No. 130082

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. ROBERT D. DYAS, Defendant-Appellee.	))))))))))	On Appeal from the Appellate Court of Illinois, Third District, No. 3-22-0112 There on Appeal from the Circuit Court of Thirteenth Judicial Circuit, Bureau County, Illinois, No. 17 CF 61 The Honorable James Andreoni, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

The People appeal from the appellate court's judgment vacating the trial court's order denying defendant's motion to withdraw his guilty plea. No issue is raised concerning the adequacy of the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court lacked jurisdiction because defendant filed the operative notice of appeal more than 30 days after the denial of his Rule 604(d) post-judgment motion.

2. Whether Rule 401(a), which applies to "a person accused of an offense punishable by imprisonment," applies after entry of judgment.

3. Whether defendant's post-judgment waiver of counsel was knowing and intelligent.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 612(b)(2). On March 27, 2024, this Court allowed the People's petition for leave to appeal.

SUPREME COURT RULES INVOLVED

Illinois Supreme Court Rule 401 states, in relevant part:

> **(a) Waiver of Counsel**. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the

defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

Illinois Supreme Court Rule 604 states, in relevant part:

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

* * *

If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion.

Illinois Supreme Court Rule 605 states, in relevant part:

(c) On Judgment and Sentence Entered on a Negotiated Plea of Guilty. In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

Illinois Supreme Court Rule 606 states, in relevant part:

(b) Time. Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion. . . .

STATEMENT OF FACTS

I. Defendant Pleads Guilty and Waives Counsel for Rule 604(d) Post-Judgment Proceedings.

Defendant was charged with unlawful possession with intent to deliver a controlled substance (methamphetamine) after the drugs were recovered in a search of the rented minivan he was driving. C24, 33.[1] Defendant's three passengers — Sherwood Lyles, Elizabeth Jones, and Mary Brown — were also charged. *See* R31. The trial court, Judge C.J. Hollerich, appointed the Public Defender of Bureau County, Michael Henneberry, to represent defendant. R15, 27. The three assistant public defenders in Bureau County

[1] "C_," "R_," and "A_" refer to the common law record, the report of proceeding, and the appendix to this brief.

were appointed to represent the codefendants. R30, 44. At arraignment, defendant was represented by Timothy Cappellini, Public Defender of LaSalle County, because Henneberry was in the hospital. R31, 38; C31.

A. Defendant moves unsuccessfully to suppress evidence while represented by counsel.

Henneberry resumed representation of defendant and moved to suppress evidence obtained from the search of the minivan. C45-48. Codefendant Lyles filed an "essentially identical" suppression motion. *See* R45.

On Thursday, October 19, 2017, prior to the joint hearing on the suppression motions, Henneberry informed the court that defendant "indicated that he'd like to fire [Henneberry] as his attorney." R101. Defendant wanted a new attorney, stating in open court that Henneberry "has some medical issues he has to tend to which is forcing him to ask for a continuance" of defendant's trial and had declined to file other motions defendant proposed. R102; *see also* C55 (Henneberry's motion for continuance, filed October 16, 2017). Henneberry explained that he was undergoing a surgical procedure the next day, Friday, and had sought a continuance because he was concerned that he might be unable to represent defendant properly the following Monday, the scheduled day of trial. R106.[2]

[2] The trial court noted that Henneberry had diabetes complications that required foot surgery, but it had not affected his cognitive abilities (or, by extension, his ability to represent clients), and that he had remained ambulatory. R379-80.

Defendant stated that he would be satisfied if he could "have counsel help me or just where I'm able to get to the law library and read up on laws myself" because "ain't nobody going to fight for my life like me." R107. Defendant agreed with the court's observation that if it appointed another attorney, the new lawyer also would "be in no position to try the case on Monday." *Id.* Defendant also agreed to first address the motion to suppress with Henneberry's representation. R108.

To "avoid some duplication," Henneberry and Lyles's attorney, Eric May, agreed that May would conduct the majority of the questioning and Henneberry would ask "follow-up questions." R109. The trial court explained the procedure to defendant, who twice stated that he was "okay with" that procedure. R110.

At the hearing, Sergeant Timothy Sweeney testified that he stopped the minivan for traveling too close behind the vehicle in front of it. R111-20. Following an alert from a drug dog, officers found a duffel bag containing illegal drugs. R225. May questioned Sweeney at length about the basis for and length of the stop, the questions Sweeney asked the minivan's occupants, and the timing of the dog sniff. R112-98. Henneberry asked several follow-up questions regarding the distance at which the minivan was following the other vehicle and whether it was relevant that defendant was not listed on the rental car agreement. R198-201; *see also* R232 (Henneberry's redirect).

May also questioned other witnesses at the suppression hearing. He asked Officer Michael Hammen, the drug dog's handler, how long it took to arrive at the scene and to conduct the sniff, and also about the dog's accuracy. R235-86. And he asked James Stenfeldt, an expert in the training of drug dogs, whether Hammen followed correct procedures and whether the dog alerted. R290-320. Henneberry did not ask additional questions of Hammen or Stenfeldt. R330.

The next day, October 20, 2017, in Henneberry's absence (due to his scheduled surgical procedure), the trial court denied the motion to suppress. R389-419. It found that Sweeney properly initiated the traffic stop and that the stop was not unlawfully prolonged. R389-401. Alternatively, the court determined, based on the totality of the circumstances, that Sweeney had reasonable suspicion to detain defendant pending arrival of the drug dog. R419.

The trial court then granted Henneberry's previously filed motion for a continuance of the trial date. R422; C57. Defendant asked to proceed pro se, but the court advised against that and declined to decide that question in Henneberry's absence. R424-25.

B. Defendant waives counsel after the trial court admonishes him under Rule 401(a).

The following Tuesday, with Henneberry again present in court, defendant stated that he wanted to represent himself — but with "a lawyer to help" so he could "know the exact laws of Illinois [him]self" — because

attorneys did not always act in his best interest. R458-60. Defendant stated that he would "dismiss Mr. Henneberry because he is not able to do everything I need him to do." R465.

The trial court then admonished defendant in accordance with Rule 401(a). The court advised defendant that he was charged with unlawful possession with intent to deliver a controlled substance, methamphetamine, a Class X felony. R465. It also informed defendant that if he were found guilty of that offense, the minimum sentence was 15 years in prison and the maximum was 60 years in prison, with no option for probation, plus a 3-year term of mandatory supervised release (MSR) and a fine of the greater of $400,000 or the street value of the methamphetamine. R465-66. The court reiterated that defendant had the right to an attorney and that one would be appointed if defendant could not afford one, as had been done. R466.

The trial court inquired as to defendant's age (36), his education level (high school graduate), and his mental health issues (none). R466-68. Defendant had prior experience with the criminal justice system, as he went to prison for robbery at age 19, then twice more for drug possession. R469-70. After defendant stated that he was "willing to take the minimum" to "get home to [his] kids," the court admonished defendant that if found guilty he would have to serve 75% of the prison sentence. R471.

The trial court further admonished defendant that "presenting a defense is not a simple matter of just telling . . . your story," that it "requires

adherence to various technical rules governing the conduct of a trial," and that pro se defendants are "bound by the same rules." R473. The court emphasized that it would be exceedingly difficult "to go to the library and somehow assimilate in a couple weeks" the knowledge gained from law school and "years of actual practice." *Id.* For example, the court explained, defendant might not know what evidence was admissible and when to object to the prosecution's questions. R473-74. Similarly, the court cautioned, defendant "may not make effective usage of . . . jury selection." R474. The court added that defendant could not complain on appeal of his own representation if he proceeded pro se, that it is unwise for even attorneys to represent themselves, and that "emotions tend to cloud your judgment." R475-76.

The court also explained that an attorney "can render important assistance by determining the existence of possible defenses" or negotiate "with the prosecutor regarding possible reduced charges or lesser penalties." R478. And if "there is a conviction, the attorney knows how to present to the court a lot of evidence that might result in a lesser sentence." R479-80.

The court also told defendant that stand-by counsel could be appointed. R481. Defendant would "make all the decisions" but have someone "there to assist." *Id.* Defendant stated that if the court were "to grant [him] that, [he] would like to keep Mr. Henneberry, due to the fact that he pretty much knows [the] case already." R481. Defendant added that because attorneys

have other cases, they would not be completely dedicated to his case, as he would, but that counsel could give advice. R483-84. The trial court then explained the difference between stand-by counsel and trial counsel. R484-85. Henneberry offered to visit defendant in jail to answer questions and discuss procedures. R486.

Defendant confirmed that he understood the admonitions and wanted to proceed pro se and with stand-by counsel. R490-92. And the court found "that the defendant understands his right to counsel and he is knowingly and voluntarily waiving that and that he is electing to represent himself." R491. The court appointed Henneberry as stand-by counsel. R492; C60. The court again advised that it thought defendant was making a mistake and further advised that he could change his mind. R496-98.

C. Counsel is reappointed and defendant pleads guilty.

Defendant later orally moved the court to reconsider the denial of his suppression motion on the ground that Officer Sweeney had committed perjury. C61; R504-16, 527-29. The court denied the motion; it found no proof of perjury and advised defendant to "avail [him]self of the public defender," who was "trained" to properly present motions. R544-47.

Two days later, on November 29, 2017, defendant informed the court that he wanted to plead guilty pursuant to an agreement. R551. Henneberry, present in court, explained that as stand-by counsel he had relayed messages between defendant and the prosecutor. R553-54.

The trial court advised defendant to accept Henneberry's representation before pleading guilty. R555-58. The court emphasized that if he had "an acute pain in [his] abdomen, [he] wouldn't go to the kitchen and get out a paring knife," he would "go to a doctor." R557-58. Defendant agreed to be represented again by Henneberry. R559. After a short recess, Henneberry and defendant confirmed that Henneberry was again representing defendant, and that defendant was knowingly accepting a negotiated plea deal. R561-62.

The prosecutor explained that defendant would plead guilty to unlawful possession of a controlled substance with intent to deliver, a Class X felony, and that he would receive an 18-year prison term followed by 3 years of MSR, in addition to certain fines and fees. R562. Henneberry and defendant confirmed the plea agreement's terms. R563.[3]

The trial court reviewed the terms of the plea agreement with defendant. R565-66. The court confirmed that defendant was 36 years old, and that he was not taking medication that might impair his judgment or failing to take prescribed medication. R567-68. The court noted that

[3] Defendant also asked the court to marry him and one of his codefendants, though this was "not a condition precedent" to the plea. R563; *see also* C63 (letter from defendant regarding marriage); *but see Dyas*, 2023 IL App (3d) 220112, ¶ 4 ("Defendant stated that he would only agree to the plea if the court would marry him and his codefendant."). Defendant later confirmed that he had gotten married, R623, and the judge confirmed that he had married defendant and the codefendant not because it was condition of the plea agreement, but because it "was the human thing to do," R820.

defendant seemed "in complete control of [his] faculties." R569. The court then reviewed the indictment with defendant and confirmed that defendant understood the charges. R569-70. The court also confirmed that defendant had discussed the matter with Henneberry, who was now acting as his counsel. R570.

The court admonished defendant that he was charged with a Class X felony, that he would not be eligible for probation, and that the minimum prison sentence was 15 years and the maximum 60 years, which would be followed by a 3-year MSR term, in addition to potential fines. R570-71. Defendant confirmed that he understood the charge and his sentencing exposure and had discussed them with Henneberry as his counsel. R570-72. The court also admonished defendant about potential indirect consequences of a guilty plea and that he was giving up his right to a jury trial. R573-78.

The court asked defendant if had "any complaints to make about the way [Henneberry] has represented you?" R579. Defendant responded, "No." *Id*. The court then asked defendant, "Are you satisfied with the way he has represented you?" *Id.* Defendant replied, "Yes." *Id.*

The court found that defendant understood the nature of the charges against him, understood the rights he was giving up and the possible penalties, was pleading guilty voluntarily, and that the nature of the offense and defendant's criminal history warranted the negotiated sentence. R583-84. The court accepted defendant's plea and found him guilty of unlawful

possession with intent to deliver a controlled substance, methamphetamine. R585; *see also* C64 (acknowledgment of admonitions and guilty plea); C66 (acknowledgment of consequences of guilty plea). The court sentenced defendant to 18 years in prison, followed by 3 years of MSR. R588-89; C65.

The court then provided all the Rule 605(c) admonitions, including that if defendant wanted to appeal, he needed to first file a motion to withdraw his plea; that an attorney would be appointed for him at no cost to prepare the motion; that if the plea was withdrawn, a new trial would be set on the charge; and that the motion had to raise any claim he wanted to preserve for appeal. R590-91.

D. Defendant files a Rule 604(d) post-judgment motion and proceeds pro se because he disapproves of newly appointed counsel.

Defendant then filed a document "exercising [his] right to an appeal," alleging ineffective assistance by Henneberry, inadequate time in the law library, and claims regarding the suppression hearing. C73-78; *see also* C83-86 (follow-up letter raising same issues); C89 (request for transcripts from plea hearing). The trial court treated the filings as a Rule 604(d) motion to withdraw the plea. R598; C80.

In open court, defendant confirmed that he wanted to dismiss Henneberry as his attorney. R598-60. The prosecutor noted, and the court agreed, that different counsel needed to be appointed for the post-judgment motion. R601-02. Because all attorneys in the Bureau County Public

Defender's Office had conflicts due to their representation of codefendants, the trial court again appointed the Public Defender of LaSalle County. R602-03; C93. The court speculated that Cappellini — who was the Public Defender and had previously represented defendant when Henneberry was ill — might not himself represent defendant but might instead assign the case to an assistant. R602-03; C93. But Cappellini himself accepted the appointment.

At the next hearing, defendant stated that he did not want Cappellini to represent him because "he's not trying to evaluate the facts of [the] case," and "this is racial." R613. Cappellini posited that defendant's dissatisfaction stemmed from Cappellini's appearance at defendant's arraignment; he stated that defendant had "expected [him] to have things suppressed that day." R614. Defendant responded that Cappellini was "trying to coerce [him] [and] saying that it's going to get worse." *Id.* Cappellini replied that he had "tried to explain . . . the consequences of vacating a guilty plea." *Id.*

The trial court noted that defendant had created a similar "dynamic" with Henneberry. R615-16. Cappellini declined to assign an assistant public defender from his office. R619. Defendant asked for the appointment of an attorney from Peoria, "a county that's used to dealing with people with my skin complexion," but the court explained that it could not appoint an attorney from outside the circuit. *Id.*

Defendant complained that "it's either take him or represent yourself." R621. The court explained that defendant did not have the right to choose his appointed attorney and that it would discharge Cappellini if defendant did not want him. *Id.* After defendant again stated that he "shouldn't be forced to have to deal with [Cappellini] or represent [himself]," the court discharged Cappellini. *Id.*; C111.

Defendant filed a "Motion for Change of Venue," C115, which the trial court construed as a motion to substitute judge, R642-43. Defendant continued to raise the issue of Cappellini's representation, stating that "what I mean by conflict is he had showed no interest in trying to get to the facts of my case." R653. The court explained that these allegations did not satisfy the legal definition of an impermissible conflict. *Id.*

Judge Marc Bernabei heard the motion to substitute judge. R656. Defendant complained that Judge Hollerich had ordered that defendant receive transcripts from his guilty plea hearing only, and Judge Bernabei explained that defendant was not entitled to transcripts from other proceedings. R659-63.

Defendant also asserted that Judge Hollerich was forcing him to proceed pro se because he would not appoint anyone other than Cappellini. R667-68. Defendant argued that Cappellini had a conflict because he "had no real interest in [defendant's] case" and "was more so looking at [defendant] like he was a state's attorney." R669. Defendant claimed that Judge

Hollerich "forced [him] into going pro se" because he "went right along" with Cappellini's "decision that if [defendant] didn't pick him, then [defendant] was to go pro se." *Id.* Judge Bernabei explained that defendant could hire an attorney of his choice, but for an appointed attorney, a defendant receives whomever the court appoints unless there is a conflict of interest. R670.

After Judge Bernabei reviewed the transcripts of the post-judgment proceedings, he explained to defendant that Judge Hollerich's incorrect speculation that Cappellini may himself not represent defendant did not establish that Cappellini had a conflict of interest or that Hollerich was biased. R674-83. Judge Bernabei denied the motion for substitution of judge, R683; C133, then reminded defendant that he had a right to the appointment of Cappellini, R684.

The case returned to Judge Hollerich, who offered to appoint the LaSalle County Public Defender's Office. R693. Defendant stated that Cappellini had "already showed that he really has no interest" in defendant's case but agreed to the appointment. *Id.* The court reappointed the LaSalle County Public Defender. R694; C134.

Cappellini subsequently appeared and stated that he would review the transcripts and communicate with defendant regarding grounds for withdrawing the plea. R699. Defendant repeated his assertion that Cappellini had a conflict of interest, R700, and the court reiterated that defendant's complaint about Cappellini's dedication to his case did not

establish a conflict of interest, R710. Defendant responded, "Do not make me proceed with this guy." R711. Cappellini asked for the opportunity to review the materials and discuss the matter with defendant. R711. Defendant then asked, "[N]ow you're saying that I got to take him?" *Id.* The court set a status date to allow Cappellini time to review the materials. R711-14.

At the next hearing, Cappellini explained that he had reviewed the materials and discussed with defendant his allegations regarding Henneberry's performance at the suppression hearing, but that defendant had "refuse[d] to cooperate." R719. Defendant responded, "It's been said over and over again. . . . I refuse to go along with him." *Id.* He later added, "I refuse his help. . . . I'll refuse to proceed with him." R720.

The trial court responded, "If you're telling me that you don't want Mr. Cappellini to represent you, then I'm going to discharge the public defender's office and you can represent yourself." R724. "I don't want him," defendant responded. R725. The court discharged Cappellini and informed defendant that he was representing himself unless he hired a lawyer. *Id.*; C139.

At the hearing on defendant's motion to withdraw his plea, defendant called Henneberry as a witness. R748. Henneberry testified that he had been a licensed attorney since 1980, had worked in the public defender's office since 1991, and became the Bureau County Public Defender in 1993. R767-68. Henneberry explained that he did not duplicate May's questioning at the suppression hearing because the issues were the same and May "did

an excellent job." R753, 766. Further, in his limited role as stand-by counsel, he met with defendant at the law library three times and volunteered to communicate with the prosecutor on defendant's behalf. R758, 768-69. Henneberry also discussed with defendant the possibility of a stipulated bench trial to preserve issues for appeal, but defendant chose to plead guilty. R795. Henneberry called defendant the day after the plea hearing and asked if he wanted to file a motion to withdraw his plea, and defendant declined. *Id.*

On October 18, 2018, the trial court denied the post-judgment motion, holding that defendant had not demonstrated any basis for withdrawing his plea. C182; R816-27. The trial court found "zero evidence" that the plea was based on misapprehension of the facts or law, there was no doubt as to defendant's guilt, defendant failed to present a meritorious defense, and justice would not have been better served by presenting the copious evidence of defendant's guilt to the jury. R813-15. Further, defendant demonstrated neither that Henneberry was ineffective, R816-19, nor any prejudice from Henneberry's allegedly deficient performance, R821-22.

On November 16, 2018, defendant filed a motion to reconsider the denial of the motion to withdraw his plea, with a proof of service certifying mailing on November 2, 2018. C183. On November 19, 2018, defendant filed a notice of appeal, with a proof of service certifying that the document was mailed on November 14, 2018. C188. On November 19, 2018, the trial court

struck defendant's motion to reconsider for lack of jurisdiction and appointed the appellate defender for defendant's appeal. C190-91.

II. The Appellate Court Grants Defendant's Motion to Dismiss His Appeal and Remands for the Trial Court to Address His Motion to Reconsider the Denial of His Post-Judgment Motion.

On appeal, defendant (through counsel) moved to dismiss the appeal as premature and asked the appellate court to remand for the trial court to proceed on defendant's motion to reconsider the denial of his post-judgment motion to withdraw the plea. C235. On April 6, 2020, the appellate court granted defendant's motion and dismissed the appeal. *Id.*; *see also* C237 (mandate).

III. The Trial Court Denies Defendant's Motion to Reconsider.

On remand, Judge Hollerich appointed a new attorney in the Bureau County Public Defender's Office, Timothy R. Gatza, who had not represented any of the codefendants. C243, 245; R973. Judge Hollerich then retired, and the case was reassigned to Judge James Andreoni. R973.

Gatza filed an amended motion to reconsider. C310. Defendant wrote a letter to the trial court stating that he was unhappy with counsel's motion. C316. At a subsequent hearing, defendant stated, "I just wanted to make it clear on the record that I was only pro se because I had an issue with Mr. Cappellini." R1007; *see also id.* ("They tried to give me Mr. Tim Cappellini three times, and they said, due to the fact that I didn't want him, I had to go pro se.").

Gatza filed a second amended motion to reconsider the denial of defendant's post-judgment motion to withdraw his guilty plea. C326. At a hearing on the motion, counsel argued that defendant did not understand that, by pleading guilty, he was giving up his right to appeal the denial of his suppression motion. R919. The prosecutor countered that Henneberry testified that he discussed proceeding with a stipulated bench trial to preserve issues for appeal, but defendant chose to plead guilty. R938.

On March 25, 2022, the trial court denied the motion to reconsider. C330. On March 28, 2022, defendant filed a notice of appeal. C333.

IV. Without Addressing Jurisdiction, the Appellate Court Reverses Based on the Lack of Post-Judgment Rule 401(a) Admonitions.

On appeal, the appellate court "conclude[d] that Rule 401(a) admonishments are required [before waiver of counsel] even after a defendant is sentenced following a guilty plea," and because defendant had not been readmonished during proceedings on his post-judgment motion, the court vacated the trial court's order denying that motion. A5, ¶¶ 17, 24. Acknowledging that Rule 401(a) applies to a person "accused" of a crime, the appellate court reasoned that defendants could face additional penalties if pleas are vacated and so should receive the Rule 401(a) admonitions. A5, ¶ 17. The appellate court further recognized that its conclusion conflicted with a prior appellate court decision that had held that Rule 401(a)'s plain language precludes its application to post-sentencing proceedings. A4, ¶15 (citing *People v. Young*, 341 Ill. App. 3d 379, 387 (4th Dist. 2003)). Justice

McDade, specially concurring, asserted that defendant did not waive counsel despite rejecting Cappellini's representation because he expressed desire for another attorney. A6, ¶¶ 28-30.

The appellate court did not address its jurisdiction.

STANDARDS OF REVIEW

This Court reviews de novo issues of jurisdiction and interpretation of this Court's rules. *People v. Abdullah*, 2019 IL 123492, ¶ 18. This Court reviews a trial court's determination that defendant has knowingly and intelligently waived the right to counsel for abuse of discretion. *People v. Baez*, 241 Ill. 2d 44, 116 (2011).

ARGUMENT

The appellate court lacked jurisdiction over defendant's appeal. Defendant's first notice of appeal, filed in November 2018, was timely. But defendant, through counsel, voluntarily dismissed that appeal and, under *People v. Walls*, 2022 IL 127965, defendant's March 2022 notice of appeal following the denial of his motion to reconsider the denial of his Rule 604(d) post-judgment motion was untimely. Accordingly, this Court could vacate the appellate court's judgment on this basis alone.

After determining that the appellate court lacked jurisdiction, however, the Court should exercise its supervisory authority to address the conflict in the appellate court and hold that Rule 401(a) does not apply in post-judgment proceedings. Rule 401(a)'s plain language requires that its

admonitions be given to "a person accused of an offense punishable by imprisonment." Ill. S. Ct. R. 401(a). But after a defendant has been sentenced, and thus final judgment has been entered, a defendant is a person *convicted* of an offense, not a "person *accused* of an offense." *Id.* (emphasis added). By its plain language therefore, Rule 401(a) does not apply to post-judgment proceedings. Moreover, this Court has promulgated other rules — Rules 604(d) and 605(c) — that apply in the post-judgment context and require the trial court to advise a defendant about his post-judgment rights. And Rule 401(a) admonitions have little value for post-judgment defendants, especially because they duplicate admonitions during the plea hearing and sentencing.

Finally, because Rule 401(a) does not apply, the only question is whether defendant's waiver of counsel was knowing and intelligent. The trial court properly exercised its discretion in finding that defendant knowingly and intelligently waived his right to counsel.[4] The record demonstrates that defendant was repeatedly warned about his right to counsel and the dangers of self-representation, understood these dangers, and decided that he would

[4] The People assume, without conceding, that defendant had a Sixth Amendment right to counsel after he filed his Rule 604(d) post-judgment motion. *See Marshall v. Rodgers*, 569 U.S. 58, 61 (2013) ("assum[ing], without so holding," that "preappeal motion for a new trial is a critical stage"); *People v. Merriweather*, 2013 IL App (1st) 113789, ¶ 25 (defendant has right to counsel after he files a proper post-plea motion).

rather represent himself than accept his court-appointed counsel. For these reasons, the Court should reverse the appellate court's judgment.

I. The Appellate Court Lacked Jurisdiction Because Defendant Filed the Notice of Appeal Years After the Denial of his Rule 604(d) Motion.

The appellate court lacked jurisdiction to render its judgment because defendant failed to file the operative notice of appeal within 30 days of the denial of his Rule 604(d) motion to withdraw his plea.

The "filing a notice of appeal is the only jurisdictional step in perfecting an appeal." *Walls*, 2022 IL 127965, ¶ 18. Rule 604(d) governs appeals from judgments entered upon a plea of guilty. Ill. S. Ct. R. 604(d). It requires a defendant who entered a plea of guilty to file a motion "within 30 days of the date on which sentence is imposed" to either reconsider the sentence or withdraw the plea of guilty, before filing a notice of appeal. *Id.* "If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, *measured from the date of entry of the order denying the motion*." *Id.* (emphasis added). And Rule 606 provides a 30-day window to appeal. Ill. S. Ct. R. 606(b). Accordingly, a defendant who pleads guilty has 30 days in which to file a notice of appeal from the denial of a Rule 604(d) motion, which period runs from the "date of entry of the order denying the [Rule 604(d)] motion." Ill. S. Ct. R. 604(d).

As the Court recently confirmed in *Walls*, these "rules plainly required defendant to file his notice of appeal within 30 days after entry of the trial

court's order disposing of his motion directed against the final judgment," which this Court "has consistently and repeatedly held . . . is the sentence." 2022 IL 127965, ¶ 19 (internal quotation marks omitted). Thus, the Court's "rules require filing a notice of appeal within 30 days after the denial of a Rule 604(d) postjudgment motion . . . to withdraw a guilty plea." *Id.* ¶ 26.

Applying this established law, the appellate court lacked jurisdiction to consider defendant's appeal. On October 18, 2018, the trial court denied defendant's Rule 604(d) post-judgment motion to vacate his guilty plea. C182. Defendant had 30 days from that date to timely file a timely notice of appeal. He complied with this requirement by mailing a notice of appeal (with the appropriate certificate of service) to the circuit clerk on November 14, 2018, C188; *see also People v. Shunick*, 2024 IL 129244, ¶¶ 52, 60; Ill. S. C. Rs. 12(b)(6), 373(b), conferring the appellate court with jurisdiction over defendant's appeal, C191, 196. However, the appellate court then lost jurisdiction over the matter when, on April 6, 2020, it granted defendant's motion to dismiss the appeal and remanded for the circuit court to proceed on defendant's motion to reconsider the denial of his post-judgment motion. C235; *see also* C237 (mandate issued).

Subsequent proceedings in the trial court on defendant's motion to reconsider the denial of his Rule 604(d) post-judgment motion did not toll the time to file the notice of appeal, for a "successive postjudgment motion to reconsider the denial of a Rule 604(d) motion does not toll the time for filing

an appeal." *Walls*, 2022 IL 127965, ¶ 26; *see also id.* ¶ 24 ("The only postsentencing motions contemplated by Rules 604(d) and 606(b) . . . are a motion to reconsider the sentence and a motion to withdraw the guilty plea," and "Rule 606(b) provides a 30-day time period for filing an appeal following the denial of one of those Rule 604(d) motions.").

Thus, the March 28, 2022, notice of appeal that defendant filed following the denial of his second amended motion to reconsider, which led to appellate court's decision below, did not confer jurisdiction on the appellate court. Defendant filed it approximately three-and-a-half years after the trial court's October 18, 2018, order denying defendant's Rule 604(d) post-judgment motion, well after the 30-day deadline. The Court should thus hold that the appellate court lacked jurisdiction to consider defendant's appeal.

II. The Appellate Court Erred in Vacating the Denial of Defendant's Post-Judgment Motion Because Rule 401(a) Does Not Apply Post-Judgment and Defendant's Waiver of Counsel Was Constitutionally Valid.

Upon finding that the appellate court lacked jurisdiction, the Court should, pursuant to its supervisory authority, resolve the conflict in the appellate court on the scope of Rule 401(a), and hold that Rule 401(a) does not apply to post-judgment proceedings. The Illinois Constitution vests this Court "with supervisory authority over all of the lower courts." *People v. Salem*, 2016 IL 118693, ¶ 20 (citing Ill. Const. 1970, art. VI, § 16). This Court exercises that power "only if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the

administration of justice." *Salem*, 2016 IL 118693, ¶ 21; *see also id.*, ¶ 23 (exercising supervisory authority because "right to appeal a criminal conviction is fundamental and thus it is in the best interest of justice that we reinstate defendant's appeal"). Here, the normal appellate process was foreclosed when the appellate court lost jurisdiction after it allowed defendant's "motion to dismiss [the] appeal as premature and remand[ed] to the circuit court to proceed on defendant's timely-filed motion to reconsider the denial of defendant's motion to withdraw his guilty plea." C235. Further, the question whether Rule 401(a) admonitions are required post-judgment has divided the appellate court; thus, this dispute involves a matter important to the administration of justice.

The trial court properly accepted defendant's waiver of counsel at the proceedings on his Rule 604(d) post-judgment motion without providing him Rule 401(a) admonitions. By its plain language, Rule 401(a) applies only to a person who is "accused of an offense" and therefore does not apply to a defendant who has been sentenced and waives counsel during post-judgment proceedings. Instead, a different rule, Rule 605, provides the admonitions a defendant must receive after sentencing. Additionally requiring Rule 401(a) admonitions in the post-judgment context would not serve that rule's purpose and, in fact, would be redundant given the requirements of Rule 605 and the constitutional prohibition against accepting a waiver of counsel that is not knowing and intelligent. Accordingly, the appellate court erred in finding

that Rule 401(a) admonitions are required before the trial court accepts a waiver of counsel after judgment. And because the record demonstrates that defendant's post-judgment waiver of counsel was knowing and intelligent, no basis exists to allow defendant to withdraw his guilty plea.

A. Rule 401(a) does not apply after entry of judgment.

The same principles that govern the construction of statutes apply to the interpretation of court rules. *Walls*, 2022 IL 127965, ¶ 16. The goal in construing a court rule is to ascertain and give effect to the intent of the drafters, and the best evidence of that intent is the rule's language, given its plain and ordinary meaning. *Id.* The Court does not consider words and phrases in isolation but in light of other relevant provisions, the Court's rules as a whole, and their purposes. *People v. Tousignant*, 2014 IL 115329, ¶ 8.

The plain language of Rule 401(a) establishes that it does not apply to post-judgment proceedings. The rule states that the trial "court shall not permit a waiver of counsel by a person *accused* of an offense punishable by imprisonment without first" addressing that person in open court and informing him of, and ensuring that he understands, the nature of the charges, the potential sentences, and his right to counsel. Ill. S. Ct. R. 401(a) (emphasis added). A person is "accused" of an offense when the person is "arrested and brought before a magistrate," "formally charged with a crime (as by indictment or information)," or has had legal proceedings initiated against him. Black's Law Dictionary 27 (11th ed. 2019). But after judgment

has been entered, the defendant stands convicted of an offense and is no longer a "person accused of an offense." *See Betterman v. Montana*, 578 U.S. 437, 442-43 (2016) (explaining that the term "accused" has long been understood "as distinct from 'convicted'" and "describe[s] a status preceding 'convicted'"); *see also*, *e.g.*, 725 ILCS 5/103 *et seq.* (entitled "Rights of Accused" and including provisions that govern rights of persons who are in the pre-judgment stage of a criminal case). Thus, by its plain language, Rule 401(a) does not apply to persons, like defendant, who, after conviction, file a Rule 604(d) motion to vacate a plea. *See People v. Young*, 341 Ill. App. 3d 379, 387 (4th Dist. 2003).[5]

Instead, this Court promulgated Rules 604(d) and Rule 605 to address post-judgment admonitions. In particular, Rule 605 sets forth the admonitions the trial court must give to defendants after judgment, depending on whether they were convicted after a trial, an open plea, or a negotiated plea. *See* Ill. S. Ct. R. 605. Relevant here, when sentence is

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[5] Other appellate court decisions recognizing that where a defendant files a Rule 604(d) post-judgment motion and waives counsel, the trial court must confirm that the waiver is knowing and intelligent but need not provide Rule 401(a) admonishments include: *People v. Owens*, 2021 IL App (2d) 190153, ¶ 20 ("trial judge is obligated to appoint counsel in postplea proceedings, . . . unless he finds that the defendant knowingly waives the right to appointed counsel") (internal quotation marks omitted); *People v. Baker*, 2020 IL App (3d) 180348, ¶ 15 ("court must either appoint counsel to represent an indigent defendant for postplea proceedings or find that the defendant knowingly waived the right to appointed counsel"); *People v. Smith*, 365 Ill. App. 3d 356, 359 (1st Dist. 2006) (same); *People v. Allison*, 356 Ill. App. 3d 248, 250-51 (4th Dist. 2005) (same); and *People v. Ledbetter*, 174 Ill. App. 3d 234, 236-37 (4th Dist. 1988) (same).

imposed pursuant to a negotiated plea, the trial court must advise the defendant, among other things, that before he files a notice of appeal, he must file a motion to withdraw his plea, Ill. S. Ct. R. 605(c)(2); that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made, as well as, if the People elect, any charges that were dismissed as a part of the plea agreement, Ill. S. Ct. R. 605(c)(3), (4); and "that if the defendant is indigent, . . . counsel will be appointed to assist the defendant with the preparation of the motion[ ]," Ill. S. Ct. R. 605(c)(5). If a defendant files such a motion, Rule 604(d) explains that the "trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel." Ill. S. Ct. R. 604(d). Thus, Rules 604 and 605 together require the trial court to appoint post-judgment counsel at the request of indigent defendants. These rules also set forth the admonitions with respect to post-judgment counsel that the court must provide, and, critically, they do not incorporate Rule 401(a)'s admonitions. Thus, in addition to Rule 401(a)'s plain language, viewing Rule 401(a) in light of this Court's other rules confirms that Rule 401(a) does not apply after judgment.

That Rule 401 admonitions are not required in the post-judgment context makes sense for multiple reasons. To start, this Court's rules "mesh together not only to ensure that defendants' constitutional rights are

protected, but also to avoid abuses by defendants." *People v. Wilk*, 124 Ill. 2d 93, 103 (1988). The rules are thus written to apply sequentially and are tailored to particular points in the criminal process. Rule 401 governs admonitions at a specific point of a criminal proceeding: before trial or plea, when the person is "accused of a crime." Rule 402 covers admonitions that the trial court must give to persons before they plead guilty. *See* Ill. S. Ct. R. 402(a). And, as explained, Rule 605 sets forth the admonitions the trial court must give to defendants after judgment, depending on whether they were convicted after a trial, an open plea, or a negotiated plea. *See* Ill. S. Ct. R. 605.

Second, because of the other admonitions this Court's rules require, Rule 401(a)'s admonitions provide no benefit to defendants who already have been sentenced. *See Young*, 341 Ill. App. 3d at 387 (after sentencing, defendants "already kn[o]w everything a Rule 401(a) admonishment would have told him"). There is no need to ensure that such defendants understand "the nature of the charge" against them — Rule 401(a)'s first admonition — when they have already been convicted, either after trial or entry of a guilty plea. *See* Ill. S. Ct. R. 401(a). Indeed, requiring this admonition would be particularly redundant where the defendant has pleaded guilty because the trial court, at the plea hearing, is required to provide the Rule 402(a) admonition that informs the defendant of "the nature of the charge." Ill. S. Ct. R. 402(a)(1). Second, there is no need to admonish a defendant regarding

"the minimum and maximum sentence prescribed by law," Ill. S. Ct. R. 401(a)(2), when the defendant has already been sentenced and, if he pleaded guilty, was admonished at the plea hearing regarding "the minimum and maximum sentence prescribed by law," Ill. S. Ct. R. 402(a)(2). Rule 401(a)'s third admonition — that the defendant be informed that he "has a right to counsel," Ill. S. Ct. R. 401(a)(3) — is covered both by the constitutional requirement that a waiver of counsel be knowing and intelligent, *see Iowa v. Tovar*, 541 U.S. 77, 87-88 (2004), and by Rule 605, which, as explained, requires the trial court to advise a defendant who is sentenced pursuant to a guilty plea that he has the right to the assistance of counsel for post-judgment motions if he is indigent, *see supra* pp. 27-28.

Third, requiring different admonitions pre- and post-judgment reflects that the Sixth Amendment does not require specific admonitions before a court may secure a knowing and voluntary waiver of counsel and instead anticipates that distinct stages of the criminal process warrant different admonitions. Indeed, the United States Supreme Court has refused to "prescribe[] any formula or script to be read to a defendant who states that he elects to proceed without counsel." *Tovar*, 541 U.S. at 88. Rather, a valid waiver of counsel is based "not [on] the trial court's express advice, but rather the defendant's understanding." *United States v. Cash*, 47 F.3d 1083, 1088 (11th Cir. 1995) (quotation marks omitted); *see* Wayne LaFave et al., Criminal Procedure § 11.3(b) (4th ed. 2015) ("The critical issue . . . is what

the defendant understood — not what the court said[.]"); *see also People v. Marcum*, 2024 IL 128687, ¶¶ 46, 52-54, 58-59 (strict or technical compliance with Rule 401(a) not required; waiver valid if made knowingly and intelligently).

Against this backdrop, this Court has differentiated between pre- and post-judgment stages of the criminal process when deciding what admonitions are required. At trial, where guilt or innocence is determined, "counsel is required to help even the most gifted layman adhere to the rules of procedure and evidence, comprehend the subtleties of *voir dire,* examine and cross-examine witnesses effectively, object to improper prosecution questions, and much more." *Tovar*, 541 U.S. at 89 (internal quotation marks and ellipses omitted). By contrast, "'[a] plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.'" *People v. Fitzgibbon*, 184 Ill. 2d 320, 326 (1998) (quoting *Boykin v. Alabama,* 395 U.S. 238, 242 (1969)). Thus, the nature and gravity of the consequences of pre-judgment proceedings weigh in favor of Rule 401(a)'s prophylactic rules that protect against invalid waivers of counsel in those proceedings.

The same is not true after judgment. As a result, a "waiver of counsel before trial may require a give-and-take between the accused and someone trying to educate him about the benefits of proceeding with counsel's

benefits," but "a waiver of counsel on appeal need not be accompanied by this kind of colloquy because the major complexities, choices, and risks are past." *Jean-Paul v. Douma*, 809 F.3d 354, 359 (7th Cir. 2015). Indeed, although a defendant has the right to counsel on direct appeal, *see Smith v. Robbins*, 528 U.S. 259, 278 (2000), Rule 401(a) does not require that its admonitions be given to a defendant who chooses to waive this right and proceed pro se on appeal. *See* Ill. S. Ct. R. 401(a) (providing that "[a]ny waiver of counsel shall be in open court"); Ill. S. Ct. R. 607(a) (trial court need only appoint counsel for appeal if "defendant is indigent and desires counsel on appeal").

In this regard, post-judgment proceedings are more akin to appeals than to pre-judgment proceedings. Rule 604(d) was specifically "designed to eliminate needless trips to the appellate court and to give the trial court an opportunity to consider the alleged errors and to make a record for the appellate court to consider on review in cases where defendant's claim is disallowed." *Wilk*, 124 Ill. 2d at 106; *see also People v. Gorss*, 2022 IL 126464, ¶ 15 ("purpose of Rule 604(d) is to ensure that any errors that may have resulted in a guilty plea and subsequent sentence are brought to the attention of the circuit court before appeal"). Rule 605(a), like other rules requiring a defendant to file post-trial and post-sentencing motions, serve similar purposes. *See* Ill. S. Ct. R. 605(a); *People v. Reed*, 177 Ill. 2d 389, 393-94 (1997) (purpose behind statute governing post-sentencing motions was requiring sentencing issues be raised in trial court to preserve them for

appellate review); *People v. Enoch*, 122 Ill. 2d 176, 185-86 (1988) (post-trial motion must raise issue to preserve for appellate review to provide trial court opportunity to correct error and to save resources). Further demonstrating the close relationship between post-judgment proceedings and appeals, the post-judgment rules are found in Article VI of the Court's rules, which is entitled "Appeals in Criminal Cases, Post-Conviction Cases, and Juvenile Court Proceedings," while Rule 401 is found in Article IV, entitled "Rules on Criminal Proceedings in the Trial Court."

Accordingly, just as Rule 401(a) does not apply to appellate proceedings, it does not apply to post-judgment proceedings. For these reasons, the appellate court's holding that Rule 401(a) applies post-judgment was incorrect. Neither the plain language nor purpose of Rule 401(a) supports that result. The result is inconsistent with the structure of the Court's rules. And although a post-judgment defendant who "succeed[s] in his motion to withdraw his plea . . . face[s] the possibility of a substantially longer sentence" when the case returns to the pre-judgment stage, A5, ¶ 17 (quotation marks omitted), the same is true for a defendant who succeeds in returning his case to the pre-judgment stage on appeal, when Rule 401(a) does not apply. Accordingly, the Court should hold that Rule 401(a) does not apply after judgment.

B. The trial court properly exercised its discretion when it accepted defendant's knowing and intelligent waiver of his right to counsel.

Although Rule 401(a) does not apply, the Sixth Amendment requires a knowing and intelligent waiver of counsel at all critical stages of the criminal process. *Tovar*, 541 U.S. at 87-88; *see also supra* p. 21. The trial court did not abuse its discretion in finding that defendant knowingly and intelligently waived his right to post-judgment counsel when choosing to proceed pro se instead of accepting Cappellini's representation. *Baez*, 241 Ill. 2d at 116 (trial court's finding that defendant knowingly and intelligently waived right to counsel reviewed for abuse of discretion). And the special concurrence below was incorrect in asserting that defendant did not waive counsel despite rejecting Cappellini's representation because he expressed desire for another attorney. *See* A6, ¶¶ 28-30.

A knowing and intelligent waiver requires "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *People v. Lesley*, 2018 IL 122100, ¶ 51 (citing *Patterson v. Illinois*, 487 U.S. 285, 292 (1988)); *see Tovar*, 541 U.S. at 88 ("a waiver of counsel is intelligent when the defendant knows what he is doing and his choice is made with eyes open") (internal quotation marks omitted)). "The determination of whether there has been an intelligent waiver of the right to counsel must depend upon the particular facts and circumstances of each case, including the background, experience, and conduct of the accused."

Lesley, 2018 IL 122100, ¶ 51. "The entire record should be considered in determining whether the waiver was knowingly and understandingly made." *Id.*

Here, the record demonstrates that defendant knowingly and intelligently waived his right to post-judgment counsel. Defendant was repeatedly admonished about his right to appointed counsel and the dangers of self-representation. The trial court provided these admonishments, and defendant said he understood them, after the trial court denied his suppression motion. R424-25. Before accepting defendant's initial pre-plea waiver, the trial court again advised defendant of his right to counsel, emphasizing the disadvantages of self-representation. R473-76. As the trial date approached, the court again advised defendant that he had the right to counsel and suggested defendant should avail himself of that right. R546-47. When defendant decided to plead guilty, the court again advised him of his right to counsel and defendant exercised that right for the plea proceedings. R555-59. After accepting his plea, the trial court admonished defendant pursuant to Rule 605(c) that counsel would be appointed to help him prepare any post-judgment motion. R591. At the next hearing, after defendant filed his motion to withdraw his guilty plea, the prosecutor noted, and the court agreed, that counsel needed to be appointed for the post-judgment motion, R601-02, and the court explained to defendant that it was appointing the LaSalle County Public Defender, R602-03. Then, after defendant objected to

representation by Cappellini and sought a motion for substitution of judge, Judge Bernabei again reminded defendant that he had the right to the reappointment of counsel but could not choose his appointed attorney. R684. In sum, the record establishes that defendant understood that he had the right to appointed counsel when he chose to represent himself at post-judgment proceedings.

Similarly, the record shows that defendant understood the ramifications of withdrawing his guilty plea. The trial court admonished defendant about the nature of the charge and the potential sentences at the bond hearing. R5, 12. The court provided both admonishments pursuant to Rule 401(a) before accepting defendant's pre-plea waiver of counsel. R465-66. During the plea hearing, the court provided these admonishments again, and defendant confirmed he understood them and had discussed them with Henneberry. R570-72. After accepting the guilty plea, the court admonished defendant that he needed to file a motion to withdraw the plea to preserve any claim for appeal, and that if his plea were withdrawn, a new trial would be set on the possession charge. R590-92. And before defendant ultimately rejected Cappellini's appointment, Cappellini informed the court that he had "tried to explain [to defendant] . . . the consequences of vacating a guilty plea," including that "[i]t opens him up to all the sentencing that he could have possibly got prior to the plea," and that "[i]t could get worse" for defendant if he withdrew the plea. R614-15. Thus, the record also

establishes that defendant understood the consequences of withdrawing his negotiated guilty plea.

Moreover, that defendant had completed high school and had prior experience with the criminal justice system (including prior convictions for drug possession) further confirms that he understood his current possession charge and that his waiver was knowing and intelligent. *See People v. Hall*, 114 Ill. 2d 376, 412 (1986) (familiarity with justice system supports finding that waiver was knowing and intelligent). Defendant was 36 years old, had finished high school, had no mental health issues, and had served three prison sentences. R466-70. And he repeatedly informed the court that he understood how the criminal justice system worked, insisting that he would do a better job than an appointed attorney because attorneys had other cases and he cared more about his case and thus would give it more attention. R107, 469-70, 483-84.

Indeed, defendant's decision to represent himself did not result from his lack of knowledge or understanding about the right to counsel or consequences of withdrawing his plea. Rather, and in contrast to the assertion in the special concurrence below that defendant never waived counsel, defendant knowingly decided to represent himself because he was dissatisfied with Cappellini, his appointed post-judgment counsel, and he could not choose a different court-appointed attorney. At the first hearing after Cappellini was appointed, defendant stated that he did not want

Cappellini to represent him because Cappellini was "not trying to evaluate the facts" and "saying it's going to get worse" if defendant withdrew his plea. R613-15. Defendant understood his choices under the law, as he complained then that "it's either take him or represent yourself." R621. Later, when he argued for substitution of judge, defendant asserted that Judge Hollerich "forced [him] into going pro se" by telling him that if he "didn't pick [Cappellini], then [defendant] was to go pro se." R669. Then again, after Judge Hollerich reappointed Cappellini, defendant stated, "Do not make me proceed with this guy." R711. At the next hearing, after Cappellini had reviewed the materials, defendant "refuse[d] to go along with" Cappellini and "refuse[d] his help." R719-20. When faced with the express choice of accepting Cappellini or going pro se, defendant stated, "I don't want him." R725; *see also* R1007 (following remand, defendant "ma[d]e it clear on the record the [he] was only pro se because [he] had an issue with Mr. Cappellini").

That defendant waived counsel because he wanted a different appointed attorney does not invalidate his waiver. To the contrary, a defendant who has "refused to cooperate with numerous appointed attorneys, who was warned of the consequences that his failure to cooperate would have, and who insisted, despite his conduct, that he was not waiving his right to appointed counsel . . . has knowingly and intelligently waived his right to appointed counsel." *Lesley*, 2018 IL 122100, ¶ 53; *see also id.* (collecting

federal cases reaching same result). Like in *Lesley*, the record here "establishes that defendant was repeatedly informed that . . . his second appointed counsel[] would be his last and that, if he could not get along with appointed counsel, his choice was to hire an attorney or proceed *pro se*." *Id.* ¶ 54. "This admonishment served to warn defendant that if he wanted continuing legal representation he needed to work productively with appointed counsel or retain counsel. Defendant did neither." *Id.* So, his waiver was knowing and intelligent. *Id.*

Indeed, *Lesley* found a knowing and intelligent waiver even though the defendant there "was not apprised by the court of the advantages of representation of counsel and of the dangers and pitfalls of representing himself." *Id.* ¶ 56. But the trial court repeatedly did both here. Thus, defendant's waiver of counsel was knowing and intelligent, and the trial court properly exercised its discretion in accepting it.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court.

June 25, 2024

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 9715 words.

/s/ Eldad Z. Malamuth
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 25, 2024, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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Illinois Official Reports

Appellate Court

People v. Dyas, 2023 IL App (3d) 220112

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT D. DYAS, Defendant-Appellant.
District & No.	Third District No. 3-22-0112
Filed	September 5, 2023
Decision Under Review	Appeal from the Circuit Court of Bureau County, No. 17-CF-61; the Hon. James A. Andreoni, Judge, presiding.
Judgment	Order vacated; cause remanded.
Counsel on Appeal	James E. Chadd, Douglas R. Hoff, and Stephen L. Gentry, of State Appellate Defender's Office, of Chicago, for appellant. Thomas Briddick, State's Attorney, of Princeton (Patrick Delfino, Thomas D. Arado, and Stephanie L. Raymond, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE BRENNAN delivered the judgment of the court, with opinion. Justice Davenport concurred in the judgment and opinion. Justice McDade specially concurred, with opinion.

OPINION

¶ 1 Defendant, Robert D. Dyas, appeals the denial of his motion to withdraw his guilty plea, arguing that the trial court denied him his right to counsel for postplea proceedings. Defendant filed a motion to reconsider and, while that motion remained pending, filed a notice of appeal. He then filed a motion to dismiss the appeal as premature, which this court granted, and the case was remanded. Upon remand, the trial court appointed counsel, and defendant filed an amended motion to reconsider denial of his motion to withdraw guilty plea, which was denied. Defendant appealed. For the reasons that follow, we vacate the trial court's denial of defendant's motion to withdraw guilty plea and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with unlawful possession with intent to deliver more than 900 grams of methamphetamine, a Class X felony punishable by 15 to 60 years' imprisonment at 75% (720 ILCS 646/55(a)(1), (a)(2)(F) (West 2016); 730 ILCS 5/3-6-3(a)(2)(v) (West 2016)). He was originally represented by Bureau County Assistant Public Defender Michael Henneberry. At one point, defendant told the court he was unhappy with Henneberry and asked to represent himself. The court admonished defendant pursuant to Illinois Supreme Court Rule 401(a) (eff. July 1, 1984). The court explained to defendant the disadvantages of representing himself and the benefits of having counsel. Defendant persisted in seeking to represent himself, and Henneberry was then appointed as standby counsel. At the following court date, defendant again complained that Henneberry was not assisting him. The court explained to defendant that he had chosen to represent himself and only have Henneberry as standby counsel.

¶ 4 Ultimately, defendant agreed to plead guilty in exchange for a sentence of 18 years' imprisonment to be served at 75%. Henneberry represented defendant for the plea. Defendant stated that he would only agree to the plea if the court would marry him and his codefendant. The court admonished defendant and found the plea knowingly and voluntarily made. Judgment was entered on November 29, 2017.

¶ 5 On December 14, 2017, defendant sent a letter to the court stating he was "exercising [his] right to an appeal." In the letter, defendant contended that he was appealing his decision to plead guilty, as it was made on "the very poor and inadequate counseling" of Henneberry. The court treated this letter as a motion to withdraw guilty plea. As defendant had made claims against his appointed counsel and all attorneys at the Bureau County Public Defender's Office had conflicts, defendant was appointed the La Salle County Public Defender's Office.

¶ 6 At a later court date, defendant was represented by La Salle County Assistant Public Defender Timothy Cappellini. Cappellini had previously stepped in for Henneberry when Henneberry had a medical procedure during defendant's arraignment. After a lengthy colloquy between the court and defendant, the court stated, "Well, Mr. Cappellini is discharged and the La Salle County PD is discharged in the case and you can represent yourself, [defendant], because it's pretty clear to me that that's what you really want."

¶ 7 Defendant filed motions for change of venue and substitution of judge, which were denied. On May 7, 2018, defendant asked for counsel to be appointed, and the court again appointed the La Salle County Public Defender's Office. Cappellini indicated that he would be handling the case.

¶ 8 On July 17, 2018, Cappellini stated that defendant refused to cooperate with him. Defendant said that Cappellini had a conflict of interest because he showed no interest in defendant's case. The court stated that that was not a "conflict of interest." Defendant said that he was in the law library every day and was not interested in hearing what anyone said other than what he read in the library. The court said, "Well, it's one thing to read a law book and it's another thing to go to law school for three years and maybe practice criminal law for about 30 years as defense counsel. There's—that's one thing. It's another thing to just read some law books." The court again stated that, if defendant did not want Cappellini to represent him, then he could represent himself. The court asked defendant what he wanted to do, and defendant said, "I don't want him." The court discharged the public defender's office and told defendant he could represent himself or hire his own attorney. Defendant agreed.

¶ 9 The court then asked the State when it wanted to conduct the hearing on defendant's motion to withdraw his guilty plea. After a brief colloquy, defendant agreed to conduct the hearing on August 29, 2018. The court also reminded defendant, "you're free to hire your own attorney at any time."

¶ 10 At the next court date, the court acknowledged defendant's confusion as to why he could not yet file a postconviction petition and stated, "[w]hich is why you should be represented by counsel."

¶ 11 A hearing was held on defendant's motion to withdraw guilty plea on October 18, 2018. Defendant appeared *pro se*. Defendant called and questioned Henneberry about the plea negotiations. After the hearing, the court denied the motion. Defendant subsequently filed a motion to reconsider, which was ultimately denied.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues (1) the trial court denied him his right to counsel for his postplea proceedings and (2) the trial court erred by failing to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).[1]

¶ 14 A defendant is entitled to the representation of counsel at all critical stages of a criminal proceeding. *People v. Burton*, 184 Ill. 2d 1, 21-22 (1998). But a defendant may relinquish his right to counsel in three ways: (1) waiver, which is the intentional relinquishment of a known right; (2) forfeiture, which is the failure to make a timely assertion of that right; and (3) waiver by conduct, which combines elements of waiver and forfeiture. *People v. Lesley*, 2018 IL 122100, ¶¶ 36-38. To be effective, waiver of the constitutional right to counsel must be voluntary, knowing, and intelligent. *People v. Wright*, 2017 IL 119561, ¶ 39. Further, where applicable, the court must comply with Rule 401(a) before it can accept waiver of counsel. *Id.* ¶ 41. Rule 401(a) provides,

[1]Defendant acknowledges that he failed to raise the denial-of-right-to-counsel issue below but asks that we consider it under the plain error doctrine. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009). The State does not press defendant's forfeiture in its brief, however, and makes no attempt to discuss the standard for plain error review. It is well established that the State may forfeit an issue of forfeiture as to a defendant's arguments. *People v. Meakens*, 2021 IL App (2d) 180991, ¶ 12. Though we do not reach the forfeiture issue, we otherwise observe that claims of improper waiver are reviewable under the second prong of the plain-error doctrine. *People v. Moore*, 2021 IL App (1st) 172811, ¶ 12.

> "The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

Strict compliance is not always required, however; substantial compliance is sufficient if the record shows (1) the waiver was made knowingly and voluntarily and (2) the admonishment given did not prejudice the defendant's rights. *Wright*, 2017 IL 119561, ¶ 41; see also *People v. Haynes*, 174 Ill. 2d 204, 241 (1996) ("The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made."). Importantly, "Rule 401(a) admonishments must be provided *at the time the court learns that a defendant chooses to waive counsel*, so that the defendant can consider the ramifications of such a decision." (Emphasis added.) *People v. Jiles*, 364 Ill. App. 3d 320, 329 (2006) (citing *People v. Stoops*, 313 Ill. App. 3d 269, 275 (2000)).

¶ 15 Initially, we consider whether Rule 401(a) even applies in the present context, *i.e.*, after the entry of a sentence. The Fourth District has held "[t]he plain language and logic of Rule 401(a) does not require admonishing a defendant who has been convicted and sentenced of the nature of the charge for which he was just convicted and the sentence he just received." *People v. Young*, 341 Ill. App. 3d 379, 387 (2003). In determining that Rule 401(a) was inapplicable to the postsentencing context, the *Young* majority concluded it would be "useless" to inform a defendant wishing to withdraw a guilty plea, postsentencing, of the nature of the charge and possible sentencing options, stating,

> "The language of Rule 401(a) manifests only the intent to deal with defendants who are considering a waiver of counsel at the initial-appointment stage of the proceedings. The plain language of Rule 401(a) says that the admonishments are to be given to a defendant 'accused' of an offense 'punishable' by imprisonment. [Citation.] In this case, Young had already been *convicted* of the offense and *sentenced*, while being represented by counsel. Young already knew everything a Rule 401(a) admonishment would have told him." (Emphases in original.) *Id.*

The court thus held that Rule 401(a) does not apply after a defendant has been convicted and sentenced.

¶ 16 This interpretation of Rule 401(a), however, is not universal. See *id.* at 389 (Appleton, J., dissenting) ("Clearly, under our decision in [*People v. Langley*, 226 Ill. App. 3d 742 (1992)], Rule 401(a) remains applicable after arraignment and even after trial."); *People v. Thomas*, 335 Ill. App. 3d 261, 264 (2002) (concluding trial court erred when it failed to give Rule 401(a) admonishments after the defendant filed a motion to withdraw guilty plea *pro se*). "Regardless of how far the criminal proceedings have progressed," Justice Appleton wrote in his *Young* dissent, "a defendant cannot intelligently waive his or her right to counsel without a grasp of that essential information" required to be given by Rule 401(a). *Young*, 341 Ill. App. 3d at 390 (Appleton, J., dissenting).

¶ 17 We conclude that Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea, and thus we disagree with *Young*. The interpretation of Rule 401(a)'s use of the word "accused" by the *Young* majority, limiting it procedurally to the pretrial or preplea context, is wrongly circumscribed. Here, had defendant discharged appointed counsel and prevailed in his motion to withdraw his guilty plea, he would not only remain "accused" of the charged offense but also would face up to 60 years' imprisonment at 75%. Impressing upon defendant the possibility of up to 60 years' imprisonment, as opposed to the 18-year agreed sentence he sought to vacate, cannot be deemed "useless" as described by the *Young* court. Indeed, the prophylactic purpose of the Rule 401(a) admonishments seem particularly applicable where a self-representing defendant might otherwise "succeed" in his motion to withdraw his plea, only to face the possibility of a substantially longer sentence.

¶ 18 Turning to the question of whether the trial court satisfied Rule 401(a), the State recognizes that there was not strict compliance with the rule. It instead argues that there was substantial compliance where, prior to the trial court's discharge of Cappellini at the July 17, 2018, postplea hearing, the court substantially complied with Rule 401(a) as follows: at the July 28, 2017, bond hearing, defendant was advised of the charge and that it was a Class X felony punishable by a minimum sentence of 15 years' imprisonment and a maximum of 60 years, as well as the possible maximum fine; at the October 24, 2017, hearing (the date on which the court discharged Henneberry), defendant was again advised the charge was a Class X felony and of the minimum and maximum sentences, as well as the possible maximum fine; at the November 29, 2017, plea hearing (at which Henneberry appeared as standby counsel), defendant was again advised the charge was a Class X felony and of the minimum and maximum sentences, as well as the possible maximum fine; and at the May 7, 2018, postplea hearing, defendant was advised that he was charged with a Class X felony punishable by a minimum sentence of 15 years' imprisonment. Moreover, defendant was advised of his right to appointed counsel at the June 5, 2018, postplea hearing and of his right to retain private counsel at the July 17, 2018, hearing (the date on which the court discharged Cappellini).

¶ 19 Notwithstanding the foregoing admonishments, we conclude the trial court did not substantially comply with Rule 401(a). Assuming *arguendo* that defendant willfully waived counsel through his conduct, this occurred at the July 17, 2018, hearing. At that time, the trial court made *no* attempt to provide Rule 401(a) admonishments; indeed, the only related right referenced by the court was defendant's right to engage private counsel. It is well settled that "Rule 401(a) admonishments must be provided at the time the court learns that a defendant chooses to waive counsel, so that the defendant can consider the ramifications of such a decision." *Jiles*, 364 Ill. App. 3d at 329. The State cites cases in which substantial compliance was found despite errors in the admonitions concerning the potential sentences. See, *e.g.*, *People v. Johnson*, 119 Ill. 2d 119 (1987). Those cases, however, are inapplicable here because the trial court gave no Rule 401(a) admonitions at all when defendant asked to waive counsel. See *People v. Langley*, 226 Ill. App. 3d 742, 751 (1992).

¶ 20 The facts here are comparable to those in *People v. Campbell*, 224 Ill. 2d 80 (2006). In *Campbell*, the defendant appeared without counsel on the day of trial and requested a bench trial. *Id.* at 82. The court asked the defendant to confirm he wanted to proceed to trial without counsel but failed to contemporaneously inform him of the nature of the charge, of the possible sentence or penalties, or of his right to appointed counsel if indigent. Defendant was convicted. On these facts, the Illinois Supreme Court concluded that "there was no compliance, substantial

or otherwise, with Rule 401(a)." *Id.* at 84. The court did not consider whether admonishments at an earlier court date could demonstrate substantial compliance with Rule 401(a).

¶ 21 As stated by the *Campbell* court,

> "The rules of [our supreme] court are not suggestions; rather, they have the force of law, and the presumption must be that they will be obeyed and enforced as written. ***. Under the plain language of Rule 401(a), [defendant] was entitled to be advised of his rights, and the trial court's failure to do so was error." *Id.* at 87.

Here, defendant was not advised of his rights under Rule 401(a) at the time the court discharged the public defender and permitted defendant to proceed on his motion to withdraw his guilty plea *pro se*. Indeed, we note that it had been over six months since defendant had been informed that the maximum sentence he faced was 60 years. Thus, "there was no compliance, substantial or otherwise, with Rule 401(a)." See *id.* at 84.

¶ 22 A trial court's failure to give Rule 401(a) admonishments before accepting a waiver of counsel compels a reversal and remand. *Id.* at 87. For that reason, we do not reach defendant's argument that he was denied his right to counsel for his postplea proceedings. Accordingly, we vacate the trial court's denial of defendant's motion to withdraw his guilty plea and remand for new postplea proceedings.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we vacate the order of the circuit court of Bureau County and remand for further proceedings.

¶ 25 Order vacated; cause remanded.

¶ 26 JUSTICE McDADE, specially concurring:

¶ 27 I agree with the majority's decision to remand because any waiver of counsel, however it may have occurred, and subsequent self-representation in this case required the giving of Rule 401(a) admonishments. I also agree with the reasoning leading to the conclusion that the Fourth District's decision in *Young* (*supra* ¶ 15) was overbroad and is inapplicable in this case.

¶ 28 I write separately to point out that nothing in the record before us shows defendant ever clearly relinquished his right to counsel in any of the three ways recognized by the supreme court in *Lesley* (*supra* ¶ 14) and that he was therefore improperly denied counsel for his motion hearing. He did not do a "waiver." It is clear from all the proceedings that he wanted counsel—counsel who would understand and accept his position and advance it to the court. He rejected counsel he did not believe, rightly or wrongly, would or could do that. The court appeared to recognize this continuing desire for assistance and repeatedly advised defendant that he could hire his own attorney if he persisted in rejecting the ones appointed by the court that he felt were ineffective. Similarly, there was no waiver by way of forfeiture; defendant made a timely assertion of his right to counsel and persisted in his request for appointed representation—just not by Mr. Cappellini.

¶ 29 And clearly there was no "waiver by conduct." In *Lesley*, the supreme court discussed requirements of this type of waiver, saying:

> "Waiver by conduct requires that a defendant receive a warning about the consequences of his conduct, including the risks of proceeding *pro se*. [Citations.] The

> key to waiver by conduct is misconduct occurring *after an express warning has been given to the defendant about the defendant's behavior and the consequences of proceeding without counsel*. [Citations.] A defendant who engages in dilatory conduct after having been warned that such conduct will be treated as a request to proceed *pro se* cannot complain that a court is depriving him of his right to counsel." (Emphasis added.) *Lesley*, 2018 IL 122100, ¶ 42.

It may perhaps be argued that the court's admonition—that if defendant did not continue with Cappellini he would have to represent himself or hire his own attorney—was the type of warning contemplated by the court and that defendant's rejection of Cappellini was sufficient to put his "conduct" in issue.

¶ 30 However, at no point in the July 17, 2018, hearing did the court advise defendant about the risks and/or consequences of proceeding *pro se*. This requirement not only includes the usual litany of the risks an untrained and potentially emotionally stressed self-advocate takes going up against formally trained and experienced legal counsel playing on his or her own turf. It also includes an understanding, which counsel ought normally provide, of the consequences of winning or losing in the proceeding. Thus, I would find, for this reason as well as that discussed by the majority, that the court is obligated to give the defendant the Rule 401(a) admonishments. It is only after receiving these warnings that the defendant's persistent rejection of Cappellini (which I personally do not equate with the requisite "misconduct") can constitute "waiver by conduct." Because that did not happen in this case, defendant was improperly deprived of Rule 401(a) admonishments under both rationales.

¶ 31 In the absence of any recognizable waiver, I would also find that defendant was improperly deprived of legal representation. Remand is therefore warranted for a new hearing on his motion to withdraw his guilty plea for this additional reason.

130082

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
STATE OF ILLINOIS, COUNTY OF BUREAU

PEOPLE OF THE STATE OF ILLINOIS)
)
VS)
Robert Dyes)

NO. 17-CF-61

ORDER

CIRCUIT COURT
BUREAU COUNTY
FILED
APR 03 2018
Dawn M. Reglin
CLERK OF THE CIRCUIT COURT

/ / The defendant, having appeared (in person) (by his/her attorney) (by attorney's written appearance) and having pleaded not guilty, (waived) (demanded) a jury trial, it is ORDERED that the above cause is hereby set for:
/ / Pretrial conference on _____, 20_____, at _____ ____.M.
/ / Bench trial on _____, 20_____, at _____ ____.M
/ / Jury trial on _____, 20_____, at _____ ____.M.
with final pretrial _____, 20_____, at _____ ____.M.

/ / Cause dismissed for the following reason: Supreme Court Rule 504 on motion of People with leave granted to reinstate for want of prosecution, there being no complaining witness in Court, on motion of defendant after a hearing on the motion.

/ / Bail set at $_____ cash, 10% rule applies personal recognizance.

/ / Defendant failed to appear. The clerk shall forfeit bail in the amount of $_____, obtain a verification of the complaint and issue a warrant with new bail in the amount of $_____ and the 10% rule (applies.) (does not apply.) (The warrant is limited to Bureau County and the immediate surrounding counties.)

X Cause continued until the 7th day of May, 2018, at 1:30 p.m., for ~~hearing on Motion~~ (by agreement of the parties) (on motion of the defendant) (on People's motion) (on Court's motion). to vacate guilty plea

/ / Ordered that the following order heretofore entered is hereby vacated: bail forfeiture driver's license forfeiture issuance warrant, and the warrant is hereby recalled plea guilty, and the sentence is hereby vacated and cause set for (bench trial) (jury trial) (pre-trial conference) on the _____ day of _____, 20_____, at 9:00 A.M.

/ / The defendant appearing and having requested a continuance for payment, the Court orders this cause continued to _____, 20_____, at _____.M. for (payment) (Rule). **IF THE TOTAL FINE AND COSTS IS NOT PAID BY THE DUE DATE, THE DEFENDANT IS ORDERED TO APPEAR BEFORE THIS COURT ON SAID DATE OR A WARRANT WILL BE ISSUED FOR THE DEFENDANT'S ARREST.**

/ / Balance due on fine and costs in the amount of $_____ is hereby revoked.

/ / (Court supervision) (Conditional discharge) heretofore ordered is terminated. (Fine and costs) (Restitution) are paid and cause is dismissed.

X Public Defender is discharged. The defendant still represents himself.

X Defendant applied for Court appointed Counsel, and was examined under oath in Court as to his assets and liabilities. The State's Attorney informed the Court that imprisonment will be sought in the event that a judgment of guilty is entered. The Court finds that the defendant does qualify for the appointment of Counsel. ORDERED that the Public Defender of Bureau County is hereby appointed to represent the defendant in all causes arising from this occurrence.

DATE 4-3-18

JUDGE

Copy of this order hand delivered to the defendant.

X Robert Dyes
DEFENDANT'S SIGNATURE

G.J.C

BUREAU COUNTY CLERK OF THE CIRCUIT COURT
700 South Main Street, Princeton, Illinois 61356

C 111

Circuit Clerk - White	State's Attorney - Yellow	Defendant - Pink	Public Defender - Gold

A008

My point is simply that the mere fact that he didn't ask a lot of questions alone doesn't necessarily prove something one way or the other. What the outcome of a hearing on that would be, that's another matter; I'm not expressing any opinion about that. But because of that, I'm a little reluctant to force Mr. Cappellini on you, because every time I try to get you an attorney, you basically say that you don't trust the lawyer and you want to represent yourself.

THE DEFENDANT: That's not what I'm saying.

THE COURT: If you insist on representing yourself, I'll let you do that.

THE DEFENDANT: That's not what I'm saying.

THE COURT: What are you saying?

THE DEFENDANT: I'm saying Mr. Cappellini don't have my best interests. I feel he's racist and I do not want him representing me. I would rather another attorney.

THE COURT: Well, let me turn to Mr. Cappellini. You're the public defender.

Is there somebody else from your office who can be assigned to the case?

MR. CAPPELLINI: No, he doesn't get to choose.

I've done nothing wrong. I've tried to represent him; I've tried to reason with him and tried to communicate with him. If he doesn't want to do that, there's not much I can do, and there wouldn't be anything different on any other attorney coming over here, and I can't have my guys running all over different counties for absolutely no reason.

THE COURT: Well, I think the rule is that it's Mr. Cappellini's decision as to who gets assigned to the cases for the LaSalle County Public Defender's Office. So if you want to represent yourself and you want -- if you want Mr. Cappellini discharged, I'll discharge him.

THE DEFENDANT: Is there a way we can get a public defender out of another office, maybe Peoria or someone that is -- you know, a county that's used to dealing with people with my skin complexion. There is another way around this. It doesn't have to be out of LaSalle County.

THE COURT: I can't appoint somebody from another circuit.

THE DEFENDANT: Why not?

THE COURT: Well, you'll have to ask somebody else that question.

MR. CAPPELLINI: And I'm willing to get the transcript of his plea and I'm willing to --

THE DEFENDANT: I'm requesting all transcripts as well as my plea -- as well as my plea transcripts. That was the whole purpose of my letters to the court so that I can -- I can bring it to whoever is representing me attention because 604(d) says I get a free copy. That's what my issue is here.

THE COURT: I'll try to -- one last time. You ask for those transcripts in an appeal.

THE DEFENDANT: I'm --

THE COURT: And without a motion to withdraw your guilty plea, any issues that you wanted to raise based on the transcript would be waived.

THE DEFENDANT: How does that waive? This is being treated as a motion to withdraw my plea.

THE COURT: Only because I treated it that way. So the point here is I don't think you really understand some of this legal stuff but this guy does. Mr. Cappellini does.

THE DEFENDANT: I don't want him though. I want another one --

THE COURT: Well, it's not a matter of a popularity contest and giving you the lawyer you

want. That's really what the issue is. I'm not going to --

THE DEFENDANT: This is -- this is being spun on me. It's like it's either take him or represent yourself and that's not how it's supposed to go.

THE COURT: Yeah. Well, unfortunately you don't get to -- you don't get to pick the lawyer you want. So if you don't want Mr. Cappellini, I'll discharge Mr. Cappellini.

THE DEFENDANT: It's supposed to get cleared that I'm supposed to get a different one out of LaSalle County. I shouldn't be forced to have to deal with him or represent myself.

THE COURT: Okay. Well, Mr. Cappellini is discharged and the LaSalle County PD is discharged in the case and you can represent yourself, Mr. Dyas, because it's pretty clear to me that that's what you really want.

THE DEFENDANT: It's clear -- it seems to me that the court is being biased to my situation, you know what I mean, and this is very unfair, and this is the same thing that happened in the suppression hearing. I was forced to have Mr. Henneberry to represent me and I didn't want him representing me during the

130082

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,

BUREAU COUNTY, ILLINOIS

People of the state of Illinois

Plaintiff

Case No. 17-CF-61

Action

vs.

Robert D. Dyas

Defendant

CIRCUIT COURT
BUREAU COUNTY
FILED
JUL 17 2018
Dawn M. Reglin
CLERK OF THE CIRCUIT COURT

ORDER

The Public Defender's office of LaSalle County is discharged ~~as counsel~~ from representing the defendant. This cause is continued until August 29, 2018 at 1:15 pm for hearing on the defendant's motion to vacate his guilty plea.

Robert Dyas

Enter: July 17th 2018

JUDGE

ORIGINAL - White PLAINTIFF - Yellow DEFENDANT - Pink

C 139

BUREAU COUNTY CLERK OF THE CIRCUIT COURT
700 South Main Street, Princeton, Illinois 61356

A013

(Whereupon the following proceedings were duly had:)

THE COURT: This is 17-CF-61, *People v. Robert Dyas*. Mr. Dyas is present. He is in the custody of the Department of Corrections. Mr. Cappellini is present, and the state's attorney, Mr. Caffarini, is present.

The matter is set for a status. Basically a status on the defendant's motion to withdraw his guilty plea.

MR. CAPPELLINI: Correct, your Honor.

I've had the opportunity to read the transcript of the plea as well as everything that he had filed pro se before I met with him and tried to ascertain exactly what his grievances are in regards to the reason to vacate his guilty plea. I went through a number of things that he believes Mr. Henneberry didn't do concerning the Motion to Suppress and some other motions he wanted filed. Noted those, tried to explain to him the law, because in one of his pro se things, he complained about an appeal not being filed, and I tried to explain to him Mr. Henneberry had no grounds to file an appeal until we had a motion to vacate his guilty plea heard. And

if that wasn't granted, then he has a right to appeal. At that point he said he refuses to cooperate with myself, and that's it.

THE COURT: Well, do you have any response to that or do you want to address that, Mr. Dyas?

THE DEFENDANT: Yes. It's been said over and over again me and -- he's really not -- he has my better interests and I refuse to go along with him. He just asked me --

THE COURT: I didn't mean to ask you about that. I meant with regard --

THE DEFENDANT: You asked me if I had -- if I wanted to address it.

He just came in here just now within two minutes before it's time to go into court to try to go over transcripts with me. He never got with me, we never met over the phone, never came to see me about anything. He spoke -- I believe he is supposed to go over all the trial transcripts with me. He never did none of that. He just came in here. He asked me a few things. I answered him. He went against it. It states that I been reading in the law that I know that was illegal that happened in my suppression hearing, along with the procedures of

going on right now.

So I -- I can't -- I refuse his help. I need some other legal help that is going to be on my side. He is totally against what I'm doing so I'll refuse to proceed with him.

MR. CAPPELLINI: And I've explained to him numerous times, today and prior to that, the purpose to vacate a guilty plea is not to relitigate the Motion to Suppress. You have to allege something that his attorney at the time perhaps did wrong so that he wasn't given proper legal representation at that time.

So I questioned him as to exactly what his allegations were in regard to his attorney, and I've written them all down and said -- so I can put those in a proper form for a motion to vacate his guilty plea. And at that point he just said he would not cooperate with me, he won't listen to me and he'll do anything he wants.

Your Honor, I believe that that's his position. There's law -- Judge Raccuglia has told me and that's her position, is that if you're not going to cooperate with your attorney, who (inaudible at 1:11:43).

THE COURT: I'm sorry. If you're not going to cooperate?

MR. CAPPELLINI: If you're not going to cooperate with your attorney, then you're waiving your right to appointed attorney. You don't get to pick and choose. He has a right to be represented by competent counsel, which I certainly have got more experience than probably anybody in the public defender's offices in these counties.

THE DEFENDANT: Your Honor, it's also -- it's also case law that says that I don't have to go with no attorney that I've already alleged conflict of interest with. That's in *People v. Free*.

THE COURT: You don't have a conflict of interest.

THE DEFENDANT: Yes, we have. We already had this issue in our -- in our court date on the 25th. It was already alleged that me and him had this issue before when he -- when he came to my arraignment on August 11th of last year. He came in here and made that statement about what I was trying to do wasn't going to happen. That's already a conflict of interest.

The law says once I allege that there's a

conflict, I don't have to demonstrate the conflict. It's supposed to be presumed already. This man clearly -- this man clearly has showed he has no interest in my case so I refuse his work. It's already been said on the record that we have an issue. I don't want him representing me. That's my -- that's why I'm standing on that.

THE COURT: Okay. I tried to -- it took me I'd say at least two court appearances, maybe more, before I really understood that when you use the term, quote, "conflict of interest," unquote, that means that, in your opinion, your attorney does not have the level of interest or the degree of interest and involvement in your case that you think the attorney should have, and that's what you mean by, quote, "conflict of interest," unquote. Isn't that correct? I mean, that's what you --

THE DEFENDANT: To a certain extent, but there's other things.

THE COURT: Okay. But the other things really don't have anything to do with the legal term, quote, "conflict of interest," unquote. And that -- that's what I think is -- I think that was clear from the last court appearance or the appearance before that.

But you continue to use that term, which you have the right to use that term, but I think it should be clear that -- and I think it is from your previous comment -- that conflict of interest to you means that, in your view, your attorney does not share your interest in the case or doesn't demonstrate the amount of interest and concern for your welfare in the case, or your success in the case, that you think is appropriate. It's not that there's an ethical conflict of interest. That's the distinction.

THE DEFENDANT: His ineffectiveness, it's a big conflict. He's in ineffective. I mean, that's a pretty big conflict if you ask me. He's ineffective. He's --

MR. CAPPELLINI: His comment, your Honor, because I tell him certain things I cannot do does not mean I'm ineffective. I have to follow the law and try to explain the law to him.

THE DEFENDANT: Your Honor, this is -- I mean, this is no offense to anybody, but I'm in that law book library every single day I'm in that prison, and I read all these -- anything that pertains to my case every day. So for somebody to come try to tell me anything different than what the law says, then

you're clearly -- you're not -- you're not in my best interests. I'm reading these law for a reason. I'm fighting for my freedom here, as well as my wife's, so for somebody to come try to tell me anything different than what the Supreme Court is saying, that's supposed to be procedure, then you're being ineffective.

THE COURT: Okay. Well, it's one thing to read a law book and it's another thing to go to law school for three years and maybe practice criminal law for about 30 years as defense counsel. There's -- that's one thing. It's another thing to just read some law books.

If I read a couple of medical books, I -- I wouldn't operate on myself. But I understand your point of view and you've expressed this several times. At some point the court is just beating a dead horse.

If you're telling me that you don't want Mr. Cappellini to represent you, then I'm going to discharge the public defender's office and you can represent yourself. What would you like to do?

THE DEFENDANT: Well, if you're going to discharge --

THE COURT: No, I'm asking you what you would like to do.

THE DEFENDANT: I don't -- I don't want him.

THE COURT: Okay. Then the public defender of LaSalle County is discharged and you can represent yourself. You're free to hire your own lawyer at any time. Okay?

THE DEFENDANT: Okay.

THE COURT: Okay. So what -- thank you for your services, Mr. Cappellini, and I appreciate your efforts. If there's something else --

MR. CAPPELLINI: Your Honor, I know we gave him a number of copies of things the last time we were in court. Do you have a copy still of the transcript of your plea?

THE DEFENDANT: Oh, yeah.

THE COURT: Okay. Thank you very much.

So when would you like to have the hearing on Mr. Dyas's motion to withdraw his guilty plea?

MR. CAFFARINI: Are you ready to go? We can do it in a couple weeks or -- not a couple weeks but middle of August?

THE DEFENDANT: Middle of August would be fine. 30 days.

130082

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,

BUREAU COUNTY, ILLINOIS

People of the state of Illinois

Plaintiff

vs.

Robert Dyes

Defendant

Case No. 17-CF-61

Action

ORDER

This cause comes on for a motion to Vacate guilty plea. For the reasons stated on the record the defendant's motion is denied.

Enter: 10-18 2018

JUDGE

ORIGINAL - White PLAINTIFF - Yellow DEFENDANT - Pink

C 182

BUREAU COUNTY CLERK OF THE CIRCUIT COURT
700 South Main Street, Princeton, Illinois 61356

A022

IN THE 130082
CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS
BUREAU COUNTY

PEOPLE OF THE STATE OF ILLINOIS) CASE NO.
PLAINTIFF) 17-CF-61
V.S.)
ROBERT DYAS)
DEFENDANT)

CIRCUIT COURT
BUREAU COUNTY
FILED
NOV 19 2018
Dawn M. Reglin
CLERK OF THE CIRCUIT COURT

OFFICIAL SEAL
BEATRICE E STANLEY
Notary Public State of Illinois
My Commission Expires 02/10/2019

NOTICE OF APPEAL

AN APPEAL IS TAKEN FROM THE ORDER OR JUDGEMENT DESCRIBED BELOW:

APPELLANT'S NAME: ROBERT DYAS

APPELLANT'S ADDRESS: PONTIAC CORRECTIONAL CENTER, 700 W. LINCOLN STREET P.O. BOX 99, PONTIAC, ILLINOIS 61764.

APPELLANT'S ATTORNEY: PRO SE

OFFENSE: UNLAWFUL POSSESION WITH INTENT TO DELIVER CONTROLLED SUBSTANCE, (METHAMPHETAMINE) (1) COUNT

JUDGEMENT: DISMISSAL/DENIAL OF MY MOTION TO WITHDRAW GUILTY PLEA AND VACATE JUDGEMENT

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORDS, AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT DEFENDANT

UNDER SUPREME COURT RULES 605-605, 304 (b), APPELLANT ASK THE COURT TO ORDER THE OFFICIAL COURT REPORTER TO TRANSCRIBE AN ORIGINAL AND COPY OF THE PROCEEDINGS, FILE THE ORIGINAL WITH THE CLERK AND DELIVER A COPY TO APPOINT COUNSEL ON APPEAL. APPELLANT, BEING DULY SWORN, SAYS THAT AT THE TIME OF HIS CONVICTION HE WAS AND IS UNABLE TO PAY FOR THE RECORD OR TO RETAIN COUNSEL FOR APPEAL.

Robert Dyas

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 14 DAY OF Nov, 2018

Beatrice E Stanley
NOTARY PUBLIC

INR: ROBERT D. DYAS
REG NO. Y26284
PONTIAC CORRECTIONAL CENTER
700 W. LINCOLN ST.
PONTIAC, IL 61764

C 188

A023

130082

COURT COPY

CIRCUIT COURT
BUREAU COUNTY
FILED

NOV 19 2018

Dawn Reglin
CLERK OF THE CIRCUIT COURT

IN THE

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS

BUREAU COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

Vs.

No. 17-CF-61

ROBERT D. DYAS
Defendant/Respondent

PROOF/CERTIFICATE OF SERVICE

TO: COURT CLERK
DAWN REGLIN
700 S. MAIN STREET
PRINCETON, IL 61356

TO:

PLEASE TAKE NOTICE that on NOVEMBER 14, 2018, I placed the attached or enclosed documents in the institutional mail at PONTIAC CORRECTIONAL CENTER Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Service.

DATED: 11/14/2018

OFFICIAL SEAL
BEATRICE E. STANLEY
Notary Public - State of Illinois
My Commission Expires 02/10/2019

/s/ Robert Dyas
NAME: ROBERT D DYAS
I.D.O.C.#: Y26284
PONTIAC Correctional Center
P.O. Box: 99
PONTIAC, IL 61764

Subscribed and sworn to before me this 14 day of Nov., 2018.

Beatrice E Stanley
Notary Public

C 189

A024

STATE OF ILLINOIS
THIRD DISTRICT APPELLATE COURT

BARBARA TRUMBO
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
TDD 815-434-5068

April 6, 2020

Thomas Anthony Karalis
Deputy Defender, Third District
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350-1014

RE: People v. Dyas, Robert D.
General No.: 3-18-0684
County: Bureau County
Trial Court No: 17CF61

The court has this day, April 06, 2020, entered the following order in the above entitled case:

Appellant's motion to dismiss appeal as premature and remand to the circuit court to proceed on defendant's timely-filed motion to reconsider the denial of defendant's motion to withdraw his guilty plea and vacate the judgment and sentence is ALLOWED. APPEAL DISMISSED. This Court's mandate in this case will issue on June 15, 2020.

Barbara A. Trumbo
Barbara Trumbo
Clerk of the Appellate Court

c: Bureau County Circuit Court
Hon. Cornelius J. Hollerich
Geno J. Caffarini
Thomas Daniel Arado

130082

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,

BUREAU COUNTY, ILLINOIS

People of the State of Illinois

Plaintiff

Case No. 17-CF-61

Action

vs.

Robert D. Dyes

Defendant

CIRCUIT COURT BUREAU COUNTY
FILED
MAR 25 2022
Dawn M. Reglin
CLERK OF THE CIRCUIT COURT

ORDER

This cause comes on for the defendant's Second Amended Motion to Reconsider the Denial of Defendant's Motion to Vacate His Guilty Plea.

The Court having heard the arguments of Counsel and denies the defendant's motion for the Reasons stated on the record.

The clerk is ordered to file a Notice of Appeal to the 3rd District Appellate Court.

OFFICE OF THE STATE APPELLATE DEFENDER IS APPOINTED TO REPRESENT DEFENDANT ON APPEAL

G.J.C.

T.C.

Enter: March 25th 2022

JUDGE

ORIGINAL - White PLAINTIFF - Yellow DEFENDANT - Pink

C 330

BUREAU COUNTY CLERK OF THE CIRCUIT COURT
700 South Main Street, Princeton, Illinois 61356

X Robert D Dyes

A026

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
BUREAU COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff – Appellee,

vs.

Circuit Court No. **2017-CF-61**

Robert Dyas,
Defendant – Appellant.

NOTICE OF APPEAL

An appeal is taken from the Order or Judgment, described below.

1. Court to which appeal is taken: Third District Illinois Appellate Court
2. Name of the Defendant-Appellant and address to which notices shall be sent.

Name: Robert Dyas Y26284
Address: Centralia Correctional Center
Po Box 7711
Centralia, IL 62801

3. Name and address of Defendant-Appellant's attorney on appeal:
Hon. Thomas A. Karalis – Deputy Defender
Office of the State Appellate Defender
770 East Etna Road
Ottawa, Illinois 61350

If the Appellant is indigent and has no attorney, does he want one appointed? **YES**.

4. Dates of Judgment Orders: October 18, 2018

5. Sentencing Order: November 29, 2017

6. Offense of which convicted: Unlawful Possession with Intent to Deliver a Controlled Substance (Methamphetamine) Class X Felony.

7. Sentence: 18 years to Department of Corrections.

8. If appeal is not from a conviction, nature of order appealed from:

Defendant – Appellant

Dated: March 28, 2022

By: Dawn M. Reglin
Dawn M. Reglin, Clerk of the Circuit Court

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
BUREAU COUNTY, ILLINOIS

PEOPLE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 3-22-0112
	)	Circuit Court No: 2017CF61
	)	Trial Judge: James A Andreoni
v	)	
	)	
	)	
DYAS, ROBERT D	)	
Defendant/Respondent	)	

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THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
BUREAU COUNTY, ILLINOIS

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DYAS, ROBERT D	)	
Defendant/Respondent	)	

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