No. 130344

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- KRYSTLE HOFFMAN, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-23-0067. There on appeal from the Circuit Court of the Twenty-Third Judicial Circuit, Kendall County, Illinois, No. 18 CF 395. Honorable Robert P. Pilmer, Judge Presiding.

BRIEF AND ARGUMENT FORDEFENDANT-APPELLANT

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ISSUE PRESENTED FOR REVIEW

Whether 730 ILCS 5/5-4-1(c-1.5), giving trial judges the discretion to downwardly deviate from mandatory minimum sentences of imprisonment under narrow circumstances, applies to drug-induced homicide where the plain language of the statute applies to offenses that "involve the use or possession of drugs."

STATUTE INVOLVED

730 ILCS 5/5-4-1(c-1.5)(2021)

[***]

(c-1.5) Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment.

STATEMENT OF FACTS

On September 14, 2022, Krystle Hoffman pleaded guilty to one count of drug-induced homicide following the overdose death of Lorna Haseltine. (C. 146-148; R. 132) The factual basis presented at the guilty plea hearing on August 12, 2017, stated that Krystle agreed to obtain drugs for Haseltine. (R. 135) Money was sent through Western Union, and Krystle picked up that money as part of the transaction. (R. 135) In a subsequent interview with Joliet police, Krystle admitted that, on August 12, she and Haseltine texted about the drug transaction. Krystle told police that she and a third person, Mark, went to Haseltine's house to drop off heroin. "Mark actually reached over Krystle Hoffman to hand a package of what she thought was heroin to Lorna Haseltine," the prosecutor said at the hearing. (R. 135) Afterward, Haseltine, who had been helping her family prepare for a graduation party, went upstairs to take a bath. (R 134) About an hour later, she was found unresponsive in the bathtub. (R. 134) The post-mortem examination showed Lorna died as a result of, among other compounds, fentanyl and heroin intoxication. (R. 135) Judge Robert Pilmer accepted the plea, finding it was made knowingly and voluntarily. (R. 125, 136)

Krystle's plea did not include any sentencing provisions; however, on the date of the plea hearing, she filed a notice of election to be sentenced pursuant to 730 ILCS 5/5-4-1(c-1.5)(2021). (C. 132) An order entered that date reflected her election. (C. 130) In its sentencing memorandum, the prosecution cited the new statute but said it "[does] not concede its

applicability in the present case[.]" (C. 140)

The sentencing hearing was held December 19, 2022. Judge Pilmer presided. (R. 139) The prosecution presented two witnesses in aggravation, Haseltine's father and her sister. Stanely Haseltine testified that his daughter struggled with drugs, and her nine-year-old son was the one who discovered her body. (R. 146, 150) Her sister, Marissa, read a victim impact statement. (R. 152)

Numerous witnesses testified in mitigation. Anthony Aloisio was the father of Krystle's long-time boyfriend, Kevin. (R. 152-153) Kevin had been a drug user for a long time, his father said. (R. 154) Aloisio said Krystle "never gave up trying to get [Kevin] to stop using drugs and alcohol." (R. 155) She "never, ever used drugs at all," during the time Aloisio knew her. (R. 156) "She was the driving and motivating factor to help Kevin to get his life in order," Aloisio testified. (R. 156)

About two years ago, Krystle broke up with Kevin, a decision Aloisio supported."[S]he needed to do what was right for her life and not spend her entire existence trying to help Kevin become a better person," Aloisio said. (R. 157-158) Two months after the breakup, in May of 2021, Kevin died from a drug overdose. (R. 153, 158)

Aloisio said Krystle had seen the suffering a person experiences when they stop using drugs and her compassion for their suffering was what led her to "the mistakes she made." (R. 159-160) He concluded his testimony by saying, "I vouch for Krystle and her honesty and integrity and the love she

shows." (R. 160)

Several of Krystle's friends testified on her behalf. Melissa Schuberth was Krystle's best friend and said Krystle was a hard worker who never once used drugs. (R. 161-162, 165) Krystle tried at least four or five times to help Kevin get sober, but he always went back to using. It was Krystle's nature to help others. (R. 162) "Krystle is the kindest person I've ever known. She made a very bad decision that day. And she has the greatest heart I've ever known. If anybody has ever needed anything, Krystle has been there," Schuberth said. (R. 162-163) Defense counsel asked if she would describe Krystle as naive. Schuberth answered, "a bit naive and gullible." (R. 165)

Krystle's other friends described her similarly. Thany Haddon said Krystle helped her escape a very bad domestic relationship. (R. 168) She said Krystle was "naive at times," and helping people is what makes her happy. "She would do anything to be able to help them," Haddon said. (R. 170) Misty McKinney testified that Krystle helped her and their mutual friends "many times." (R. 189) "She's the kind of person that gives the shirt off her back to anybody, and even if she doesn't have anything to give, she did always make sure they had something before she would," McKinney said. (R. 189) She said Krystle was "a little bit" gullible, and "very easily swayed" because she wanted to make others happy. (R. 190)

Donna Carter, Krystle's aunt, also testified that it was Krystle's nature to be helpful; however, people often exploited that characteristic. "She's been taken advantage of her whole life," Carter said. Another aunt,

Valerie Carter, echoed that testimony. She described Krystle as a "people pleaser" who does not want to let anyone down. She said Krystle is very generous, but people often took advantage of her generosity. (R. 192) "[S]he's kind of naive and gullible," which made her a target of "[p]eople that aren't very good quality." (R. 192-193)

Krystle's father, Terry Hoffman, testified she was "a little bit slow" in school and had to be taken out of classes for additional help. (R. 172) She was more of a follower rather than a leader and "was being used a lot by different people constantly," he said. (R. 176)

Suzanne Rubin, Krystle's psychotherapist, testified that Krystle suffers from depression and anxiety. (R. 178-179) Krystle also has co-dependency issues, which Rubin described as "essentially fusing yourself with another person." (R. 179) People pleasing and gullibility are part of that personality profile. (R. 179) Krystle had made progress in dealing with her depression and co-dependency and posed no risk to the public, according to Rubin. (R. 180) "I have quite a bit of background in assessing risk potential, and the likelihood of recidivism in any regard with Krystle in my personal and professional opinion is extremely low," Rubin said. (R. 181) On cross-examination, Rubin acknowledged she was aware that Krystle committed a crime while out on bond. Rubin said when she was speaking about recidivism, "I was specifically referring to the charge for which she's being charged." (R. 182) In her statement to the court, Krystle took full responsibility for her actions and apologized to Haseltine's family. (R. 222-

223)

After taking a short recess, the trial court issued its ruling. Judge Pilmer said he took into consideration the fact that Krystle's conduct caused or threatened serious harm and that a sentence was necessary to deter others from committing the same crime. (R. 224) He gave no weight to the fact that Krystle had been charged with a DUI during the pendency of this case because she took full responsibility for it. (R. 224-225) He applied several factors in mitigation, including that she did not contemplate her act would cause or threaten serious physical harm, she led a law-abiding life to this point, the circumstances were unlikely to recur, and her character and attitude indicated she was not likely to commit another crime. (R. 225)

The judge found Krystle posed no risk to public safety and that the case did involve the use or possession of drugs. (R. 226) He said, "Certainly, if the Court had broad discretion in imposing a sentence, it may very well be that a term of probation would be appropriate under the very specific facts of this case." (R. 226) The judge said that, nonetheless, 730 ILCS 5/5-4-1(c-1.5), did not apply to the offense of drug-induced homicide. (R. 227) He sentenced Krystle to six years in prison and ordered her to pay restitution. (R. 227; C. 149) The judge denied her motion to reconsider the sentence and motion to stay mittimus and admit her to bail pending appeal. (C. 181)

In a published decision issued on December 21, 2023, the Second District Appellate Court reversed the lower court's ruling, finding that section 5-4-1 (c-1.5) applies to drug-induced homicide. *People v. Hoffman*,

2023 IL App (2d) 230067, ¶ 40. The Court stated that, for purposes of the appeal, it was necessary to determine only whether drug-induced homicide was an offense that required a mandatory minimum sentence of imprisonment and whether the offense involves the use or possession of drugs. *Id.*, ¶ 29. It answered both questions affirmatively, finding that the plain language of the section as well as the legislative history supported that conclusion.

In reaching its decision, the Court found that section 5-4-1(c-1.5) did not exclude Class X felonies nor was its applicability restricted based on the class of an offense. *Id.*, ¶ 30. To find otherwise would be improperly injecting an exception into the section. *Id.*

The Court, using the dictionary definition of the word "involves," determined that drug-induced homicide necessarily involved the possession of drugs. *Id.,* ¶¶32, 33. It noted that Krystle was charged with drug-induced homicide "because she 'unlawfully *delivered* heroin, a controlled substance, containing fentanyl, to *** Haseltine." (Emphasis in original.) *Id.*, ¶ 32. It stated, "we conclude that delivering a controlled substance is connected to or includes possession because, without possession, a drug could not be delivered." *Id.*, ¶ 33.

The Court stated that it found the language of the statute unambiguous, but had it found ambiguity, the legislative history supports its interpretation. *Id.,*¶ 38. It noted the legislature had been warned that the provision could include drug-induced homicide but still voted to add it to the

Code of Corrections. *Id*. The Court also said that the fact the section applies to drug-induced homicide "does not mean that every defendant convicted of that offense will be subject to sentencing under this provision" because of the additional requirements included in the provision. *Id*., ¶ 39.

In a concurring opinion, Justice Jorgensen voiced concern "with the breadth of the result." *Id.,* ¶ 61. She acknowledged the plain language of the statute supports the majority's decision, but "if the legislature takes issue with the potential broad application of section 5-4-1(c-1.5) to *all* delivery offenses, then I hope it takes the opportunity to clarify its intent." (Emphasis in original.) *Id*., ¶ 63.

ARGUMENT

As demonstrated by the plain and ordinary language of subsection (c-1.5) of the sentencing hearing statute, as well as the legislative history and other aids of statutory construction, the Second District Appellate Court correctly found the trial court possessed the discretion to sentence Krystle Hoffman below the mandatory minimum term of imprisonment for drug-induced homicide.

Krystle Hoffman is precisely the type of defendant the legislature envisioned when it enacted 730 ILCS 5/5-4-1(c-1.5)(2021), which grants judges the discretion to downwardly deviate from mandatory minimum prison sentences for certain offenses under specific conditions. Prior to the tragic overdose death of Lorna Haseltine, Krystle had never been involved in the justice system. (CI. 5) She consistently maintained employment for 17 years before her arrest in this case. (E. 32) Friends and family described her as sweet and kind with an innate desire to help others. (R. 162, 165, 170, 183-184)

But, they also said she was gullible and naive, so people often took advantage of her generosity. (R. 165,170, 176) Her father described her as a follower who "was being used a lot by different people constantly." (R. 176) She suffered from severe depression and anxiety, and "that is a film through which she operates," her therapist testified at the sentencing hearing. (R. 178-179) According to a psychosocial evaluation, "Ms. Hoffman is someone who because of her low functioning and low self-esteem is likely easily duped or manipulated. She is gullible and easily taken advantage of. She is a people-pleaser and often wants to find someone to save or heal." (E. 39)

Krystle took full responsibility for her actions by pleading guilty to

drug-induced homicide. She expressed "extreme" remorse. *People v. Hoffman*, 2023 IL App (2d) 230067, ¶11. She proved herself worthy of probation during the four years she remained out of custody while this case was pending in the trial court. As the Appellate Court noted in its opinion, the trial court permitted Krystle to travel to Florida for a week in 2021, and she remained employed while out on bond, working two jobs at one point. *Hoffman*, 2023 IL App (2d) 230067, ¶¶5, 14.

Krystle's background and characteristics do not excuse her role in Ms. Haseltine's death, but they demonstrate why she is among the narrow class of defendants eligible for a reduced sentence under subsection (c-1.5). The trial court agreed Krystle posed no risk to the public and said if it had the discretion to do so, it may "very well be that a term of probation would be appropriate under the very specific facts of this case." (R. 226) Nevertheless, it sentenced Krystle to the mandatory minimum term of six years in prison because it did not think the new sentencing provision applied to drug-induced homicide. (R. 227)

On appeal, Krystle argued the trial court's ruling misconstrued the statute, inserting into it limitations which do not exist. The Second District agreed, reversed the ruling, and remanded the matter for a new sentencing hearing. *Hoffman*, 2023 IL App (2d) 230067, ¶¶ 1, 40. The Appellate Court held subsection (c-1.5) granted the trial judge the discretion to downwardly deviate from the mandatory minimum six year prison sentence. *Id.*, ¶ 40. It found, "Nowhere does section 5-4-1(c-1.5) indicate that it excludes Class X

felonies. Nor is its applicability otherwise restricted based on the class of the offense. . . . The State would have us find an exception for Class X felonies – an exception for which the legislature did not provide. We simply cannot inject such an exception into section 5-4-1(c-1.5)." *Hoffman*, 2023 IL App (2d) 230067, ¶ 30.

In its brief, the State repeats most of the same arguments it made in the lower courts. It asserts that section 5-4-1(c-1.5) refers only to "low-level, nonviolent crimes predicated on drug use and simple possession, and not greater offenses predicated on more serious criminal conduct." (St. Br. at 11) According to the State, should the Second District's ruling stand, violent criminals will be permitted to roam the streets, unencumbered by penal restraints. (St. Br. at 18-20) However, the ominous future the State predicts ignores the safeguards embedded in (c-1.5) which are designed to prevent such doomsday scenarios. To permit a sentence less than a mandatory minimum term of imprisonment, a judge must determine, on the record, that a defendant does not pose a public safety risk and the interest of justice requires a downward deviation. 730 ILCS 5/5-4-1(c-1.5).

This Court should affirm the Second District's ruling because the plain language of the subsection unambiguously indicates the legislature intended it to apply to any offense involving the use or possession of drugs, as long as its other requirements are met. Even if this Court determines the subsection is ambiguous, the extrinsic aids of statutory interpretation demonstrate it applies to drug-induced homicide.

The provision at issue here states:

> (c-1.5) Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment.
> 730 ILCS 5/5-4-1(c-1.5)(2021).

The narrow question presented in this case is whether drug-induced homicide is an offense eligible for downward deviation in sentencing under this provision. Statutory interpretation is a question of law which this Court reviews *de novo*. *People v. Clark*, 2024 IL 130364, ¶ 15.

A. The unambiguous language of subsection (c-1.5) plainly indicates that drug-induced homicide is an offense eligible for a downward deviation in sentencing because it is an offense that necessarily "involves the use or possession" of drugs.

When determining the meaning of a statute, courts are charged with ascertaining and giving effect to the intent of the legislature. *People v. Lloyd*, 2013 IL 113510, ¶ 25. "The best means of accomplishing this objective is through the statutory language itself, given its plain and ordinary meaning." *Clark*, 2024 IL 130364, ¶ 15. When the statute is clear and unambiguous, it will be applied as written without resorting to aids of statutory construction. *People v. Davidson*, 2023 IL 127538, ¶ 14.

To ascertain intent, a court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. *People v. Jackson*, 2011 IL 110615, ¶ 12. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). The reviewing court should not read words or meanings into a statute when the legislature has chosen not to include them. *People v. Johnson*, 2013 IL 114639, ¶ 12. "[W]e are to give the statutory language the fullest, rather than the narrowest, possible meaning to which it is susceptible." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 279 (2003). The plain and ordinary meaning of this statute's language demonstrates Krystle is eligible for a downward deviation in her sentence.

In arguing that the plain and ordinary language of the statute precludes drug-induced homicide, the State in its brief relies on aids of statutory construction which should be employed only when the language is ambiguous. First, it asserts, "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions." (St. Br. at 14) This is the canon of *expressio unius est exclusio alterius*, which provides "the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions." *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17. As this Court noted in *People v. Grant*, 2022 IL 126824, ¶ 42, "that canon is inapposite" where it "determined that the legislative intent is clear from the plain language of the statute." But see,

Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill. 2d 141, 152 (1997) ("The maxim [of *expressio unius est exclusio alterius*], is closely related to the plain language rule in that it emphasizes the statutory language as it is written"). Next, the State urges this Court to apply the doctrine if *in pari materia* in order to ascertain the legislature's intent. (St. Br. at 15) However, "[i]t is fundamental that before the rule of *in pari materia* is applied, the statute to be construed must be found to be ambiguous." *People v. 1946 Buick, VIN 34423520*, 127 Ill. 2d 374, 377 (1989). Krystle will address these doctrines in Part B of this argument, in which she contends that, even if this Court finds the statute ambiguous, she is eligible for downward deviation of the mandatory minimum prison sentence pursuant to the canons of statutory interpretation.

At the outset, the State in its brief disputes the Second District's opinion by contesting the court's interpretation and application of the term "involves." (St. Br. at 12) It recites the same definition provided by the appellate court: "'to have within or as part of itself: include' or 'to relate *closely*: connect.'" (Emphasis in State brief)(St. Br. at 12); *Hoffman*, 2023 IL App (2d) 230067, ¶ 31. The State asserts that the phrase "involves the use or possession of drugs," as used in the statute, is more closely related to drug use or possession "because the offense is primarily based on that criminal conduct," whereas "greater offenses," like drug-induced homicide, are not closely related to use or possession. (St. Br. at 13) Therefore, it concludes, offenses such as drug-induced homicide "are not naturally or ordinarily

described as offenses 'involving' that conduct, even though they include it." (St. Br. at 13) Under the State's rationale, an offense can "include" conduct yet at the same time not "involve" it. Despite its assertion, no such meaningful distinction exists. See *United States v. Arnaout,* 431 F. 3d 884, 1001 (7th Cir. 2005) ("The ordinary and plain meaning of 'involved' means 'to include'").

The State is also unavailing in its attempt to distinguish drug-induced homicide from various other drug offenses based on whether they "relate closely" to drug use or possession. The offense of drug-induced homicide requires "unlawfully delivering a controlled substance to another." 720 ILCS 5/9-3.3(a). Even the prosecutor in the trial court admitted that "one has to possess drugs before one can deliver them." (R. 199) And, as trial counsel noted, the statutory definition of "delivery" is "the actual, constructive or attempted transfer of possession of a controlled substance[.]" (R. 215); See 720 ILCS 570/102(h) ("'Deliver' or 'delivery' means the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship"). Thus, drug possession is not only closely related to drug-induced homicide, it is inextricably linked. As the Appellate Court stated, "delivering a controlled substance is connected to or includes possession because, without possession, a drug could not be delivered." 2023 IL App (2d) 230067, ¶ 33.

The Appellate Court held, "If the legislature wanted to limit section 5-4-1(c-1.5) to only use-or-possession drug offenses, it would have not modified

the phrase 'use or possession of drugs' with the term 'involves." *Hoffman*, 2023 IL App (2d) 230067, §37. The Court continued, "Taking the State's position would require us to disregard the term 'involves,' which would render that term completely meaningless." *Id.* In its brief, the State refutes that its interpretation renders the word "involves" superfluous. It makes the following argument:

> The word "involves" was necessary because "drug use" and "drug possession" are not specific criminal offenses but are instead types of conduct proscribed by various laws including the Controlled Substances Act, 720 ILCS 570/402, the Methamphetamine Control and Community Protection Act, *id.* § 646/660, the Cannabis Control Act, *id.* § 540/4, and the Use of Intoxicating Compounds Act, *id.* § 690/1. Because "drug use" and "drug possession" are not themselves criminal offenses but are instead types of offenses, it would have made no sense for the General Assembly to specify that subsection (c-1.5) applies "when the offense *is* the use of possession of drugs. (Emphasis in original.) (St. Br. at 21)

The State concludes that the legislature used "involves" to ensure "that the subsection (c-1.5) extends to *all* use-or-possession offenses." (Emphasis in original.) (St. Br. at 21) Despite its efforts to argue otherwise, subsection (c-1.5) is not restricted to use-or-possession offenses. This argument subverts the plain meaning of the subsection by confining it only to those offenses deemed palatable by the State, and this Court should reject such an interpretation. As this Court has stated, "Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court's own idea of orderliness and public policy." *Illinois Landowners All., NFP v. Illinois Commerce Comm'n*, 2017 IL

121302, ¶ 50.

While not directly on point, the case of *Shular v. United States*, 589 U.S. 154 (2020), provides insight on how to navigate a statute with similar language. *Shular* involved interpreting which state offenses Congress meant to include when it defined a "serious drug offense" as "involv[ing] the manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance," for purposes of sentencing under the Armed Career Criminal Act. The Court stated that the use of the word "involves" reflected Congress's intent to encompass the various drug offenses that exist at the state levels but which "lacked common nomenclature." *Shular*, U.S. 589 at 155. The Court stated, "The evident solution was for Congress to identify offenses by the conduct involved, not by the name of the offenses." *Id*. Krystle contends this was also the solution crafted by the Illinois General Assembly: in order to encompass the variety of offenses eligible for reduced sentencing, it was necessary to describe the conduct involved. See also, *United States v. Godinez*, 955 F. 3d 651, 656 (7th Cir. 2020) ("we have construed the term 'involving' to carry 'expansive connotations'").

If the General Assembly intended to limit (c-1.5) as the State suggests, it could have cited, as the State did in its brief, the specific Acts to which the subsection applied. (St. Br. at 21) Alternatively, it could have conveyed its intent to limit the statute by specifying which offenses were specifically included or excluded, as the legislature does in other provisions of the

Sentencing Hearing statute. See 730 ILCS 5/5-4-1(a)(7.5)(2022)(specifying which offenses qualify a person to make a statement about the impact of the offense and to offer evidence in aggravation or mitigation); 5/5-4-1(c-1) (specifying which offenses require a trial judge to make a finding as to whether the conduct leading to the conviction resulted in great bodily harm); see also *People v. Burge*, 2021 IL 125642, ¶ 20 ("a court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation"). It is worth noting that, prior to its enactment, a legislator even suggested the provision be revised to "say anybody who violates the Controlled Substances Act or something to that nature," but no such revision was ever made. Illinois Senate Transcript, 2019 Reg. Sess. No. 50, at 18.

In *Kawashima v. Holder*, 565 U.S. 478 (2012), the United States Supreme Court provided a method for determining the scope of the word "involves." The Court there interpreted whether a conviction for willfully making and subscribing a false tax return involved "fraud or deceit," thereby qualifying the tax offense as a deportable aggravated felony under the Immigration and Nationality Act. *Kawashima*, 565 U.S. at 480. The Kawashimas (both husband and wife were convicted) argued they could not be deported due to having aggravated felonies, since neither "fraud" nor "deceit" were formal elements of their underlying convictions, i.e., the statute describing the tax offense did not specifically include the phrase "fraud or deceit." *Id.* at 482.

To resolve the issue, the Court looked to the statute defining the conviction, instead of the facts underlying the crime. *Id*. at 483. It determined that, even though the words "fraud or deceit" did not appear in the statute, the offense was not excluded. *Id.* "The scope of the clause is not limited to offenses that include fraud or deceit as formal elements. Rather, Clause (i) refers more broadly to offenses that 'involve' fraud or deceit – meaning offenses with elements that necessarily entail fraudulent or deceitful conduct." *Id*., at 483-84.

Similar to how the phrase "fraud or deceit" did not explicitly appear in the statute defining the tax offense, the word "delivery" does not explicitly appear in subsection (c-1.5). Nevertheless, the absence of the word "delivery" from the subsection does not mean that offenses which include delivery – such as drug-induced homicide – are excluded from the ambit of offenses that "involve the use or possession of drugs," just like the *Kawashima* Court found that the absence of the phrase "fraud or deceit" did not exclude the tax offense from the ambit of offenses that qualify as aggravated felonies.

Therefore, using the Supreme Court's reasoning from *Kawashima*, drug-induced homicide is an offense eligible under (c-1.5) because it necessarily includes possession. The underlying statute at issue here, 720 ILCS 5/9-3.3, states that a person commits drug-induced homicide when they deliver a controlled substance to another, causing that person's death. "Delivery" necessarily entails possession, as is demonstrated by the statutory definition of "delivery." See 720 ILCS 570/102(h). Delivery cannot happen

without possession. As the Seventh Circuit has stated, "An offense 'involving' specified conduct is an offense that necessarily entails that conduct." *United States v. Godinez*, 955 F.3d 651, 656 (7th Cir. 2020). The "specified conduct" here is "use or possession," and drug-induced homicide is an offense that necessarily entails possession.

Attempting to support its position that (c-1.5) excludes drug-induced homicide as an eligible offense, the State compares penalties for other various drug offenses. It argues the "legislature's long standing treatment of drug crimes involving trafficking or delivery as more serious than offenses based on drug use and simple possession reinforces the conclusion that the omission of any reference to more serious drug crimes from subsection (c-1.5) was deliberate." (St. Br. at 14) It then speculates that the seriousness of the subsection's other enumerated offenses dictates which types of drug offenses the legislature intended to include. Along the same lines, the State subsequently argues that the Appellate Court's application of the term "involves" contravened the legislature's determination "that offenses involving the delivery drugs are different from, and warrant more serious punishment than, drug use and simple possession." (St. Br. at 20)

The State in its brief notes that drug-induced homicide is a Class X, nonprobationable felony that carries a mandatory minimum prison sentence of six years. (St. Br. at 17) According to the State, this means "the legislature has determined that drug-induced homicide is much more serious than any offense enumerated in subsection (c-1.5)." (St. Br. at 17) As a result, the State

posits, the subsection does not apply to "serious offenses against persons like drug-induced homicide." (St. Br. at 17)

At the outset, it necessary to point out that subsection (c-1.5) does *not* minimize possession to "*simple* possession," the phrase repeated by the State throughout its brief. (St. Br. at 11, 12, 14, 15, 16, 20, 21, 23) The provision states that the offense "involves the use or possession of drugs." If the legislature intended to restrict the subsection to "*simple* possession," it would have used that language. See, *People v. Savory*, 197 Ill. 2d 203, 213 (2001) (finding that if the legislature intended to limit the application of the statute, "it would have chosen a different way of expressing the statutory requirements"). The State's frequent use of the phrase "simple possession" violates a fundamental rule of statutory construction: words may not be added. As this Court stated, "In interpreting a statute, we may not add words or fill in perceived omissions." *People v. Wells*, 2023 IL 127169, ¶ 31.

There is no dispute that drug-induced homicide is a serious offense. The problem with the State's argument is that every offense requiring a mandatory *minimum* sentence of imprisonment is inherently non-probationable and serious. Where this subsection applies only to those offenses requiring a mandatory minimum sentence of imprisonment, the fact that drug-induced homicide requires a mandatory minimum sentence of imprisonment actually supports the holding that it is eligible for reduced sentencing under this provision.

According to the State, the neighboring words in the subsection, i.e.,

the other included offenses of retail theft and driving on a revoked license due to unpaid financial obligations, "confirm that the legislature saw fit to relax mandatory minimum sentences only for low-level, nonviolent offenses against property and the public and not for serious offenses against persons like drug-induced homicide." (St. Br. at 17) It concludes that the phrase "offense [that] involves the use or possession of drugs" exclusively describes "offenses based on drug use or simple possession." (St. Br. at 17-18) The State cites to *Corbett v. County. Of Lake*, 2017 IL 121536, ¶ 32, for the premise that "a word is given more precise content by the neighboring words with which it is associated." (St. Br. at 16) It adds, "This principle 'is particularly useful when construing one term in a list to avoid ascribing to one word a meaning so broad that it is inconsistent with the accompanying words, thus giving 'unintended breadth to [legislative acts].'" *Corbett*, 2017 IL 121536, ¶ 32 (quoting *Gustafson v. Alloyd Co.,* 513 U.S. 561, 575 (1995)." (St. Br. at 16)

In this case, however, the "neighboring words" principle provides no guidance because neither retail theft nor driving on a revoked license due to unpaid financial obligations carries mandatory minimum sentences of imprisonment, a fact the State fails to acknowledge in its brief. See 720 ILCS 5/16-25(f)(1), (2), (3); 625 ILCS 5/6-603(a-7); 730 ILCS 5/5-5-3. The subsection specifically relates to "an offense that requires a mandatory minimum sentence of imprisonment[.]" 5-4-1 (c-1.5). Where the other two offenses fall outside the purview of this requirement, their inclusion does not evince, let alone confirm, a legislative intent that the subsection apply only to "low-level

nonviolent offenses."

The State's attempt to harmonize the three unrelated enumerated offenses by characterizing them as "low-level, nonviolent crimes, like drug use and simple possession" violates the fundamental cannon of statutory interpretation which prohibits reading into a statute "exceptions, limitations, or conditions that the legislature did not express." *People v. Wells*, 2023 IL 127169, ¶ 34. In its ruling, the Second District recognized the State's error, finding, "Nowhere does section 5-4-1 (c-1.5) indicate that it excludes Class X felonies. Nor is its applicability otherwise restricted based on the class of the offense." 2023 IL App (2d) 230067, ¶ 30. The Court concluded, "We simply cannot inject such an exception into section 5-4-1(c-1.5)." *Id.*

The State denies that its interpretation injects exceptions into the subsection, once again relying on the "neighboring words" doctrine to support its argument. (St. Br. at 20) It asserts that the "neighboring terms listing the low-level, nonviolent crimes" assists in "ascertaining the 'involvement' with drugs" that is contemplated by the statute. (St. Br. at 20-21) For the reasons previously stated, the other offenses enumerated do not limit the type or class of drug-related offenses eligible for reduced sentencing under the provision.

The State contends, "A narrow construction is also appropriate because a broader construction would produce absurd results that the legislature did not intend." (St. Br. at 18) It advances a classic slippery slope argument to support this contention and insists that construing this statute as the Appellate Court did would "lead to absurd and unintended results." (St. Br.

at 12) It portends that the Appellate Court's interpretation would make the following offenses "eligible for reduced sentencing:" criminal sexual assault aggravated because a defendant delivered any controlled substance to the victim, the drug-assisted versions of aggravated criminal sexual abuse, predatory criminal sexual assault of a child, administering a drug to a child to promote child prostitution, forcing a child to ingest a drug during ritualized child abuse, and aggravated battery by delivering a drug to a person who suffers great bodily harm or permanent disability as a result of its use. (Sr. Br. at 18-19) This alarmist argument ignores the fact that the subsection includes parameters to its application. It does not, as the State insinuates, grant a court *carte blanche* in sentencing defendants.

The State's interpretation renders the other parts of this subsection superfluous. It divorces the first requirement of the statute, which delineates eligible offenses, from the other two requirements, which restrict its application. *People v. Fair*, 2024 IL 128373, ¶ 61 ("We view the statute as a whole, construing words and phrases in connection with other relevant statutory provisions rather than in isolation, while giving each word, clause, and sentence of a statute a reasonable meaning, if possible, and not rendering any term superfluous"). In order for a court to downwardly deviate from a mandatory minimum prison sentence, it must find that the defendant does not pose a risk to public safety *and* the interest of justice requires imposing a lesser sentence. Moreover, a court cannot make this decision in a vacuum because the statute mandates a "court must state on the record its

reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." Thus, in accordance with established case law, this subsection grants the trial court discretion in sentencing defendants while also ensuring that discretion is not unfettered. See *People v. O'Neal*, 125 Ill. 2d 291, 297 (1988) ("Sentencing judges are vested with wide discretion so that reasoned judgments as to the penalty appropriate to the particular circumstances of each case can be accomplished. [Citations omitted.]However, that discretion is not unfettered").

In its brief, the State attempts to distinguish *United States v. James*, 834 F. 2d 92 (4th Cir. 1987), which the Appellate Court referenced in support of its finding that delivering a controlled substance involves the use or possession of drugs. (St. Br. at 22); *People v. Hoffman*, 2023 IL App (2d) 230067, ¶¶ 34-36. The State argues that "possession with *intent* to distribute is closely and necessarily involved with distribution" because "the former requires the intent to commit the latter." (Emphasis added.)(St. Br. at 22) It asserts that this is not the same as saying "'possession is closely and necessarily involved with distribution,'" which is how the Second District analogized the case. (St. Br. at 22) The State's position is not persuasive because possession is necessarily involved in both "possession with intent to distribute" as well as with "distribution." While intent certainly connects both offenses, as the *James* Court stated, so too does possession.

The plain and ordinary language of subsection (c-1.5) demonstrates the legislature's intent to provide sentencing relief to certain defendants under a

narrow set of circumstances. Krystle Hoffman is among those eligible for a downward deviation in her sentence because the offense to which she pled guilty, drug-induced homicide, meets the requirements set forth: it requires a mandatory minimum term of imprisonment and it involves the use or possession of drugs. Any other reading injects exceptions into the plain language of the provision which simply do not exist.

This Court cannot construe this statutory provision in the way the State urges because doing so violates fundamental cannons of statutory interpretation. The remedy the State seeks is only available through legislative action. "It is axiomatic that where the language of a statute is plain and unambiguous, the only role of the court is in its application. . . . Any alteration to the statute, regardless of any perceived benefit or danger, must necessarily be sought from the legislature." *In re M.M.*, 156 Ill. 2d 53, 69 (1993). In fact, Justice Jorgensen's special concurrence in the Second District's ruling acknowledges the legislature's duty to initiate revisions should lawmakers take issue with the breadth of this subsection. She stated, "While I am wary of the eventual application of this sentencing provision, I acknowledge that the plain language and the legislative history support the majority's decision. However, if the legislature takes issue with the potential broad application of 5-4-1(c-1/5) to *all* delivery offenses, then I hope it takes the opportunity to clarify its intent." *Hoffman*, 2023 IL (2d) 230067, ¶ 63. (Emphasis in original.) As this Court recently stated, "The responsibility for the justice or wisdom of legislation rests upon the legislature." *People v.*

Mayfield, 2023 IL 128092, ¶ 27. This Court should affirm the ruling of the Appellate Court.

B. If this Court determines subsection (c-1.5) is ambiguous, extrinsic aids of statutory interpretation support the Second District's finding that drug-induced homicide is among the offenses eligible for reduced sentencing.

Should this Court determine the language of subsection (c.1-5) is ambiguous, the various aids of statutory interpretation demonstrate Krystle is eligible for a downward deviation of her sentence under this provision. "A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways." *People v. Lighthart*, 2023 IL 128398, ¶ 39 (quoting *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395-96 (2003)). "When interpreting an ambiguous statute, we consider the purpose of the law, the evils it was intended to remedy, and the legislative history of the statute." *People ex rel. Illinois Dept. of Corr. v. Hawkins*, 2011 IL 110792, ¶ 24. Legislative history and debates are valuable aids to interpret ambiguous statutes. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 15.

1. Legislative History

In its brief, the State contends that the earlier versions of subsection (c.1-5) reveal the legislature's intent to limit the provision to "low-level, nonviolent offenses." (St. Br. at 24) It asserts that the provision was worded broadly at first then narrowed before it was finally passed into law. (St. Br. at 24) Contrary to the State's argument, the evolution of the subsection did not take such a direct path and its various iterations do not "unmistakably"

represent the legislature's intent "to prevent it from applying to serious or violent crimes." (St. Br. at 25) Rather, a more detailed look at the subsection's progression demonstrates the legislature's intent to address the harms caused by the mandatory incarceration of any defendant convicted of an offense involving the use or possession of drugs. See *Bergin v. Bd. of Trustees of Teachers' Ret. Sys.*, 31 Ill. 2d 566, 573 (1964) ("It is always proper to consider the course of legislation upon a particular statute in arriving at the legislative intent"). The provision evolved as follows:

January 30, 2019: Introduced in the House

On January 30, 2019, this subsection was introduced in the House of Representatives as House Bill 1587. The provision did not list which offenses were *eligible* for reduced sentencing. It did, however, state which offenses/offenders were *ineligible*: an offender convicted of a sex offense under Article 11 of the Criminal Code or an offense involving the infliction of great bodily harm. It also set forth parameters for defendants charged with an offense "involving the use, possession, or discharge of a firearm." They would not be eligible for a reduced sentence unless the presentence investigation report made such a recommendation and there was "clear articulable evidence that the defendant was not a threat to public safety." Additionally, the provision applied broadly to offenses "that require[ ] a mandatory minimum sentence of imprisonment or probation or conditional discharge of 2 years or more." House Bill 1587 (as introduced), 101st Gen, Assem., filed January 30, 2019, at 1, 6-8.

March 14, 2019: First Amendment in the House

The first amendment to this measure was filed in the House on March 14, 2019. This version *expanded* the *ineligible* offenses, excluding offenders "convicted of a crime of violence as defined in Section 2 of the Crime Victims Compensation Act[.]" Notably, the version of the Crime Victims Compensation Act in effect at that time excluded drug-induced homicide from the offenses defined as crimes of violence. 740 ILCS 45/2 (eff. Jan. 1, 2019, to July 11, 2019).This version of (c-1.5) continued to apply to offenses requiring "a mandatory minimum sentence of imprisonment or probation or conditional discharge of 2 years or more." First Amendment to House Bill 1587, 101st Gen, Assem., filed March 14, 2019, at 1, 7-8.

March 21, 2019: Second Amendment in the House

The second amendment to (c-1.5) came one week later, on March 21, 2019. This iteration again *expanded* the *ineligible* offenses to also exclude those convicted of "an offense in Article 11 of the Criminal Code of 2012 [or] Article 18 of the Criminal Code of 2012," in addition to those convicted of crimes of violence as defined in the Crime Victims Compensation Act. Article 11 relates to sex offenses (720 ILCS 5/11) and Article 18 relates to robbery (720 ILCS 5/18). This version still applied to offenses requiring "a mandatory minimum sentence of imprisonment or probation or conditional discharge of 2 years or more." Second Amendment to House Bill 1587, 101st Gen, Assem., filed March 21, 2019, at 1, 7-8.

April 4, 2019: Third Amendment in the House

On April 4, 2019, the third amendment to the provision was filed in the House. This revision of subsection (c-1.5) was the first to list offenses which were specifically eligible for a downward deviation in sentencing. It applied "if the offense involves drug possession, retail theft, or driving on a revoked license." It eliminated the references to Articles 11 and 18 of the Criminal Code as well as to crimes of violence as defined in the Crime Victims Compensation Act. It continued to apply to "an offense involving the use, possession, or discharge of a firearm" as long as the presentence investigation report made such a recommendation and there was "clear articulable evidence" that the defendant was not a threat to public safety." Third Amendment to House Bill 1587, 101st Gen, Assem., filed April 4, 2019, at 1, 7-8.

April 5, 2019: Fourth Amendment in the House

The next day, on April 5, the fourth and final House amendment to this subsection was filed. This version contained the exact language eventually passed into law in 2021 as part of House Bill 3653. This final amendment deleted the language that the offense "requires a mandatory minimum sentence of imprisonment or probation or conditional discharge of 2 years or more." The provision applied only to sentences requiring a mandatory minimum term of imprisonment. It also deleted the reference to offenses involving firearms. It listed only those offenses eligible for reduced sentencing. Significantly, the offenses were expanded to those that involve

"the *use or* possession of drugs." The retail theft remained the same, and the final eligible offense was restricted to "driving on a revoked license *due to unpaid financial obligations*." Fourth Amendment to House Bill 1587, 101st Gen, Assem., filed April 5, 2019, at 1, 7. On April 10, 2019, Rep. Harper stated, "this Amendment is trying to remove opposition from the Cook County State's Attorney and the Illinois State's Attorney. We are continuing to work on the Bill together." Illinois House Transcript, 2019 Reg. Sess. No. 39, at 128, April 10, 2019.

Debates

The General Assembly debates on this subsection occurred in April and May of 2019, after the final House amendment had been filed. These debates clearly demonstrate that the intent of this subsection was to reduce the societal harm caused by mandatory minimum sentences of imprisonment and to return discretion to the trial courts. Less than a week after the Fourth Amendment was filed, the House of Representatives discussed the measure. Illinois House Transcript, 2019 Reg. Sess. No. 40, at 175, April 11, 2019. Rep. Harper stated,

> I am pleased to present House Bill 1587. This Bill simply allows judges to give what we are calling smart sentences to individuals who are convicted of a crime but do not pose a threat to public safety. So it just allows judges to sentence an offender to a sentence less than the statutory minimum when it makes sense. We have been working on this Bill to remove opposition. There are a couple of changes that we need to make in the Senate that we look forward to making. I encourage an "aye" vote. *Id.*

Extensive discussion ensued regarding the included drug offenses. In

opposition to the measure, Rep. Bryant specifically identified that drug-induced homicide was among the charges for which a judge could order a "reduction of sentencing." *Id.* Rep. Batnick asked for clarification on the drug offenses the provision included, inquiring, "Does that include ....what...just possession, not dealing, just possession?" *Id.* at 177. Rep. Harper responded, "It's possession and use, and the language was approved by and came from the State's Attorney." *Id.* She specified it came from the Cook County State's Attorney's Office, "But in doing that it removed the opposition from the Illinois State's Attorney." *Id.*

Rep. Batnick questioned, "And is there any .... on the drug possession is there any mandatory minimum left regardless of how much? Like the weight of it. So if I have [sic] if possession is one gram, a one thousand grams ... is there any deviation with Amendment 4 that says there's still a mandatory minimum at certain amount?" *Id.* at 178.

Rep. Harper responded, "That is up to the judge but the State's Attorneys, as I stated before, that's one of the things that we are cleaning up in the Senate." *Id.* Rep. Batnick asked, "And you believe in the Senate they'll fix something with the size of the amount of drugs that they have with the mandatory minimums, correct?" *Id.* at 179. Rep. Harper answered, "We're already working on that right now as we speak." *Id.* Significantly, the language of subsection (c-1.5) was never altered after it arrived in the Senate. It was passed into law in 2021 exactly as it was amended on April 5, 2019.

Rep. Connor, a former prosecutor, stated he appreciated that judges

and prosecutors "now have the ability to impose something other than that mandatory minimum and get the person back to functioning in society as quickly as possible." *Id*. at 179-80. Rep. Skillicorn, a self-identified conservative Republican, expressed his support for this measure. *Id*. at 180. He discussed how he had been impacted by Newt Gingrich's admission that mandatory minimum prison sentences were his "greatest mistake." *Id.* Skillicorn heard Gingrich speak about the damage to communities resulting from mandatory minimums sentences and how they "actually hurt people and hurt those communities." *Id.*

More than a month later, on May 24, 2019, the Senate addressed the subsection, and the conversation continued regarding which drug offenses it included. Illinois Senate Transcript, 2019 Reg. Sess. No. 50, at 15, May 24, 2019. Sen. McClure specifically said, "there's an entire category of if the offense involves the use or possession of drugs, and it could be any offense. Why is that so ambiguous, Senator, versus the other two offenses, which are very specific?" *Id*., at 16. Sen. Sims answered:

> the bill before you allows [sic] is for the judge to use his discretion, as I mentioned, if the person is – is a threat to public safety or if it's in the interest of justice for the – the judge to then not impose a mandatory minimum sentence. So we are – we are empowering judges to make the decisions that – that they are charged with making. And then also making sure that they state on the record why they have made that decision. We are not going to act as a super-judiciary; we are allowing the judges to then make the – make – use their discretion to make the decisions that they're charged with making. *Id.*, at 16-17.

Sen. McClure listed a variety of serious crimes that he said "involve

the use of drugs," including Class X offenses. *Id.*, at 17. He warned that judges "can make very poor decisions on the wrong day because they woke up on the right side of the bed and they heard certain things[.]" *Id.*, at 18. He suggested an "easy way to solve this." He said, "Just say anybody who violates the Controlled Substances Act or something to that nature. But the fact that you make it so that every single crime that involves the use of drugs[sic]." *Id.*

Sen. Sims acknowledged Sen. McClure's concerns but reiterated that "the intent is to treat the Judiciary as they are, a co-equal branch of government." *Id.*, at 19. He continued,

> We are going to make sure that we don't stand as a super-judiciary and stand in the place of the Judiciary. It we are going – the reason that we got into the system that we – we've got into – the problems that we've gotten into in our criminal justice system, the reason that we have been trying desperately to reform our criminal justice system, to tear down the problems that we have, is because of the mandatory minimum sentencing. So I – I get it. There are – there are folks – some folks have – they're – they're – they're afraid that the – the judge's won't use their discretion appropriately. I get it. But if – you know, when you're talking about a fourth or the fifth or the sixth violation, a judge can use their – their discretion to determine when an individual is a threat to public safety. The judge can then – is – under this legislation, the judge is then required to state on the record the reason why they made the decision to – to give the – to deviate from the mandatory minimum sentence. Nothing in the legislation says that the judge has to do that. It – it is merely another tool in the tool box that reforms our criminal justice system. Now we can . . . the talking points that this will . . . harm public safety, that is not the intent of this legislation. The intent of this legislation is to empower the Judiciary to act appropriately. Illinois Senate Transcript, 2019 Reg. Sess. No. 50, at 19, May 24, 2019.

As demonstrated by the evolution of the subsection through the amendments and the debates on it, this provision was carefully crafted to address both the harm of mandatory minimums and to return discretion to the judiciary. Further evincing this intent is that this provision was included in Public Act 101-652 under Article 20, titled "mandatory minimums." See Pub. Act 101-652 (H.B. 3653, approved Feb. 22, 2021, eff. July 1, 2021).

The language of this subsection regarding offenses involving the use or possession of drugs was not a surprise or eleventh-hour inclusion in Public Act 101-652. Rep. Harper informed her colleagues, they considered and acted upon input from outside interested parties. Lawmakers recognized that the phrase "involves the use or possession of drugs" represented a wide span of offenses. As the Second District noted, "Aware of this fact, the legislators voted to add section 5-4-1(c-1.5) of the Corrections Code." *Hoffman*, 2023 IL (2d) 230067, ¶ 38. From April 5, 2019, through its enactment in January of 2021, the language of the provision remained exactly the same.

The State in its brief dismisses as moot the extensive debates about (c-1.5) because they occurred in 2019 rather than at the time of its passage into law. (St. Br. at 26) The State asserts, "It is not clear that anyone in the House or Senate who later voted to adopt subsection (c-1.5) in January of 2021 (as part of a different bill) recalled McClure's remarks from a year and a half earlier." (St. Br. at 26) The State's argument suggests the legislators simply forgot they had previously acknowledged the wide range of offenses included in the phrase "involves the use or possession of drugs." It insinuates

that the passage of this provision was not an acquiescence to its language but rather an oversight. However, as this Court has noted, "Absent substantial considerations to the contrary, 'an amendatory change in the language of a statute creates a presumption that it was intended to change the law as it theretofore existed.'" *People v. Hicks*, 119 Ill. 2d 29, 34 (1987) (quoting *People v. Nunn*, 77 Ill. 2d 243, 248 (1979)). Here, it is clear that the legislature intended to drastically revise the sentencing hearing statute to provide increased discretion to judges under certain circumstances. The fact that this subsection was debated in 2019 but passed into law in 2021 has no bearing on its relevance, particularly when not a single word of the provision changed during that time.

In attempting to downplay the significance of the debates, particularly the statements of Sen. McClure in which he acknowledged subsection (c-1.5) could encompass Class X felonies, the State asserts, "one comment by a single legislator generally does not shed light on the General Assembly's intent," citing *People v. R.L.*, 158 Ill. 2d 432, 442 (1994). (St. Br. at 26) This argument, however, ignores the numerous other comments made by multiple legislators throughout the debates that demonstrated their awareness that the provision encompassed a wide range of offenses. Moreover, the State's assertion regarding "a single legislator" defeats its own argument that one statement by Rep. Slaughter on January 13, 2021, definitively proves the measure was intended only for "lower level, non-violent offenses." (St. Br. at 24) The State was referencing discussions in the General Assembly that

occurred in 2021, prior to the passage of House Bill 3653, which included subsection (c-1.5). Rep. Slaughter stated, "Senate Amendment 2, offers a provision to provide for more judicial discretion for lower level, non-violent offenses." Illinois Senate Transcript, 2021 Reg. Sess. No 98. Although it is not specified in the debates, the State assumes this is a reference to (c-1.5). To the extent that is accurate, this is the only comment made since 2019 regarding the subsection. Nothing else in the legislative history and debates suggests the intent of the provision was to address only "lower level, non-violent offenses." As illustrated above, the debates that took place regarding (c-1.5) demonstrate the subsection was meant to apply to all offenses involving the use or possession of drugs, even if they were Class X, as long as the other requirements of the section were met.

Legislators made clear that House Bill 3635, which included subsection (c-1.5), was intended to be no less than revolutionary. On January 12, 2021, Sen. Sims stated, "This is a moment that presents a tremendous opportunity for us to fundamentally change the way we look at criminal justice in this State. This is a big, bold, complex, transformational agenda[.]" Illinois Senate Transcript, 2021 Reg. Sess. No. 98. Rep. Slaughter echoed those sentiments the next day in the House, stating, "this Bill represents a robust, transformative, bold, and vicious initiative to comprehensively reform our criminal justice system." Illinois House Transcript, 2021 Reg. Sess. No. 104. Restricting subsection (c-1.5) to only those offenses deemed acceptable by the State contravenes the legislature's stated intent to make significant

criminal justice reforms. As this Court has recently stated, "[W]e do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.[Citations omitted]." *People v. Sroga*, 2022 IL 126978, ¶ 44. As such, this Court should effectuate the legislature's stated intent by affirming the ruling of the Second District.

2. Doctrine of *expressio unius*

Citing *People v. O'Connell*, 227 Ill. 2d 31, 37 (2007), the State argues "Where a statute lists the thing to which it refers, there is an inference that all omissions should be understood as exclusions." (St. Br. at 14) This is the canon of *expressio unius est exclusio alterius* meaning "'the expression of one thing is the exclusion of another [Internal citations omitted].'" *People v. Roberts*, 214 Ill. 2d 106, 117 (2005). This rule of statutory interpretation may be employed when the legislative intent is not clear from the plain language of the statute. *Roberts*, 214 Ill. 2d at 117.

Using this theory, the State concludes that, when the legislature said that subsection "applies to offenses involving drug 'use' or 'possession,' it meant offenses involving those forms of conduct and not others, like delivery or homicide." (St. Br. at 14) This argument, however, is fundamentally flawed because it assumes that the absence of the word "delivery" constitutes an omission. On the contrary, as argued in Part A, and as found by the Appellate Court, delivery is already encompassed within the phrase "use or possession." *Hoffman*, 2023 IL App (2d) 230067, ¶ 33. Thus, "delivery" is not omitted from the statute; rather, it is, necessarily, already included. Like the

Supreme Court found in *Kawashima v. Holder*, 565 U.S. 478, 483 (2012), just because a word does not appear in a statute does not mean it was excluded.

3. Doctrine of *in pari materia*

If the language of a statute is ambiguous, the doctrine of *in pari materia* may be used to "ascertain the meaning of a provision." *In re Jaime P.*, 223 Ill. 2d 526, 533 (2006). Under this tool of interpretation, "two statutes, or two parts of one statute, concerning the same subject must be considered together in order to produce a harmonious whole." *People v. Rinehart*, 2012 IL 111719, ¶ 26 (internal quotations omitted). A statute must be analyzed while "keeping in mind the subject it addresses and the legislature's apparent objective in enacting it." *Rinehart*, 2012 IL 111719, ¶ 26.

The State references this doctrine in the first part of its argument in which it contends the statute is unambiguous. (St. Br. at 15) It compares the three types of offenses listed in an attempt "to produce a harmonious whole." In Part A, Krystle discussed the shortcomings of this method, noting that none of the other offenses require mandatory minimum imprisonment sentences. As this Court has stated, "It is not our role to inject a compromise, but, rather, to interpret the acts as written." *Folta v. Ferro Engineering*, 2015 IL 118070, ¶ 43. Attempting to harmonize the three types of offenses here would be injecting a compromise where none exists.

By finding the statute unambiguous, the Second District complied with its duty to "interpret the act as written" because the Court addressed the only

relevant questions: (1) is drug-induced homicide an offense that requires a mandatory minimum sentence of imprisonment? And (2) does drug-induced homicide involve the use or possession of drugs? *Hoffman*, 2023 IL App (2d) 230067, ¶ 28. It correctly answered both in the affirmative.

Not only was the legislature's objective apparent in enacting the statute, it was explicit. "The intent of this legislation is to empower the Judiciary to act appropriately," Sen. Sims stated on May 24, 2019, during the Senate debate on this specific provision. Sen. Sims's statement, combined with the discussion regarding the desire to reduce the harm of mandatory minimum sentences, demonstrate that the legislature intended any offense involving the use or possession of drugs to be addressed by this subsection.

4. Rule of lenity

Pursuant to the rule of lenity, subsection (c-1.5) must be construed in favor of Krystle. This principle of statutory construction "teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States v. Davis*, 588 U.S. 445, 464 (2019); see also *Fitzsimmons v. Norgle*, 104 Ill. 2d 369, 374 (1984) (where a statute can reasonably be read in more than one way, the rule of lenity requires a court to construe the statute strictly in favor of the accused). This rule applies not only to criminal prohibitions but also to the penalties that may be imposed. *Bifulco v. U. S.*, 447 U.S. 381, 387 (1980).

The State's insistence that the provision here excludes drug-induced homicide amounts to nothing more than conjecture. Our justice system has

long held that a penalty may not be imposed based on a probability of the legislature's intent. This Court, citing a case from 1820, recently stated, "In construing a criminal statute, courts must resist the impulse to speculate regarding legislative intent, for 'probability is not a guide which a court, in construing a penal statute, can safely take.'" *People v. Hartfield*, 2022 IL 126729, ¶ 69 (quoting *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 105 (1820)). Applying the rule of lenity permits the sentencing court the discretion to impose a penalty suited to the specific and unique facts of this case.

Subsection (c-1.5) applies to drug-induced homicide because the offense requires a mandatory minimum prison term and involves the use or possession of drugs. The legislative history and debates, as well as the other aids of statutory construction mandate this conclusion. Where Krystle Hoffman took responsibility for her actions, had no criminal history, and was not a threat to the public, the interest of justice requires imposing a sentence less than the mandatory minimum prison term of six years. This Court should affirm the ruling of the Second District and remand this matter to the trial court.

CONCLUSION

For the foregoing reasons, Krystle Hoffman, defendant-appellee, respectfully requests that this Court affirm the ruling of the Second District Appellate Court vacating her six-year prison sentence and remanding the matter for a new sentencing hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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, is 42 pages.

/s/Ann Fick
ANN FICK
Assistant Appellate Defender

APPENDIX TO THE BRIEF

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

KRYSTLE HOFFMAN
Defendant/Respondent

Reviewing Court No: 2-23-0067
Circuit Court/Agency No: 2018CF000395
Trial Judge/Hearing Officer: HONORABLE ROBERT PILMER

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KRYSTLE HOFFMAN
Defendant/Respondent

Reviewing Court No: 2-23-0067
Circuit Court/Agency No: 2018CF000395
Trial Judge/Hearing Officer: HONORABLE ROBERT PILMER

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SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

KRYSTLE HOFFMAN
Defendant/Respondent

Reviewing Court No: 2-23-0067
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Trial Judge/Hearing Officer: HONORABLE ROBERT PILMER

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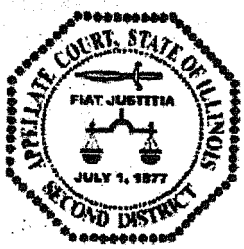

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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KENDALL COUNTY, ILLINOIS

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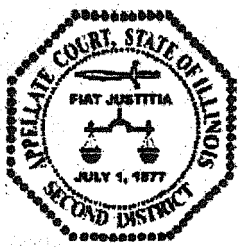

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STATE OF ILLINOIS, CIRCUIT COURT KENDALL COUNTY	SENTENCING ORDER	FILED IN OPEN COURT DEC 19 2022 MATTHEW G. PROCHASKA CIRCUIT CLERK KENDALL CO.

THE PEOPLE OF THE STATE OF ILLINOIS,

v.

Krystle Hoffman

Defendant *(First, middle, last name)*

Case Numbers 18CF395

States Attorney Shifka Deft. Attorney Tomczak

Court Reporter KN Deputy Clerk AF

1. Fines

☒ DEFENDANT ADMONISHMENT: 705 ILCS 135/5-5 (effective July 1, 2019) established a minimum fine of ☐ $25 for a minor traffic offense and ☒ $75 for any other offense, unless otherwise provided by law.

☐ If applicable, DEFENDANT HAS BEEN ADMONISHED of his/her right to elect whether he/she will be sentenced under the law in effect at the time of the offense or at the time of sentencing.

Defendant has elected *(Check one)*:

☐ He/she will be sentenced under the law in effect at the time of the offense;

☒ He/she will be sentenced under the law in effect at the time of the time of sentencing.

PLEA: ☐ NOT GUILTY ☒ GUILTY FINDING BY: ☒ COURT ☐ JURY SENTENCE IS: ☐ AGREED ☒ CONTESTED

☒ CONVICTION TO ENTER ☐ PROBATION ☐ CONDITIONAL DISCHARGE ☐ COURT SUPERVISION
☐ WITHHOLD JUDGMENT ☐ PROBATION per 730 ILCS 5/5-6-3.4 ☐ PROBATION per 730 ILCS 550/10 OR 570/410
For a period of ____ months until ____/____/____ at ___:____ a.m.

Offense Drug Induced Homicide a Class X ~~Misdemeanor~~/Felony $ 560.00

Offense 720 ILCS 5/9-3.3(a) a Class ____ Misdemeanor/Felony $ ____

Offense ____ a Class ____ Misdemeanor/Felony $ ____

Total Fine Amount $ 560.00

2. Criminal Assessment ***(Check the highest class offense only)***

☒ Schedule 1: Generic Felony (705ILCS135/15-5) $549	$ 549.00
☐ Schedule 2: Felony DUI (705ILCS135/15-10) $1709	$ ____
☐ Schedule 3: Felony Drug Offense (705ILCS135/15-15) $2215	$ ____
☐ Schedule 4: Felony Sex Offense (705ILCS135/15-20) $1314	$ ____
☐ Schedule 5: Generic Misdemeanor (705ILCS135/15-25) $439	$ ____
☐ Schedule 6: Misdemeanor DUI (705ILCS135/15-30) $1381	$ ____
☐ Schedule 7: Misdemeanor Drug Offense (705ILCS135/15-35) $905	$ ____
☐ Schedule 8: Misdemeanor Sex Offense (705ILCS135/15-40) $1184	$ ____
☐ Schedule 9: Major Traffic Offense (705ILCS135/15-45) $325	$ ____
☐ Schedule 10: Minor Traffic Offense (705ILCS135/15-50) $226	$ ____
☐ Schedule 10.5: Truck Weight/load Off (705ILCS135/15-52) $260	$ ____
☐ Schedule 11: Conservation Offense (705ILCS135/15-55) $195	$ ____
☐ Schedule 13: Non-Traffic Violation (705ILCS135/15-65) $100	$ ____

Total Criminal Assessment Amount $ 549.00

3. **Conditional Assessment** ***(Check all that apply)***

- ☐ Arson/residential arson/aggravated arson (705ILCS135/15-70(1)) $500 for each Conviction $_____
- ☐ Child pornography (705ILCS135/15-70(2)) $500 for each conviction $_____
- ☐ Crime lab drug analysis (705ILCS135/15-70(3)) $100 $_____
- ☐ DNA analysis (705ILCS135/15-70(4)) $250 $_____
- ☐ DUI analysis (705ILCS135/15-70(5)) $150 $_____
- ☐ Drug related offense, possession/delivery (705ILCS135/15-70(6)) Street Value $_____
- ☐ Methamphetamine related offense, possession/manufacture (705ILCS135/15-70(7)) Street Value $_____
- ☐ Order of protection violation (705ILCS135/15-70(8)) $200 for each conviction $_____
- ☐ Order of protection violation (705ILCS135/15-70(9)) $25 for each conviction $_____
- ☐ States Attorney petty or business offense (705ILCS135/15-70(10)(a)) $4 $_____
- ☐ States Attorney conservation or traffic offense (705ILCS135/15-70(10)(b)) $2 $_____
- ☐ Guilty plea or no contest, DV against family member (705ILCS135/15-70(13)) $200 for each sentenced violation $_____
- ☐ EMS response reimbursement vehicle/snowmobile/boat violation (705ILCS135/15-70(14)) Max Amount is $1000 $_____
- ☐ EMS response reimbursement controlled substances (705ILCS135/15-70(15)) Max amount is $1000 $_____
- ☐ EMS response reimbursement reckless driving/aggravated reckless driving/speed in excess 26 mph (705ILCS135/15-70(16)) Max amount is $1000 $_____
- ☐ Weapons violation, Trauma Center Fund (705ILCS135/15-70(18)) $100 for each conviction $_____

Total Conditional Assessment Amount $_____

4. **Other Assessments**

- ☒ Restitution (See supplemental order) $ 4492.64
- ☐ Probation/Supervision Fee $_____ months x _____ months until __/__/__ __:__ am $_____
  - ☐ Comply with all conditions set out in the corresponding order.
  - ☐ Shall not violate any laws of any jurisdiction, including Federal, State or Local Ordinances.
- ☐ Public Defender assessment $_____
- ☐ Victim Impact Panel $_____
- ☐ Kendall County Jail Weekend/Work Release Fee $_____
- ☐ GPS Fee $_____
- ☒ DNA Indexing Fee $ 250 00
- ☐ Other $_____

5. **Credits** (to be applied before offsets)

2,500 00

- ☒ Bond Applied to Restitution first $30 ($4[illegible])
- ☒ Credit for time served 2 day(s) x $30 day credit ($60 00)

Total Credits ($[illegible]560 00)

WAIVER SECTION

Total amount due shall be paid by 6/30/23.

Total Amount Due $ 3291.64

Unless a court ordered payment schedule is implemented or the assessment requirements of this Act are waived under a court order, the Clerk of the Circuit Court may add to any unpaid assessments under this Act a delinquency amount equal to 5% of the unpaid assessments that remain unpaid after 30 days, 10% of unpaid assessments that remain unpaid after 60 days and 15% of the unpaid assessments that remain unpaid after 90 days. (705 ILCS 135/5-10(e))

☒ **INCARCERATION**

☐ _____ day(s) in Kendall County Jail (See Imprisonment Order)

☒ 6 year(s) 0 month(s) in Illinois Department of Corrections 18 month(s) mandatory supervised release.

☐ Impact Incarceration Recommendation ☐ Extended Term Sentence per 730 ILCS 5/5-8-2 ☐ MSR per 730 ILCS 5/5-8-1(a)(6)

☐ Class X Sentencing per 730 ILCS 5/5-4.5-95(b) ☒ Truth-In Sentencing per 730 ILCS 5/3-6.3

☐ _____ weekend(s) to commence ___/___/___ at 6:00 p.m. plus $20.00 per weekend fee (see imprisonment Order)

*** All weekends are consecutive and are from 6:00 p.m. on Friday to 6:00 p.m. on Sunday ***

☐ _____ day(s) periodic imprisonment (see Supplemental Sentencing Order) plus $10.00 per day fee.

☒ Incarceration shall commence instanter. ☐ Incarceration shall commence on ___/___/___ at _____ a.m./p.m.

☐ No Day for Day Credit ☐ Day for Day Credit ☒ Credit for 2 actual days served from 11/16/18 to 11/17/18.

☐ **COUNSELING**

☐ Shall complete evaluation within ____ days for ☐ Alcohol/Drug ☐ Anger Management ☐ Psychological _____. and successfully complete all recommended counseling and aftercare as a condition of probation.

☐ Shall complete Level ____ alcohol counseling per alcohol evaluation / subject to modification by alcohol evaluation.

☐ Shall complete an Illinois Certified Domestic Violence Counseling Program.

☐ Shall complete T.A.S.C. and all recommended aftercare as a condition of probation.

OTHER CONDITIONS

☐ _____ hour(s) of Public Service Work as arranged by Court Services.

☐ _____ days(s) on the (Global Positioning System) or SCRAM Program) at $_____ per day (See Supplemental Order)

☐ Shall have no contact/no harmful or offensive contact with_____.

☐ Shall not enter upon the property of _____.

☐ Shall refrain from direct or indirect contact with any street gang member(s).

☐ Register pursuant to: ☐ Sex Offender Registration Act (730 ILCS 150/1) ☐ Violent Offender Against Youth Act (730 ILCS 154/1)

☐ HIV (Human Immunodeficiency Virus) / STD (Sexually Transmitted Disease) testing (730 ILCS 5/5-5-3(g)).

☐ Shall submit a blood specimen for genetic marking purpose (730 ILCS 5/5-4-3).

☒ Shall submit to DNA Indexing (Felony only) plus #250.00 fee (730 ILCS 5/5-4-3(a)).

☐ Said sentence shall run ☐ Concurrent ☐ Consecutive to the sentence imposed in _____ County, case number_____.

☐ Defendant shall report and appear before this court for a status review on ___/___/___ at ____a.m.

ALL TERMS AND CONDITIONS TO BE COMPLETED BY SAID DATE.

☐ Defendant waives personal service of a Petition to Revoke. ☐ A motor vehicle was used in the commission of a Felony Offense.

☐ The Court verifies that the offense(s) were/were not sexually motivated pursuant to 730 ILCS 154/86.

☐ The Defendant has been advised as to the penalties under the Federal Gun Control Act of 1968.

☐ The following cases and or counts are hereby Nolle Prosequi:_____.

☒ Other: Appeal rights given

12/19/22
Date

Judge

I am the Defendant and I have read and understand this Sentencing Order.

_____ Signature of Defendant

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,) CASE NO(S): 18 CF 395

vs.

Krystle Hoffman Defendant.

FILED IN OPEN COURT
DEC 19 2022
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

State's Attorney Shifla Defendant's Attorney Domczak

Court Reporter KN Deputy Clerk AF

SUPPLEMENTAL ORDER OF RESTITUTION

Pursuant to the Sentencing Order in this case(s) the Defendant is ordered as a condition of the sentence to pay restitution as follows:

1. ~~[ ]~~ The Defendant shall pay $ 4492.64 as and for restitution by 6 / 30 / 23 9:00 a.m.

2. [ ] Restitution, as set forth in paragraph number one shall be a joint and several obligation with the following case(s):

Case Name(s)	Case Number(s)

Restitution to be paid from defendant's bond first

All payments shall be made payable to the Kendall County Circuit Clerk, 807 W. John Street, Yorkville, IL 60560 in accordance with this Order. The Kendall County Circuit Clerk shall first apply the payment to restitution, then to fines, fees and costs, then to current probation fees ordered herein.

3. ~~[ ]~~ The person(s) entitled to receive the restitution is (are):

Name:	Stanley Haseltine	
Address:	8407 Hanbury Ct	
City/State/Zip:	Joliet IL 60431	
Account No.:		
Amount:	$ 4492.64	$

[ ] That said order shall be sealed by the Circuit Clerk and shall be opened ~~only for good cause~~ shown by an order of this Court.

Dated: 12/19/22

Judge

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, vs. KRYSTLE HOFFMAN, Defendant,

CASE NO(S): 18 CF 395

State's Attorney ms

Defendant's Attorney tomzack

Court Reporter

Deputy Clerk

ORDER

This cause coming before the Court, the Court being fully advised in the premises, and having jurisdiction of the subject matter, the defendant:

☐ is present In Person ☐ is present in custody did not appear

☐ present with interpreter/language line ☐ Other

On Motion of ☐ Defendant ☐ Prosecution ☐ Court ☒ Agreement

Case Continued To at 9:00 a.m. **Courtroom No.** 115

Defendant must appear in person: ☐

For: ☐ Return with Attorney ☐ Set Preliminary Hearing ☐ Preliminary Hearing/Arraignment

☐ Pretrial ☐ Final Pretrial ☐ Trial Setting ☐ Final Trial Setting

☐ Bench Trial ☐ Final Jury Setting ☐ 402 Conference ☐ Setting of PTR

☐ Status Review

☐ Hearing on Motion/Petition to

The defendant has:

☐ waived right to preliminary hearing ☐ been arraigned instanter ☐ S.C.R. 402 admonishment

☐ been admonished of extended term ☐ been advised of trial/hearing in absentia

It is further ordered:

☐ Writ Continued ☐ Speedy Trial Tolled ☐ Subpoenas Continued ☐ Public Defender Appointed

☐ Strike Future Dates ☐ Warrant quashed and recalled instanter (DOB:

(Copy of Order to be sent to Ken Com by Circuit Clerk)

☐ Issue warrant forthwith, Bail set at $ ☐ 10% to apply ☐ Full Cash Bond

☐ Clerk to send bond forfeiture notice ☐ Judgment entered on bond forfeiture

☐ Copy of this order to be sent to: Defendant's Attorney

☒ Other: after hearing on the motion, defendant's motion to reconsider is denied, motion to stay mittimus is also denied. appellate defender is appointed. Clerk is to prepare and file the Notice of Appeal.

Date: 02/24/2023

Robert Pilmer Digitally signed by Robert Pilmer Date: 2023.02.24 10:40:05 -06'00'

Judge

Rev. 06/21

SA9C 181

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
v.) Case No. 18CF395
)
KRYSTLE HOFFMAN,)
Defendant.)

FILED
FEB 28 2023
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

NOTICE OF APPEAL

An appeal is taken from the judgment described herein:

1. This appeal is taken to the Appellate Court of the Second District from this Circuit Court of the 23rd Judicial Circuit.
2. The Appellant in this matter is, Krystle Hoffman.
3. The Appellant is indigent and on February 24, 2023, the Court appointed the Office of the Appellate Defender to represent the Defendant on the appeal of this matter.
4. On September 14, 2022, the Defendant entered a plea of guilty to a Class X Felony of Drug Induced Homicide 720 ILCS 5/9-3.3(a).
5. After a sentencing hearing on December 19, 2022, the Defendant was sentenced to six years in the Illinois Department of Corrections. The Motion to Reconsider Sentence filed on January 6, 2023, was denied after hearing on February 24, 2023. The Motion to Stay Mittimus and Admit Defendant to Bail Pending Appeal filed on February 24, 2023, was denied after hearing on February 24, 2023.

Matthew G. Prochaska

Matthew G. Prochaska
Kendall County Circuit Clerk
807 W. John St.
Yorkville, IL 60560

2023 IL App (2d) 230067
No. 2-23-0067
Opinion filed December 21, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kendall County.
Plaintiff-Appellee,	)	
v.	)	No. 18-CF-395
KRYSTLE L. HOFFMAN,	)	Honorable Robert P. Pilmer,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court, with opinion.
Justice Mullen concurred in the judgment and opinion.
Justice Jorgensen specially concurred, with opinion.

OPINION

¶ 1 Defendant, Krystle L. Hoffman, was arrested for committing a drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2018)). Three days after her arrest, defendant's father posted $5000 in bond. Defendant continued to work while out on bond. Four years after she was arrested, defendant pleaded guilty to committing a drug-induced homicide. No agreement was made concerning her sentence. Defendant filed an election to be sentenced under section 5-4-1(c-1.5) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-4-1(c-1.5) (West 2022)), which permits trial courts to exercise their discretion and impose sentences below the mandatory minimums if certain conditions were met. Following a hearing, the trial court sentenced defendant to six years'

imprisonment, the mandatory minimum sentence. See 720 ILCS 5/9-3.3(b) (West 2018) (drug-induced homicide is a Class X felony); 730 ILCS 5/5-4.5-25(a) (West 2018) (sentence for Class X felony is between 6 and 30 years). The court did not impose a sentence under section 5-4-1(c-1.5) of the Corrections Code because it found that provision inapplicable to drug-induced homicide. The court also ordered defendant to pay $4492.64 in restitution to the father of the victim, Lorna Haseltine. Because part of defendant's bond was exonerated, the bond did not completely satisfy the restitution amount. The court set June 30, 2023—6 months and 11 days after the sentencing order was entered—as the date for defendant to pay restitution. Defendant moved the court to reconsider her sentence, challenging only the court's decision not to impose a sentence under section 5-4-1(c-1.5) of the Corrections Code. The court denied the motion, and this timely appeal followed. On appeal, defendant argues that we must vacate her six-year sentence and the restitution order and remand this cause for a new sentencing hearing because (1) section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide and (2) the trial court failed to set the manner and method of paying restitution in light of defendant's ability to pay. We vacate defendant's six-year sentence and remand for the trial court to (1) consider imposing a sentence under section 5-4-1(c-1.5) and (2) set the manner and method of paying restitution in light of defendant's ability to pay.

¶ 2 I. BACKGROUND

¶ 3 On November 16, 2018, defendant was charged by information with drug-induced homicide. The next day, the trial court's staff prepared a pretrial bond report and defendant prepared an affidavit of assets and liabilities. The pretrial bond report indicated that defendant worked as a manager at TGI Fridays, had worked there for the last 15 years, and earned between $3000 and $4000 per month. The affidavit of assets and liabilities revealed that defendant worked

as an "assoc. manager/server" at TGI Fridays, earned $2300 a month, and paid $1035 in rent and $300 toward a car loan.[1] The court set defendant's bond at $50,000, with 10% to apply. Defendant's father posted $5000 in bond on November 19, 2018. He signed the bail bond, acknowledging that "any and all of the bail bond deposited may be used to pay costs, attorney's fees, fines, restitution, or for other purposes authorized by the Court." Nine days after posting bond, defendant retained private counsel to represent her.

¶ 4 Approximately two months later, in January 2019, defendant was indicted. The bill of indictment provided:

> "That on or about August 12, 2017, *** [defendant] committed the offense of DRUG-INDUCED HOMICIDE, *** in that said defendant, while committing a violation of the Controlled Substances Act, Section 401(d) of Act 570 of Chapter 720 of the Illinois Compiled Statutes [(720 ILCS 570/401(d) (West 2018))], unlawfully delivered heroin, a controlled substance, containing fentanyl, to *** Haseltine, and *** Haseltine['s] death was caused by the injection, inhalation, absorption, or ingestion of that controlled substance."

¶ 5 In February 2020, approximately one year after she was indicted, defendant submitted a change of address form. This form reflected that she was moving from an apartment in Joliet to an apartment in Bolingbrook. In June 2021, the conditions of defendant's bond were modified so that she could travel to Florida for about one week. In July 2021, defendant submitted another change of address form, which reflected that she was moving to her father's house. On January 3, 2022, defendant assigned $2000 of her bond money to Dr. Karen Smith, a licensed clinical professional counselor who evaluated defendant and prepared a report.

---

[1]Presumably, defendant's rent and car loan were monthly expenses.

¶ 6 On September 14, 2022, defendant filed an election to be sentenced under section 5-4-1(c-1.5) of the Corrections Code (see 5 ILCS 70/4 (West 2022) ("If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.")). The State did not concede that section 5-4-1(c-1.5) applied. Defendant entered a blind plea of guilty to committing a drug-induced homicide. The court admonished defendant about sentences that could be imposed, including a sentence under section 5-4-1(c-1.5), and the rights she was giving up by pleading guilty. The factual basis for the plea revealed that, on August 12, 2017, defendant had a text conversation with Haseltine about obtaining drugs and defendant agreed to supply her with some. A Western Union account, which was used to pay for the drugs, showed that defendant collected the money for the drugs as part of the transaction. When police interviewed defendant, she said that she and a man named Mark went to Haseltine's house and "Mark actually reached over [defendant] to hand a package of what [defendant] thought was heroin to *** Haseltine on that particular day." Thereafter, Haseltine was found unresponsive in her bathtub. She later died. An autopsy revealed that heroin laced with other drugs was found in Haseltine's system and that her death resulted from the ingestion of these substances. The court accepted the defendant's guilty plea, finding it knowingly and voluntarily made.

¶ 7 Defendant's sentencing hearing was held on December 19, 2022. At that hearing, various documents were admitted. These included the text messages defendant and Haseltine exchanged, Western Union business records, the psychosocial report Smith prepared, and defendant's presentence investigation report (PSI).

¶ 8 The text messages showed that Haseltine contacted defendant on the morning of August 12, 2017. Haseltine asked defendant if she or defendant's ex-boyfriend could "help [her] out" and

"grab one of those," for which Haseltine would "pay [defendant] extra on top of that." Haseltine then offered to "send[ ] the money to W[estern]U[nion]" so that defendant could "go into the currency [exchange] with [her identification card] and grab it." Defendant texted Haseltine her address, and Haseltine texted defendant the control number she needed to collect the money at the currency exchange. Defendant replied, "[M]ark said he should have stuff around 1 anyways." Defendant then told Haseltine that she would contact her when she left work. Haseltine texted that she sent defendant $58, and defendant confirmed that she would "drop it off by [Haseltine]." Defendant asked Haseltine how much she wanted, and Haseltine asked defendant to "see if [she] could get 50 and split it." At 2:16 p.m., defendant texted Haseltine, telling her that she was on her way to "get Mark," and she estimated that they would be at Haseltine's house at 2:40 p.m. At 3:02 p.m., defendant texted Haseltine that she was "[h]ere."

¶ 9 The Western Union documents revealed that Haseltine sent $58 to defendant on August 12, 2017, at 11:45 a.m. Defendant collected the payment later that day.

¶ 10 The report Smith prepared, which was based on various documents and interviews Smith had with defendant and her father in February and August 2022, reflected that defendant had lived in her ex-boyfriend's apartment in Bolingbrook. She left there, moved in with a friend who lived in southern Illinois, and slept on the friend's couch.

¶ 11 Smith indicated that defendant was slow academically and, although she got along well with people, she was easily influenced by others. Defendant, who expressed extreme remorse for Haseltine's death, reported that she had attempted to commit suicide by swallowing a bottle of Xanax. In an excerpt of the police interview that Smith reviewed, Smith learned that Mark was defendant's ex-roommate and defendant had driven Mark to Haseltine's home because Mark did not have a driver's license.

¶ 12 The PSI showed that defendant drove while under the influence of alcohol (DUI) on March 14, 2022, while she was out on bond in this case. A month later, she was convicted of that offense and sentenced to 12 months of supervision and DUI counseling. Defendant was employed as a server at Cracker Barrel, earning $7.20 per hour plus tips. Monthly, defendant paid $900 in rent, $340 toward her car loan, and $126 for automobile insurance. She also had an outstanding balance of $3000 on her credit card.

¶ 13 Other evidence presented at the hearing revealed that Haseltine's father paid $4492.64 for Haseltine's funeral. A bill from the funeral home admitted at the hearing confirmed this. Haseltine's father paid for the funeral out of pocket and was never reimbursed.

¶ 14 Haseltine's father and sister testified about how Haseltine's death negatively affected them and Haseltine's young son. Defendant's friends and family testified that defendant was not a drug user and was hardworking, often working overtime or two jobs. At the time of sentencing, defendant lived in a hotel and worked there in addition to her job as a server at Cracker Barrel. Defendant's friends and family indicated that defendant was gullible, naïve, and easily taken advantage of. She was extremely giving, helping her friends and family financially and emotionally. Defendant's compassion was evidenced by the fact that she repeatedly attempted to help her ex-boyfriend overcome his drug addiction.

¶ 15 Suzanne Rubin, a psychotherapist with "quite a bit of background in assessing risk potential," interviewed defendant and testified at the sentencing hearing. She diagnosed defendant with depression, anxiety, and codependency. Rubin described codependency as "essentially fusing yourself with another person." Both people-pleasing and gullibility were characteristics of codependency. Rubin asserted that defendant posed no risk to the public and that "the likelihood of recidivism in any regard with [defendant] in [Rubin's] personal and professional opinion [was]

extremely low." She reached this conclusion knowing that defendant had committed DUI while out on bond.

¶ 16 In allocution, defendant accepted full responsibility for her actions and apologized to Haseltine's family.

¶ 17 The trial court sentenced defendant to six years' imprisonment. In imposing the sentence, the court considered the PSI and the evidence the parties presented, including all the exhibits. The court found in aggravation that "defendant's conduct caused or threatened serious harm" and "a sentence [was] necessary to deter others from committing the same crime." See 730 ILCS 5/5-5-3.2(a)(1), (7) (West 2022). The court gave "no weight to [defendant] being charged with the offense of DUI," as she "accepted responsibility for that offense shortly after being charged." In mitigation, the court found that "defendant did not contemplate [that] her criminal conduct would cause or threaten serious physical harm to another," she either "ha[d] no history of prior delinquency or criminal activity or ha[d] led a law-abiding life for a substantial period of time before the commission of the present crime," her "criminal conduct was the result of circumstances unlikely to recur," her "character and attitude[ ] *** indicate[d] she [was] unlikely to commit another crime," and she "[was] particularly likely to comply with the terms of a period of probation." See *id.* § 5-5-3.1(a)(2), (7), (8), (9).

¶ 18 In addressing this last point, the court considered whether it should sentence defendant under section 5-4-1(c-1.5) of the Corrections Code. In doing so, the court noted that "[c]ertainly if [it] had broad discretion in imposing a sentence, it may very well be that a term of probation would be appropriate under the very specific facts of this case." The court also found that "[defendant did] not pose a risk to public safety" and that "the events of August 12, 2017[,] involve[d] the use or possession of drugs" per section 5-4-1(c-1.5). See 730 ILCS 5/5-4-1(c-1.5) (West 2022).

However, the court determined that "the phrase [']use or possession of drugs[']] in conjunction with a mandatory minimum sentence as set forth in the statute does not apply to the offense of drug-induced homicide, a Class X felony."

¶ 19 The court then ordered defendant to pay Haseltine's father $4492.64 in restitution, noting that restitution would be paid from the bond money before any other assessments were satisfied. The State interjected that "the only thing [it] would point out, there's a partial exoneration of the bond, there's 2,000 less." Thus, "there's 2,500 available." The State asked "that that [balance] go to restitution first." Defendant did not object. The State then alerted the court that "[w]e need a date for that, that it needs to be paid by." The court ordered "that the balance should be paid by June 30, 2023." Defendant did not object.

¶ 20 Defendant moved the trial court to reconsider the sentence, challenging the trial court's determination that section 5-4-1(c-1.5) of the Corrections Code did not apply to drug-induced homicide. Defendant did not challenge the restitution order. The court denied the motion.

¶ 21 Four days after the trial court denied her motion to reconsider, defendant filed a notice of appeal. Thereafter, this court granted in part defendant's motion to stay her sentence and set her bond at $100,000, with 10% to apply. Defendant posted the $10,000 appeal bond in the trial court.

¶ 22 This timely appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant raises two issues on appeal. She argues that (1) section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide and (2) the restitution order is improper because the trial court failed to set the manner and method of paying restitution in light of defendant's ability to pay. We consider each issue in turn.

¶ 25 A. Section 5-4-1(c-1.5) of the Corrections Code

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¶ 26 Resolving whether section 5-4-1(c-1.5) applies to drug-induced homicide necessarily begins with interpreting the statute. In interpreting the statute, we are guided by the well-settled rules of statutory construction. "Our primary objective when construing a statute is to ascertain the intent of the legislature and give effect to that intent." *People v. Ramirez*, 2023 IL 128123, ¶ 13. "The best evidence of legislative intent is the statutory language itself, which must be given its plain and ordinary meaning." *Id.* "Statutes must be read as a whole, and all relevant parts should be considered." *Id.* "A reviewing court may also discern legislative intent by considering the purpose of the statute, the problems to be remedied, and the consequences of interpretating the statute one way or another." *People v. Palmer*, 2021 IL 125621, ¶ 53. We "may not depart from the language of the statute by interjecting exceptions, limitations, or conditions tending to contravene the purpose of the [statute]." *Ramirez*, 2023 IL 128123, ¶ 13. We review *de novo* the construction of a statute. *Id.*

¶ 27 Before analyzing section 5-4-1(c-1.5), we find it helpful to consider the purpose of this statutory provision, which, as noted above, the canons of statutory construction allow us to do.[2] "The intent of [the] legislation [was] to empower the Judiciary to act appropriately." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 20 (statements of Senator Sims). Section 5-4-1(c-1.5) was enacted "to reform our criminal justice system, to tear down the problems that we have, *** because of the mandatory minimum sentencing." *Id.* The legislators were "not removing the mandatory minimum[s], [but] allowing the [trial] judge to deviate" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 177 (statements of Representative Harper)) and "impose something

[2]Section 5-4-1(c-1.5) (730 ILCS 5/5-4-1(c-1.5) (West 2020)) was introduced by House Bill 1587 (101st Ill. Gen. Assem., House Bill 1587, 2019 Sess.) and added to the Illinois Compiled Statutes by Public Act 101-652, § 20-5 (eff. July 1, 2021).

other than that mandatory minimum and get the [defendant] back to functioning in society as quickly as possible" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 179-80 (statements of Representative Connor)). In doing so, the legislators wanted to "treat the Judiciary as they are, a co-equal branch of government," and ensure that the legislators were not "stand[ing] as a super-judiciary." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 19 (statements of Senator Sims). Although there were discussions about the breadth of offenses that would or would not fall under this provision (see 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175 (statements of Representative Bryant) (specifically mentioning that drug-induced homicide would not be included); 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 17 (statements of Senator McClure) (expressing concern that "any offense that involves the use or possession of drugs that is currently not eligible for probation would now be eligible for probation at the discretion of *** the judge")), it was noted that "the language that [the legislators] us[ed] was approved by and came from the [Cook County] State's Attorney" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 177 (statements of Representative Harper)).

¶ 28 With this in mind, we turn to examining section 5-4-1(c-1.5) of the Corrections Code, which provides:

> "Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser

term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." 730 ILCS 5/5-4-1(c-1.5) (West 2022).

For purposes of this appeal, we find it necessary to determine only whether, under section 5-4-1(c-1.5), drug-induced homicide (1) is "an offense that requires a mandatory minimum sentence of imprisonment[ ]" and (2) "involves the use or possession of drugs." *Id.*

¶ 29 First, we consider whether drug-induced homicide is "an offense that requires a mandatory minimum sentence of imprisonment." *Id.* As charged here, drug-induced homicide is a Class X felony. 720 ILCS 5/9-3.3(b) (West 2018). A defendant convicted of a Class X felony faces a prison sentence between 6 and 30 years. 730 ILCS 5/5-4.5-25(a) (West 2018). This six-year sentence is a mandatory minimum. See *People v. Skillom*, 2017 IL App (2d) 150681, ¶ 29. Thus, section 5-4-1(c-1.5) of the Corrections Code applied to defendant insofar as the offense to which she pleaded guilty, *i.e.*, drug-induced homicide, was an offense that required the trial court to impose a minimum sentence.

¶ 30 We next consider whether drug-induced homicide is one of the enumerated offenses as to which the trial court can exercise its discretion and impose a sentence less than the minimum if the remaining conditions specified in section 5-4-1(c-1.5) are met. Although the State recognizes that drug-induced homicide is a Class X felony and that Class X felonies have mandatory minimum sentences, it claims that section 5-4-1(c-1.5) cannot apply to drug-induced homicide because "[n]one of the enumerated offenses[, *i.e.*, the use or possession of drugs, retail theft, or driving with a revoked license that resulted from unpaid financial obligations,] are Class X felony offenses." We find the State's argument misguided. Nowhere does section 5-4-1(c-1.5) indicate that it excludes Class X felonies. Nor is its applicability otherwise restricted based on the class of

the offense. Rather, the enumeration of offenses in section 5-4-1(c-1.5) states simply that "the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations." 730 ILCS 5/5-4-1(c-1.5) (West 2022). The State would have us find an exception for Class X felonies—an exception for which the legislature did not provide. We simply cannot inject such an exception into section 5-4-1(c-1.5). *Ramirez*, 2023 IL 128123, ¶ 13.

¶ 31 Turning to the offenses enumerated in section 5-4-1(c-1.5), we determine that drug-induced homicide falls within the first type of offense listed: it is an offense that "*involves* the use or possession of drugs." (Emphasis added.) 730 ILCS 5/5-4-1(c-1.5) (West 2022). In construing what the legislature meant by "involves the use or possession of drugs," we find it necessary to look to the dictionary. See *People v. Castillo*, 2022 IL 127894, ¶ 24 ("In determining the plain, ordinary, and popularly understood meaning of a statutory term, it is entirely appropriate to look to the dictionary for a definition of the term."). "Involves" is defined as "to have within or as part of itself: include" or "to relate closely: connect." Merriam-Webster Online Dictionary, **********.merriam-webster.com/dictionary/involves (last visited Nov. 15, 2023) [https://perma.cc/FZ3R-TZN5].

¶ 32 In light of this definition, we look to the elements of drug-induced homicide as set forth in section 9-3.3(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/9-3.3(a) (West 2018)):

> "A person commits drug-induced homicide when he or she violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully *delivering* a controlled substance to another, and any person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance." (Emphasis added.)

In line with section 9-3.3(a) of the Criminal Code, defendant was charged with drug-induced homicide because she "unlawfully *delivered* heroin, a controlled substance, containing fentanyl, to *** Haseltine." (Emphasis added.)

¶ 33 In light of the above, we conclude that "delivering" a controlled substance for purposes of drug-induced homicide "involves," *i.e.*, is "connect[ed]" to or "include[s]," the use or possession of drugs. More specifically, we conclude that delivering a controlled substance is connected to or includes possession because, without possession, a drug could not be delivered. See 720 ILCS 570/102(h) (West 2018) (" 'Deliver' or 'delivery' means the actual, constructive or attempted transfer of possession of a controlled substance ***."); *People v. Bolar*, 225 Ill. App. 3d 943, 947 (1992) ("While a person can possess something without delivering it, he cannot deliver it without possessing it. Therefore, when the jury found [the defendant] 'delivered' the cocaine, it also necessarily found that he possessed it."); *People v. Fonville*, 158 Ill. App. 3d 676, 687 (1987) ("[P]ossession is necessarily involved where someone intends to manufacture or deliver a controlled substance.").

¶ 34 Supporting our position is *United States v. James*, 834 F.2d 92 (4th Cir. 1987). There, the defendant was charged with possessing cocaine with the intent to distribute and carrying a firearm during a crime of drug trafficking. *Id.* at 92. Drug trafficking was defined as "any felony violation of federal law *involving* the distribution, manufacture, or importation of any controlled substance." (Emphasis added and internal quotation marks omitted.) *Id.* The defendant moved to dismiss the charges brought against him. *Id.* The trial court granted that motion as to carrying a firearm during a crime of drug trafficking, finding that possessing cocaine with the intent to distribute was not an offense involving distribution. See *id.* The government appealed. *Id.*

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¶ 35 The reviewing court concluded that "possession with intent to distribute [was] a crime 'involving' distribution." *Id.* The court observed:

> "[V]iolations 'involving' the distribution, manufacture, or importation of controlled substances must be read as including more than merely the crimes of distribution, manufacturing, and importation themselves. Possession with intent to distribute is closely and necessarily involved with distribution. In fact, the line between the two may depend on mere fortuities, such as whether police intervene before or after narcotics have actually changed hands." *Id.* at 93.

The court also observed:

> "[T]his interpretation is necessary to give rational effect to [the carrying-a-firearm-during-drug-trafficking provision]. The statute is obviously intended to discourage and punish the deadly violence too often associated with drug trafficking. Such violence can readily occur when drug traffickers attempt to protect valuable narcotics supplies still in their possession or attempt to stop law enforcement officials from disrupting intended transactions. [The carrying-a-firearm-during-drug-trafficking statute] ought not to be interpreted so narrowly as to exclude such dangerous situations." *Id.*

¶ 36 The same is true here. First, "involves the use or possession of drugs" must include more than just use or possession. As observed in *James*, possession is closely and necessarily involved with distribution—here, delivery, which section 9-3.3(a) of the Criminal Code requires.[3] Further, construing section 5-4-1(c-1.5) of the Corrections Code as applying to only use-or-possession drug

[3]Distribute is synonymous with deliver. See Merriam-Webster Online Thesaurus, **********.merriam-webster.com/thesaurus/deliver (last visited Nov. 15, 2023) [https://perma.cc/MN7L-ASUC].

offenses not only entails that we exclude the term "involves," which we cannot do, but also frustrates the legislative purpose, which is to undo the harm that the extensive mandatory minimum sentencing laws created. See *In re S.P.*, 297 Ill. App. 3d 234, 238 (1998) (noting that "several offenses under the [Corrections Code] carry mandatory minimum sentences").

¶ 37 The State argues that section 5-4-1(c-1.5) does not apply to drug-induced homicide because "[n]oticeably absent from this provision is any indication the legislature sought to include any offense that involved the 'delivery' of a controlled substance." We find the State's argument unavailing. The fact that the legislature did not include the term "delivery" in the phrase "use or possession of drugs" does not mean that drug-induced homicide, an offense requiring the delivery of a controlled substance, does not fall under this provision. Section 5-4-1(c-1.5) applies to offenses that "*involve*[ ] the use or possession of drugs" (emphasis added) (730 ILCS 5-4-1(c-1.5) (West 2022)), *not* simply the use or possession of drugs. If the legislature wanted to limit section 5-4-1(c-1.5) to only use-or-possession drug offenses, it would not have modified the phrase "use or possession of drugs" with the term "involves." Taking the State's position would require us to disregard the term "involves," which would render that term completely meaningless. See *Chapman v. Chicago Department of Finance*, 2023 IL 128300, ¶ 39 (noting that appellate court's failure to construe clause in statute violated rules of statutory construction because it rendered that clause superfluous). We simply cannot do that. See *id.*

¶ 38 While we come to our decision here by "giv[ing] undefined statutory words and phrases their natural and ordinary meanings" "[a]nd *** enforc[ing] the clear and unambiguous language as written, without resort to other aids of construction, *e.g.*, legislative history" (*People v. Cavitt*, 2021 IL App (2d) 170149-B, ¶ 167), had we found the statute ambiguous, the legislative history in this matter would support our reading. As noted, the legislature was warned that this law could

encompass drug-induced homicide. See 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 16 (statements of Senator McClure) (noting that "there's an entire category of if the offense involves the use or possession of drugs, and it could be any offense. Why is that so ambiguous, Senator, versus the other two offenses, which are very specific?"). Aware of this fact, the legislators voted to add section 5-4-1(c-1.5) of the Corrections Code.

¶ 39 As a final matter, we note that the mere fact that section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide does not mean that every defendant convicted of that offense will be subject to sentencing under this provision. Rather, even though drug-induced homicide is "an offense that requires a mandatory minimum sentence" and "involves the use or possession of drugs," a sentence under section 5-4-1(c-1.5) is allowed only if all the other conditions are met. 730 ILCS 5/5-4-1(c-1.5) (West 2022). That is, the trial court must still "find[ ] that the defendant does not pose a risk to public safety" and that "the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment." *Id.* Moreover, as an additional safeguard, imposing a sentence under section 5-4-1(c-1.5) requires that the trial court "must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." *Id.*

¶ 40 Given that section 5-4-1(c-1.5) applies to drug-induced homicide, we grant defendant the relief for which she asks, *i.e.*, a remand for a new sentencing hearing. In doing so, we stress that we express no opinion on whether defendant should be sentenced under section 5-4-1(c-1.5) of the Corrections Code.

¶ 41 B. Restitution

¶ 42 Defendant argues that the restitution order was improper because the trial court failed to set the manner and method of payment in light of her ability to pay. Defendant recognizes that she

forfeited this issue when she did not object to the restitution order at sentencing and challenge the order in her motion to reconsider the sentence. See *People v. Enoch*, 122 Ill. 2d 176, 198 (1988). Nevertheless, she asks us to consider the issue under the plain-error rule. The State argues that plain-error review is inappropriate because no error occurred.

¶ 43 "Generally, on appeal, we consider forfeited for appeal any issue not raised at trial and in a posttrial motion." *People v. D'Alise*, 2022 IL App (2d) 210541, ¶ 21. However, "[f]orfeiture does not apply when the issues raised fall within the parameters of the plain-error rule." *Id.* ¶ 23. Forfeited errors in sentencing, of which restitution is a part, may be reviewed under the plain-error rule if the error is plain and the defendant shows that either "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." (Internal quotation marks omitted.) *People v. Adame*, 2018 IL App (2d) 150769, ¶ 12; see *D'Alise*, 2022 IL App (2d) 210541, ¶¶ 23, 28.

¶ 44 Defendant argues that the trial court's imposition of restitution without setting the manner and method of payment in light of her ability to pay is reviewable under the second prong of the plain-error rule. We agree. See *D'Alise*, 2022 IL App (2d) 210541, ¶ 24.

¶ 45 The first step in reviewing an issue under the plain-error rule is deciding whether " 'plain error' occurred." *People v. Quezada*, 2022 IL App (2d) 200195, ¶ 40 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007)). "Plain error" is a " 'clear' " or an " 'obvious' " error. *Id.* (quoting *Piatkowski*, 225 Ill. 2d at 565 n.2). Thus, we address whether a clear or obvious error arose when the trial court did not (1) consider defendant's ability to pay restitution and, based thereon, (2) set the manner and method of paying restitution.

¶ 46 "Generally, a trial court's order for restitution will not be disturbed on appeal absent an abuse of discretion." *D'Alise*, 2022 IL App (2d) 210541, ¶ 26. "A trial court abuses its discretion

only when its ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would adopt the court's view." *Id.* That said, an order for restitution must comply with section 5-5-6 of the Corrections Code (730 ILCS 5-5-6 (West 2022)). *D'Alise*, 2022 IL App (2d) 210541, ¶ 27. A claim that an order for restitution failed to comply with section 5-5-6 of the Corrections Code is reviewed *de novo*. *Id.* Because defendant's arguments concern whether the order for restitution complied with the statutory requirements, our review here is *de novo*. See *id.*

¶ 47 Considering whether the restitution order here complied with section 5-5-6 of the Corrections Code mandates that we construe this statute. In doing so, we are again guided by the well-settled rules of statutory construction outlined above.

¶ 48 Section 5-5-6(f) of the Corrections Code covers the issues raised here. It provides, in relevant part:

> "Taking into consideration the ability of the defendant to pay, *** the court shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years, *** not including periods of incarceration, within which payment of restitution is to be paid in full. Complete restitution shall be paid in as short a time period as possible. *** If the defendant is ordered to pay restitution and the court orders that restitution is to be paid over a period greater than 6 months, the court shall order that the defendant make monthly payments; the court may waive this requirement of monthly payments only if there is a specific finding of good cause for waiver." 730 ILCS 5-5-6(f) (West 2022).

¶ 49 In *D'Alise*, this court considered the application of section 5-5-6(f) in a situation similar to that presented here. There, the defendant, an unlicensed dentist who was convicted of the unlicensed practice of dentistry, was ordered to pay restitution to two former patients who were

injured by the defendant or those he employed. *D'Alise*, 2022 IL App (2d) 210541, ¶¶ 1, 9-10. In entering the restitution order, the trial court did not make a specific finding about the defendant's ability to pay or specify the time frame for the defendant to pay all the restitution. *Id.* ¶ 13.

¶ 50 On appeal, we determined that "a trial court is not required to expressly state that it considered a defendant's ability to pay" when ordering the defendant to pay restitution. *Id.* ¶ 51. Rather, we concluded that "there need only be sufficient evidence before the court concerning the defendant's ability to pay." *Id.* The trial court in *D'Alise* had sufficient evidence before it to determine that the defendant was able to pay restitution. *Id.* However, we determined that this fact "d[id] not mean that the restitution order [was] proper." *Id.* ¶ 55. Rather, we noted that a trial court ordering restitution must set the manner and method of making payments and, in doing so, "must specifically consider a defendant's ability to pay restitution." *Id.* We observed that, for example, "a court should consider that a defendant with many liquid assets might be able to easily pay a small amount of restitution in a very short time, while a defendant with no assets might not." *Id.* Because the trial court "fail[ed] to define the time during which [the] defendant must pay all the restitution," we "remand[ed] th[e] case for the limited purpose of allowing the trial court to determine the time frame for [the] defendant to pay restitution in full." *Id.* ¶¶ 61-62.

¶ 51 Here, as in *D'Alise*, evidence before the trial court suggested that defendant had the ability to pay restitution. Although defendant had debt and had lived with friends and family, presumably for free, she had money to obtain a private attorney and travel to Florida, had worked steadily for several years, and was working two jobs and living in a hotel when the trial court ordered her to pay restitution. That said, we note that the trial court here, like the trial court in *D'Alise*, failed to set the manner and method of paying restitution in light of defendant's ability to pay. More problematic is the fact that the trial court's order, which was entered on December 19, 2022,

seemed to require defendant to pay restitution in a lump sum, as it ordered only that restitution had to be paid by June 30, 2023. The difficulty is that June 30, 2023, was 6 months and 11 days after the order for restitution was entered. Because this was "greater than 6 months," the court had to "order that *** defendant make monthly payments" or "waive this requirement of monthly payments only if there [was] a specific finding of good cause for waiver." 730 ILCS 5/5-5-6(f) (West 2022). The trial court did neither. That is, it neither set monthly payments nor specifically found that monthly payments were waived for good cause. Thus, although the overage of 11 days may seem *de minimis*, it is nonetheless outside the six months our legislature set and is, therefore, improper.

¶ 52 Given the above, we conclude, as we did in *D'Alise*, that the failure to define the manner and method of paying restitution is a clear and obvious error. Thus, even though defendant forfeited this issue by failing to raise it in the trial court, we invoke the plain-error rule to review it and find that the restitution order is improper.

¶ 53 The State argues that "[w]here, as here, the trial court was silent as to the specific payment schedule[ ], it may be inferred that the court did not intend restitution to be paid over a period but rather intended a single payment." In making this argument, the State relies on *People v. Brooks*, 158 Ill. 2d 260 (1994). There, the defendant was convicted of armed robbery, sentenced to 10 years' imprisonment, and ordered to pay $2767.93 in restitution within two years after his release from prison. *Id.* at 262. At issue before our supreme court was whether the requirement in section 5-5-6(f) that a trial court "fix a period of time not in excess of 5 years" for payment of restitution meant 5 years from the defendant's sentencing or 5 years from the defendant's release from prison. (Emphasis and internal quotation marks omitted.) *Id.* at 263-64. Our supreme court determined

that this five-year period could run from either time. *Id.* at 263, 267-68.[4] In light of that holding, the court did not analyze in depth the defendant's argument that the restitution order was improper because it failed to set the manner and method of payment. See *id.* at 272. Specifically, the court asserted:

> "We do not consider at length an additional argument raised by [the] defendant that the [restitution] order was inappropriate for its failure to specify the method and manner of payment. [Citation.] The trial court's failure to define a specific payment schedule is understandable, given that [the] defendant had yet to serve his [prison] term and the regularity and amount of his future income, if any, was unknown. [Citation.] Furthermore, it is appropriate to infer from the trial court's failure to specify a payment schedule that restitution is to be made in a single payment. [Citation.] Under such circumstances, the [restitution] order's lack of specificity is not unreasonable." *Id.* at 272.

¶ 54 Notably, section 5-5-6(f) as applied in *Brooks* required, as it does now, monthly restitution payments if the restitution period exceeded six months, unless the court made "a specific finding of good cause for waiver" of the monthly-payment requirement (see Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-5-6(f)). Curiously, although the restitution period in *Brooks* exceeded six months (see *Brooks*, 158 Ill. 2d at 262) and the trial court neither required monthly payments nor (apparently) found good cause for waiver, the supreme court did not discuss whether the trial court erred in that respect. Nonetheless, the plain language of section 5-5-6(f) constrains us to hold that the trial court in this case erred by not making a specific finding of good cause for waiving the

[4]The version of section 5-5-6(f) of the Corrections Code in effect when *Brooks* was decided did not provide, as it does now, that the time within which a defendant had to pay restitution excluded any time the defendant was incarcerated. See Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-5-6(f).

monthly-payment requirement, where the restitution period exceeded six months. See *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 82 (compliance with section 5-5-6(f) is mandatory).

¶ 55 As a final matter, we note that the State asks us to take judicial notice of the fact that defendant posted an appeal bond of $10,000, she is not currently in custody, and an outstanding balance of $1992.64 in restitution remains. In her reply brief, defendant notes that her father posted her appeal bond and did not receive notice that the bond could be used to satisfy the restitution order. Defendant intimates that, given the lack of notice, the appeal bond cannot be used to satisfy the outstanding amount of restitution.

¶ 56 We do not consider here how, if at all, the appeal bond affects the restitution order. We simply order, consistent with *D'Alise*, that the trial court on remand set the manner and method for paying restitution in light of defendant's ability to pay. In doing so, we express no opinion on whether the appeal bond can be used to pay restitution.

¶ 57 III. CONCLUSION

¶ 58 For these reasons, we vacate defendant's six-year sentence and remand this cause for the trial court to (1) consider whether to impose a sentence under section 5-4-1(c-1.5) of the Corrections Code and (2) set the manner and method of paying restitution in light of defendant's ability to pay. We otherwise affirm the judgment of the circuit court of Kendall County.

¶ 59 Affirmed in part and vacated in part; cause remanded with directions.

¶ 60 JUSTICE JORGENSEN, specially concurring:

¶ 61 While I concur in the majority's decision to remand this cause for a new sentencing hearing, I write separately to voice my concerns with the breadth of the result.

¶ 62 On appeal, defendant calls attention to the fact that she should have been eligible for sentencing under section 5-4-1(c-1.5) because her drug-induced homicide conviction required a

mandatory minimum sentence of imprisonment and "involve[d] the use or possession of drugs." 730 ILCS 5/5-4-1(c-1.5) (West 2022). As the majority correctly points out, sentencing eligibility under section 5-4-1(c-1.5) is not limited to *only* the "use or possession of drugs" but also includes all offenses *involving* the possession of drugs—including the delivery of drugs.

¶ 63 I am left troubled, however, because I do not believe, based on the legislators' comments at the House and Senate proceedings, that the General Assembly intended for all possession-, use- , and *delivery*-related offenses to be encompassed in the new sentencing scheme. While I am wary of the eventual application of this sentencing provision, I acknowledge that the plain language and the legislative history support the majority's decision. However, if the legislature takes issue with the potential broad application of section 5-4-1(c-1.5) to *all* delivery offenses, then I hope it takes the opportunity to clarify its intent.

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People v. Hoffman, 2023 IL App (2d) 230067

Decision Under Review:	Appeal from the Circuit Court of Kendall County, No. 18-CF-395; the Hon. Robert P. Pilmer, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Thomas A. Lilien, and Ann Fick, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Eric C. Weis, State's Attorney, of Yorkville (Patrick Delfino, Edward R. Psenicka, and Victoria E. Jozef, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

No. 130344

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- KRYSTLE HOFFMAN, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-23-0067. There on appeal from the Circuit Court of the Twenty-Third Judicial Circuit, Kendall County, Illinois, No. 18 CF 395. Honorable Robert P. Pilmer, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 November 19, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Kimberly Maloney
LEGAL SECRETARY
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