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IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JORGE L. REYES, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-19-0474. There on appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 11 CF 2428. Honorable Jeffrey S. MacKay, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Jorge Reyes, appeals to this Court from a final judgment denying his motion for revocation of fines.

ISSUES PRESENTED FOR REVIEW

I. Whether a petition to revoke a fine under 730 ILCS 5/ 5-9-2 (2019), shares the same procedures as similar petitions, like a petition for relief from judgment under 730 ILCS 5/2-1401 (2019), making it not ripe for adjudication until 30 days pass after the petition is filed and served on the State so that the State has an opportunity to respond?

II. Did the appellate court erroneously interpret Section 5-9-2 of the Unified Code of Correction ("UCC") to apply only to discretionary fines specifically listed in Section 5-9-1 of the UCC instead of to all fines, whether mandatory or discretionary, where the statute explicitly states a defendant may seek revocation of fines stemming from a criminal conviction except those under Chapter 15 of the Illinois Vehicle Code?

STATUTES AND RULES INVOLVED

730 ILCS 5/5-9-2. Revocation of a Fine (effective Jan. 1, 1992)

> Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment.

Ill. Rev. Stat. 1991 ch. 38 ¶ 1005-9-2. Revocation of a fine (repealed Jan. 1, 1992)

> The court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment.

STATEMENT OF FACTS

Jorge Reyes was initially charged by indictment on October 18, 2011, with a Class 1 felony charge of aggravated DUI, based on the allegation that he drove while intoxicated on July 9, 2011, and at the time had four prior DUI violations. (C. 14). On May 9, 2012, the parties reached an agreement whereby Mr. Reyes entered a guilty plea to an amended Class 2 felony charge of aggravated DUI, based on his having three prior DUI violations. (R. 33-34). Per the agreement, Mr. Reyes was sentenced to 36 months in the Illinois Department of Corrections (hereinafter "IDOC"), with credit for 200 days already served. (R. 33-36). The agreement, as stated by the prosecutor, also provided for "zero fines, court costs only, DNA indexing and fee." (R. 33-34).

Judge Daniel Guerin admonished Mr. Reyes pursuant to Supreme Court Rule 402 and concurred in the parties' agreement. (R. 39-45, 47). Although the agreement contemplated "zero fines," the judgment order entered on the day of the plea included a number of assessments that were actually fines. (C. 53-54). The judgment order awarded Mr. Reyes $65 in $5 per day credit against some of these fines for time he spent in pre-trial custody. (C. 53).

On August 20, 2018, Mr. Reyes filed a *pro se* petition for revocation of fines, listing three separate DuPage County case numbers on the petition: Nos. 08 DT 2571; 11 CF 2428; and 16 CF 19. (C. 64-66). At the time this petition was filed, Mr. Reyes was incarcerated in the IDOC on his 2016 case, and he indicated that he had another 22 months left to be served. (C. 65). He stated in his petition that he was indigent and received a stipend of $10 per month from the IDOC. (C. 65). He said he would like to get a "fresh start" upon his release from custody and that

revoking his fines would allow him to do that. (C. 66).

Mr. Reyes's included a petition to proceed as a poor person with his petition. (C. 67-68). Therein, Mr. Reyes attested to not having: any cash, savings or checking account; income other than his IDOC stipend; real estate or motor vehicles; or any other personal property. (C. 67-68).

At an August 21, 2018 hearing, at which Assistant States Attorney (hereinafter "ASA") Amalia Romano was present, Judge Jeffrey S. MacKay noted the filing of Mr. Reyes's petition. (R. 53). When asked, ASA Romano indicated that the State did not have anything to add on the record. (R. 53). The judge denied the petition in Case No. 11 CF 2428. The body of the order read as follows:

> The defendant plead guilty and was assessed fines and costs for this case on 05/09/2012. Defendant has been in IDOC on another case since 02/03/2017. Defendant had almost 5 years to pay his fines and costs before he was in IDOC and has failed to do so. (C. 70).

On February 27, 2019, Mr. Reyes filed a second *pro se* petition for revocation of fines, again listing all three case numbers. (C. 73-77). In this petition, he alleged that he was seeking revocation of his fines "cause indigent." (C. 75). Although he did not repeat it in the petition itself, on his proof of service he wrote that "my incarceration has left me indigent," and that "I will be homeless on my release date [and] the fine will be more hardship to me." (C. 73).

Mr. Reyes's accompanying affidavit to proceed as a poor person reflected that his only income remained the $10 per month stipend he received from the IDOC. (C. 77). He attested that the scope of his personal holdings was: $183 in his prison trust account but no other cash or savings, a TV worth $50, and a hot pot worth $20. (C. 77).

At a hearing held on March 1, 2019, at which ASA Grace Barsanti was

present, Judge MacKay, without requesting any input, advised the prosecutor that he would be entering an order denying the petition. (R. 56). The judge then denied the petition on the basis that Mr. Reyes failed to make a showing of good cause. (C. 79).

On May 6, 2019, Mr. Reyes filed his third *pro se* petition for revocation of fines, which is the subject of the instant appeal. (C. 82-85). The petition again listed all three case numbers, although the accompanying affidavit to proceed as a poor person shows only the 11 CF 2428 case number. (C. 86).

In this petition, Mr. Reyes alleged that he had four months remaining to be served on his 2016 case and that he had no income other than his now $15 per month stipend from the IDOC. (C. 84). He further stated in the petition that "once released I'll be homeless," adding that "said petitioner will be homeless living in shelter with no financial assistance except shelter." (C. 84-85). Mr. Reyes's application to proceed as a poor person reflected no change in his income or assets other than showing a prison trust account of $200 and his state pay had been increased from $10 per month to $15 per month. (C. 86-87).

On May 21, 2019, Judge MacKay held a hearing on this petition, at which ASA Barsanti was again present. (R. 59). The judge again found that Mr. Reyes had failed to make a showing of good cause. (R. 59). ASA Barsanti drafted an order to that effect that the judge signed. (C. 88). Mr. Reyes filed a notice of appeal from this order on June 5, 2019, and an amended notice was filed on June 26. (C. 91, 93).

In Appeal 2-19-0474, two issues were raised on Mr. Reyes' behalf:

1. Whether the circuit court order denying the petition for revocation of fines should be vacated and the cause remanded for further proceedings, because the petition was not ripe for adjudication and the circuit court's order was therefore premature.

2. Whether the circuit court abused its discretion in finding that Reyes had failed to show good cause for revocation of his fines where the only evidence before the court was that Reyes lacked the ability to pay those fines and that paying would impose a hardship on him.

After Appeal 2-19-0474 was fully briefed, the Second District, on its own motion, remanded the cause for Mr. Reyes to file a motion pursuant to Supreme Court Rule 472 challenging any fees as improperly imposed. (Sup2 C. 9). The circuit court entered an agreed order on August 10, 2021, granting Mr. Reyes an additional $960 in per diem credit toward the fines assessed in the sentencing orders of May 9, 2021. (Sup2 C. 10). That left an outstanding fine balance of $135 for Case 11 CF 2428.

The Second District thereafter decided the appeal on March 30, 2022. *People v. Reyes*, 2022 IL App (2d) 190474. The court first determined the circuit court, acting *sua sponte*, did not have to wait for 30 days for any State response before ruling on the petition to revoke fines. *Reyes*, 2022 IL App (2d) 190474, ¶¶ 21-34. The court then held that revocation pursuant to 730 ILCS 5/5-9-2 applied only to discretionary fines specifically listed in 730 ILCS 5/5-9-1 and because the fines that Mr. Reyes was challenging were mandatory, he could not seek their revocation. *Reyes*, 2022 IL App (2d) 190474, ¶¶ 35-56.

This Court granted leave to appeal.

ARGUMENT

I. A petition to revoke a fine under 730 ILCS 5/ 5-9-2 (2019), like a petition for relief from judgment under 730 ILCS 5/2-1401 (2019), is not ripe for adjudication until 30 days pass after being filed and served on the State.

Jorge Reyes brought this appeal from the denial of a petition to revoke fines, filed pursuant to 730 ILCS 5/ 5-9-2 (2019), which allows for the revocation or modification of fines upon good cause shown. He filed the petition on May 6, 2019, and the circuit court *sua sponte* denied it 15 days later on May 21, 2019, without having received any response from the State. However, a reviewing court has held that petitions to revoke fines are similar in nature to petitions for relief from judgment, so the same procedural rules should apply to both. That said, the judge was required to wait 30 days until ruling on the petition to allow the State an opportunity to respond. As the judge did not do so, this Court should vacate the order denying Mr. Reyes's petition and remand the cause to the circuit court.

The determination of whether the circuit court properly dismissed a petitioner's complaint *sua sponte* is a question of law subject to *de novo* review. *People v. Vincent*, 226 Ill.2d 1, 17 (2007).

Section 5-9-2 does not itself set forth the procedure to be filed or rules to be applied when a petitioner files a petition to revoke fines. However, in *People v. Mingo*, 403 Ill. App.3d 968 (2d Dist. 2010), the appellate court determined that a petition to revoke fines brought under Section 5-9-2 was a "free-standing, collateral action," similar in nature to a petition for relief from judgment brought under 735 ILCS 5/2-1401 (2019). *Mingo*, 403 Ill. App.3d at 970-71 (disagreed with on other grounds in *People v. Guadarrama*, 2011 IL App (2d) 100072, ¶ 11). As such, proceedings on petitions to revoke fines should be governed by the same rules

that govern petitions for relief from judgment under 735 ILCS 5/2-1401, which are governed by the rules of civil practice. See *Vincent*, 226 Ill.2d at 6; see also *People v. Clemons*, 2011 IL App (1st) 102329, ¶¶ 9-10 (defendant's petition brought under Section 2-1401, although filed under his criminal case number, is essentially a civil complaint inviting a responsive pleading and accordingly the rules of civil practice apply). Just like a Section 2-1401 petition, a petition to revoke fines is essentially a "complaint[ ] inviting responsive pleadings." *Clemons*, 2011 IL App (1st) 102329, ¶¶ 9-10. As such, this Court should hold that the same procedural requirements to petitions to revoke fines as to petitions for relief from judgment.

As the Second District recognized in the instant case, the general rules of practice are the same for civil and criminal cases. *Reyes*, 2022 IL App (2d) 190474, ¶ 24 (citing S.Ct.R. 1, Committee Comments (rev. July 1, 1971)). Supreme Court Rule 104 requires that pleadings subsequent to a complaint are to be filed with the circuit clerk with proof of service on any party who has appeared and not been held in default for failure to plead. But the lack of service does not affect the circuit court's jurisdiction, and, as the Second District noted here, there is nothing in Rule 104 stating that a party must be given time to respond before the court rules on the petition. *Reyes,* 2022 IL App (2d) 190474, ¶ 24.

However, where a party is in default, there are additional requirements when any pleading has been filed seeking new or additional relief against that party. In that situation, the other party must be issued a notice in a specified form and given 30 days to respond on risk of a default judgment for failure to appear or answer. S.Ct.R. 105. By Supreme Court Rule 106, the notice requirement in Rule 105 applies to certain civil petitions, including petitions for relief from judgment under Section 2-1401. Ill. Sup. Ct. R. 106.

Yet, below, the Second District took the position that Rule 104 alone applies to petitions to revoke fines under Section 5-9-2. *Reyes*, 2022 IL App (2d) 190474, ¶ 24. Specifically, the appellate court held that because such petitions are not explicitly listed in Rule 106 for treatment under Rule 105, there is no requirement for notice to the other party and a 30-day period before ruling on a Section 5-9-2 petition. *Id.* at ¶¶ 25-26, 32. Nevertheless, Section 5-9-2 initiates a collateral challenge to a final sentencing judgment on fines; therefore, this Court should take the opportunity to establish that such petitions should be treated the same as petitions challenging final judgments under Section 2-1401. That would also treat petitions to revoke fines much like initial complaints under Supreme Court Rule 101(d).

If this Court treats Section 5-9-2 revocation petitions like Section 2-1401 petitions for relief from judgement and makes Rules 105 and 106 applicable, then *People v. Laugharn*, 233 Ill.2d 318 (2009), should control the outcome. There, the defendant filed a Section 2-1401 petition on August 24, 2004, which the circuit court dismissed as untimely on September 2, 2004. *Id.* at 320-21. This Court found that because the 30-day period, under civil practice rules, within which the State was required to respond to the petition had not yet expired, the case was not ripe for adjudication. *Id.* at 323. This Court further clarified that a failure to answer a petition within the 30-day period results in "an admission of well-pleaded facts," after which, the judge may dismiss the petition. *Id.* (citing *Vincent*, 226 Ill.2d at 10). As a result, the circuit court's dismissal order was premature, so this Court directed that the order be vacated and the cause be remanded for further proceedings. *Id.* at 321. The same result should be ordered here.

Similarly, in *People v. Clemons* 2011 IL App (1st) 102329, pursuant to Section

2-1401, the defendant filed a motion for specific performance of his plea agreement three months after the entry of his plea. *Clemons* 2011 IL App (1st) 102329, ¶¶ 4-5. In the motion, he asked that he be entitled to serve his sentence for aggravated discharge of a firearm at 50%, because he had not been told at the time of the plea that the sentence had to be served at 85%. *Id*. at ¶ 4. The motion was file-stamped on June 24, 2010. At a hearing on July 1, 2010, at which an Assistant State's Attorney was present, the trial judge considered and denied the motion *sua sponte* without hearing argument or evidence, finding that the court was not required to tell the defendant at the time of his plea about the requirement that he serve 85% of his sentence. *Id*. at ¶¶ 5-6.

On appeal, the defendant, citing to *Laugharn,* argued that the court's order denying his petition was premature and must therefore be vacated. *Id*. at ¶ 8. The State argued, to the contrary, that the fact that a prosecutor was present in court on the day the judge entered his order and voiced no objection to the order rendered the petition ripe for adjudication. *Id*. at ¶¶ 8, 16. The appellate court rejected the State's argument, finding that the failure to respond to a petition was of no import, and did not frame the issues in the case, until after the 30-day time period in which the respondent was required to answer had expired and the respondent was found to be in default. *Id*. at ¶ 17. The court found that "[m]ere silence on the part of the State, within the 30-day period . . . , does not render the petition ripe for adjudication." *Id*. Accordingly, the court vacated the trial court's denial of the defendant's motion and remanded the cause for further proceedings. *Id*. at ¶¶ 19-20.

In this case, although it is unclear when the State first received notice of the defendant's petition, an Assistant State's Attorney personally appeared in

court at the hearing held on May 21, 2019, and even drafted the order denying the petition to revoke fines for the judge to sign. (C. 88). The earliest date on which the State could be considered to have been served was May 5, 2019, four days after the defendant's petition was placed in the U.S. mail. (C. 83); see Sup. Ct. R. 12(c). At the latest, however, the State had notice of the petition, and submitted to the jurisdiction of the court, on May 21, 2019, when the prosecutor appeared personally, was advised by the court of what its ruling on Mr. Reyes' petition would be, and drafted the order denying the petition. See *People v. Ocon*, 2014 IL App (1st) 120912, ¶¶ 31-32 (the 30 days for State to respond to defendant's petition began to run when State had actual notice of the petition and appeared in court on it); see also *In Re M.W.,* 232 Ill.2d 408, 426 (2009) (a respondent may consent to personal jurisdiction over him or her by appearing before the court).

In either event, less than 30 days had expired, either from: 1) the effective date of service by mail upon the State of Mr. Reyes's petition to the date of the order denying the petition, or 2) the time of the prosecutor's appearance in court on the petition to the entry of the order denying the petition. The time for the State to file a responsive pleading had not passed when the court ruled. Indeed, had the circuit court requested or received a response from the State within the relevant time period, it is possible that the lengthy and time-consuming litigation in which the parties have been involved could have been avoided. The prosecutor may very well have agreed that Mr. Reyes had shown good cause for revoking his fines and an order to that effect could have been entered. Further, it should be pointed out that Mr. Reyes has now filed three petitions to revoke his fines attesting that he has little or no income, nowhere to live, and cannot pay his

remaining fines. (C. 65, 75, 84). These petitions were all denied with no feedback on what is missing from his petitions or why they have been denied, outside of the judge telling him he had time to pay his fines but failed to do so and has failed to show good cause. (C. 70, 79, 88). Mr. Reyes was not afforded an opportunity to explain his circumstances during the five-year period the judge held against him. Further, it was never argued *why* he has failed to show good cause, so Mr. Reyes is in a position where he must file a *pro se* revocation petition with no guidance on what standard he must meet to succeed. If the State was required to respond, at least Mr. Reyes would know the State's position and its perceived inadequacies of his revocation petition, allowing him some opportunity to remedy any issues therein. However, the circuit court did not wait the required 30-day period so the order denying the petition was premature.

For these reasons, this Court should hold that the order denying the petition to revoke fines must be vacated as premature and the cause be remanded for further proceedings.

II. Contrary to the plain language of Section 5-9-2 Unified Code of Corrections allowing a defendant to seek revocation of fines except those under Chapter 15 of the Illinois Vehicle Code, the appellate court erroneously interpreted the statute to apply only to discretionary fines specifically listed in Section 5-9-1.

The State's Attorney made it clear at the time of Mr. Reyes's plea that "zero fines" would be imposed and only court costs were being imposed as part of the negotiated deal. (R. 33-34). Yet, Mr. Reyes was assessed $1670 in charges in this 2011 case. Many of those charges were fines that should not have been imposed per the plea agreement, the largest being a $1000 fine for the DUI Tech Fund pursuant to 625 ILCS 5/11-501.01(f) (2011).Even after Mr. Reyes was given the statutorily-required $5 per day credit toward the fines for his 200 days in custody before sentencing per 725 ILCS 5/114-10 (2011), he still had $135 in fines remaining to pay. The appellate court held that Mr. Reyes could not have his fines revoked per Section 5-9-2 because: 1) they are not listed in Section 5-9-1 of the UCC and 2) their imposition was mandatory. The Second District's reasoning was erroneous on both counts, and, as a result, this Court should revoke Mr. Reyes' outstanding fines.

This is a matter of statutory construction, which is a question of law, thus, the standard of review here is *de novo*. *People v. Jackson*, 2011 IL 110615, ¶ 12

A court strictly construes ambiguous criminal statutes to afford lenity to the accused. *In re Detention of Powell*, 217 Ill.2d 123, 142 (2005). However, "they must not be construed so rigidly as to defeat the intent of the legislature." *People v. Bratcher*, 63 Ill.2d 534, 543 (1976). The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *People v. Garcia*, 241 Ill.2d 416, 421 (2011). In ascertaining 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. *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. The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Garcia*, 241 Ill.2d at 421.Also, a court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results. *Id*.

An amendment to a statute is an appropriate source for determining the legislative intent. *Jackson*, 2011 IL 110615, ¶ 18. Although an amendment to a statute may give rise to a presumption that the legislature intended to change the law, such presumption is not conclusive and may be overcome by other circumstances and considerations. *People v. Villa*, 2011 IL 110777, ¶ 35. In other words, an amendment to a statute will be presumed to be a fundamental change to the law and apply prospectively and not retroactively, unless that presumption is rebutted by express statutory language or necessary implication. *People v. Digirolamo*, 179 Ill. 2d 24, 50 (1997).

Section 5-9-2 provides that "[e]xcept as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." None of the fines imposed on Mr. Reyes were imposed for a violation of Chapter 15 of

the Vehicle Code. See *Reyes*, 2022 IL App (2d) 190474, ¶ 11. Thus, under the plain and ordinary language of Section 5-9-2, which this Court has held is the best indicator of legislative intent and should be given effect, it would appear that Mr. Reyes could seek revocation of any of his unpaid fines–particularly the $1000 fine which was imposed pursuant to Chapter 11 of the Vehicle Code. *People v. Whitney*, 188 Ill.2d 91, 97 (1999) ("The statutory language should be given its plain and ordinary meaning.").

However, the appellate court did not apply the plain language of the statute. Instead, it found that the statute did not apply to the fines at issue in the instant case because: 1) they are not listed in Section 5-9-1 of the UCC and 2) their imposition was mandatory. As explained more fully below, neither distinction is persuasive.

A. The appellate court incorrectly held that Section 5-9-2 applies only to fines listed in Section 5-9-1.

Below, the appellate court acknowledged that Section 5-9-2 could be interpreted in one of two ways. It could be read to apply to either: 1) all fines except those imposed pursuant to Chapter 15 of the Vehicle Code, including mandatory fines (which is the interpretation that Mr. Reyes argues is correct); or 2) only discretionary fines imposed for violating the law listed in Section 5-9-1 of the UCC, other than discretionary penal fines imposed pursuant to Chapter 15. *Reyes*, 2022 IL App (2d) 190474, ¶ 40. Given these two possible interpretations, the rule of lenity would dictate that the statute should be interpreted in Mr. Reyes' favor. Nevertheless, the appellate court determined that the latter reading is correct so that a defendant such as Mr. Reyes may not seek revocation of fines that were

mandatorily imposed at the time of sentencing. *Reyes*, 2022 IL App (2d) 190474, ¶¶ 41-56.

In reaching the conclusion that Section 5-9-2 cannot be applied to the fines in question, the Second District relied on *People v. Bennett*, 144 Ill. App.3d 184 (4th Dist. 1986). *Reyes*, 2022 IL App (2d) 190474, ¶¶ 41-43. In *Bennett,* the defendant was seeking under Section 5-9-2[1] to modify a fine imposed under the Violent Crime Victims Assistance Act, an Act which at that time was found in Chapter 70 of the Illinois Revised Statutes. *Bennett*, 144 Ill. App.3d at 184. Along with finding that a fine under the VCVAA could not be revoked for public policy reasons, the *Bennett* court also found that the defendant could use Section 5-9-2 to challenge fines only if the fines in question were imposed under the UCC (then found in Chapter 38 of the Illinois Revised Statutes, now found in Chapter 730 of the Illinois Compiled Law Statutes). *Id*.

However, in 1992, eight years after *Bennett* was decided, the legislature amended Section 5-9-2 in a way that contradicts the holding in *Bennett*. Now, Section 5-9-2 contains the sole limitation "[e]xcept as to fines established for violations of Chapter 15 of the Illinois Vehicle Code." If the legislature had intended Section 5-9-2 to apply only to those fines found in the now Act 5 of Chapter 730 (the UCC), there would be no reason to except fines under the Illinois Vehicle Code given the holding in *Bennett*, because they would already be excepted as they not codified in the UCC. See *People v. Larson*, 2015 IL App 2d 141154, ¶ 5 (a statute must be construed so as to avoid rendering specific language in it

[1]The version of Section 5-9-2 that was in effect when *Bennett* was decided can be found in the Appendix of this brief on pages 31-32.

superfluous or meaningless). In other words, if the holding in *Bennett* is applied to the more recent version of Section 5-9-2 would read as:

> Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment *if the fine was imposed pursuant to Section 5-9-1 of the UCC*.

The Second District's holding essentially adds the above italicized language into the statute. *See People v. Pullen*, 192 Ill. 2d 36, 42 (2000) ("Nor, under the guise of statutory interpretation, can we 'correct' an apparent legislative oversight by rewriting a statute in a manner inconsistent with its clear and unambiguous language."). Moreover, if *Bennett* still applied to Section 5-9-2 after the 1992 amendment, it would still allow only the revocation of fines imposed under the UCC making the 1992 addition excluding fines imposed under Chapter 15 of the Vehicle code superfluous and/or meaningless. Contrary to *Bennett* and the Second District's reasoning below, the legislature has made it clear that the scope of Section 5-9-2 after it was amended is not limited to fines imposed under the UCC and the only fines excepted from potential revocation are those from Chapter 15 of the Vehicle Code. Thus, per the normal rules of statutory construction, as to any fines levied prior to the 1992 amendment to Section 5-9-2, the holding in *Bennett* should apply. *Jackson*, 2011 IL 110615, ¶ 18.

Therefore, since the legislature fundamentally changed the statute as it was interpreted by *Bennett*, all fines issued after the amendment to the statute should be governed by the plain meaning of the statute, i.e., *all* fines, *not just those outlined in Section 5-9-1,* except those defined in Chapter 15 of the Vehicle Code, are subject to revocation per Section 5-9-2. *Id*. Here, Mr. Reyes's fines were

levied well after the 1992 amendment, so the appellate court was wrong to apply *Bennett* here.

The absurdity of the holding in *Bennett* as it applies to the amended statute can also be seen by applying the rules of logic. The rules of logic dictate that two negatives make a positive, as seen by the simple algebraic equation "- (-x) = x." The holding in *Bennett* combined with the later amended version of Section 5-9-2, looking just as it applies to the Chapter 15 verbiage added in 1992, would be logically equivalent to saying: "Section 5-9-2 does *not not* apply to violations of Chapter 15 of the Illinois Vehicle Code." See 730 ILCS 5/5-9-2; see also *Bennett*, 144 Ill. App.3d at 186; see also *Reyes*, 2022 IL App (2d) 190474, ¶ 43. When the double negatives cancel each other out, from a logical stand point, the amended Section 5-9-2 would allow revocation of fines outlined in Section 5-9-1 *and* those in Chapter 15 of the Vehicle Code. This is an absurd result.

While this exercise of logic is a bit esoteric, it shows that when the legislature added the language excepting the fines outlined in Chapter 15 of the Vehicle Code, it fundamentally changed the law to apply to all fines except those specifically listed therein. If the appellate court's interpretation of Section 5-9-2 in *Bennett* still applied to the amended statute, the legislature would not have needed to add any language if it intended Section 5-9-2 to apply only to those fines outlined in Section 5-9-1 because those in Chapter 15 of the Vehicle were already excepted. *Bennett*, 144 Ill. App.3d at 186. Since the 1992 addition to Section 5-9-2 is inconsistent with the holding in *Bennett*, so this Court should hold that the amendment was a fundamental change in the statute and *Bennett* should be applied only to those fines issued before Section 5-9-2 was amended in 1992. Since the

plain and ordinary meaning of the amended statute allows for a defendant to seek the revocation of all fines other than those listed in Chapter 15 of the Vehicle Code, the appellate court below was incorrect in holding the Mr. Reyes could not seek revocation of the fines in question through Section 5-9-2.

B. The appellate court below also was incorrect when it held that Section 5-9-2 allows only the revocation of fines that the judge has discretion to impose and not those whose imposition is mandatory.

Throughout the entirety of Illinois statutes, the legislature has classified fines as either mandatory or discretionary, mostly through the use of the terms "shall" or "may" or their functional equivalents. It should also be noted that Article 9 of the UCC concerning fines contains numerous fines both mandatory and discretionary throughout its history. 730 ILCS 5/5-9-1.1through 5-9-1.20. The following is just a small sampling of some mandatory and discretionary fines that the legislature has defined that shall/may be imposed at sentencing:

- **720 ILCS 570/401.1 - Controlled substance assessments** - "A person convicted of controlled substance trafficking shall be . . .fined an amount as authorized by Section 401 of this Act, based upon the amount of controlled or counterfeit substance brought or caused to be brought into this State. . . . " *People v. Jones*, 223 Ill.2d 569, 588 (2006) (held to be a fine, not a fee).

- **730 ILCS 125/17 - Reimbursement for Medical Expenses** - To the extent that such person is reasonably able to pay for such [qualified medical expenses], including reimbursement from any insurance program or from other medical benefit programs available to such person, he or she shall reimburse the county or arresting authority. *People v. Warren,* 2016 IL App (4th) 120721-B, ¶ 119 (upholding previous case law classifying this as a fine not a fee).

- **725 ILCS 240/10 - Violent Crime Victims Assistance Fund** - When any person is convicted in Illinois of an offense listed below, or placed on supervision for that offense on or after July 1, 2012, the court shall impose the following fines [details differing amounts the defendant can be fined based upon the characteristics of the convicted offense].

- **730 ILCS 5/5-6-3(b)(13) - Conditions of probation and of conditional discharge** - The Court may . . . require that the person . . . contribute a reasonable sum of money, not to exceed the maximum amount of the fine authorized for the offense for which the defendant was sentenced [to local anti-crime program or the Department of Natural Resources]. *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 48 (held to be a fine).

Needless to say, the legislature is very comfortable differentiating when fines are mandatory or discretionary for a judge to impose and it does so on a regular basis. Given the scope of how the legislature has drafted statutes authorizing fines both inside and outside the UCC, this Court should take into account the entirety of the Illinois Complied Statutes when interpreting the use of "fines" in Section 5-9-2. Given that the legislature chose to use the generic term "fines" in Section 5-9-2, the plain and ordinary reading of the statute would include both mandatory or discretionary fines. *Whitney*, 188 Ill.2d at 97. Using how the legislature has codified fines throughout the statutes as a baseline, it can be seen that the legislature must have intended for the remedy therein to apply to all fines, mandatory or discretionary, throughout the breadth of Illinois Compiled Statutes imposed as part of a criminal sentence or else it would have specified it within Section 5-9-2 that it only applied to discretionary fines as it had done in so many other sections throughout the laws of this state. See *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 61 (Where the legislature has authorized multiple convictions based on simultaneous possession of different pieces of incriminating evidence in other statutes, the absence of such language in the statute in question should be interpreted as legislative intent to not allow it there.) In other words, since the legislature used the generic term "fines" without the use of a mandatory or discretionary qualifier, it intended Section 5-9-2 to apply to *all* types of fines.

If this Court limits the scope of the statute's purview to the fines defined specifically in the UCC, the same result should be reached because the UCC uses the same shall/may language to differentiate between mandatory and discretionary fines. For instance, all those convicted of a felony *may* be required to pay a fine of at least $75. 730 ILCS 5/5-9-1(a) (2019); 730 ILCS 5/5-4.5-50(b) (2019). In contrast, Section 5-9-1.1(c) (now repealed, but effective at the time Mr. Reyes's fines were imposed) stated "a fee of $5 *shall* be assessed by the court." 730 ILCS 5/5-9-1.1(c).

The Second District did discuss how the exception for fines pursuant to Chapter 15 of the Vehicle Code came to be added to Section 5-9-2 and the role of this Court's decision in *People v. Ulrich*, 135 Ill.2d 477 (1990), in that process. *Reyes*, 2022 IL App (2d) 190474, ¶¶ 45-55. This Court held in *Ulrich* that the provisions of Section 5-9-1(d) of the UCC requiring a judge to take a defendant's financial circumstances into account in setting a fine did not apply to the imposition of mandatory fines under Chapter 15 of the Vehicle Code. *Ulrich*, 135 Ill.2d at 485-86. Section 5-9-1 of the UCC concerns the imposition of fines and Section 5-9-2 concerns the revocation of fines. Imposition and revocation of a fine are fundamentally different concepts, so the appellate court applying case law that dealt with Section 5-9-1 to how it interprets Section 5-9-2 was unsound. In doing so, the appellate court conflated what a judge is able to do when fines are imposed at sentencing and what the judge is able to do when a defendant later seeks to revoke those fines. There is nothing in Section 5-9-2 that implies that a fine in which the judge did not have discretion to impose cannot later be revoked. Further, as discussed above, the plain reading of Section 5-9-2 affords the judge discretion to revoke *any* fine, whether its imposition was mandatory or discretionary, except

fines imposed pursuant to a single chapter of the Vehicle Code. If the legislature intended for Section 5-9-2 to apply only to fines that were discretionarily imposed it very easily could have stated as such.

The differentiation between imposition and revocation of fines was discussed in *People v. Ruff*, 115 Ill. App.3d 691 (4th Dist. 1983). The appellate court in *Ruff* specified that the judge's power vested in Section 5-9-2 cannot impact his obligations defined under Section 5-9-1. There the defendant challenged the imposition of a mandatory fine, arguing that the judge did not consider his ability to pay before imposing it. *Id.* at 694. Also, there, the circuit court judge attempted to use Section 5-9-2 to deviate from the mandated amount of a fine specified in Section 5-9-1.1 because it was clear that the defendants would not be able to pay the mandated amount. *Id.* 693-94.

However, the Fourth District held that the statute mandating the minimum fine to be imposed based upon the amount of drugs involved had a rational basis and the circuit court judge did not have the power to impose a fine less than the mandatory minimum outlined in Section 5-9-1.1. *Id.* Further, the appellate court specifically held that the legislature had provided safeguards to cover those who in good faith could not pay a fine that was imposed by enacting Section 5-9-2, allowing those in financial hardship an avenue to later have their fines revoked upon a showing of good cause. *Id.* at 694-95. There are also safeguards in place in Sections 5-9-3 and 5-9-4 that afford additional time for payments and prevent the circuit court from revoking a defendant's probation for failing to pay a fine when he does not have the ability to do so respectively. *Id.*

Not only did *Ruff* detail the difference between imposition of a mandatory

fine and the revocation of same, it discussed Section 5-9-2 as an avenue to revoke a mandatory fine. *Id.* (lists Section 5-9-2 as a safeguard to the *mandatory* imposition of hefty fines upon someone without the ability to pay them). Yet, here, the Second District held that Mr. Reyes could not seek the revocation of his fines because the judge did not have discretion in whether or not they were imposed. *Reyes*, 2022 IL App (2d) 190474, ¶ 43 ("If, as defendant suggests, 'fine' referred to the mandatory fines imposed on him, section 5-9-2 of the Corrections Code would run afoul of the provisions mandating that the fines imposed here must be assessed."). Again, the appellate court was incorrect when it failed to differentiate between the mandatory imposition of a fine and the judge's discretion in later revoking that fine based on the defendant's good faith inability to pay it.

Further, the Second District here has contradicted its own holding in *People v. Rivera*, 2020 IL App (2d) 171002, which allowed for the revocation of a mandatory fine through a Section 5-9-2 petition *and* specifically differentiated a judge's obligations and abilities at the time of imposition and those at the time when considering revocation through Section 5-9-2. There, the defendant sought to revoke, in part, a $2900 street-value fine imposed after a negotiated guilty plea. *Rivera*, 2020 IL App (2d) 171002, ¶ 3. On appeal, the State argued that the principles of contract law governing plea agreements should preclude a defendant from seeking the revocation of a fine as part of a negotiated plea agreement. *Id.* at ¶ 9. However, the Second District there, held that, because a judge did not have any discretion whether or not to impose the street-value fine, it would be the same as if the defendant had entered a blind plea. *Id.* at ¶ 10. The Second District went on to say "where a fine is mandatory . . . because a defendant who enters a negotiated

plea is similarly situated with those who enter blind pleas or who are convicted after a trial and should likewise be permitted to seek relief based on hardship or inability to pay, without seeking to rescind the plea agreement." *Id*. Similarly, Mr. Reyes should be afforded the opportunity to seek relief from his mandatory fines based on his hardship and inability to pay through Section 5-9-2.

Beyond the plain and ordinary reading of the statute, the reason behind the statute also supports Section 5-9-2 applying to all fines as the potential economic consequences of debt from fines are the same for a defendant whether the fines are codified as mandatory or discretionary. With the lapse of time, a defendant owing mandatory fines, no less than one owing discretionary fines, should be able to seek relief from onerous penalties when he can show good cause for revocation, which in most cases would be a good faith showing of an inability to pay.

This Court should hold that the plain reading of Section 5-9-2 as amended in 1992 allows for the revocation of *any* fine, either mandatorily or discretionarily imposed, except those outlined in Chapter 15 of the Vehicle Code.

C. Mr. Reyes demonstrated good cause for his fines to be revoked.

Should this Court agree that Section 5-9-2 is applicable to all fines, outside of those detailed in Chapter 15 of the Vehicle Code, then the final issue to be resolved in this case is whether the circuit court abused its discretion in denying the request for revocation of fines. Here, the circuit court did not take the position that Mr. Reyes could not seek the revocation of mandatory fines but instead denied his petition on the merits. (R. 59). However, the judge did not explain what about Mr. Reyes revocation petition was insufficient, but rather simply stated that "[Mr. Reyes] failed to make a showing of good cause." (R. 59).

Further, in making this assessment, this Court should take into consideration that Mr. Reyes was not supposed to receive any fines in the first place per his negotiated plea agreement. (R. 34-35). Moreover, he was imprisoned for another case when he filed his petition so his ability to produce any income was limited to that which was provided to him by the State. (C. 84). Here, in his first two revocation petitions he attested his income was a mere $10 per month and in the instant petition it was raised to $15 per month. (C. 65, 77, 84). So, at most, his annual income was $180. Further, the instant petition attested that his entire net worth was only $125. (C. 86) (listing $50 in assets and $200 in his prison account, subtracted by the debt of his remaining balance of his fines of $135). Additionally, Mr. Reyes had no prospects for employment or housing available to him a mere four months prior to his release form IDOC custody. (C. 85-86). In fact, he expected to be homeless and seeking housing in homeless shelters upon release. (C. 73, 84-85). This is not the type of person from whom the State should be seeking money to fund state programs such as the police, circuit court operations, specialty courts such as the mental health courts, the children's advocacy center, and/or the DUI technology fee. See (Sup2C. 5) (listing the outstanding fines that are owed).

The legislature provided a clear avenue for individuals such as Mr. Reyes to get out from under such life altering and opportunity limiting debt through Section 5-9-2 of the UCC. Thus the judge abused his discretion in finding the Mr. Reyes had not shown good cause for his fines to be revoked. This Honorable Court should find the judge abused his discretion after the legal questions giving rise to this appeal are resolved.

That said, this Court should vacate the trial court's order denying his petition

for revocation of fines and either enter an order revoking those fines or remand this matter to the circuit court with appropriate instructions for further proceedings.

CONCLUSION

For the foregoing reasons, Jorge Reyes, respectfully requests that this Court vacate the trial court's order denying his petition for revocation of fines and either enter an order revoking those fines or remand this matter to the circuit court with appropriate instructions for further proceedings.

Respectfully submitted,

THOMAS A. LILIEN
Deputy Defender

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COUNSEL FOR PETITIONER-APPELLANT

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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 26 pages.

/s/Andrew Thomas Moore
ANDREW THOMAS MOORE
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Jorge Reyes No. 128461

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APPEAL TO THE APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 2-19-0474
Circuit Court No: 2011CF002428
Trial Judge: JEFFREY S MACKAY

v.

JORGE REYES

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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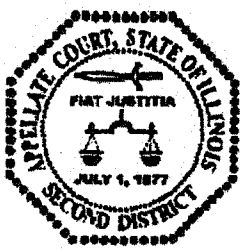
Plaintiff/Petitioner

Reviewing Court No: 2-19-0474
Circuit Court No: 2011CF002428
Trial Judge: JEFFREY S MACKAY

v.

10

JORGE REYES
Defendant/Respondent



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JUDGMENT - SENTENCE TO IDOC SEE BACK 2011CF002428-143

IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

-VS-

JORGE L REYES
Defendant

2011CF002428
CASE NUMBER

Date of Sentence 05/09/2012

Date of Birth 06/04/1957
(Defendant)

Year of Birth _____
(Victim)

FILED
12 May 09 AM 11: 02
Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above named defendant has been adjudged guilty of the offenses enumerated below.

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	DATE OF OFFENSE	CITATION	CLASS	SENTENCE	MANDATORY SUPERVISED RELEASE
0001	07/09/2011	625 ILCS 5/11-501(A)	2	36mon(s)	2

AGGRAVATED DUI - 4TH VIOLATION
and said sentence shall run concurrent with the sentence imposed on:

The Court finds that the defendant is:
[ ] Convicted of a class _____ offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-5-3(c)(8).
[X] The Court further finds that the defendant is entitled to receive credit for time actually served in custody since 10/23/2011.
[ ] The Court further finds that the conduct leading to conviction for the offenses enumerated in count(s) _____ resulted in great bodily harm to the victim.(730 ILCS 5/3-6-3(a)(iii)).
[ ] The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the "impact incarceration" program.If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. Written consent is attached.
[ ] The court further finds that offense was committed as a result of the use of, abuse of,or addiction to alcohol or a controlled substance.
[ ] IT IS FURTHER ORDERED that the sentence(s) imposed on count(s) _____ be (concurrent with)(consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.
[ ] IT IS FURTHER ORDERED that the defendant serve [ ]75% [ ]85% [ ]100% of said sentence.
[ ] IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
[X] IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him to the Department of Corrections which shall confine said defendant until expiration of his sentence or until he is otherwise released by operation of law.
[X] IT IS FURTHER ORDERED THAT FOR COUNT 0001 SUBMIT TO DNA INDEXING AT IDOC.
[X] IT IS FURTHER ORDERED THAT
FOR COUNT 0001 PAY $1,605.00. THIS IS COSTS ONLY.
This order reflects a credit of $5.00 for the following date(s) since 10/23/2011 for countnumber 0001.
COURT AUTOMATION FEE $15.00 (705 ILCS 105/27.3, County Code 9-30).
STATE POLICE FEE $15.00.
DOCUMENT STORAGE FEE $15.00 (705 ILCS 105/27.3(c), County Code 9-10).
CLERKS FEES $125.00 (705 ILCS 105/27.2(w)).
DRUG COURT-MENTAL HEALTH COURT FUND $10.00(Credit Amount $10.00) (55 ILCS 5/5-1101, County Codes 9-21 and 9-25).
STATES ATTORNEY FEES $30.00 (55 ILCS 5/4-2002, 625 ILCS 5/16-105).
COURT FUND FEE $30.00 (55 ILCS 5/5-1101, County Codes 9-21 and 9-25).
VIOLENT CRIME VICTIMS ASSISTANCE FUND $25.00(Credit Amount $25.00) (725 ILCS 240/10).
COURT SECURITY FEE $25.00 (55 ILCS 5/3-6023, 55 ILCS 5/5-1103, County Code 20-30, OJPS-001B-89).
SERIOUS TRAFFIC VIOLATION FEE $35.00 (625 ILCS 5/16-104d).
COUNTY JAIL MEDICAL COSTS FUND FEE $10.00 (730 ILCS 125/17).

CHRIS KACHIROUBAS,CLERK OF THE 18TH JUDICIAL CIRCUIT COURT,WHEATON, ILLINOIS 60187-0707

SEE BACK
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JUDGMENT - SENTENCE TO IDOC 2011CF002428 **2011CF002428-143**

TRAUMA CENTER FEE $100.00 (625 ILCS 5/16-104b, 730 ILCS 5/5-9-1.10, 730 ILCS 5/5-9-1.1(b)).
CHILD ADVOCACY CENTER FEE $30.00(Credit Amount $30.00) (55 ILCS 5/5-110(f-5)).
DUI TECH FUND $1,000.00 (625 ILCS 5/11-501.01(f), 625 ILCS 40/5-7(e-3), 625 ILCS 45/5-16(A)5.3).
DNA ANALYSIS FEE $200.00 (730 ILCS 5/5-4-3(j) and (k)).
SPINAL CORD FUND $5.00 (705 ILCS 105/27.6(b-1), 705 ILCS 105/27.6(c-1), 730 ILCS 5-9-1.1(c)).

THIS ORDER IS EFFECTIVE IMMEDIATELY.
[X] IT IS FURTHER ORDERED THAT EVIDENCE SHALL BE DISPOSED AFTER 45 DAYS UNLESS FURTHER COURT FILINGS.

DATE: 05/09/2012

JUDGE _____ File Date : 05/09/2012

GUERIN DANIEL P
Validation ID : DP-05092012-1102-44803

CHRIS KACHIROUBAS,CLERK OF THE 18TH JUDICIAL CIRCUIT COURT,WHEATON, ILLINOIS 60187-0707

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CRIMINAL ORDER 2011CF002428-242

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

VS

JORGE L REYES

2011CF002428

CASE NUMBER

FILED

19 May 21 AM 10: 58

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

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

IT IS ORDERED, based on the COURT'S motion:

DEFENDANT'S MOTION PURSUANT TO 730 ILCS 5/5-9-2 TO VACATE OR MODIFY PAYMENT OF UNPAID FINES IS DENIED AS THE DEFENDANT FAILED TO MAKE A SHOWING OF GOOD CAUSE.

THE CIRCUIT COURT CLERK SHALL SEND A COPY OF THIS ORDER TO:

JORGE REYES
M28747
EAST MOLINE CORRECTIONAL CENTER
100 HILLCREST ROAD
EAST MOLINE, IL 61244

Submitted by: GRACE BARSANTI

DuPage Attorney Number 50175

Attorney for PEOPLE OF THE STATE OF ILLINOIS

503 N COUNTY FARM RD

WHEATON, IL, 60187

File Date: 05/21/2019

JUDGE JEFFREY MACKAY

Validation ID : DP-05212019-1100-050

Date : 05/21/2019

2022 IL App (2d) 190474
No. 2-19-0474
Opinion filed March 30, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-2428
JORGE L. REYES,	)	Honorable Jeffery S. MacKay,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.
Justices McLaren and Zenoff concurred in the judgment and opinion.

OPINION

¶ 1 We consider in this case (1) whether a petition to revoke fines under section 5-9-2 of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-9-2 (West 2018)) requires the trial court to wait 30 days before denying it sua sponte, and (2) whether certain fines defendant sought to revoke were properly subject to such a petition. We answer both questions in the negative.

¶ 2 I. BACKGROUND

¶ 3 In May 2012, defendant, Jorge L. Reyes, pleaded guilty to aggravated driving while under the influence of alcohol (625 ILCS 5/11-501(a)(2), (d)(2)(C) (West 2010)), per a plea agreement. The agreement provided that defendant would be sentenced to three years' imprisonment and that "zero fines, court costs only, DNA indexing and fee" would be imposed. After finding that

defendant knowingly and voluntarily entered the plea and accepted the agreement, the trial court reiterated: "zero fine[s], court costs only, $1,000 tech fee, $100 second offender fee, $200 indexing fee by statute, unsatisfied judgment entered against any outstanding fines or costs."

¶ 4 The written sentencing order, which was dated May 9, 2012, provided: "For count 0001 pay $1,605.00. This is costs only." It further stated: "This order reflects a credit of $5.00 for the following date(s) since 10/23/2011 for countnumber [sic] 0001." (CLR 53) The order then listed a number of charges. These charges included:

COURT AUTOMATION FEE	$15
STATE POLICE FEE	$15
DOCUMENT STORAGE FEE	$15
CLERK'S FEE	$125
DRUG COURT/MENTAL HEALTH COURT FUND	$10
STATES ATTORNEY FEES	$30
COURT FUND FEE	$30
VIOLENT CRIME VICTIMS ASSISTANCE FUND	$25
COURT SECURITY FEE	$25
SERIOUS TRAFFIC VIOLATION FEE	$35
COUNTY JAIL MEDICAL COSTS FUND FEE	$10
TRAUMA CENTER FEE	$100
CHILD ADVOCACY CENTER FEE	$30
DUI TECH FUND	$1000
DNA ANALYSIS FEE	$200

SPINAL CORD FUND	$5
TOTAL	$1670

Next to some of the listed charges was a notation that the charge was credited against the total. The credited amounts included $10 for the Drug Court/Mental Health Court Fund, $25 for the Violent Crime Victims Assistance Fund, and $30 for the Child Advocacy Center Fee. The total charges, less the credited $65, was $1605. Nothing in the order indicated that the court imposed a penal fine under the Corrections Code. Defendant neither moved to withdraw his guilty plea nor appealed this order.

¶ 5 Over six years later, in July 2018, defendant sent a letter to the clerk of the court, asking about the amount of fines he owed in this and other cases. The clerk responded that defendant owed $2,086.50 in this case. Presumably, this amount includes interest.

¶ 6 On August 7, 2018, defendant mailed to the trial court and the State a petition to revoke his fines under section 5-9-2 of the Corrections Code (730 ILCS 5/5-9-2 (West 2018)), which asserted that he was indigent and would like a "fresh start" upon his release from prison. In his attached application for appointed counsel, defendant indicated that he had no assets. The petition and application were file-stamped August 20, 2018, and the trial court held a hearing on the petition one day later. Before ruling on the petition, the trial court asked the assistant state's attorney if "[she] ha[d] anything [she] want[ed] to add on the record?" The attorney replied that she did not. The court denied the petition, stating:

> "[Defendant] is saying, because he is in custody on another case, that he can't pay the fines and costs on this, although he wasn't in custody on the other case until February 3rd of 2017[,] so he was out of custody for five years before he alleges he was unable to pay any

fines and costs. So, he had five years to try to pay the fines and costs, and he didn't do it. So[,] his motion is going to be denied."

Defendant neither moved to reconsider nor appealed this order.

¶ 7 Four months later, on February 22, 2019, defendant again mailed to the trial court and the State a petition to revoke his fines. Defendant again argued that he was indigent. In his attached application for appointment of counsel, defendant indicated that he earned $70 the previous year, had $183 in a prison trust account, and owned personal property worth $70. The petition and application were file-stamped February 27, 2019. Two days later, on March 1, 2019, the trial court held a hearing on defendant's petition. Although the State appeared at that hearing, the trial court did not ask the State whether it wished to provide any input on defendant's petition. The court sua sponte denied the petition, finding that defendant failed to make a showing of good cause. Defendant neither moved to reconsider nor appealed this order.

¶ 8 Two months later, on May 1, 2019, defendant mailed to the trial court and the State a third petition to revoke his fines. As with the previous petitions, defendant filed a notice of filing. Although he did not completely fill out the notice, defendant certified that he served by mail the petition to revoke fines on the State and the court clerk.

¶ 9 In the petition, defendant again argued that he was indigent. More specifically, he asserted that he was illiterate, had no money other than the $15 he earned each month, and would, upon his release, "[b]e homeless living in [a] shelter with no financial assistance except [the] shelter." In his attached application for the appointment of counsel, defendant indicated that he earned $180 the previous year, had $200 in a prison trust account, and owned property worth $50. The petition and application were file-stamped May 6, 2019. Fifteen days later, on May 21, 2019, the trial court held a hearing on the petition. Although the State appeared at the hearing, it had not formally

responded to the petition. The trial court denied the petition without asking the State whether it had any input. The court found that "defendant failed to make a showing of good cause."

¶ 10 On June 5, 2019, defendant filed a pro se notice of appeal, and appointed counsel filed an amended notice of appeal on June 26, 2019.

¶ 11 While the appeal was pending with us, we remanded the case for the limited purpose of allowing defendant to file a motion asserting that his "fees" were improper under Illinois Supreme Court Rule 472 (eff. May 17, 2019). The parties filed an agreed motion, asserting that defendant was entitled to a per diem credit of $5 for each of the 200 days he spent in presentence custody. See 725 ILCS 5/110-14(a) (West 2018) ("Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense shall be allowed a credit of $5 for each day so incarcerated ***."). The parties agreed that defendant was entitled to a per diem credit on each of the following charges:

STATE POLICE FEE	$15
DRUG COURT/MENTAL HEALTH COURT FUND	$10
COURT FUND FEE	$30
SERIOUS TRAFFIC VIOLATION FEE	$35
CHILD ADVOCACY CENTER FEE	$30
DUI TECH FUND	$1000
TOTAL	$1120

The parties agreed that defendant was entitled to a credit of $960 against these charges. The parties agreed on $960 because defendant was in presentencing custody for 200 days. Thus, at $5 per day, he was eligible for a credit against his fines of $1000. The parties indicated that the difference was

because, when the fines were imposed, defendant was given a $40 credit against his fines for the $10 Drug Court/Mental Health Court fund and the $30 Child Advocacy Center Fee. The parties did not recognize that defendant was also given credit for the $25 Violent Crime Victims Assistance Fund fine. The trial court granted the parties' agreed motion and awarded defendant $960 in presentencing credit. Although defendant was not entitled to a per diem credit for the Violent Crime Victims Assistance Fund fine (see People v. Lake, 2015 IL App (3d) 140031, ¶ 36), the court cannot deny a credit already received (see People v. Warren, 2016 IL App (4th) 120721-B, ¶ 83). So, summing the $960 credit and the $25 credit for the Violent Crime Victims Assistance Fund fine, the defendant's outstanding fine balance is $135.

¶ 12 Because, even with the credits, defendant has $135 in outstanding fines, we now consider defendant's issues raised before we remanded this appeal.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues that the trial court erred by ruling on his petition before 30 days had passed from filing the petition. He alternatively argues that the denial of the petition was erroneous on the merits. We disagree with him on both points.

¶ 15 As we held in People v. Rivera, 2020 IL App (2d) 171002, we have jurisdiction to consider an appeal from the denial of a section 5-9-2 petition to revoke fines without a defendant first seeking to withdraw his guilty plea. Id. ¶ 8. In addition, we observe that the legislature has not always been consistent about labeling charges as either a "fine" or a "fee." People v. Jones, 223 Ill. 2d 569, 575-76 (2006); see People v. Rodriguez, 362 Ill. App. 3d 44, 51 (2005) (noting that the same charge was labeled as a "fine" in one statute and a "fee" in another). This case, too, exemplifies that problem. Although virtually all of defendant's remaining assessments are listed as "fees" and contributions to "funds," they are fines. Specifically, they were assessed not to

recover the State's expenses for prosecuting the defendant, but rather were pecuniary punishments imposed as part of his conviction and sentence. People v. Mullen, 2018 IL App (1st) 152306, ¶ 21.

¶ 16 A. Forfeiture

¶ 17 As an initial matter, we find that defendant has forfeited any argument that any of his remaining fines were improperly assessed. Rule 472(c) provides that:

> "No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above[, which includes imposition of fines,] unless such alleged error has first been raised in the circuit court. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited." (Emphasis added.) Ill. S. Ct. R. 472(c) (eff. May 17, 2019).

¶ 18 As we stated above, we remanded this appeal to the trial court so that defendant could file a motion under Rule 472. The parties filed an agreed motion, asserting that defendant was entitled to a per diem credit for various fines. Although defendant intimated in his appellate brief that he could file a Rule 472 motion—claiming that the fines imposed violated the parties' plea agreement, a contention that could have merit (see People v. Hinton, 2019 IL App (2d) 170348, ¶ 7)—no such motion was ever filed. Accordingly, under Rule 472, we must hold that defendant has forfeited any claim that the fines were improper because they violated the parties' plea agreement. See Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Of course, nothing prevents defendant from filing a postconviction petition asserting that trial and appellate counsel were ineffective for failing to argue that the court should vacate his fines pursuant to the parties' plea agreement. See People v. Childress, 191 Ill. 2d 168, 175 (2000) (appellate counsel may be ineffective for failing to raise trial counsel's ineffectiveness on direct appeal).

¶ 19 All of that said, forfeiture does not apply to the issues defendant originally raised concerning the petition to revoke his fines, which we now address.

¶ 20 B. Petitions to Revoke Fines and Our Supreme Court's Rules on Service and Notice

¶ 21 Defendant first argues that the trial court's denial of his petition to revoke his fines was premature. Relying on case law, defendant argues that his petition was governed by Illinois Supreme Court Rule 105 (eff. Jan. 1, 2018) and Rule 106 (eff. Aug. 1, 1985) and that the trial court could not sua sponte deny the petition until 30 days had passed from its filing. Defendant filed his petition, at the earliest, on May 5, 2019 (see Ill. S. Ct. R. 12(c) (eff. July 1, 2017)), and the trial court sua sponte denied his petition on May 21, 2019, only 16 days later. In that light, defendant argues that the denial of his petition was premature and that we must vacate the denial and remand this cause for further proceedings.

¶ 22 To resolve this issue, we must determine which rules govern the disposition of petitions to revoke fines. This determination requires us to examine Illinois Supreme Court Rule 104 (eff. Jan. 1, 2018), Rule 105, and Rule 106 in addition to section 5-9-2 of the Corrections Code (730 ILCS 5/5-9-2 (West 2018)). In doing so, we follow the well-settled principles for interpreting rules and statutes. " 'With rules, as with statutes, our goal is to ascertain and give effect to the drafters' intention.' " People v. Salem, 2016 IL 118693, ¶ 11 (quoting People v. Marker, 233 Ill. 2d 158, 164-65 (2009)). " 'The most reliable indicator of intent is the language used ***.' " Id. (quoting Marker, 233 Ill. 2d at 164-65). " 'When the language is clear and unambiguous, we will apply the language used without resort to further aids of construction.' " Lake Environmental, Inc. v. Arnold, 2015 IL 118110, ¶ 12 (quoting Roth v. Illinois Farmers Insurance Co., 202 Ill. 2d 490, 493 (2002)). Likewise, "[w]e will not depart from the plain *** language [of a statute or a supreme court rule]

by reading into [them] exceptions, limitations, or conditions" that the drafters did not provide. People v. Roberts, 214 Ill. 2d 106, 116 (2005). Because interpreting statutes and our supreme court's rules present questions of law, our review is de novo. See In re Marriage of Fatkin, 2019 IL 123602, ¶ 25 ("Like the construction of a statute, the construction of [supreme court] rules is a question of law that we review de novo.").

¶ 23 With these principles in mind, we turn first to section 5-9-2 of the Corrections Code, which provides: "Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code [(Vehicle Code) (625 ILCS 5/15-101 et seq. (West 2018))], the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2 (West 2018). As the parties agree, section 5-9-2 does not indicate what rules govern the disposition of petitions to revoke fines.

¶ 24 Next, we turn to Rules 104, 105, and 106. These rules apply in civil as well as criminal proceedings. See Ill. S. Ct. R. 1, Committee Comments (rev. July 1, 1971). Rule 104(b) states:

> "Pleadings subsequent to the complaint, written motions, and other documents required to be filed shall be filed with the clerk with a certificate of counsel or other proof that the documents have been served on all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead." Ill. S. Ct. R. 104(b) (eff. Jan. 1, 2018).

Here, the record indicates that defendant certified that he served his petition on the court and the State by mail. Although the certification paperwork was incomplete, the State is not taking issue with service. Thus, we must conclude that service by mail was proper. See Ill. S. Ct. R. 12(b)(5) (eff. July 1, 2017) ("[I]n case of service by mail *** [service is proved] by certification under section 1-109 of the Code of Civil Procedure [(Civil Code) (735 ILCS 5/1-109 (West 2018))] of

the person who deposited the document in the mail *** stating the time and place of mailing or delivery, the complete address that appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid ***."). Importantly, under Rule 104(b), nothing indicates that a party served must be given time to respond or file an appearance before the trial court can rule on the pleading filed.

¶ 25 In contrast, Rules 105 and 106 provide that a served party must be given time to answer or file an appearance before the trial court may rule on the pleading. Rule 105 "applies to parties who are in default—those who have not appeared either personally or by counsel." Eckel v. Bynum, 240 Ill. App. 3d 867, 875 (1992). Rule 105(a) provides:

> "If new or additional relief, whether by amendment, counterclaim, or otherwise, is sought against a party not entitled to notice under Rule 104, notice shall be given him as herein provided. *** It shall state that a pleading seeking new or additional relief against him has been filed and that a judgment by default may be taken against him for the new or additional relief unless he files an answer or otherwise files an appearance in the office of the clerk of the court within 30 days after service, receipt by certified or registered mail, or the first publication of the notice, as the case may be, exclusive of the day of service, receipt or first publication." (Emphasis added.) Ill. S. Ct. R. 105(a) (eff. Jan. 1, 2018).

Here, the State is not in default. Thus, Rule 105 does not apply.

¶ 26 Rule 106, however, expands the filing requirements of Rule 105 to three specific proceedings. It states: "Notice of the filing of a petition under section 2-1401, section 2-1601 or section 12-183(g) of the [Civil Code] shall be given by the same methods provided in Rule 105 for the giving of notice of additional relief to parties in default." Ill. S. Ct. R. 106 (Aug. 1. 1985).

Nowhere does Rule 106 indicate that the filing requirements of Rule 105 also apply to petitions to revoke fines under section 5-9-2 of the Corrections Code. Thus, it appears that Rule 106 does not apply here either. Given that Rule 104(b) was followed in this case—and the plain language of that rule does not provide that the party served must be given time to respond or appear before the trial court can rule—we cannot conclude that the trial court prematurely ruled on defendant's petition to revoke his fines.

¶ 27 Nonetheless, relying on People v. Laugharn, 233 Ill. 2d 318 (2009), People v. Clemons, 2011 IL App (1st) 102329, and People v. Mingo, 403 Ill. App. 3d 968 (2010), defendant argues that Rules 105 and 106 govern petitions to revoke fines.

¶ 28 Both Laugharn and Clemons concerned petitions for relief from judgments under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2018)). At issue in Laugharn was whether a trial court could sua sponte dismiss a section 2-1401 petition as untimely before the expiration of the 30 days in which the State could answer or otherwise plead. Laugharn, 233 Ill. 2d at 321, 323. Our supreme court held that the dismissal was premature. Id. at 323. Specifically, relying on Rules 105 and 106, the court determined that "[t]he circuit court's dismissal short-circuited the proceedings and deprived the State of the time it was entitled to answer or otherwise plead." Id.

¶ 29 Similarly, in Clemons, the defendant filed a section 2-1401 petition to enforce a plea agreement. Clemons, 2011 IL App (1st) 102329, ¶ 1. Less than 30 days after filing the petition, the trial court sua sponte dismissed the petition. Id. ¶ 6. The appellate court determined that, like the 2-1401 petition filed in Laugharn, the court sua sponte dismissed defendant's petition prematurely because the dismissal was before the State's 30-day time to respond expired. Id. ¶ 15.

¶ 30 Laugharn and Clemons are unpersuasive here. There, the defendants filed 2-1401 petitions. The plain language of Rule 106 indicates that Rule 105 governs the disposition of section 2-1401 petitions. As noted, these rules do not govern petitions to revoke fines under section 5-9-2 of the Corrections Code.

¶ 31 Defendant argues that Mingo supports his position that, like section 2-1401 petitions, petitions to revoke fines are governed by Rules 105 and 106. In Mingo, we considered whether a petition to revoke fines must be brought in the trial court within 30 days after the final judgment for the trial court to have jurisdiction over the petition. Mingo, 403 Ill. App. 3d at 970. We determined that it was not necessary because a petition to revoke fines, like a petition brought under section 2-1401 of the Civil Code, is a freestanding collateral action. Id. at 972.

¶ 32 We cannot conclude from Mingo that Rules 105 and 106 govern petitions to revoke fines. Although a petition to revoke fines and a 2-1401 petition are collateral proceedings, this similarity is insufficient to establish that Rules 105 and 106 also apply to petitions to revoke fines. We could not read Rules 105 and 106 as encompassing petitions to revoke fines unless we read into those rules conditions that our supreme court did not provide. As noted, this is something we cannot do. Roberts, 214 Ill. 2d at 116.

¶ 33 In reaching this conclusion, we observe that defendant's reply brief argues for the first time that "[r]uling on the merits of the defendant's petition to revoke fines without first waiting for a response from the State, and without giving the defendant notice and an opportunity to be heard, presents a classic example of denial of due process." Because defendant's initial brief did not raise this issue, we will not consider it. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Points not argued [in the appellant's initial brief] are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); see also People v. Taylor, 2019 IL App (1st) 160173,

¶ 41 (defendant forfeited due process argument raised for first time in reply brief). That said, it is difficult to see how defendant was denied due process because the trial court ruled on his petition to revoke fines without the State's input. More to the point, the State was denied the opportunity to be heard, not defendant.

¶ 34 We conclude that Rules 105 and 106 do not govern the disposition of petitions to revoke fines. Thus, the trial court did not err in sua sponte denying defendant's petition before 30 days had passed from its filing.

¶ 35 C. Denial of Petition to Revoke Fines

¶ 36 We turn now to defendant's argument that the trial court nonetheless erred in denying his petition to revoke his fines. Before doing so, we note that even though the trial court—a court of competent jurisdiction—has twice previously ruled that defendant failed to establish good cause, the State has not argued that res judicata bars our review of defendant's latest petition. Of course, res judicata is an affirmative defense that might be forfeited if not raised (Schloss v. Jumper, 2014 IL App (4th) 121086, ¶ 18), and here we find that it was forfeited.

¶ 37 Because res judicata does not bar us from addressing the merits, we next consider whether the court should have granted defendant's petition to revoke his fines. Defendant argues, among other things, that his petition should have been granted because all fines—except those imposed under Chapter 15 of the Illinois Vehicle Code (see 625 ILCS 5/15-101 to 15-319 (West 2010) (a chapter addressing weight and load limits))—are subject to revocation under section 5-9-2 of the Corrections Code if good cause is shown. 730 ILCS 5/5-9-2 (West 2018). The State argues that only discretionary penal fines imposed under the Corrections Code may be revoked under section 5-9-2. Thus, according to the State, if a discretionary fine is not imposed under the Corrections

Code, like the fines imposed on defendant here, it may not be revoked under section 5-9-2, regardless of whether good cause is shown.

¶ 38 Whether the fines imposed here are subject to revocation requires us to interpret section 5-9-2 of the Corrections Code. In doing so, we again follow well-settled rules of statutory construction outlined above. Additionally, under those rules, "if the language in the statute *** is susceptible to being interpreted in more than one way by reasonably well-informed people, the statute *** is ambiguous." People v. Martino, 2012 IL App (2d) 101244, ¶ 26. "In such instances, a court may consider extrinsic aids of construction in discerning the legislative authority's intent." Id. "We must construe the statute *** to avoid rendering any part of it meaningless or superfluous." Id. "Additionally, we cannot view words and phrases in isolation, but, rather, we must consider them in light of other relevant provisions." Id. "We may also consider the consequences that would result from construing the statute *** one way or the other, and, in doing so, we must presume that the legislative authority did not intend absurd, inconvenient, or unjust consequences." Id. As noted above, we review de novo issues involving statutory interpretation. Id.

¶ 39 Mindful of those principles, we again turn to interpret section 5-9-2 of the Corrections Code. As noted above, that section provides: "Except as to fines established for violations of Chapter 15 of the *** Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2 (West 2018).

¶ 40 At issue is what the term "fines" means, as referenced in section 5-9-2 of the Corrections Code. One could read section 5-9-2 as limiting the revocation of fines to all fines except those imposed under Chapter 15 of the Vehicle Code. However, one could also read section 5-9-2 as limiting the revocation of fines to those discretionary penal fines imposed for violating the law but excluding fines imposed under Chapter 15 of the Vehicle Code.

¶ 41 In resolving what the term "fine" means, we find instructive People v. Bennett, 144 Ill. App. 3d 184 (1986). There, the defendant pleaded guilty to battery and resisting a peace officer. Id. When the court sentenced the defendant, it imposed a $45 fine under the Violent Crime Victims Assistance Act (Victims Act) (725 ILCS 240/10 (West 2018) (formally Ill. Rev. Stat. 1991, ch. 70, ¶ 510)). Bennett, 144 Ill. App. 3d at 184-85. The defendant neither moved to withdraw his plea nor filed a notice of appeal. Id. at 185. Later, the State moved to extend the defendant's time to pay his fine. Id. Although the trial court could have considered at the hearing on the State's motion whether to reduce or revoke the defendant's fine under section 5-9-2 of the Corrections Code, the court left the $45 fine intact. Id. at 185-86. The defendant appealed. Id. at 185.

¶ 42 On appeal, the defendant argued that his $45 fine should have been revoked. Id. at 186. The appellate court disagreed. Id. The court determined:

> "[W]e conclude that section 5-9-2 refers to a penal fine imposed under the *** Corrections [Code]. The 'fine' referred to in this provision clearly refers to the penalties authorized in section 5-9-1 [citation]. By contrast, a fine payable to the Violent Crime Victims Assistance Fund is clearly mandatory and 'in addition to' a fine imposed under the *** Corrections [Code]. [Citation]. Moreover, the Violent Crime Victims Assistance Act contains no suggestion that the guidelines of the *** Corrections [Code] may apply to a fine levied under the Victims Act. Finally, the Victims Act seeks to compensate victims of violent crime; this goal would be thwarted by applying section 5-9-2 to excuse fines such as that owed by the present defendant.
>
> We do not believe that section 5-9-2 may be used to circumvent the mandatory nature of a fine under the Victim[ ]s Act. Accordingly, the trial court did not err in failing to reduce or revoke the defendant's fine." Id.

¶ 43 Here, as in Bennet, we determine that the term "fine" referred to in section 5-9-2 means the discretionary penal fines authorized by section 5-9-1 of the Corrections Code (730 ILCS 5/5-9-1 (West 2018)). If, as defendant suggests, "fine" referred to the mandatory fines imposed on him, section 5-9-2 of the Corrections Code would run afoul of the provisions mandating that the fines imposed here must be assessed. Like in Bennet, all the fines imposed on defendant had to be imposed in addition to any penal fine imposed under the Corrections Code. See Jones, 223 Ill. 2d at 593, 599 (Trauma Center fee and Spinal Cord fund are mandatory fines); People v. Millsap, 2012 IL App (4th) 110668, ¶¶ 30-31 (State Police and Child Advocacy Center fees are mandatory fines); People v. O'Laughlin, 2012 IL App (4th) 110018, ¶ 12 (Serious Traffic Violation fee is a mandatory fine); People v. Folks, 406 Ill. App. 3d 300, 305 (2010) (Drug Court/Mental Health Court fund is a mandatory fine); People v. Jones, 397 Ill. App. 3d 651, 660 (2009) (Court Fund fee is a mandatory fine); People v. Diaz, 377 Ill. App. 3d 339, 351 (2007) (DUI Tech fund of $1000 is a mandatory fine).

¶ 44 Other Corrections Code provisions support our position that the fines referred to in section 5-9-2 are discretionary penal fines. Section 5-9-1 of the Corrections Code (730 ILCS 5/5-9-1 (West 2018)) is entitled "Authorized fines." Section 5-9-1(a) provides that "[a]n offender may be sentenced to pay a fine as provided in Article 4.5 of Chapter V [730 ILCS 5/5-4.5-5 et seq. (West 2018)]." Id. § 5-9-1(a). Article 4.5 of Chapter V concerns "General Sentencing Provision[s]." Id. § 5-4.5-5. The "General Sentencing Provision[s]" include sentencing for felonies and misdemeanors. Id. Under these "General Sentencing Provision[s]," a trial court may impose on a defendant convicted of a felony or a misdemeanor a fine in addition to a sentence. See, e.g., id. § 5-4.5-45(e) (fine for a Class 4 felony may be imposed); id. § 5-4.5-65(e) (fine for Class C

misdemeanor may be imposed). As relevant here, it is these discretionary penal fines, the fines imposed under Article 4.5 of Chapter V, to which section 5-9-2 refers.

¶ 45 In reaching our conclusion, we note that, when Bennet was decided in 1984, section 5-9-2 of the Corrections Code did not contain any language referring to Chapter 15 of the Vehicle Code. In 1984, section 5-9-2 simply provided: "The court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-9-2.

¶ 46 We have examined the legislative history hoping that it would justify excluding fines imposed under Chapter 15 of the Vehicle Code that relate to size, weight, and load regulations. Unfortunately, the legislative history provided no definitive guidance. We observe, however, that the regulations in Chapter 15 of the Vehicle Code typically apply to commercial vehicles, and violations frequently add up to thousands of dollars in fines. Nevertheless, we cannot conclude that the legislature, by excluding fines imposed under Chapter 15 of the Vehicle Code, meant to expand petitions to revoke fines to those mandatory fines imposed on defendant here.

¶ 47 Instructive on that point is People v. Ullrich, 135 Ill. 2d 477 (1990). There, the defendant was convicted of driving an overweight vehicle on an elevated structure. Id. at 479. Although defendant was subject to mandatory fines and costs totaling $6385 under section 15-113(a) of the Vehicle Code (625 ILCS 5/15-113(a) (West 2018) (formally Ill. Rev. Stat. 1985, ch. 95 ½, ¶ 15-113), the trial court ultimately imposed a $100 fine. Ullrich, 135 Ill. 2d at 480. When the fine was imposed, section 5-9-1(d) of the Corrections Code (730 ILCS 5/5-9-1(d) (West 2018) (formally Ill. Rev. Stat. 1985, ch. 38, ¶ 1005-9-1))—which provides that a trial court may consider a defendant's financial circumstances in setting the amount of a fine—contained no language excluding fines imposed under Chapter 15 of the Vehicle Code. Ullrich, 135 Ill. 2d at 481.

¶ 48 The State appealed, and the appellate court affirmed. Id. at 482. The appellate court determined that "strict imposition of the fines required by section 15-113(a) of the Vehicle Code would be inconsistent with the requirement of section 5-9-1(d) of the Corrections Code that the [trial] court consider the [defendant's] financial situation when imposing a fine." Id. at 481-82. In doing so, the appellate court reasoned that "since the two statutes were inconsistent, the later statute, section 5-9-1(d) of the Corrections Code, implicitly amended the earlier statute, section 15-113(a) of the Vehicle Code." Id. at 482. Thus, the appellate court determined that the trial court could consider a defendant's financial situation in setting a fine under section 15-113(a) of the Vehicle Code. Id. When the appellate court rendered its decision, section 5-9-1(d) did not mention Chapter 15 of the Vehicle Code. Id. at 481.

¶ 49 The State appealed to our supreme court. Id. at 479. At issue was whether section 15-113(a) of the Vehicle Code was amended by implication by section 5-9-1(d) of the Corrections Code. Id. at 482. The supreme court noted that amendment by implication is disfavored and that a statute will be deemed amended by implication only if the terms of the latter statute are so inconsistent that the two statutes cannot stand together. Id. at 483. Accordingly, it determined that section 15-113(a) of the Vehicle Code was not amended by section 5-9-1(d) of the Corrections Code. Id. at 483. The court reasoned that (1) section 5-9-1(d) of the Corrections Code served a different purpose than section 15-113(a) of the Vehicle Code, and (2) section 5-9-1(d) of the Corrections Code applied to discretionary fines while section 15-113(a) of the Vehicle Code concerned mandatory fines. Id. at 484-85, 487.

¶ 50 On the second point, the court reasoned:

> "Section 5-9-1 of the Corrections Code provides that an offender 'may be sentenced to pay a fine' and that a fine 'may be imposed' in addition to a sentence of conditional discharge,

> probation, or imprisonment [citation]. The word 'may' ordinarily connotes discretion. [Citation.] The legislature's use of the word 'may' in section 5-9-1 of the Corrections Code stands in contrast to the language of the mandatory fine provision of section 15-113(a) of the Vehicle Code, which provides that offenders 'shall be fined' according to the schedule provided in that section. We find that *** section 5-9-1 of the Corrections Code was intended to apply to discretionary fines and not to fixed, mandatory fines." Id. at 484-85.

The court also noted that "[i]t is apparent that the legislature intended section 5-9-1(d) of the Corrections Code to apply only to those situations where the legislature has given the [trial] court discretion to determine the amount of a fine, for example, where the legislature has provided a range of permissible fines." Id. at 485. Our supreme court, like the trial and appellate courts, applied the 1985 version of section 5-9-1(d) of the Corrections Code, which was in effect when the fine was imposed. Id. at 481.

¶ 51 Ullrich illustrates why section 5-9-2 of the Corrections Code does not apply to the mandatory fines imposed on defendant here. First, although section 15-113(a) of the Vehicle Code concerns mandatory fixed fines, other sections of Chapter 15 of the Vehicle Code grant the trial court discretion to impose a fine within a fixed range. See 625 ILCS 5/15-113.1 (West 2018) (fine imposed of not less than 10 cents per pound for each pound that the gross weight of the vehicle exceeds the gross weight of vehicles permissible under section 15-111 of the Vehicle Code (Id. § 15-111)); Id. § 15-113.2 (an owner or driver of a vehicle must be fined within a discretionary range for each pound of excess axle-weight that exceeds the weight authorized by the permit issued to the owner); Id. § 15-113.3 (providing for a range of fines that must be imposed when the vehicle's gross weight exceeds the permit's). Given that discretion, the legislature may very well have specifically excluded fines imposed under Chapter 15 of the Vehicle Code, which exclusion

includes the fixed mandatory fines and the fines the trial court must impose within a discretionary range. None of the fines imposed on defendant here, which are not specifically excluded under either section 5-9-1 or section 5-9-2 of the Corrections Code, are similarly discretionary.

¶ 52 Moreover, we presume that the legislature amended section 5-9-1(d) in response to the appellate court's decision in Ullrich. Three months before our supreme court decided Ullrich, the legislature amended section 5-9-1(d) of the Corrections Code. After the amendment, that section, which included the exception under Chapter 15 of the Vehicle Code, provided:

> "(d) In determining the amount and method of payment of a fine, except for those fines established for violations of Chapter 15 of the *** Vehicle Code, the court shall consider:
>
> (1) the financial resources and future ability of the offender to pay the fine; and
>
> (2) whether the fine will prevent the offender from making court ordered restitution or reparation to the victim of the offense; and
>
> (3) in a case where the accused is a dissolved corporation and the court has appointed counsel to represent the corporation, the costs incurred either by the county or the State for such representation." (Emphasis added.) Ill. Rev. Stat. 1989, ch. 38, ¶ 1005-9-1(d).

¶ 53 Subsequently, in 1992, the legislature added language to section 5-9-2 of the Corrections Code. That section, which included the exception under Chapter 15 of the Vehicle Code, provided, as it does now, that: "Except as to fines established for violations of Chapter 15 of the *** Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." (Emphasis added.) Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-9-2.

¶ 54 With the 1992 amendment, sections 5-9-1 and 5-9-2, which already had complementary provisions allowing discretionary revocation of discretionary fines, now have parallel exceptions. Specifically, section 5-9-1 does not apply to the imposition of fines under Chapter 15 of the Vehicle Code, and section 5-9-2 does not authorize revocation of fines imposed under Chapter 15 of the Vehicle Code. The legislature, by adding this exclusion to section 5-9-2, fixed the conflict between sections 5-9-1 and 5-9-2 of the Corrections Code that otherwise would have existed between 1989 and 1992. See Stone v. Department of Employment Security Board of Review, 151 Ill. 2d 257, 262 (1992) ("The presumption is that statutes which relate to one subject were intended by the legislature to be consistent and harmonious with each other.").

¶ 55 Given the sequence of events, we believe that the amendment to section 5-9-1 was intended strictly to enact Ullrich's holding that the standards delineated in section 5-9-1 for imposing discretionary fines do not apply to the imposition of either (1) the fixed, mandatory fines or (2) the discretionary fines within a fixed range authorized by Chapter 15 of the Vehicle Code. Moreover, the amendment to section 5-9-2 appears to have been designed to track the amendment to section 5-9-1 and clarify that section 5-9-2 does not authorize revocation of fines imposed under Chapter 15 of the Vehicle Code. Thus, under section 5-9-2 of the Corrections Code, revocation of fines is allowed only for the discretionary penal fines imposed under the Corrections Code. Therefore, we cannot apply section 5-9-2 to all fines except those imposed under Chapter 15 of the Vehicle Code. That would effectively undo the holding in Bennet and, more importantly, subvert the holding in Ullrich—that the parallel provision of section 5-9-1 of the Corrections Code does not apply to mandatory fines. See People v. Harris, 69 Ill. App. 3d 118, 123 (1979) ("[A] decision by the [Illinois] supreme court, and its implications for the construction of [statutes], is binding upon th[e appellate courts.]").

¶ 56 Because we have determined that defendant's remaining fines were not subject to revocation, we need not determine whether his petition demonstrated "good cause."

¶ 57 III. CONCLUSION

¶ 58 In sum, we determine that the trial court (1) did not prematurely deny defendant's petition to revoke fines under section 5-9-2 of the Corrections Code, and (2) could not lawfully revoke defendant's remaining fines. So, for the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 59 Affirmed.

No. 2-19-0474

IN THE

APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois
Plaintiff-Appellee,	)	No. 11 CF 2428
-vs-	)	
JORGE L. REYES,	)	Honorable Jeffrey S. MacKay,
Defendant-Appellant.	)	Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Second District, from the judgment described below:

Appellant's Name: Register No.	Jorge Reyes M28747
Appellant's Address:	East Moline Correctional Center 100 Hillcrest Road East Moline, IL 61244
Appellant's Attorney:	Office of the State Appellate Defender
Appellant's Attorney's Address:	One Douglas Avenue, Second Floor Elgin, IL 60120
Offense of which convicted:	Aggravated driving under the influence
Date of Order:	May 21, 2019
Sentence:	36 months
Orders appealed:	Denial of motion to vacate/modify fines

Respectfully submitted,

By: Thomas A. Lilien

Thomas A. Lilien, Deputy Defender

C 93

1005-8-6. Place of confinement

§ 5-8-6. Place of Confinement. (a) Offenders sentenced to a term of imprisonment for a felony shall be committed to the penitentiary system of the Department of Corrections. However, such sentence shall not limit the powers of the Department of Children and Family Services in relation to any child under the age of one year in the sole custody of a person so sentenced, nor in relation to any child delivered by a female so sentenced while she is so confined as a consequence of such sentence. A person sentenced for a felony may be assigned by the Department of Corrections to any of its institutions, facilities or programs.

(b) Offenders sentenced to a term of imprisonment for less than one year shall be committed to the custody of the sheriff. A person committed to the Department of Corrections, prior to July 14, 1983, for less than one year may be assigned by the Department to any of its institutions, facilities or programs.

(c) All offenders under 17 years of age when sentenced to imprisonment shall be committed to the Juvenile Division of the Department of Corrections and the court in its order of commitment shall set a definite term. Such order of commitment shall be the sentence of the court which may be amended by the court while jurisdiction is retained; and such sentence shall apply whenever the offender sentenced is in the control and custody of the Adult Division of the Department of Corrections. The provisions of Section 3-3-3 [1] shall be a part of such commitment as fully as though written in the order of commitment. The committing court shall retain jurisdiction of the subject matter and the person until he or she reaches the age of 21 unless earlier discharged. However, the Juvenile Division of the Department of Corrections shall, after a juvenile has reached 17 years of age, petition the court to conduct a hearing pursuant to subsection (c) of Section 3-10-7 of this Code.[2]

(d) No defendant shall be committed to the Department of Corrections for the recovery of a fine or costs.

(e) When a court sentences a defendant to a term of imprisonment concurrent with a previous and unexpired sentence of imprisonment imposed by any district court of the United States, it may commit the offender to the custody of the Attorney General of the United States. The Attorney General of the United States, or the authorized representative of the Attorney General of the United States, shall be furnished with the warrant of commitment from the court imposing sentence, which warrant of commitment shall provide that, when the offender is released from federal confinement, whether by parole or by termination of sentence, the offender shall be transferred by the Sheriff of the committing county to the Department of Corrections. The court shall cause the Department to be notified of such sentence at the time of commitment and to be provided with copies of all records regarding the sentence.

Amended by P.A. 83-1362, Art. II, § 48, eff. Sept. 11, 1984.

[1] Paragraph 1003-3-3 of this chapter.

[2] Paragraph 1003-10-7 of this chapter.

Article II of P.A. 83-1362, the First 83rd General Assembly Combining Revisory Act, resolved multiple actions in the 83rd General Assembly.

1005-8-7. Calculation of term of imprisonment

§ 5-8-7. Calculation of Term of Imprisonment. (a) A sentence of imprisonment shall commence on the date on which the offender is received by the Department or the institution at which the sentence is to be served.

(b) The offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed, at the rate specified in Section 3-6-3 of this Code.[1]

(c) An offender arrested on one charge and prosecuted on another charge for conduct which occurred prior to his arrest shall be given credit on the determinate sentence or maximum term and the minimum term of imprisonment for time spent in custody under the former charge not credited against another sentence.

Amended by P.A. 80-1099, § 3, eff. Feb. 1, 1978.

[1] Paragraph 1003-6-3 of this chapter.

ARTICLE 9. FINES

1005-9-1. Authorized fines

§ 5-9-1. Authorized Fines. (a) An offender may be sentenced to pay a fine which shall not exceed for each offense:

(1) for a felony, $10,000 or the amount specified in the offense, whichever is greater;

(2) for a Class A misdemeanor, $1,000 or the amount specified in the offense, whichever is greater;

(3) for a Class B or Class C misdemeanor, $500;

(4) for a petty offense, $500 or the amount specified in the offense, whichever is less;

(5) for a business offense, the amount specified in the statute defining that offense.

(b) A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment.

(c) Every fine imposed in sentencing for a criminal or traffic offense, except an offense relating to parking or registration, or offense by a pedestrian, shall include an amount payable to The Traffic and Criminal Conviction Surcharge Fund of the State Treasury in accordance with the following table:

Amount of Fine	Amount of Penalty Assessment
Up to $59.99	$4.00
$60.00 to $79.99	$6.00
$80.00 to $99.99	$8.00
$100 or more	10% of the total fine imposed

Such amounts payable to such fund shall be assessed by the court imposing the fine and shall be collected by the Circuit Clerk in addition to the fine and costs in the case.

The Circuit Clerk may accept payment of fines and costs by credit card from an offender who has been convicted of a traffic offense, petty offense or misdemeanor and may charge the service fee permitted where fines and costs are paid by credit card provided for in Section 27.3b of "An Act to revise the law in relation to clerks of courts", approved March 25, 1874, as now or hereafter amended.[1] The Circuit Clerk shall distribute such amount collected on behalf of The Traffic and Criminal Conviction Surcharge Fund in accordance with the provisions of Section 9.1 of the "Illinois Police Training Act".[2]

(d) In determining the amount and method of payment of a fine, the court shall consider:

(1) the financial resources and future ability of the offender to pay the fine; and

(2) whether the fine will prevent the offender from making court ordered restitution or reparation to the victim of the offense.

(e) The court may order the fine to be paid forthwith or within a specified period of time or in installments.

Amended by P.A. 83-1362, Art. II, § 48, eff. Sept. 11, 1984; P.A. 84-613, § 2, eff. Jan. 1, 1986.

[1] Chapter 25, ¶ 27.3b.

[2] Chapter 85, ¶ 509.1.

Article II of P.A. 83-1362, the First 83rd General Assembly Combining Revisory Act, resolved multiple actions in the 83rd General Assembly.

1005-9-1.1. Drug related offenses

§ 5-9-1.1. When a person has been adjudged guilty of a drug related offense involving possession or delivery of cannabis or possession or delivery of a controlled substance as defined in the Cannabis Control Act, as amended,[1] or the Illinois Controlled Substances Act, as amended,[2] in addition to any other penalty imposed, a fine shall be levied by the court at not less than the full street value of the cannabis or controlled substances seized.

"Street value" shall be determined by the court on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court as to the current street value of the cannabis or controlled substance seized.

Added by P.A. 82-449, § 2, eff. Jan. 1, 1982.

[1] Chapter 56½, ¶ 701 et seq.

[2] Chapter 56½, ¶ 1100 et seq.

1005-9-1.2. Proceeds of fines for drug related offenses—Juvenile drug abuse fund—Drug traffic prevention fund

§ 5-9-1.2. (a) Twelve and one-half percent of all amounts collected as fines pursuant to Section 5-9-1.1 [1] shall be paid into the Juvenile Drug Abuse Fund, which is hereby created in the State treasury, to be used by the Department of Alcoholism and Substance Abuse for the funding of programs and services for drug-abuse treatment for juveniles. Any amounts remaining in that fund after the programs and services for drug-abuse treatment for juveniles have been fully funded shall be used by the Department of Alcoholism and Substance Abuse for funding other programs and services for drug-abuse treatment, prevention and education.

(b) Eighty-seven and one-half percent of the proceeds of all fines received pursuant to Section 5-9-1.1 shall be transmitted to and deposited in the treasurer's office at the level of government represented by the Illinois law enforcement agency whose officers or employees conducted the investigation or caused the arrest or arrests leading to the prosecution, to be subsequently made available to that law enforcement agency as expendable receipts for use in the enforcement of laws regulating controlled substances and cannabis. If such seizure was made by a combination of law enforcement personnel representing different levels of government, the court levying the fine shall determine the allocation of such fine. The proceeds of fines awarded to the State treasury shall be deposited in a special fund known as the Drug Traffic Prevention Fund. Monies from this fund may be used by the Department of State Police for use in the enforcement of laws regulating controlled substances and cannabis; to satisfy funding provisions of the Intergovernmental Drug Laws Enforcement Act; [2] to defray costs and expenses associated with returning violators of the Cannabis Control Act [3] and the Illinois Controlled Substances Act [4] only, as provided in those Acts, when punishment of the crime shall be confinement of the criminal in the penitentiary; and all other monies shall be paid into the general revenue fund in the State treasury.

Amended by P.A. 83-1362, Art. IV, § 8, eff. Sept. 11, 1984; P.A. 84-25, Art. IV, § 14, eff. July 18, 1985.

[1] Paragraph 1005-9-1.1 of this chapter.

[2] Chapter 56½, ¶ 1701 et seq.

[3] Chapter 56½, ¶ 701 et seq.

[4] Chapter 56½, ¶ 1100 et seq.

1005-9-2. Revocation of a fine

§ 5-9-2. Revocation of a Fine. The court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment.

1005-9-3. Default

§ 5-9-3. Default. (a) An offender who defaults in the payment of a fine or in any installment may be held in contempt and imprisoned for nonpayment. The court may issue a summons for his appearance or a warrant of arrest.

(b) Unless the offender shows that his default was not due to his intentional refusal to pay, or not due to a failure on his part to make a good faith effort to pay, the court may order the offender imprisoned for a term not to exceed 6 months if the fine was for a felony, or 30 days if the fine was for a misdemeanor, a petty offense or a business offense. Payment of the fine at any time will entitle the offender to be released, but imprisonment under this Section shall not satisfy the payment of the fine.

(c) If it appears that the default in the payment of a fine is not intentional under paragraph (b) of this Section, the court may enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion.

(d) When a fine is imposed on a corporation or unincorporated organization or association, it is the duty of the person or persons authorized to make disbursement of assets, and their superiors, to pay the fine from assets of the corporation or unincorporated organization or association. The failure of such persons to do so shall render them subject to proceedings under paragraphs (a) and (b) of this Section.

(e) A default in the payment of a fine or any installment may be collected by any means authorized for the collection of money judgments rendered in favor of the State.

Amended by P.A. 78-255, § 61, eff. Oct. 1, 1978.

No. 128461

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JORGE L. REYES, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-19-0474. There on appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 11 CF 2428. Honorable Jeffrey S. MacKay, 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 October 25, 2022, 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 petitioner-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/Vinette Mistretta
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