

2026 IL App (2d) 240697-U
No. 2-24-0697
Order filed September 24, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,
v. JATNAEL R. MALAGON-GUADARRAMA, Defendant-Appellant.

Appeal from the Circuit Court of Lake County.
Honorable Patricia S. Fix, Judge, Presiding.
No. 16-CF-2290

JUSTICE MULLEN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant waived claim that trial court's admonishments did not comply with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) and he failed to establish that the purported omission amounted to plain error or that counsel was ineffective for failing to preserve this error; trial counsel was not ineffective for failing to admonish defendant regarding various consequences of guilty plea arising from defendant's conviction as a sex offender and the potential effects that could have on mandatory supervised release; record belied defendant's claim that he believed he would have to proceed to trial without the assistance of counsel if he pleaded not guilty.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Jatnael R. Malagon-Guadarrama, pleaded guilty to four counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2014)) and was sentenced to 28 years'

imprisonment. As part of the partially negotiated plea arrangement, the State dismissed 16 additional counts of criminal sexual assault. Defendant now appeals, raising three overarching issues. First, he argues that his motion to withdraw his plea of guilty should have been granted by the trial court where he was not properly admonished regarding fines, fees, and costs in accordance with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). Second, he asserts that counsel's representation during the plea process was ineffective in that he was not advised as to the lifetime obligation to register as a sex offender and the conditions that this imposed upon him as well as aspects of mandatory supervised release (MSR) that could result in lifetime imprisonment. Third, he contends his plea was involuntary because he erroneously believed that he would be forced to represent himself at trial as he could not afford to continue to pay private counsel.

¶ 4

II. BACKGROUND

¶ 5

A. Initial Trial Court Proceedings

¶ 6 Defendant was indicted on 20 counts of criminal sexual assault on September 21, 2016, alleging that he engaged in 10 separate acts of sexual penetration with G.N., who was at least 13 but under 18 years old. The first 10 counts alleged that defendant was in a position of trust and supervision regarding G.N. The second 10 counts, which were based on the same conduct, alleged that he and the victim were family members.

¶ 7 Defendant was arraigned on September 29, 2016, while he was represented by a public defender. The trial judge admonished defendant, *inter alia*, as follows:

“THE COURT: You are charged, by way of indictment, with 20 counts of criminal sexual abuse—excuse me—assault. Those are all non-probationable class 1 felonies, which carry with them the possibility of 4 to 15 years in the Illinois Department of Corrections, up to 30 years if you were eligible for an extended sentence, followed by a period of

mandatory supervised release or parole for a minimum of two years. That could be extended, in the discretion of the Department of Corrections, to the remainder of your life.¹

***Additionally, you would be required to register as a sex offender for the remainder of your life.”

¶ 8 Subsequently, defendant retained private counsel, Carlos Davalos. Davalos filed a motion to suppress a statement made by defendant to the police. In the motion, defendant argued that the statement was involuntary, because, among other reasons, it occurred after he suffered injuries in a motor vehicle accident during his drive to the police station and was thus involuntary.

¶ 9 On the day the motion was scheduled to be heard (February 28, 2017), defendant waived his right to a jury trial and entered an open plea of guilty to four counts of criminal sexual assault. In exchange, the State dismissed the 16 remaining counts (as well as an unrelated misdemeanor). No agreement was made as to a particular sentence (*i.e.*, the plea was not fully negotiated). Prior to the trial court accepting defendant’s plea, the State summarized the plea agreement to the trial court, stating that defendant’s sentence “would be 4 to 15 years served consecutively and served at 85 percent.” Further, “defendant would also serve mandatory supervised release as required by

¹We note that in the statement of facts of defendant’s brief, appellate defense counsel paraphrased the trial court’s admonishments as follows: “At the arraignment, the trial court advised [defendant] that his potential sentence for each count would be four to 15 years in prison, include a mandatory supervised release term *** of at least two years and the requirement of lifetime registration as a sex offender.” Defense counsel failed to acknowledge the trial court’s statement that MSR “could be extended, in the discretion of the Department of Corrections, to the remainder of [defendant’s] life.” The significance of this portion of the admonishment to the second issue raised by defendant is clear; hence, this omission is, at best, disingenuous.

statute and lifetime sex-offender registration.” Defendant inquired whether the sentence would be served at 85 percent, and the State replied affirmatively. The trial court then asked defendant whether he had any additional questions, and defendant stated that he did not. Defendant also stated that this represented his understanding of the plea agreement.

¶ 10 The trial court then asked defendant whether he wished to plead guilty. Defendant replied, “I don’t have another option.” The trial court told defendant that he could choose to go to trial. The trial court again explained the agreement. It added, “Criminal sexual assault convictions carry with them a **two-year** mandatory supervised release—formerly known as ‘parole’—sentence.” (Emphasis added.) Defendant then said that he wished to plead guilty. After re-explaining the sentence, the trial court told defendant, “It’s fine that you’ve decided to do this today, but I want you to understand that you do not have to do this. You have a right to continue to plead not guilty and have a trial.” On further questioning by the trial court, defendant stated that he had not discussed his videotaped statement (which would have been the subject of the motion to suppress) with his attorney. Defense counsel represented that they had discussed the issue. Defendant then asked whether he could have “a week or two” to discuss the videotape. The State indicated that its offer would “not remain open after the hearing.”

¶ 11 Defendant then expressed that he has four children and “[t]hey need to pay rent and everything.” He stated, “I know I have [a] possibility to go to trial—because I am not what they’re saying. That is why it’s difficult for me to accept everything that they’re offering right now.” Defendant indicated he still wished to plead guilty and that he had no further questions. Defendant stated that no one had forced or threatened him to plead guilty. When asked whether he had committed an act of sexual penetration with the victim, defendant said, “I admit I had relationship—sexual relationship with her.” The trial court then accepted defendant’s plea.

¶ 12 A sentencing hearing was held on April 25, 2017. The State presented the testimony of Detective Colin Gaffney, who stated he interviewed defendant after the police initially responded to a complaint that G.N. was impregnated by defendant. The interview lasted “approximately 18 minutes,” during which Defendant admitted that he knew G.N. was pregnant, that they had engaged in sexual intercourse in excess of fifty times, and that he believed he was the father of the child. The trial court sentenced defendant to 7 years’ imprisonment on each count, to be served consecutively, for a total sentence of 28 years’ imprisonment. The trial court also imposed a term of MSR of three years to life. The trial court also ruled: “All mandatory court costs, fines, and assessments are imposed.” The common law record which contains a document titled “Exhibit A, Assessment of Fines, Fees, Costs, and Restitution,” was signed by defendant and dated the day of sentencing. Exhibit A states that “this court has assessed ... the following fine(s), fee(s), costs and/or restitution,” and indicates a total of \$4,126. This \$4,126 figure is consistent with a judgment order entered in parallel on the same date as Exhibit A.

¶ 13 Defendant subsequently retained a new private attorney, Robert P. Ritacca. He filed a motion to reconsider sentence on April 28, 2017. On August 22, 2017, Ritacca filed a motion to vacate defendant’s plea and sentence. The motion alleged that defendant received ineffective assistance regarding his plea in that, *inter alia*, his attorney: told him filing a posttrial motion would result in an increased sentence; failed to investigate any defenses; did not inform defendant of the charges; and did not show defendant the video evidence. The motion also alleged that defendant’s plea was not voluntary because the trial court did not advise defendant properly regarding the term of MSR he faced and that the plea lacked a factual basis.

¶ 14 A hearing was held on defendant’s motion on October 27, 2017. Following argument by the parties, the trial court acknowledged that it “did say the wrong MSR.” Nevertheless, the trial

court denied the motion. As for the trial court's admonishment regarding MSR, the trial court found that defendant was, in fact, informed that his prison term would be followed by a period of MSR. Relying, *inter alia*, on *People v. Boykins*, 2017 IL 121365, it found that it had adequately admonished defendant. It found that to the extent the admonishment was inaccurate, defendant suffered no prejudice and it did not render his plea involuntary. Defendant immediately appealed (defendant's first appeal). See *People v. Malagon-Guadarrama*, 2020 IL App (2d) 171038-U.

¶ 15 During defendant's first appeal, he argued that his plea was not voluntary because the trial court failed to properly admonish him regarding the term of MSR he would have to serve. This court rejected that argument. See *Id.* ¶ 16. We did, however, determine that defendant's postplea counsel failed to strictly comply with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) by failing to adequately support several claims that relied upon facts outside the record. *Id.* ¶ 10 ("Those [claims] were that trial counsel advised defendant that if he filed any post-trial motions his sentence would be increased, that counsel failed to investigate any defenses, that counsel failed to inform defendant of the charges, and that counsel failed to show defendant any video evidence."). We remanded for compliance with Rule 604(d). *Id.* ¶ 23.

¶ 16 B. Trial Court Proceedings Subsequent to First Appeal

¶ 17 On remand, defendant, this time represented by a public defender, filed a new motion to withdraw his plea. This motion argued that defendant's plea was not knowing or voluntary because his plea attorney was ineffective in that he provided defendant with inaccurate information regarding the terms of the plea; defendant "was operating under a misapprehension of fact regarding the terms of his plea agreement"; and defendant's attorney coerced him into pleading guilty. The motion further asserted that, but for these errors, defendant would have insisted on going to trial and that defendant had a valid defense he could have raised.

¶ 18 A hearing was held on defendant's new motion on November 13, 2024. By affidavit, defendant averred that he had no experience or knowledge of the criminal justice system; did not speak English; had cognitive problems; did not know his constitutional rights; and did not understand many concepts pertaining to the criminal justice process. On the day he entered his plea, his attorney presented to him offers from the State that would have required him to accept 20 years' imprisonment and, subsequently, 16 years' imprisonment. Defendant rejected the offers and told his attorney, Davalos, that he wanted to go to trial. Davalos told defendant that he had not been paid enough to try the case. Defendant could not afford to pay Davalos anything more, and Davalos did not tell defendant he could have an attorney appointed to represent him. Thus, defendant averred, he believed that if he went to trial, he would have to represent himself. Davalos told defendant he would be sentenced to 16 years' imprisonment. Defendant swore, "I decided to plead guilty because I believed I would be sentenced to 16 years in prison." He did not inform defendant of various terms of the agreement, including that defendant would have to serve 85% of the sentence; that he would have to register as a sex offender; that costs, fines, and assessments would be imposed (and had defendant known that he would not have plead guilty); and that defendant would serve a period of "parole." Moreover, defendant believed his plea would encompass related charges in Cook County. At the plea hearing, defendant had trouble understanding what was transpiring, as the interpreter was not able to keep up with the proceedings.

¶ 19 The State presented an affidavit from Davalos. Contrary to defendant's affidavit, Davalos averred that defendant "was advised extensively as to the overwhelming evidence that the State had gathered in support of the assertions of the complaining witness." He told defendant that, pursuant to the plea agreement, the minimum sentence possible was 16 years' imprisonment, but

made no guarantees that this is the sentence defendant would receive. In a supplemental affidavit, Davalos stated that he did not recall whether he discussed “lifetime sex offender registration and its requirements” with defendant prior to defendant accepting the plea.

¶ 20 The trial court denied defendant’s new motion to withdraw his plea. The trial court found that defendant’s claim that he believed he would not be appointed a public defender if he decided to proceed to trial was “belied by the record on the case, where the defendant was represented previously by public defenders after indigency findings.” Regarding defendant’s claim that his attorney told him he would be sentenced to 16 years’ imprisonment (the statutory minimum), the trial court noted the extensive admonishments defendant received on the record about the possible sentence, which addressed the sentencing range of 4 to 15 years imprisonment, that the sentences would be served consecutively, and that defendant would have to serve at least 85% of them. The court read verbatim from the transcript of the plea hearing, recounting: “The Court then followed up with: ‘And there’s no guarantee what the number is going to be of your sentence. Do you understand that?’ And the defendant replied: ‘Yes.’” Similarly, the trial court found that regardless of whether Davalos addressed sex offender registration with defendant, the subject of lifetime sex offender registration was addressed in open court. As for defendant’s claim that he did not understand the proceedings, the trial court noted that defendant signed various *pro se* motions that were written in English and that defendant did, in fact, ask questions during the proceeding, which indicated that he was able to understand what was transpiring. The court found that defendant’s claim that he did not understand the sentencing range was also belied by the record. It stated that Davalos’s representation was not deficient, and furthermore that defendant had not established he was prejudiced by his attorney’s advice, assuming it was deficient. Citing *People v. Hughes*, 2012 IL 112817, ¶ 64, the trial court observed that “[a] bare allegation that the defendant would have

pleaded not guilty and insisted on a trial if counsel had not been deficient is not enough to establish prejudice.” It noted defendant’s potential sentencing exposure if he did not accept the deal and further found that defendant neither asserted a claim of actual innocence nor did he articulate a plausible defense. This second appeal followed.

¶ 21

III. ANALYSIS

¶ 22 On appeal, defendant raises three overarching issues. First, he asserts that the trial court’s decision to deny his motion to withdraw his plea of guilty constituted either plain error or the ineffective assistance of counsel where its admonishments did not comply with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). Defendant contends that the trial court failed to apprise him that fines, fees, and costs would be imposed as a result of his plea. Second, he contends that he received the ineffective assistance of counsel during the plea process because he was not told of his lifetime obligation to register as a sex offender and the conditions it imposed upon him or the terms of MSR that could lead to lifetime imprisonment. Third, he argues his plea was involuntary because—as he could not afford to continue to pay private counsel—he thought he would have to represent himself at trial. We will address each contention in turn.

¶ 23

A. Imperfect Admonishment Regarding Fines, Costs, and Fees

¶ 24

1. Waiver

¶ 25 Defendant argues that because the trial court’s admonitions at the time of his plea did not explain the possibility of fines, fees, and costs, his plea of guilty was not knowing and voluntary. Citing *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969), defendant argues that a court violates due process by accepting a guilty plea without an affirmative showing the guilty plea was made voluntarily and intelligently. In this case, regrettably, neither the judge at arraignment nor the judge

who accepted defendant's plea of guilty advised defendant that he faced the possibility of fines, fees, and costs.

¶ 26 But when defendant filed his new motion for leave to withdraw his plea of guilty, although he claimed that plea counsel was deficient by failing to apprise him of the possible financial penalties, he failed to raise the issue of the trial court's omission regarding fines, fees, and costs. Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) provides: "Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." *People v. Ratliff*, 2024 IL 129356, ¶ 26 (noting that "[t]hough forfeiture may be a limitation on the parties, and not this court, we have never stated that the same is true of waiver"), declared that "Rule 604(d) is unmistakably clear: Any issue not raised in a postplea motion is 'waived' on appeal." In so holding, *Ratliff* pointed to the rule's purpose of protecting constitutional rights, while avoiding abuses by defendants and promoting finality of judgments. *Ratliff*, 2024 IL 129356, ¶ 27.

¶ 27 However, defendant here argues that *Ratliff* should be read to insulate violations of Rule 402 from Rule 604(d)'s strict waiver rule. Defendant points to language in *Ratliff* that he contends supports a narrower reading. In *Ratliff*, the trial court failed to substantially comply with Rule 401, which concerns waivers of counsel, at the time the defendant sought to represent himself. *Ratliff*, 2024 IL 129356, ¶ 30. Months later he pleaded guilty and received proper admonishments as required under Rule 402(a). *Ratliff*, 2024 IL 129356, ¶¶ 6, 24. Noting that the defendant never argued his plea was less than knowing and voluntary, *Ratliff* stated: "Any constitutional claims that arose *before his plea*, including any claim related to his right to counsel, were waived." (Emphasis added.) *Ratliff*, 2024 IL 129356, ¶ 24.

¶ 28 But at least in this case, we see no reason to constrain the strict waiver rule of *Ratliff*. First, reading the court’s treatment of the issue as a whole does nothing to support limiting its effect to only the waiver of errors occurring before a plea hearing. *Ratliff*’s rationale rests on the “unmistakably clear” (*id.* ¶ 26) language of Rule 604(d) itself, which states sweepingly that “any issue not raised ” is “waived.” Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024). *Ratliff* exhorts “counsel and courts alike” that its rules of procedure are “not suggestions” and should be followed. *Id.* at ¶ 27. Several recent cases from the appellate court have applied *Ratliff* on these terms and found waiver where Rule 402 was allegedly violated. *Cf. People v. Toms*, 2026 IL App (5th) 250582-U, ¶ 50, *People v. Britton*, 2025 IL App (4th) 250536-U, ¶ 30, *People v. Maxwell*, 2026 IL App (1st) 242331-U, ¶ 18, and *People v. Brown*, 2025 IL App (5th) 230542-U, ¶ 31.

¶ 29 Finally, the *Ratliff* court noted that the rule “serves the systemic interest in the finality of judgments, while offering an important outlet that allows the defendant to avoid waiver of any constitutional claims by raising them in a postplea motion.” *Ratliff*, 2024 IL 129356, ¶ 23. And defendant here had access to that outlet, given that he was aware at the time of sentencing that he was sentenced to the payment of mandatory fines and costs of which he was not advised during the plea hearing. Therefore, we see no reason to limit the scope of *Ratliff*’s holding that “[a]ny issue not raised in a postplea motion is ‘waived’ on appeal.” (Emphasis added.) *Ratliff*, 2024 IL 129356, ¶ 26. We find that this claim has been waived as a result of the failure to raise it in the motion to withdraw defendant’s plea of guilty. As defendant has waived this claim, plain-error review is generally not available. *Ratliff*, 2024 IL ¶¶ 21-22; *People v. Townse*, 209 Ill. 2d 543, 548 (2004).

¶ 30

2. Forfeiture

¶ 31 Defendant attempts to avoid the bar that waiver raises by arguing that his omission should be deemed a forfeiture rather than a waiver. He asserts we should review his “underdeveloped” claim as second-prong plain error, raising two arguments. First, he attempts to distinguish *Ratliff* on the basis that *Ratliff* involved a failure to admonish the defendant in accordance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), which concerns the waiver of the right to counsel and does not necessarily impact the validity of the guilty plea. According to defendant, compliance with Rule 402 “inherently impact[s] the validity of the plea.” Defendant asserts that the *Ratliff* court “hinted that such a claim [directed against the plea] may have changed the outcome by repeatedly pointing out the [defendant’s] motion’s failure to challenge the knowing or voluntary nature of his plea.” The “hints” defendant alludes to occur in the supreme court’s discussion of whether the defendant’s plea of guilty waived the Rule 401 violations and the court’s analysis of whether a Rule 401(a) violation was cognizable as second-prong plain error. See *Ratliff*, 2024 IL 129356, ¶¶ 24, 33, 44. The question here is whether Rule 604(d) exempts the failure to include a violation of Rule 402 from its strict waiver provision. We think this unlikely because, unless a post-plea motion concerns a motion to reconsider a sentence, it will always be directed against the validity of the plea. Rule 604(d), nevertheless, deems such issues waived. See *People v. Stewart*, 123 Ill. 2d 368, 373-74 (1988).

¶ 32 Defendant also claims that his failure to explicitly include the trial court’s failure to admonish him regarding fines should be deemed forfeiture (which would allow us to consider plain error) because he raised it, albeit imperfectly, in conjunction with his claim that plea counsel was ineffective. This is unavailing. Our supreme court has explained that “an important purpose of Rule 604(d) is to ensure that any errors that may have resulted in a guilty plea and subsequent sentence are brought to the attention of the circuit court before appeal, while memories are fresh

and witnesses are available.” *People v. Gorss*, 2022 IL 126464, ¶ 15. Allowing an issue to be raised—if it can even be called that—in such an indirect manner would thwart the purpose of this rule. *Cf. People v. White*, 221 Ill. 2d 1, 12 (2006) (abrogated on other grounds by *People v. Luedemann*, 222 Ill. 2d 530, 548 (2006)) (“Defense counsel’s objection did not inform the trial court of the need for a preliminary hearing prior to proceeding to trial on the new information. Had counsel’s objection relied on the proper grounds, the trial court could have corrected the error by setting the matter for preliminary hearing or obtaining a waiver of that hearing from [the] defendant.”). In short, defendant’s attempts to avoid *Ratliff* are unpersuasive. The issue is waived, not forfeited.

¶ 33 Nevertheless, assuming, *arguendo*, that defendant’s omission constituted a forfeiture, the plain error doctrine would not save his claim. The plain error doctrine permits a reviewing court to consider an unpreserved error (1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error and (2) where a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Coats*, 2018 IL 121926, ¶ 9. Defendant argues this error is reviewable under the second prong because it affects “substantial rights.”

¶ 34 Assuming the issue of whether a violation of Rule 402 is akin to structural error were before us, *Ratliff* remains relevant. After finding waiver of the defendant’s claim regarding Rule 401, the court in *Ratliff* addressed whether the issue—assuming *arguendo* that it was merely forfeited—could be reviewed as second-prong plain error. *Ratliff*, 2024 IL 129356, ¶ 29. It held it could not, despite the trial court’s failure to substantially comply with Rule 401. *Ratliff*, 2024 IL 129356,

¶¶ 29-30. *Ratliff* found that “structural errors” or “second-prong errors” are “a very narrow group that defies harmless error analysis.” *Ratliff*, 2024 IL 129356, ¶ 37 (citing *People v. Moon*, 2022 IL 125959 ¶ 28) (“That is, if a constitutional claim can be harmless beyond a reasonable doubt, it does not affect the fundamental fairness of a defendant’s trial.”). *Ratliff* held that Rule 401 violations were not structural errors (see *id.* at ¶43), noting that the admonitions required lacked the historical pedigree found with structural errors. *Id.* at ¶ 44. Additionally, *Ratliff* observed that “[n]othing in the federal or state constitutions requires any admonitions before a defendant may waive the right to counsel,” and characterized the rule itself as a “safeguard” and “tangential to the constitutional right” to counsel, and therefore another indicium of structural error was absent. *Id.*

¶ 35 Finally, the court observed:

“The fact that substantial compliance is sufficient indicates that a Rule 401(a) violation, if pressed in a postplea or posttrial motion, would be subject to a record-intensive and prejudice-focused harmless error analysis. If such a violation rose to the level of structural error, strict compliance would be required.” *Ratliff*, 2024 IL 129356, ¶ 44.

¶ 36 Applying *Ratliff* to defendant’s claim here, we note that Rule 402 was adopted in 1970 and its objectives are to ensure compliance with the requirements of *Boykin*, 395 U.S. 238, which held that due process requires that the record affirmatively show that a guilty plea is knowing and voluntary, and to give visibility to the plea process. Ill. S. Ct. R. 402 (eff. July 1, 2012), Committee Comments (rev. May 1997). So, like the admonitions in Rule 401, the admonitions in Rule 402 lack the historical lineage that accompanies structural errors. See *Ratliff*, 2024 IL 129356, ¶ 44. Additionally, we observe that, in line with Rule 401, Rule 402 is a safeguard to ensure due process and tangential to the right itself. See *id.* ¶ 44. Finally, as is the case with Rule 401, substantial compliance, not strict compliance, with Rule 402 is sufficient. Ill. S. Ct. R. 402 (eff. July 1, 2012);

People v. Dougherty, 394 Ill. App. 3d 134, 138 (2009). This does not indicate structural error. See *Ratliff*, 2024 IL 129356, ¶ 44 (“The fact that substantial compliance is sufficient indicates” defendant must show prejudice.). Applying the guidance supplied in *Ratliff*, we hold that a violation of Rule 402 is not a structural or second-prong error, “would be subject to a record-intensive and prejudice-focused harmless error analysis,” and therefore would be reviewable only as first-prong plain error, had it not been waived. See *Ratliff*, 2024 IL 129356, ¶¶ 43-44. Therefore, we reject defendant’s argument that this error is reviewable under the second prong.

¶ 37 3. Ineffective Assistance of Counsel During Postplea Proceedings

¶ 38 Finally, defendant argues that postplea counsel’s failure to include the trial court’s erroneous admonishments in his motion to withdraw his plea amounted to the ineffective assistance of counsel. Defendant argues that the trial court’s admonitions failed to comply with Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 2012) because the trial court failed to mention the fines, costs, fees, and assessments that would be imposed as a result of his guilty plea. Therefore, postplea counsel should have included the argument in the motion to withdraw the plea.

¶ 39 “A claim of ineffective assistance requires a defendant to demonstrate both that counsel’s performance was objectively unreasonable and that such deficiency prejudiced the defendant.” *People v. Brown*, 2023 IL App (4th) 220573, ¶ 29. But even a professionally unreasonable error does “not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland v. Washington*, 466 U.S. 668, 691 (1984). Stated another way, the defendant must show “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

¶ 40 Prejudice in the guilty plea context requires that the defendant demonstrate a reasonable probability that, “ ‘but for counsel’s errors, he would not have pleaded guilty and would have

insisted on going to trial.’ ” *People v. Valdez*, 2016 IL 119860, ¶ 29 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). “A bare allegation that the defendant would have pleaded not guilty and insisted on a trial if counsel had not been deficient is not enough to establish prejudice.” *People v. Hall*, 217 Ill. 2d 324, 335 (2005). Where the purported deficiency is postplea counsel’s failure to include the issue in the motion to withdraw the plea of guilty, the defendant must show that the withdrawal and rejection of the plea deal and insistence on a trial would have been “rational under the circumstances.” See *Hughes*, 2012 IL 112817, ¶ 65 quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). A reviewing court must “consider the relevant surrounding circumstances to assess prejudice.” *People v. Brown*, 2017 IL 121681, ¶ 48. In a case such as this involving erroneous advice about the consequences of a plea, it is not required that a defendant articulate a claim of actual innocence or a plausible defense; however, those factors are relevant to whether the rejection of the plea would have been rational. Compare *Lee v. United States*, 582 U.S. 357, 366-71 (2017) (finding that, despite overwhelming evidence of guilt, defendant demonstrated a reasonable probability that he would have rejected the plea “[i]n the unusual circumstances of this case” where deportation was of “paramount importance” to him and he was misinformed by plea counsel on that issue) with *Brown*, 2017 IL 121681, ¶¶ 46-52 (concluding that, where “there was little doubt defendant would be convicted,” and where plea counsel failed to advise 85% and not 50% of sentence would be served, defendant failed to show rejecting the plea bargain would have been rational because of the sentencing benefit provided). If a defendant cannot establish prejudice, the reviewing court need not determine whether counsel’s performance was deficient. *People v. Smith*, 195 Ill. 2d 179, 188 (2000).

¶ 41 Turning to defendant’s arguments concerning prejudice, he argues that postplea counsel’s omission resulted in his forfeiture of “a meritorious issue.” He also claims the record evidences

that finances were “central to [his] concerns” and that he provided the support for the household. He maintains that he had no knowledge that he would be subject to fines as part of his sentence, and he would not have pleaded guilty had he known. But these claims sidestep the real issue of whether it would have been rational to reject the plea deal and proceed to trial.

¶ 42 Defendant was facing a maximum of 150 years in prison for criminal sexual assault. The record demonstrates that the State had a witness who would testify that defendant admitted to having sex with the victim in excess of 50 times and impregnating her. His attorney averred that he viewed the evidence against defendant as “overwhelming.” The idea that the issue of the minimum fines he received was a “concern” such that withdrawing the plea on that basis and proceeding to trial would have been rational beggars belief. And nothing in the record before us suggests that defendant could assert a claim of innocence or a plausible defense that could have been raised at trial, defendant’s suppression motion notwithstanding (we note that defendant was aware of this motion at the time he chose to accept the current plea deal). *Hall*, 217 Ill. 2d at 335–36. “Surmounting *Strickland*’s high bar is never an easy task.” *Padilla*, 559 U.S. at 371. In this case, the bar has not been cleared, and defendant has not met his burden to establish the necessary showing under *Strickland* to merit a withdrawal of his plea.

¶ 43 In his reply brief, defendant raises for the first time a request for another remand (this is the second appeal) for Rule 604(d) compliance, asserting that counsel “included a claim but failed to include the legal reasoning necessary for relief.” We will not address this issue: “It is well settled that issues raised for the first time in the appellant’s reply brief shall be deemed waived on appeal.” *People v. Brownell*, 123 Ill. App. 3d 307, 319 (1984).

¶ 44 In sum, defendant has not established that it would have been rational for him to reject a plea deal that reduced his exposure to prison time by decades to avoid a little over \$4,000 in fines, fees, and costs.

¶ 45 B. Ineffective Assistance of Counsel During the Plea

¶ 46 Defendant next argues that he received ineffective assistance of counsel regarding the entry of his guilty plea for two reasons. First, he contends that his attorney failed to explain to him that he would be required to register as a sex offender for life as well as what consequences that entailed. Second, he asserts that plea counsel failed to inform him of how the requirements of registration as a sex offender would affect his eligibility for MSR and could lead to lifetime incarceration. Of course, a plea must be voluntarily and intelligently entered. *People v. Presley*, 2012 IL App (2d) 100617, ¶ 27. “Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice ‘was within the range of competence demanded of attorneys in criminal cases.’ ” *Hill*, 474 U.S. at 56 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)).

¶ 47 Generally, the ultimate question of whether counsel rendered ineffective assistance is reviewed *de novo*. *People v. Davis* 2023 IL App (1st) 220231, ¶ 28. However, in this case, the trial court expressly found that plea counsel did not provide deficient representation and that defendant did not establish prejudice because he did not explain why it would have been rational to reject the plea. Where the “trial court has reached a determination on the merits of defendant’s ineffective assistance of counsel claim, we will reverse only if the trial court’s action was manifestly erroneous.” *Id.* “The term ‘manifest error’ has been interpreted to mean error which is clearly evident, plain, and indisputable.” *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997). We find neither of defendant’s contentions well-founded.

¶ 48 When a defendant alleges ineffective assistance during the plea process, the well-known analysis set forth in *Strickland*, 466 U.S. 668, controls. *Brown*, 2017 IL 121681, ¶ 26 (citing *Hill*, 474 U.S. at 58). Thus, a defendant seeking to withdraw a guilty plea on this basis must show that counsel’s representation “fell below an objective standard of reasonableness and that he was prejudiced by counsel’s deficient performance.” *Id.* ¶ 25 (citing *Hughes*, 2012 IL 112817, ¶ 44). In the guilty plea context, the first *Strickland* prong concerning the adequacy of counsel’s representation remains the same. *Id.* ¶ 26. A defendant must show that counsel’s performance was unreasonable in light of prevailing professional norms. *Hughes*, 2012 IL 112817, ¶ 44. An attorney’s duties to advise a client extends to consequences of a plea that are “severe, certain to occur, ‘enmeshed’ in the criminal process, and are of predictable importance to a defendant’s calculus.” *Id.* ¶ 49. Turning to the prejudice prong, “a guilty-plea defendant ‘must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.’ ” *Brown*, 2017 IL 121681, ¶ 26. (quoting *Hill*, 474 U.S. at 59). A defendant must satisfy both prongs of this analysis; thus, if the defendant fails to establish either, a court need not address the other prong of the analysis. *People v. Colon*, 225 Ill. 2d 125, 135 (2007).

¶ 49 Regarding prejudice, our supreme court has distinguished between situations where a defendant’s guilty plea was entered in reliance upon counsel’s erroneous advice concerning trial strategy and a plea entered based on counsel’s incorrect advice as to the consequences of the plea. See *Brown*, 2017 IL 121681, ¶ 34 (discussing *Lee v. United States*, 582 U.S. 357, 364-67 (2017)). In the former case, “when reviewing an ineffective assistance claim related to a defendant’s defense strategy or chance of acquittal, *i.e.*, a defendant’s prospects at trial,” prejudice requires “a claim of innocence or a plausible defense.” *Id.* ¶ 45. However, in the latter, when the alleged

ineffectiveness relates to the consequences of pleading guilty, these considerations are not dispositive. *Id.* ¶ 46 (citing *Lee*, 582 U.S. at 364-65). In such a case, to establish that they would have insisted on going to trial, defendants must simply show that rejecting a plea deal “ ‘would have been rational under the circumstances’ ” of the case. *Valdez*, 2016 IL 119860, ¶ 29 (quoting *Padilla*, 559 U.S. at 372. The mere assertion that the defendant would not have pleaded guilty is generally insufficient to satisfy this prong. See *Hughes*, 2012 IL 112817, ¶ 66.

¶ 50 In *Lee*, the United States Supreme Court rejected a defendant’s prospects at trial as the *sine qua non* of a successful claim that a defendant would have rejected a plea agreement. It explained:

“But common sense (not to mention our precedent) recognizes that there is more to consider than simply the likelihood of success at trial. The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. [Citation.] When those consequences are, from the defendant’s perspective, similarly dire, even the smallest chance of success at trial may look attractive. For example, a defendant with no realistic defense to a charge carrying a 20-year sentence may nevertheless choose trial, if the prosecution’s plea offer is 18 years. Here [the defendant] alleges that avoiding deportation was *the* determinative factor for him; deportation after some time in prison was not meaningfully different from deportation after somewhat less time. He says he accordingly would have rejected any plea leading to deportation—even if it shaved off prison time—in favor of throwing a ‘Hail Mary’ at trial.” (Emphasis in original.) *Lee*, 582 U.S. at 367-68.

However, though not dispositive, the existence of a meritorious defense or claim of actual innocence remains relevant to the inquiry, “because defendants obviously weigh their prospects at trial in deciding whether to accept a plea.” *Id.* at 367. In other words, a court must examine the

circumstances surrounding the plea. *Brown*, 2017 IL 121681, ¶ 49. Whether a defendant has made an adequate showing will depend on the facts of the particular case. *Hughes*, 2012 IL 112817, ¶ 65. The ultimate touchstone of such a claim is whether “a decision to reject the plea would have been rational under the circumstances.” *People v. Boyd*, 2018 IL App (5th) 140566, ¶ 18. With these standards in mind, we turn to defendant’s particular arguments.

¶ 51 1. Failure to Advise Regarding Sex-Offender Registration

¶ 52 Defendant first argues that that counsel was ineffective for failing to advise him of the requirement that he register as a sex offender for the rest of his life. See 730 ILCS 150/7 (West 2016). Further, defendant asserts that counsel failed to “explain the consequence of registering as a sex offender for life.” Defendant sets forth a myriad of consequences that follow his guilty plea to the four counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2014)). Among other things, he points out that the registration requirement brings with it risks of further criminal convictions, including felonies. See 730 ILCS 150/10 (West 2024). Defendant must register at least annually or any time he stays somewhere for three days as well as any place he works or goes to school. 730 ILCS 150/3, 6 (West 2024). Registration requires defendant pay a \$100 annual fee. 730 ILCS 150/3(c)(6) (West 2024). The law enforcement agency he registers with may require him to appear personally up to four times per year. 730 ILCS 150/6 (West 2024).

¶ 53 Because defendant pleaded guilty to criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2014)), he is classified as a sexual predator (720 ILCS 150/2(E)(1) (West 2024)). Therefore, he must register for life. 730 ILCS 150/7 (West 2024). By statute, law enforcement agencies are required to disclose to a large number of people and agencies information about defendant, including his name and address. 730 ILCS 152/120 (West 2024). Moreover, because the victim in this case was under the age of 18, defendant is deemed a “child sex offender.” 720 ILCS 5/11-

9.3(d) (West 2024). As such, there are various restrictions on where defendant may live, work, or even be. See 720 ILCS 5/11-9.3 (West 2024); 720 ILCS 5/11-9.4-1 (West 2024). Defendant further points out that he must renew his driver's license annually (730 ILCS 5/5-5-3(o) (West 2024)), his ability to change his name is restricted (735 ILCS 5/21-101(b) (West 2024)), he may not serve as an election judge (10 ILCS 5/13-4(a)(2) (West 2024)), and he must vote early or by mail if his polling place is in a school (10 ILCS 5/11-4.1(d) (West 2024)). Defendant observes that "this is not an exhaustive list."

¶ 54 By affidavit, defendant averred that plea counsel "never advised [him] regarding the requirements." He adds that plea counsel filed an affidavit stating that he did not "recall or have any independent recollection as to whether or not [he] discussed any sex offender registration requirements with [defendant] prior to or at the time of his guilty plea." Defendant points out that plea counsel's memory was quite detailed when relating other aspects of his representation. Defendant acknowledges that "the trial court mentioned the lifetime sex offender registration requirement, [but] this did not inform [him] of the extent of the collateral consequences." We note that the trial court found that plea counsel's "advice was within the range of competency demanded of an attorney in a criminal case," though it did not specifically address whether plea counsel addressed lifetime registration. In any event, we will focus our analysis on the prejudice prong. As noted above, to succeed, it is incumbent upon defendant to show that he would have rejected the plea had he been properly advised by showing that such a decision would have been rational under the circumstances. *Valdez*, 2016 IL 119860, ¶ 29.

¶ 55 But here, defendant had actual knowledge of the lifetime sex offender registration requirement when he entered his plea, so we do not have to speculate regarding what his decision would have been had his attorney advised him of this requirement. Quite simply, as the record

indicates and the trial court found, the trial court advised defendant of this requirement. *Supra*. ¶ 7, see *Valdez*, 2016 IL 119860, ¶ 31 (“It is well established that admonishments by the circuit court can cure prejudice to a defendant resulting from counsel’s incorrect advice.”). As defendant accepted the plea with knowledge of this requirement, he cannot establish prejudice from his attorney’s alleged omission. *Cf. People v. Bryant*, 2016 IL App (5th) 140334, ¶ 42 (“Here, the record demonstrates that the defendant was fully aware that he was facing a sentence of 20 to 60 years and that as the circuit court determined, he ‘knowingly accepted the benefit of a negotiated plea in the midst of a hard fought jury trial.’ The defendant has thus failed to meet his burden of establishing that he was prejudiced by the circuit court’s failure to admonish him as to the applicable sentencing range, and his assertion that he was denied ‘real justice because he pled guilty without a complete understanding and knowledge of the ramifications of his guilty plea’ is belied by the record.”).

¶ 56 Defendant also argues that plea counsel should have advised him of the many consequences that followed his plea to an offense that would require him to register as a sex offender. In his opening brief, as discussed above, defendant sets forth an extensive, though not exhaustive, list of the restrictions and burdens to which he is subjected to as a result of his plea. We note that before the trial court, aside from making some general references to “the onerous nature of sex offender registration,” defendant does not address these requirements individually. Similarly, before this court, defendant does not explain why any particular requirement is onerous enough that had he known of it, he would have insisted on trial and that it would have been rational to do so. This is significant, as we will explain.

¶ 57 In *Lee*, 582 U.S. at 367-68, the Supreme Court examined the relevance of the severity of a consequence of a guilty plea regarding how it might affect a defendant’s decision making. It noted

that where consequences are “similarly dire, even the smallest chance of success at trial may look attractive.” *Id.* at 367. Thus, it accepted the defendant’s argument in that case that “deportation after some time in prison was not meaningfully different from deportation after somewhat less time.” *Id.* Deportation is obviously a significant consequence. See *Padilla*, 559 U.S. at 364. Conversely, many of the burdens of sex offender registration set forth by defendant in his brief are not of similar gravity.

¶ 58 For example, defendant points out that he is “disqualified from serving as an election judge.” 10 ILCS 5/13-4(a)(2) (West 2024). Unlike deportation, it is difficult to see how a defendant could attach meaningful significance to the ability to serve as an election judge when deciding whether to accept a plea deal. See *Lee*, 582 U.S. at 367-68. The same can be said for many of the burdens cited by defendant, such as: having to renew his driver’s license annually (730 ILCS 5/5-5-3(o) (West 2024)); limitations on his ability to change his name (735 ILCS 5/21-101(b) (West 2024)); being able to operate an ambulance, fire truck, food truck, or ice cream truck (720 ILCS 5/11-9.3(c-8) (West 2024)); or work at a carnival (720 ILCS 5/11-9.3(c-5) (West 2024)). It would similarly defy credulity to suppose a defendant would give weight to some of the more significant restrictions cited by defendant in deciding whether to accept a plea. Indeed, how much additional prison time would a rational defendant expose himself to in order to preserve the right to loiter within 500 feet of a park (720 ILCS 5/11-9.4-1(c) (West 2024)) or live within 500 feet of a school (720 ILCS 5/11-9.3(b-5) (West 2024)) (we do not discount the possibility that some such considerations may be especially significant to a particular defendant in a unique factual context; however, defendant has not attempted to establish that such a context exists in this case). Even in aggregate (as presented by defendant), defendant has not convinced us that it would be rational to balance such considerations against the exposure to significant additional prison time. Moreover,

defendant does not address any particular requirement in isolation and explain why it is so significant that a rational defendant would give it significant weight when deciding whether to enter a guilty plea.

¶ 59 In short, it is defendant's burden on appeal to establish error in the proceedings below. *People v. Adams*, 2024 IL App (1st) 221474, ¶ 36. In this case, the standard of review requires that defendant meet this burden by showing that the trial court's decision was manifestly erroneous, that is, error that is "clearly evident, plain, and indisputable." *Ruiz*, 177 Ill. 2d at 384-85. Defendant has not convinced us that any of the considerations he cites in support of this argument are so significant that he would have rejected the plea and that it would have been rational to do so. Accordingly, defendant has not established that he was prejudiced by plea counsel's failure to discuss these consequences with him.

¶ 60 2. Failure to Advise Regarding Potential Lifetime Incarceration

¶ 61 Defendant also contends that plea counsel was ineffective for failing to advise him of the potential for lifetime incarceration purportedly entailed by his plea. Again, we are guided by the familiar standards that apply when a defendant alleges the ineffective assistance of counsel. See *Brown*, 2017 IL 121681, ¶ 25 (holding that "a defendant must establish that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by counsel's deficient performance."). It is defendant's burden to demonstrate that counsel's advice with respect to his plea was unreasonable in light of prevailing professional norms. *Hughes*, 2012 IL 112817, ¶ 44. Regarding a plea, counsel's duties to advise a client extend to consequences of the plea that are "severe, certain to occur, 'enmeshed' in the criminal process, and are of predictable importance to a defendant's calculus." *Id.* ¶ 49. Regarding this claim of error, we will focus our

analysis on the deficiency prong, though defendant has failed to carry his burden on the second prong as well.

¶ 62 Defendant asserts that plea counsel should have advised him of the interplay between MSR and sex offender registration requirements. This could lead to a situation where he was denied release on MSR due to a failure to preemptively comply with the requirements imposed as a consequence of sex offender registration. As defendant points out, section 3-3-7(b-1) of the Unified Code of Corrections (730 ILCS 5/3-3-7(b-1) (West 2024)), which sets forth conditions that may be imposed upon MSR, states that a person required to register pursuant to the Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2024)) “may be required by the [Prisoner Review] Board to comply with the following specific conditions of release.” Those conditions include that a defendant “reside only at a Department approved location” and “comply with all requirements of the [SORA].” 730 ILCS 5/3-3-7(b-1)(1), (2) (West 2024).

¶ 63 This creates a situation where an MSR candidate can be “violated at the door.” In *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 9 (quoting *Armato v. Grounds*, 944 F. Supp. 2d 627, 631 n.3 (C.D. Ill. 2013)), our supreme court described this process:

“ ‘Violating an offender at the door is a legal fiction wherein it is imagined that the offender is released from custody, placed on MSR, but when he leaves the institution he is in violation of his supervision terms and he is immediately placed back in custody. In reality, the offender simply remains incarcerated until a MSR prerequisite is satisfied. This can continue until either (1) the term of MSR expires, or (2) the prerequisite is satisfied.’ ”

For a sex offender, the term of MSR is often indeterminate, and a defendant cannot petition for termination of MSR until having successfully served three years of the MSR term outside of prison. *Murphy v. Raoul*, 380 F. Supp. 3d 731, 738-39 (N.D. Ill. 2019). Defendant also notes that the

Prisoner Review Board “has wide discretion in setting the conditions of MSR.” *Cordrey*, 2014 IL 117155, ¶ 21. In *Murphy*, 380 F. Supp. 3d at 738-43, the court described the difficulty facing a sex offender seeking MSR, particularly the challenge of obtaining compliant housing.

¶ 64 The State points out that the fifth district recently considered a similar argument in *People v. Yarbrough*, 2025 IL App (5th) 240851-U. That case, like the present, involved a convicted sex offender sentenced to a term of imprisonment followed by a period of MSR of up to life. In June 2016, the defendant pleaded guilty to two counts of aggravated criminal sexual assault and did not appeal. He later filed a *pro se* petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)) that “set forth a few different constitutional claims, all of which revolved around the danger that the defendant may be required to serve his term of MSR in prison rather than in the community” based on his inability to obtain a residence. *Id.* ¶ 11. The trial court granted a motion to dismiss by the State, and appellate counsel was appointed for the defendant. Appellate counsel concluded that no issue of merit existed and moved to withdraw. *Id.* ¶ 15.

¶ 65 On appeal, the *Yarbrough* court noted the history of litigation that followed *Cordrey*, 2014 IL 117155, beginning with *Murphy*, 380 F. Supp. 3d 731. In *Murphy*, the federal district court found equal protection and eight amendment violations based on the requirement that a sex offender find a host site before being released to MSR outside prison. *Id.* at 759, 766. “The [*Murphy*] court reserved its ruling on the proper remedy and subsequently entered a permanent injunction, directing the defendants to submit a compliance plan outlining steps to ensure that no member of the plaintiff class remained in prison due to an inability to locate an MSR host site by October 31, 2021.” *Yarbrough*, 2025 IL App (5th) 240851-U, ¶ 21 (citing *Murphy v. Raoul*, 2021 WL 12306062, at *1 (N.D. Ill. Sept. 29, 2021)). The *Yarbrough* court then noted, “By June 21, 2024, the date the circuit court dismissed the defendant’s latest amended [postconviction] petition,

the danger of discrimination against indigent and homeless sex offenders was greatly reduced.” *Id.* ¶ 21 (citing *Stone v. Jeffreys*, No. 21 C 5616, (N.D. Ill. Aug. 30, 2022)).

¶ 66 The *Yarbrough* court then considered the impact of this litigation on the defendant’s claim that plea counsel was ineffective for failing “to warn the defendant about a serious collateral consequence of his plea, namely, his continued imprisonment past his MSR date due to his financial inability to obtain an MSR-compliant residence.” *Id.* ¶ 42. The court observed, “Our supreme court has stated that plea counsel may have a duty under the sixth amendment to inform a defendant of a collateral consequence of his plea ‘where the consequence is severe, certain, and sufficiently enmeshed in in the criminal process,’ and that counsel’s failure to do so ‘may give rise to a basis for withdrawing a plea.’ ” *Id.* (quoting *Hughes*, 2012 IL 112817, ¶ 59 (citing *Padilla*, 559 U.S. at 365-66)). It then noted, “While the collateral consequence of the defendant’s continued imprisonment is severe and enmeshed in the criminal process, it is not certain and has become unlikely.” *Id.* Accordingly, it found that plea counsel “did not have a duty, under *Hughes*, to inform the defendant that there was a mere possibility of his being imprisoned past his MSR date.” *Id.*

¶ 67 We find the *Yarbrough* court’s logic compelling and hold that plea counsel had no duty to inform defendant of the possibility that he might not be released from prison on his MSR date. Defendant attempts to avoid this result, urging that *Yarbrough* is inconsistent with the United States Supreme Court’s decision in *Padilla*. Defendant points to the following passage:

“There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. When the law is not succinct and straightforward ***, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when

the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.” *Padilla*, 559 U.S. at 369.

Defendant reasons that even if lifetime incarceration was not certain, it remained a possibility both severe and enmeshed in the criminal process, thus, plea counsel should have told him about it. However, it remains unclear how likely lifetime incarceration would be and whether it would be anything more than a remote possibility more than 20 years from now when defendant becomes eligible for MSR. *Yarbrough* held that the possibility at the time of its decision had “become unlikely.” *Yarbrough*, 2025 IL App (5th) 240851, ¶ 42. Defendant cites nothing to support the notion that counsel has a duty to inform a client of such remote possibilities.

¶ 68 Moreover, even if counsel had a duty to advise defendant of the possibility of lifetime incarceration as a consequence of MSR, *Yarbrough* has consequences for the prejudice prong of this inquiry as well. As explained above, it is defendant’s burden to convince us that rejecting the State’s plea offer would be rational. *Hughes*, 2012 IL 112817, ¶ 65. Defendant points to his suppression motion in arguing he had a plausible defense to the charges; we note that he elected to abandon that possible defense when he accepted the current plea agreement. It is unclear to us why the “mere possibility of his being imprisoned past his MSR date” (*Yarbrough*, 2025 IL App (5th) 240851-U, ¶ 42) would substantially alter this calculus. Defendant has thus not convinced us that exposing himself to significant additional jail time to avoid a consequence that has been addressed and remedied by federal litigation would be a rational decision. As such, defendant has not demonstrated prejudice. See *Boyd*, 2018 IL App (5th) 140566, ¶ 18.

¶ 69 In sum, defendant’s arguments that plea counsel rendered ineffective assistance are unpersuasive.

¶ 70

C. Voluntariness of Plea

¶ 71 Defendant next argues that his plea was not voluntary because when he entered it, he believed that if he proceeded to trial, he would not have the assistance of counsel. Defendant alleges that plea counsel told him that he had not been paid enough to take the case to trial. Further, according to defendant, plea counsel did not tell defendant that the court would appoint a public defender to represent him at trial.

¶ 72 The trial court rejected this argument. It found that that defendant's claim that "he did not believe he would be able to get another attorney" was "belied by the record on the case, where the defendant was represented previously by a public defender after indigency findings." The court also found implausible defendant's claim that he did not understand what was happening during the plea hearing due to his limited understanding of English, noting that defendant "indicated that he read the transcripts" which were in English, that his *pro se* motion, which he signed with an affidavit, was in English, and that he was able to ask questions about statements the trial court made during the hearing. Factual findings such as these are reviewed using the manifest-weight standard. See *People v. Lee*, 2023 IL App (1st) 211080, ¶ 43 (applying manifest-weight standard to trial court's finding that the defendant was aware he was subject to mandatory life sentence when he entered a guilty plea). "Factual findings are against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings are found to be unreasonable, arbitrary, or not based on the evidence." *People v. Wyma*, 2020 IL App (1st) 170786, ¶ 59.

¶ 73 Here, the evidence regarding defendant's knowledge of his entitlement to counsel at trial was, at most, conflicting. Defendant averred that plea counsel indicated to him and his family had not paid "him enough for a trial and he would not take my case to trial." Defendant added that they did not have additional money to pay plea counsel. Defendant also averred that plea counsel did not tell him that he could request that the trial court appoint an attorney for him if he could no

longer afford one. Moreover, plea counsel did not contradict any of these statements in his affidavit. Defendant also asserts that he was “struggling with language barriers.”

¶ 74 However, it is also true, as the trial court found, that defendant had previously been represented by a public defender. Moreover, defendant signed a jury-trial waiver stating (in Spanish) that “I have a right to counsel and, if indigent, to have counsel appointed for me by the court.” Defendant asserts that the word “trial” does not appear in this sentence, but, we observe, the sentence also does not exclude representation at trial either. The impact that this purported omission may have had on defendant’s understanding of this right is a matter of the weight to which the statement is entitled, which is a matter for the trial court to resolve. *People v. Thomas*, 364 Ill. App. 3d 91, 103-04 (2006).

¶ 75 Given the conflicting nature of the evidence, we cannot say that the trial court’s rejection of defendant’s claim that “he did not believe he would be able to get another attorney” is contrary to the manifest weight of the evidence. Accepting defendant’s version of the conversation he had with his attorney about not having been paid enough to represent defendant at trial, we cannot say that this statement is so compelling that it renders the trial court’s decision contrary to the manifest weight of the evidence. In short, an opposite conclusion to the trial court’s is not clearly apparent, so its decision is not against the manifest weight of the evidence. *Wyma*, 2020 IL App (1st) 170786, ¶ 59.

¶ 76 Therefore, we find defendant’s argument on this issue ill-founded.

¶ 77 IV. CONCLUSION

¶ 78 In light of the foregoing, the order of the circuit court of Lake County denying defendant’s motion to withdraw his guilty plea is affirmed.

¶ 79 Affirmed.