procedure* authorizing a trial court to vacate or modify a final order or judgment in civil and criminal proceedings." *People v. Thompson*, 2015 IL 118151, ¶ 28 (emphasis added). Relief from a final order or judgment is available only "upon petition as provided in this Section [2-1401]." 735 ILCS 5/2-1401(a), Section 2-1401's subsections govern the procedures for filing a petition under it. For example, "[t]he petition must be filed in the same proceeding in which

the order or judgment was entered but is not a continuation thereof," and "[t]he petition must be supported by affidavit or other appropriate showing as to matters not of record." *Id.* § 2-1401(b). And, "except [in specific circumstances], the petition must be filed not later than 2 years after the entry of the order or judgment." *Id.* § 2-1401(c).

Under subsection (f), "petitions brought on voidness grounds need not be brought within the two-year time limitation." *Sarkissian v. Chi. Bd. of Educ.*, 201 Ill. 2d 95, 104 (2002). "A void judgment is from its inception a complete nullity and without legal effect." *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 380 (2005). At common law, such judgments could "be attacked at any time." *Payson v. People*, 175 Ill. 267, 271 (1898). Subsection (f) "codifies [this] common law rule," *Sperry*, 214 Ill. 2d at 379, by providing that "[n]othing contained in this Section [2-1401] affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief," 735 ILCS 5/2-1401(f); *see Sarkissian*, 201 Ill. 2d at 104-05.

Unlike subsection (f)'s exception for preexisting remedies not subject to a time limit, subsection (b-5) does not state that petitions filed to raise its newly created claim are exempt from § 2-1401's procedural requirements, as petitioner argues. Pet. Br. 22. Subsection (b-5) sets forth one type of "meritorious claim under this Section [2-1401]," *id.* § 2-1401(b-5), and allows that a movant may "apply[] for any other relief under this Section or any

other law otherwise available to him or her," *id.*, such as "relief from a void order or judgment," *id.* § 2-1401(f). But any relief provided by "subsection (b-5)" must be "under this Section [2-1401]." *Id.* § 2-1401(b-5). The language, "under this Section," plainly refers to the entire "Section," including its subsections. *Id.* And those subsections govern (1) the relief that is available, *id.* § 2-1401(a); (2) how that relief may be obtained, *id.*; (3) in what proceeding the petition must be filed, *id.* § 2-1401(b); (4) what supporting documentation must be provided, *id.*; (5) who must be served with the petition and how, *id.*; and (6) when the petition must be filed, *id.* § 2-1401(c). Thus, when properly "construed with every other part or section of the statute to produce a harmonious whole," *Moore*, 2021 IL 125785, ¶ 40, subsection (b-5) does not create a standalone remedy exempt from § 2-1401's procedural requirements, and a petition seeking relief under subsection (b-5) must be filed within § 2-1401(c)'s limitations period. Peo. Br. 17-23.

Petitioner's reliance on actual innocence law, *see* Pet. Br. 19-21, is misplaced. The Illinois Constitution provides the right to assert a freestanding claim of actual innocence because "[i]mprisonment of the innocent would . . . be so conscience shocking as to trigger operation of substantive due process," and it would be fundamentally unfair to ignore newly discovered evidence that indicates that a convicted person is actually innocent. *People v. Washington*, 171 Ill. 2d 475, 488-89 (1996). To obtain relief, the defendant must file a petition under the Post-Conviction Hearing

Act, which expressly exempts petitions advancing such a claim from its time limitation, 725 ILCS 5/122-1(c), to prevent a fundamental miscarriage of justice, *see People v. Pitsonbarger*, 205 Ill. 2d 444, 459 (2002); *People v. Boclair*, 202 Ill. 2d 89, 102 (2002).

In contrast, the claim provided by subsection (b-5) is a purely statutory creation whose parameters and application are defined, and may be changed, by the General Assembly. *See Underwood v. City of Chi.*, 2017 IL App (1st) 162356, ¶ 27 ("where the legislature grants a right, it is free to define the parameters and application of that right"). And those parameters are different from the constitutional right to assert a claim of actual innocence. Although the General Assembly borrowed to some extent from the constitutional actual innocence standard, it also limited the scope of relief available under subsection (b-5) to relief from sentences (rather than convictions) and deliberately placed such claims within § 2-1401, rather than the Post-Conviction Hearing Act. Thus, in contrast to its treatment of actual innocence claims, *see* 725 ILCS 5/122-1(c), the General Assembly made a deliberate and rational choice to limit relief under subsection (b-5) to those individuals who file their petitions within the applicable limitations period set forth in § 2-1401(c). *See* Peo. Br. 19-27.

Contrary to petitioner's contention that adhering to the plain language of § 2-1401 is inconsistent with subsection (b-5)'s purpose, Pet. Br. 20, 22, 24-26, the General Assembly's considered policy decision *not* to restart, toll, or

create any exception to the two-year statute of limitations for subsection (b-5) petitions, establishes that the General Assembly's purpose did not include reopening sentencing orders for all "domestic violence victims who subsequently commit crimes," Pet. Br. 24. The General Assembly knew when it defined the class of persons for whom subsection (b-5) relief would be available that some persons with strong claims would be ineligible for relief due to the passage of time. Peo. Br. 25-27. But it legitimately determined that the interest in protecting those claims was outweighed by other reasonable interests, including in the stability and finality of judgments, and the administrative and other costs of reopening older judgments. *Id.* at 27.

Given these rational grounds for the General Assembly's policy choice, petitioner is incorrect that this case falls within "that select group of cases in which courts are permitted to supply missing language to correct oversights by the legislature." *Atkins v. Deere & Co.*, 177 Ill. 2d 222, 237 (1997) (Miller, J., specially concurring); *see* Pet. Br. 26 (citing Justice Miller's opinion in *Atkins*). That "'technique of [statutory] construction is to be exercised with caution,'" *Atkins*, 177 Ill. 2d at 238 (Miller, J., concurring) (quoting *Gill v. Miller*, 94 Ill. 2d 52, 58 (1983)), and "its application is limited to those exceptional situations where . . . adherence to the literal language of the statute would produce a result that is clearly and demonstrably at odds with the intent of the General Assembly," *In re Det. of Lieberman*, 201 Ill. 2d 300, 320 (2002) (citing *Gill*, 94 Ill. 2d at 58); *see, e.g.*, *People v. Johnson*, 2017 IL

120310, ¶¶ 21-24 (cited at Pet. Br. 26), such as where literal construction would render the statute unconstitutional, *see, e.g.*, *Oswald v. Hamer*, 2018 IL 122203, ¶¶ 37-38; *People v. Smith*, 307 Ill. App. 3d 414, 417-22 (1st Dist. 1999) (cited at Pet. Br. 26). This is not that exceptional case: the General Assembly knew how to create exceptions to § 2-1401's statute of limitations but balanced the relevant interests in favor of maintaining the two-year limitations period. Peo. Br. 17-27. Whether a different line should have been drawn is a matter for the General Assembly, not this Court. *Id.*; *People v. Bowers*, 2021 IL App (4th) 200509, ¶¶ 36, 41-43 (applying two-year limit to subsection (b-5) petitions is neither absurd nor contrary to General Assembly's intent).

### B. Petitioner was not under a "legal disability" prior to subsection (b-5)'s effective date.

"Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the [limitations] period of 2 years." 735 ILCS 5/2-1401(c). Petitioner contends that she was under a "legal disability" from the date she was sentenced (October 29, 2001) until subsection (b-5)'s effective date (January 1, 2016), because relief under subsection (b-5) was unavailable during that 14-plus year period. Pet. Br. 26-29. Petitioner is incorrect.

The purpose of suspending a statute of limitations based on legal disability is "to protect the legal rights of those who are unable to assert their own rights, and to mitigate the difficulties of preparing and maintaining a

civil suit while the [person] is under a disability." 51 Am. Jur. 2d *Limitation of Actions* § 199 (2022). Consistent with this objective, this Court has determined that a "person . . . is under a legal disability" for purposes of subsection (c) when the person is insane or a minor during the pertinent period. *See Morgan v. People*, 16 Ill. 2d 374, 377-80 (1959) (identical language in subsection (c)'s predecessor requires showing that person "was an infant [or] *non compos mentis*"); *see also Withers v. People*, 23 Ill. 2d 131, 135-36 (1961); *Burns v. People*, 9 Ill. 2d 477, 480 (1956). The General Assembly provided a similar definition in the Statute on Statutes, defining "'A person under legal disability' . . . as a person who has some disability or incapacity that prevents her from being 'fully able to manage his or her person or estate.'" *Parks v. Kownacki*, 193 Ill. 2d 164, 178 (2000) (quoting 5 ILCS 70/1.06 (1998)); *see also* 5 ILCS 70/1.06 (2016). The legal dictionary similarly focuses on the person's condition and its effect on their ability to manage their affairs. *See Black's Law Dictionary* 579 (11th ed. 2019) (defining "legal disability" as "[a] court-determined lack of capability to act for oneself in managing or administering financial affairs, usu. because the person is a minor or has a mental impairment"); *id.* (defining "disability" as "[a]n objectively measurable condition of impairment, physical or mental, esp. one that prevents a person from engaging in meaningful work").

Accordingly, under this established definition, "legal disability" refers to a person's ability to assert her own rights, not to whether the right itself

exists, and petitioner is therefore incorrect that the unavailability of relief under subsection (b-5) constitutes a "legal disability." *See People v. Abusharif*, 2021 IL App (2d) 191031, ¶¶ 12-18 (rejecting same contention); *People v. Donoho*, 2021 IL App (5th) 190086-U, ¶¶ 18-20 (same). Nothing in the record would support a finding, and petitioner has never alleged, that she was a minor, insane, or otherwise incapable of managing her own affairs during the relevant time, so she cannot exclude any time from the two-year limitations period based on "legal disability." *See Abusharif*, 2021 IL App (2d) 191031, ¶ 12; *Donoho*, 2021 IL App (5th) 190086-U, ¶ 19.

*In re Marriage of Vanek*, 247 Ill. App. 3d 377 (1st Dist. 1993), the single case that petitioner cites to support this argument, *see* Pet. Br. 26-27, does not warrant a different result, as the appellate court has recognized, *see Abusharif*, 2021 IL App (2d) 191031, ¶ 17; *Donoho*, 2021 IL App (5th) 190086-U, ¶ 20. *Vanek* found a petition seeking relief from a judgment of marriage dissolution to be untimely. 247 Ill. App. 3d at 378-82. At the time of the challenged judgment, the United States Supreme Court had barred division of military pensions in marriage dissolution proceedings. *Id.* at 378. In response, Congress enacted a statute that allowed States to divide such pensions, which prompted the General Assembly to pass legislation that provided an avenue for parties to reopen certain marriage judgments. *Id.* at 378-79. The Illinois legislation revived stale claims and "in effect extended the normal two-year statute of limitations governing modification of

judgments," but only until a specified date. *Id.* The petitioner in *Vanek* failed to comply with that deadline. *Id.* at 379-80.

The appellate court commented that it agreed with petitioner that "she was under the legal disability of [the Supreme Court] decision, which prevented States from dividing military pensions," during the less than two-year period following entry of petitioner's marriage dissolution judgment and the federal statute's effective date. *Id.* at 380. But this part of the decision "constitutes *dicta*," *Donoho*, 2021 IL App (5th) 190098-U, ¶ 20, because the appellate court recognized that the General Assembly had independently extended the statute of limitations, and the petitioner failed to comply with its established extended deadline, so whether a "legal disability" existed at an earlier date was irrelevant to the outcome, *see Vanek*, 247 Ill. App. at 378-81. Moreover, as discussed above, *Vanek*'s construction of "legal disability" is incorrect because it is contrary to the term's established meaning and purpose.

*Vanek* is distinguishable, in any event. There, applying the incorrect interpretation of "legal disability" was consistent with the General Assembly's clearly stated intent to revive stale claims and extend the limitations period. *Id.* But here, the General Assembly plainly stated its intent that the two-year limitations period apply to subsection (b-5) petitions, and that it begin upon entry of the challenged sentencing order. *See* Peo. Br. 17-23. Construing "legal disability" as petitioner proposes would not only be

contrary to its long-established meaning, but would also "read into [§ 2-1401] an exception to the limitations period that the legislature did not express," *Donoho*, 2021 IL App (5th) 190086-U, ¶ 19, and contravene the General Assembly's decision to limit the class of persons entitled to seek relief under subsection (b-5), *see* Peo. Br. 17-23; *Abusharif*, 2021 IL App (2d) 191031, ¶¶ 13-16.[3]

### C. Equitable considerations provide no basis for petitioner to avoid the statute of limitations.

This Court should also reject petitioner's request to *add* an exception or tolling provision to § 2-1401(c) that the General Assembly declined to provide. The People do not argue, as petitioner asserts, that "equity plays no role in assessing timeliness." Pet. Br. 35. Rather, in § 2-1401(c), the General Assembly codified in part the doctrines of equitable tolling and equitable estoppel that have been applied to other statutes of limitation, by excluding

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[3] Because petitioner cannot show a legal disability, she is not entitled to a January 1, 2016 start date, and the Court need not consider whether her petition was timely under that alternative scenario. But, as petitioner recognizes, the circuit court clerk received her petition on January 2, 2018, so the petition would be late unless the mailbox rule applies. Pet. Br. 27-28. The mailbox rule does not apply to any § 2-1401 petition, for the reasons stated in *Wilkins v. Dellenback*, 149 Ill. App. 3d 549, 554 (2d Dist. 1986), which this Court cited with approval in *Gruszeczka v. Ill. Workers' Comp. Comm'n*, 2013 IL 114212, ¶¶ 19-23. However, should the Court find that petitioner is entitled to a later start date of January 1, 2016, then the People decline to advance the argument that her petition is untimely under the mailbox rule because they did not press that argument below, and the Court need not address petitioner's contention that, despite this Court's approval of *Wilkins*'s rationale, the mailbox rule applies to § 2-1401 petitions filed by incarcerated litigants, *see* Pet. Br. 28-29.

time during which the petitioner was under legal disability or duress, or the ground for relief was fraudulently concealed. *See DeLuna v. Burciaga*, 223 Ill. 2d 49, 83-84 (2006) (fraudulent concealment analysis "addresse[d] and subsume[d]" equitable estoppel considerations); *Doe v. Hastert*, 2019 IL App (2d) 180250, ¶ 48 (equitable tolling may apply where defendant actively misled plaintiff, plaintiff mistakenly asserted right in wrong forum, or plaintiff was prevented from asserting right due to an extraordinary barrier, including legal disability). The General Assembly decided which equitable considerations to include in § 2-1401(c) and, as demonstrated by this Court's longstanding precedent that § 2-1401's limitations period must be adhered to unless the petitioner establishes a statutory ground for tolling, *see* Peo. Br. 17-23, it would be inconsistent with the General Assembly's intent to apply an equitable exception that it declined to include, *see, e.g.*, *United States v. Beggerly*, 524 U.S. 38, 48-49 (1998) (refusing to apply equitable tolling where statute "already effectively allowed for [it]" because "[e]quitable tolling is not permissible where it is inconsistent with the text of the relevant statute").

Moreover, unlike these established doctrines, petitioner's request for equitable relief rests not on any extraordinary, fact-specific circumstance that prevented her from asserting her right, but on the inevitable consequences of legislative line-drawing. She contends that her subsection (b-5) claim is strong, so it is unfair not to consider her petition. Pet. Br. 29-30. But "the merits of a claim are irrelevant when the claim is not filed within the statute

of limitations," *W.L. Miller Co. v. Zehnder*, 315 Ill. App. 3d 799, 806 (4th Dist. 2000), because "by its very nature, a statute of limitations works to defeat all claims regardless of whether they are meritorious," *Boclair*, 202 Ill. 2d at 117 (Freeman, J., specially concurring).

Indeed, the type of "injustice" that petitioner cites, Pet. Br. 29-33, is inherent in any statutory change that draws "reasonable distinctions between rights as of an earlier time and rights as they may be determined at a later time," *People v. Richardson*, 2015 IL 118255, ¶ 10; *see also* Peo. Br. 23-29. Here, the General Assembly provided an avenue for some individuals to vacate their sentences and obtain resentencing and barred relief for other individuals with equally meritorious claims. Peo. Br. 23-29. Petitioner is no worse off than she was before subsection (b-5) was enacted, and the fact that she may not avail herself of the amended provision is not an "injustice" that justifies overriding the General Assembly's deliberate value judgment. *See id.*; *Richardson*, 2015 IL 118255, ¶¶ 9-11.

Finally, petitioner's citation to cases that have relied on equitable considerations in contexts other than § 2-1401(c), Pet. Br. 33-34, is misplaced. To begin, *People v. Lawton*, 212 Ill. 2d 285, 296-301 (2004), is inapposite because it created no equitable exception to any § 2-1401 provision. Rather, it held that § 2-1401 provides the vehicle for a person committed under the Sexually Dangerous Persons Act (SDP Act) to raise an ineffective assistance of counsel claim because the Court has an "obligation to honor and protect

federal constitutional rights, . . . even where the legislature has not delineated a specific mechanism for doing so," the SDP Act is civil in nature, and § 2-1401 has been used to correct legal errors. *Id.*

*Mrugala v. Fairfield Ford, Inc.*, 325 Ill. App. 3d 484, 488 (1st Dist. 2001), *see* Pet. Br. 33-34, also does not help petitioner. *Mrugala* noted that the appellate court has recognized an equitable exception to § 2-1401(b)'s requirement that the plaintiff serve the petition on the defendant personally or by publication: "Service of a section 2-1401 petition on a party's attorney of record in the original proceeding and not the party itself is sufficient when the original attorney is in court representing his or her client in a matter ancillary to the original judgment." 325 Ill. App. 3d at 488. But, as the decision recognizing it explained, this narrow exception is consistent with, and effectuates, the General Assembly's purpose in subsection (b) "to notify a party of pending litigation so as to secure his appearance" without elevating form over substance. *Public Taxi Serv., Inc. v. Ayrton*, 15 Ill. App. 3d 706, 712-13 (1st Dist. 1973) (explaining that to insist on a method of service over actual notice "would be paying obeisance to a ritualistic gesture rather than recognizing a factual accomplishment"). In contrast, recognizing petitioner's proposed exception to § 2-1401(c)'s statute of limitations would contravene the General Assembly's plainly stated intent.

Petitioner's remaining cases, *see* Pet. Br. 34 (citing *Warren Cnty. Soil & Water Conserv. Dist. v. Walters*, 2015 IL 117783, and *Saeed v. Bank of*

*Ravenswood*, 101 Ill. App. 3d 20, 26 (1st Dist. 1981), *called into question by People v. Howard*, 363 Ill. App. 3d 741 (1st Dist. 2006)), are inapposite because they invoke the established principle that a court may consider equity when assessing whether a petitioner has satisfied § 2-1401's diligence requirements. *See* Peo. Br. 27-28 (discussing *Warren Cnty.*); *Saeed*, 101 Ill. App. 3d at 26-27 (relying on cases that "slightly relaxed the 'due diligence' requirement in order to achieve a just result" to allow plaintiff "his day in court"). They do not hold, as petitioner would have it, that a court may read into § 2-1401 exceptions that the General Assembly, in its considered judgment, declined to include. Accordingly, petitioner's § 2-1401 petition was incurably untimely, and the trial court's premature dismissal of her petition, without allowing her to assert meritless arguments claiming otherwise, was harmless.

## II. Petitioner's § 2-1401 Petition Is Meritless.

### A. Petitioner's subsection (b-5) claim fails as a matter of law.

To obtain relief from a sentencing order under subsection (b-5), a petitioner must show that her new evidence of domestic violence is "of such a conclusive character that it would likely change the sentence imposed by the original trial court." 735 ILCS 5/2-1401(b-5)(5). Petitioner alleged that she had satisfied this element and asked the trial court to "[r]educe her current [s]entence" of 40 years in prison. C558. But her petition was "meritless" because (1) "she waived any challenge to the length of her sentence, including

claims based on subsequent changes in the law, when she knowingly and voluntarily" asked the trial court to impose the 40-year term pursuant to her "fully negotiated guilty plea," and (2) "[h]er valid plea also precludes a finding that evidence of domestic violence 'would likely' change her sentence." Peo. Br. 29 (quoting 735 ILCS 5/2-1401(b-5)(5)).[4] Thus, even putting its lack of timeliness to one side, the petition failed as a matter of law, and its premature dismissal was harmless. *Id.* at 29-35.

Contrary to petitioner's suggestion, Pet. Br. 40-42, the People do not argue that subsection (b-5) expressly excludes guilty plea defendants from its purview or that its plain language bars sentencing relief for *all* guilty plea defendants. When a defendant enters an open plea, there is "absolutely no agreement . . . between the parties as to the defendant's sentence," so "no contract principles [a]re violated" if the defendant obtains a reduced sentence without vacating the underlying conviction. *People v. Johnson*, 2019 IL 122956, ¶ 30. But petitioner entered a *negotiated* guilty plea, pursuant to

[4] Given this quoted language from the People's brief, petitioner is mistaken that the People have not argued, or do not dispute, that she can satisfy subsection (b-5)'s requirements. *See* Pet. Br. 12, 16-17, 44. Moreover, petitioner disregards that this case is on appeal from the trial court's order granting the People's motion to dismiss, which assumes the truth of the petition's factual allegations. *See Ostendorf v. Int'l Harvester Co.*, 89 Ill. 2d 273, 281-82 (1982). Here, the People assume that the petition alleged sufficient facts that, if *proven* "by a preponderance of the evidence" would satisfy the first four elements of subsection (b-5), 735 ILCS 5/2-1401(b-5)(1)–(4); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 223 (1986) (Section 2-1401 petitioner must prove factual allegations at evidentiary hearing), but argue that those allegations are legally insufficient to satisfy the last element, 735 ILCS 5/1401(b-5)(5).

which "the guilty plea and the sentence [went] hand in hand as material elements of the plea bargain," and petitioner waived any right to challenge the sentence, *id.* ¶¶ 26-28 (cleaned up), whether the right existed at the time she pleaded guilty or arose from "'future favorable legal developments,'" *People v. Jones*, 2021 IL 126432, ¶ 21 (quoting *Dingle v. Stevenson*, 840 F.3d 171, 175 (4th Cir. 2016)); *see also* Peo. Br. 31-33. Therefore, the waiver rule bars relief to defendants, like petitioner, who entered negotiated guilty pleas.

Petitioner's contrary contentions ignore the legal effect of her negotiated plea. Subsection (b-5) allows vacatur of the original sentence, not the conviction itself. Thus, subsection (b-5) does not allow petitioner to obtain relief from her plea, which is the "conviction in and of itself." *People v. Reed*, 2020 IL 124940, ¶ 27. Where a plea has been negotiated, a defendant may not unilaterally seek to amend her sentence without also challenging the underlying conviction. *See* Peo. Br. 31-33.

*Reed* does not warrant a different conclusion, as petitioner argues. Pet. Br. 41. *Reed* reiterated that the Illinois Constitution's due process clause precludes the conviction of a person who is actually innocent, 2020 IL 124940, ¶ 29, and held that "defendants who plead guilty may assert an actual innocence claim under the [Post-Conviction Hearing] Act," *id.* ¶ 41. A plea waiver does not prevent the defendant from asserting an actual innocence claim, *id.* ¶ 37, because "the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt," *id.* ¶ 33, and "[w]hen met

with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a legal fiction," *id.* ¶ 35. However, due to the marked differences in the records produced by a guilty plea versus a trial, *id.* ¶¶ 45-47, a guilty plea defendant must satisfy "a more stringent standard" than a defendant who went to trial, *id.* ¶ 48, *i.e.*, the guilty plea defendant must "provide new, material, noncumulative evidence that clearly and convincingly demonstrates that a trial would probably result in acquittal," *id.* ¶ 49.

*Reed* is plainly inapposite. As discussed in Part I.A, *supra*, subsection (b-5) does not concern actual innocence or any other constitutional claims. It does not provide for relief from a conviction, or even suggest that domestic violence could provide a basis for invalidating a conviction. To the contrary, subsection (b-5) provides for relief from a sentence, and, unlike factual innocence, *see Reed*, 2021 124940, ¶ 34 ("our rules allow the court to accept a plea of guilty even where defendant asserts his innocence"), the agreed-upon sentence is a "material element[] of the [negotiated] plea bargain," *Johnson*, 2019 IL 122956, ¶ 27, that neither party may unilaterally modify or renege on, *People v. Evans*, 174 Ill. 2d 320, 327 (1996). Therefore, petitioner waived her subsection (b-5) claim when she entered into her negotiated plea. *See* Peo. Br. 29-33.

Finally, as the People's opening brief established, *id.* at 33-35, petitioner's valid guilty plea precludes a finding that evidence of domestic

violence "would likely change the sentence imposed by the original trial court," as required under 735 ILSC 5/2-1401(b-5)(5). Petitioner's response that "[i]n other contexts, courts ably reassess evidence offered at a guilty plea in light of newly presented evidence," Pet. Br. 43 (citing *Reed*, 2021 IL 124940, ¶¶ 52-53, and *People v. Hatter*, 2021 IL 125981), disregards that it is the negotiated nature of her plea that makes it nearly impossible to determine the probable effect that evidence of domestic violence would have had on each party's calculus *and* the court's ultimate sentence, Peo. Br. 33. Indeed, neither *Reed* nor *Hatter* requires that a court speculate as to how the plea bargaining process would have unfolded had certain evidence been known to both parties. *Reed* assessed only the "'factual correctness' of the conviction" itself by evaluating the new evidence against the defendant's admission of guilt and stipulation to the factual basis, and determining whether it clearly and convincingly demonstrated that a trial would probably result in acquittal. 2021 IL 124940, ¶¶ 46, 49. Similar to the analysis under *Reed*, the inquiry in *Hatter* is also comparative: to determine the likelihood that a defendant would have insisted on going to trial had counsel not erred during the plea process, a court evaluates any facts that support a claim of innocence or a plausible defense to the charged offenses, and then assesses the defendant's probability of success at trial in light of these facts. *Hatter*, 2021 IL 125981, ¶¶ 26-40.

But here, even assuming that evidence of domestic violence would likely have led the trial court to reject the negotiated plea agreement due to the length of the sentence (and despite petitioner's request that she be sentenced to the agreed-upon term), whether such evidence "would likely" result in a sentence of less than 40 years is purely speculative. The prosecution had no obligation to offer a better deal and might have preferred to go to trial on all charges; indeed, had petitioner gone to trial and been convicted of all charges, she would have been subject to a potential sentence of up to natural life in prison, *see* C10; R25-26, 33-34; 720 ILCS 5/9-1(b)(6) (2001); 730 ILCS 5/5-8-1(a)(1)(b) (2001); *e.g.*, *People v. Bew*, 228 Ill. 2d 122, 136-37 (2008) (collecting cases holding that "'mere conjecture or speculation as to outcome'" is insufficient to establish reasonable probability of different result, and dismissing as speculative argument that "State would have been forced to proffer a better plea, which defendant would have accepted" under alternative course of events); *United States v. Juliano*, 12 F.4th 937, 941-42 (9th Cir. 2021) (refusing to engage in "speculation" about whether government would have offered same plea deal under post-sentencing legislative changes); *Osley v. United States*, 751 F.3d 1214, 1223-25 (11th Cir. 2014) ("[Defendant]'s declaration that his plea deal would have resulted in a fifteen-year sentence is wholly speculative since it is unclear what plea terms the prosecution would have offered if it had known about the mandatory minimum."). Accordingly, even assuming that petitioner could satisfy the

remaining elements, her negotiated guilty plea precludes, as a matter of law, any finding that evidence of domestic violence "would likely change [her original] sentence." 735 ILCS 5/2-1401(b-5)(5).

**B. Petitioner's forfeiture arguments are meritless.**

"It is a fundamental principle . . . that when an appeal is taken from a judgment of a lower court, '[t]he question before [the] reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached.'" *People v. Johnson*, 208 Ill. 2d 118, 128 (2003) (citations omitted). Thus, this Court "requires parties to preserve issues or claims for appeal; [it] do[es] not require them to limit their arguments here to the same arguments that were made below." *Brunton v. Kruger*, 2015 IL 117663, ¶ 76. Similarly, when the appellate court reverses the trial court's judgment "and the appellee in the appellate court then brings the case to this [C]ourt on appeal, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if those issues were not raised in the appellate court." *People v. Brown*, 2020 IL 125203, ¶ 29 (citing *People v. Artis*, 232 Ill. 2d 156, 164 (2009)); *accord Bell v. Hutsell*, 2011 IL 110724, ¶¶ 20-21. And regardless of any forfeiture, this Court "may affirm the circuit court's judgment on any basis contained in the record." *People v. Horrell*, 235 Ill. 2d 235, 241 (2009).

The issue before the Court is whether the trial court's judgment dismissing petitioner's § 2-1401 petition should be affirmed because its error

in prematurely dismissing the petition was harmless. The People's opening brief argued two alternative grounds on which the Court may resolve this issue and affirm the trial court's judgment: (1) the petition was untimely, and (2) it failed as a matter of law due to petitioner's negotiated guilty plea. Peo. Br. 16. The People's motion in the trial court alleged the same grounds for dismissal, *see, e.g.*, C591-92 ("the petition is untimely"); C592 ("[Petitioner] has waived any challenge to her sentence by entering a fully negotiated plea of guilty."), and the trial court dismissed the petition on those grounds, C596. Thus, contrary to petitioner's contention, Pet. Br. 38-39, the People have properly argued in this Court that both grounds support finding the trial court's error harmless and affirming its judgment, *see, e.g.*, *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶ 42 (where circuit court dismissed entire complaint, and appellate court reversed dismissal of certain claims, defendants properly raised any arguments supported by record to sustain circuit court's judgment).

Similarly, the People's failure to include the alternative basis for affirming the trial court's judgment in their petition for leave to appeal (PLA), does not preclude this Court's review, as petitioner asserts. Pet. Br. 39-40. "[T]he failure to raise an issue in a [PLA] is not a jurisdictional bar to this [C]ourt's ability to review an issue," and this Court may review questions that are "'inextricably intertwined' with other matters properly before the [C]ourt." *Brown*, 2020 IL 125203, ¶ 31.

Here, whether the trial court's error was harmless because petitioner's § 2-1401 petition is legally insufficient due to her guilty plea, is inextricably intertwined with the "determination of whether the error that occurred requires reversal." *In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008) (finding it "entirely appropriate to consider" otherwise forfeited harmless error argument because that matter was "inextricably intertwined with the determination of whether the error that occurred require[d] reversal"); *accord People v. Becker*, 239 Ill. 2d 215, 239-40 (2010). In any event, the trial court here found that petitioner waived her claim when she entered a negotiated guilty plea, so the Court should consider this alternative legal basis for affirmance, even if it declines to find the error harmless based on to the petition's untimeliness. *See Bell*, 2011 IL 110724, ¶¶ 20-21 (refusing to enforce forfeiture where circuit court had addressed the forfeited question).

## CONCLUSION

This Court should reverse the appellate court's judgment.

September 21, 2022

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in 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 5,932 words.

/s/ Gopi Kashyap
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## 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 September 21, 2022, the **Reply Brief of Respondent-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following:

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