No. 130344

IN THE
SUPREME COURT OF ILLINOIS

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

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

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NATURE OF THE ACTION

Defendant pleaded guilty to drug-induced homicide, *see* 720 ILCS 5/9-3.3(a), for delivering heroin to Lorna Haseltine, who died as a result of using it. The circuit court sentenced defendant to the mandatory minimum term of six years' imprisonment and rejected her argument that a lesser sentence was authorized by 730 ILCS 5/5-4-1(c-1.5) (subsection (c-1.5)). The appellate court reversed and remanded for resentencing upon concluding that drug-induced homicide was an "offense [that] involves the . . . possession of drugs" within the meaning of subsection (c-1.5). The People appeal that judgment. No question is raised about the sufficiency of the charging instrument.

ISSUE PRESENTED FOR REVIEW

730 ILCS 5/5-4-1(c-1.5) authorizes a departure from a mandatory minimum sentence for an offense that "involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations." The issue is presented is whether Class X drug-induced homicide is ineligible for such a departure, given that the offense requires the delivery of drugs and a resulting death, and both the statute's plain language and the legislative history confirm that the General Assembly intended to authorize reduced sentences only for low-level, nonviolent offenses.

JURISDICTION

This Court allowed the People's petition for leave to appeal on May 29, 2024. The Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATUTES INVOLVED

730 ILCS 5/5-4-1(c-1.5) provides:

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

720 ILCS 5/9-3.3(a) provides:

> A person commits drug-induced homicide when he or she violates Section 401 of the Illinois Controlled Substances Act [720 ILCS 570/401] or Section 55 of the Methamphetamine Control and Community Protection Act [720 ILCS 646/55] by unlawfully delivering a controlled substance to another, and any person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance.

STATEMENT OF FACTS

I. Defendant pleaded guilty to drug-induced homicide and was sentenced to the mandatory minimum of six years in prison.

In November 2018, defendant was charged with one count of drug-induced homicide for "unlawfully deliver[ing] heroin," which contained fentanyl, to Lorna Haseltine, whose death resulted from consuming that controlled substance. C6; *see* C29.[1]

[1] The common law record, impounded common law record, report of proceedings, and the appendix to this brief are cited as "C__," "CI__," "R__," and "A__," respectively.

In September 2022, defendant entered an open guilty plea. R125-27, 136. The People presented a stipulated factual basis, which stated that on August 12, 2017, Haseltine was found unresponsive in a bathtub in her home. R134. A forensic pathologist would testify that Haseltine's death was caused by acryl fentanyl,[2] heroin, and phentermine[3] intoxication. R135. Records would show that on the same day, Haseltine communicated with defendant via text message about obtaining drugs, which defendant agreed to supply, and that defendant received money via a Western Union account as payment. *Id.* In an August 2018 interview with police, defendant admitted that she had exchanged these text messages with Haseltine and that she went to Haseltine's house where she delivered what she thought was heroin to Haseltine. *Id.* After admonishing defendant and ascertaining that her guilty plea was knowing and voluntary, the circuit court accepted the plea. R128-33, 136.

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[2] Although the transcript states that the victim died from "Acryl, A-C-R-Y-L, fentanyl" intoxication, R135, it appears that the comma between "Acryl" and "fentanyl" was a transcription error and that the forensic pathologist was referring to "acryl fentanyl," a fentanyl derivative that is sometimes also written as "acrylfentanyl." *See* National Library of Medicine, Compound Summary, Acrylfentanyl, https://pubchem.ncbi.nlm.nih.gov/compound/Acrylfentanyl (summarizing the opiate compound's properties and listing alternate names and spellings); 720 ILCS 570/204(b)(57) (listing acrylfentanyl as Schedule I controlled substance and opiate).

[3] Phentermine is a central nervous system stimulant and Class IV controlled substance. *See* 720 ILCS 570/210(e)(3).

At defendant's sentencing hearing, Haseltine's father testified in aggravation. On August 12, 2017, Haseltine and her nine-year-old son, Austin, lived in his house. R144-46. They were having a high school graduation party for Haseltine's sister, and he last saw Haseltine go upstairs to get ready for the party. R145-46. When the guests arrived, Austin went upstairs to find his mother and came back downstairs screaming that she would not wake up. R147. Haseltine's father went upstairs and found her in the bathtub, motionless and not breathing. R147-48. He performed CPR and called 911; responding paramedics took her away; and he never saw her alive again. R147.

Haseltine's sister read a victim impact statement, R151-52, in which she said that "traumatic memories" of the death would "haunt" her and her family "for the rest of [their] lives"; she further expressed grief that Austin would grow up without a mother, and stated that defendant should be held accountable, CI 11.

Although the presentence investigation report showed that defendant had no prior criminal charges, in April 2022, while defendant was on bond for the present case, she was found guilty of driving under the influence of alcohol and ordered to complete 12 months of court supervision and DUI counseling. CI 5.

In mitigation, defendant presented testimony from Anthony Alosio, who stated that defendant had dated his son for a five-year period that ended

two years before the 2022 sentencing hearing, and that defendant had worked very hard to help his son stop using heroin, although he always started using again. R152-56.

Defendant's friends, R161-68, 168-71, 188-90, testified that defendant was kind and helpful, R162-63, and had helped a friend escape an abusive domestic relationship, R169. They also stated that she was a hard worker who always worked full-time or two jobs. R163-64. Friends and family members also described defendant as naïve, gullible, and easily swayed. R165, 170, 184, 190, 192. Defendant's father claimed that defendant had been "used a lot by different people," and that she had been "a little bit slow in school." R172, 176.

Defendant's psychotherapist, Suzanne Rubin, opined that defendant suffered from depression, anxiety, and co-dependency issues, and that she was gullible and people-pleasing. R178-79. Rubin also opined that defendant posed no risk to the public and was very unlikely to recidivate. R180-81. On cross-examination, Rubin acknowledged that defendant drove under the influence of alcohol while she was out on bond, and clarified that her opinion about defendant's recidivism risk referred to defendant's risk of committing another drug-induced homicide. R181-82.

Defendant elected to be sentenced pursuant to the version of 730 ILCS 5/5-4-1 in effect at the time of sentencing, *see generally People v. Reyes*, 2016 IL 119271, ¶ 12 (defendant may elect to be sentenced under law in effect at

time of sentencing), which included subsection (c-1.5), R126-27; C132-33, a provision enacted by Public Act 101-652 (eff. July 1, 2021). The parties disagreed about whether subsection (c-1.5) applied to drug-induced homicide, and whether the subsection's other requirements were met, such that the court was permitted to impose a sentence below the mandatory minimum. R198-204, 211-12, 214-20. The People argued that drug-induced homicide does not "involve[ ] the use or possession of drugs" within the meaning of subsection (c-1.5) because the offense includes as an element delivery but not use or possession; the offenses to which the subsection applies are "low-level, nonviolent crimes"; and it would be absurd to conclude that the General Assembly intended to make homicide probationable. R198-202. The defense argued that drug-induced homicide involves drug possession because delivery includes possession, and that here it involved drug use, because Haseltine used heroin. R214-15.

In allocution, defendant stated that "[her] worst fault [was] that [she] always fe[lt] the need to help people" and that she had been trying to help her heroin-addicted boyfriend when she committed the offense, but she nonetheless maintained that she took "full responsibility for [her] actions." R222-23.

After considering the evidence, arguments, and defendant's statement in allocution, the circuit court announced its ruling and sentence. R223-24. In aggravation, the court found that defendant's conduct caused or

threatened serious harm and that a stricter sentence was necessary to deter others from committing the same crime. R224. The court gave no weight to the fact that defendant had driven under the influence and noted that she accepted responsibility for that offense. *Id.* In mitigation, the court found, among other things, that defendant did not contemplate that her conduct would cause harm, that she had no prior criminal history, that her offense resulted from circumstances unlikely to recur, and that her character and attitudes indicated that she was unlikely to commit another crime. R225.

The circuit court also found that defendant did not pose a risk to public safety and remarked that a term of probation may have been appropriate, but it ruled that subsection (c-1.5) did not authorize a reduced sentence for drug-induced homicide. R225-27. Accordingly, the court sentenced defendant to the mandatory minimum term of six years' imprisonment and ordered that defendant pay restitution to the victim's father for Haseltine's funeral expenses. R149, 227.

II. The appellate court reversed and held that drug-induced homicide is eligible for reduced sentencing under subsection (c-1.5).

On appeal, defendant argued, as relevant here, that the circuit court erred in finding that subsection (c-1.5) did not apply to drug-induced homicide. A8, ¶ 24.

"Before analyzing [the text of] subsection (c-1.5)," the appellate court first considered portions of the legislative history to ascertain "the purpose of

th[e] statutory provision." A9, ¶ 27. The court surveyed the legislative debates and quoted several legislators' remarks about the purposes subsection (c-1.5) was meant to serve. *Id.*

"With that [legislative history] in mind," the appellate court then considered subsection (c-1.5)'s text. A10-11, ¶ 28. After noting that drug-induced homicide met one of subsection (c-1.5)'s requirements because it requires a mandatory minimum sentence of imprisonment, A11, ¶ 29, the court went on to consider whether it is an "'offense [that] involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligation[.]'" A11-12, ¶ 30 (quoting 730 ILCS 5/5-4-1(c-1.5)).

The appellate court concluded that drug-induced homicide is an "'offense [that] *involves*'" drug possession. A12, ¶ 31 (quoting 730 ILCS 5/5-4-1(c-1.5)) (emphasis in opinion). Relying on a dictionary defining "'[i]nvolves . . . as 'to have within or part of itself: include' or 'to relate closely: connect,'" the appellate court posited that drug-induced homicide "is 'connect[ed]' to or 'include[s],'" and thus "involves," drug possession, A12-13, ¶¶ 31, 33 (quoting Involves, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/involves), because drug-induced homicide contains as an element delivery of a controlled substance, A12-13, ¶ 32 (citing 720 ILCS 5/9-3.3(a)), and delivery, in turn, "includes possession because, without possession, a drug could not be delivered," A13, ¶ 33.

The appellate court rejected the People's argument that the General Assembly did not intend that subsection (c-1.5) encompass offenses involving the delivery of drugs because it contains no references to delivery. A15, ¶ 37. The court instead maintained that "[i]f the legislature wanted to limit subsection (c-1.5) to only use-or-possession drug offenses, it would not" have used the word "involves," and that construing the subsection "as applying to only use-or-possession drug offenses" would render that word superfluous. *Id.*

The appellate court also rejected the People's argument that the legislature did not intend for subsection (c-1.5) to apply to drug-induced homicide because it is much more serious than any offenses enumerated in the section, none of which are Class X felonies; the court dismissed the argument as a request that it "find an exception for Class X felonies . . . for which the legislature did not provide." A11-12, ¶ 30.

The appellate court also stated that, although it construed the statute by "enforc[ing] [its] clear and unambiguous language as written, without resort to other aids of construction," if the statute was ambiguous, "legislative history would support [its] reading." A15-16, ¶ 38 (internal citations and quotation marks omitted). The court reasoned that a senator's argument against the bill, warning that "that this law could encompass" serious and violent felonies, showed that "legislators" were "[a]ware of this fact" when they voted to adopt subsection (c-1.5). *Id.*

Having found that subsection (c-1.5) applies to drug-induced homicide, the appellate court vacated defendant's six-year prison sentence and remanded for a hearing before the circuit court to determine whether imposing a sentence below the mandatory minimum was appropriate. A16, 22, ¶¶ 40, 58.[4]

Justice Jorgensen agreed with the appellate court's construction of subsection (c-1.5) but specially concurred to express doubt that "the General Assembly intended for all possession-, use-, and delivery-related offenses to be encompassed in the new sentencing scheme" and her "hope" that the legislature would revisit the statute "to clarify its intent." A28, ¶ 63.

STANDARD OF REVIEW

Questions of statutory interpretation are reviewed *de novo*. *People v. Fair*, 2024 IL 128373, ¶ 61.

ARGUMENT

730 ILCS 5/5-4-1(c-1.5) Does Not Authorize a Reduced Sentence for Drug-Induced Homicide.

This Court should reverse the appellate court's judgment and reinstate defendant's mandatory minimum, six-year prison sentence because drug-induced homicide is not an "offense [that] involves the use or possession of drugs" and thus is ineligible for sentencing under 730 ILCS 5/5-4-1(c-1.5).

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[4] The appellate court also held that the circuit court erred by failing to set the manner in which defendant must pay restitution (whether in one payment or in installments), and it ordered the circuit court to modify its restitution order accordingly after the remand. A16-22, ¶¶ 42-56. The People do not challenge this part of the appellate court's judgment.

Resolution of this question requires the Court to construe subsection (c-1.5) to "ascertain and give effect to the intent of the legislature." *People v. Fair*, 2024 IL 128373, ¶ 61. "The best indication of legislative intent is the plain statutory language, given its natural meaning." *People v. Wells*, 2023 IL 127169, ¶ 31. Moreover, "'[t]o determine the plain meaning, [courts] must consider the statute in its entirety and be mindful of the subject it addresses.'" *People v. Villareal*, 2023 IL 127318, ¶ 29 (quoting *People v. Comage*, 241 Ill. 2d 139, 144 (2011)); *see also, e.g.*, *People v. Taylor*, 2023 IL 128316, ¶ 59 ("words and phrases in a statute should not be considered in isolation but should be interpreted in light of other relevant statutory provisions and the statute as a whole"). And "[i]t is always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results." *People v. Garcia*, 241 Ill. 2d 416, 421 (2011). "Where the language of the statute is plain and unambiguous, a court will apply it as written, without resort to extrinsic aids to statutory construction," such as legislative history. *People v. Castillo*, 2022 IL 127894, ¶¶ 24, 34.

Read as a whole, subsection (c-1.5)'s text clearly and unambiguously provides that its reference to offenses involving "the use or possession of drugs" refers to low-level, nonviolent crimes predicated on drug use and simple possession, and not greater offenses predicated on more serious criminal conduct. *See infra* Part A. This construction is supported by subsection (c-1.5)'s omission of any reference to other criminal conduct that

the General Assembly has recognized as more serious, such as the delivery of drugs, and by the neighboring statutory language describing the other offenses eligible for reduced sentencing, which show that the legislature intended to authorize deviations from mandatory minimum sentences only for low-level, nonviolent offenses. The appellate court's broader construction will lead to absurd and unintended results.

Moreover, even if the language of the statute were ambiguous, and it is not, the legislative history eliminates any possible doubt as it shows that the General Assembly intended to limit application of subsection (c-1.5) to low-level, nonviolent offenses. *See infra* Part B.

A. Subsection (c-1.5)'s plain language clearly and unambiguously shows that the legislature intended to relax mandatory minimum sentences only for low-level, nonviolent crimes, and not homicide.

Subsection (c-1.5)'s plain language unambiguously shows that its language authorizing a reduced sentence for an "offense [that] involves the use or possession of drugs" applies only to low-level offenses based on drug use and simple possession, and not to more serious crimes, such as delivery of a controlled substance, much less controlled substance delivery causing a person's death (that is, drug-induced homicide). *See* 720 ILCS 5/9-3.3(a).

First, the plain meaning of the phrase "offense [that] involves the use or possession of drugs" supports this construction. To "involve" means, *inter alia*, "to have within or as part of itself: include" or "to relate *closely*: connect." Involve, Merriam-Webster Dictionary, https://www.merriam-

webster.com/dictionary/involve; *see also* Involve, American Heritage College Dictionary, 716 (3d ed. 1997) (defining "involve," as "[t]o contain as a part; include," and "[t]o connect *closely* and often incriminatingly; implicate") (emphasis added). Thus, the plain meaning of "offense [that] involves the use or possession of drugs" is an offense *closely* related to drug use or possession because the offense is primarily based on that criminal conduct. Conversely, greater offenses that proscribe distinct and more serious conduct, such as delivery of a controlled substance and drug-induced homicide, are not closely related to drug use or possession, and so are not naturally or ordinarily described as offenses "involving" that conduct, even though they include it.

This construction is supported by the words describing the drug-related conduct that eligible offenses "involve": "use" or "possession." It stands to reason that if the General Assembly intended subsection (c-1.5) to encompass other kinds of drug-related criminal conduct, such as delivery or manufacturing, it would have included those terms. After all, when the legislature wants to apply a sentencing reform to both a lesser-included offense and a greater offense with an additional element, it identifies both eligible offenses, as it did in another provision enacted by the same Public Act that adopted subsection (c-1.5). *See* 730 ILCS 5/5-6-3.8 (eff. July 1, 2021, P.A. 101-652) (providing that certain prior convictions for, among other offenses, "felony possession of a controlled substance, or possession with intent to

deliver a controlled substance," are treated as Class A misdemeanors for purposes of determining eligibility for probation and other programs).

"Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions." *People v. O'Connell*, 227 Ill. 2d 31, 37 (2007). This principle of statutory construction "'is based on logic and common sense,' as '[i]t expresses the learning of common experience that when people say one thing they do not mean something else.'" *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17 (quoting *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 286 (2003)). Applying that principle here, when the legislature said that subsection (c-1.5) applies to offenses involving drug "use" and "possession," it meant offenses involving those forms of conduct and not others, like delivery or homicide.

Indeed, the legislature's longstanding treatment of drug crimes involving trafficking or delivery as more serious than offenses based on drug use and simple possession reinforces the conclusion that the omission of any reference to more serious drug crimes from subsection (c-1.5) was deliberate. For example, the Controlled Substances Act explains that "it is the intent of the General Assembly" to "penalize most heavily the illicit traffickers or profiteers of controlled substances," and that the legislature did not intend "to treat the unlawful user or occasional petty distributor of controlled substances with the same severity as the large-scale, unlawful purveyors and traffickers of controlled substances." 720 ILCS 570/100. Accordingly,

possession of a controlled substance, *id.* § 402, is a distinct offense from manufacturing, delivery, or possession with the intent to manufacture or deliver a controlled substance, *id.* § 401. The felony classifications vary depending on the type and quantity of the substance, but simple possession ranges from a Class 4 felony, *id.* § 402(c), to a Class 1 felony, *id.* § 402(a), whereas delivery ranges from a Class 3 felony, *id.* § 401(e)-(h), to a Class X felony, *id.* § 401(a). And the penalties are commensurately higher for delivery than for simple possession of the same substance. *Compare, e.g.*, *id.* § 401(a)(1)(A) (6-to-30-year sentencing range for delivery of between 15 and 100 grams of substance containing heroin), *with id.* § 402(a)(1)(A) (4-to-15-year sentencing range for simple possession of same quantity of heroin).

The General Assembly's recognition that delivery is different from and more serious than simple possession or use shows that if the legislature wanted to relax mandatory minimum sentences for offenses involving delivery, it would have said so explicitly. *See, e.g.*, *In re Craig H.*, 2022 IL 126256, ¶ 26 ("We presume that statutes relating to the same subject are governed by a single spirit and policy and that they are intended to be consistent and harmonious."); *People v. McCarty*, 223 Ill. 2d 109, 133 (2006) ("Under the doctrine of *in pari materia,* two statutes dealing with the same subject will be considered with reference to one another to give them harmonious effect.").

The conclusion that "offense[s] involv[ing] the use or possession of drugs" was meant to encompass only low-level possession and use offenses, and not more serious crimes, such as those involving delivery, is reinforced by subsection (c-1.5)'s neighboring language that lists the other offenses to which it applies. A statutory word or phrase "'is given more precise content by the neighboring words with which it is associated.'" *Villareal*, 2023 IL 127318, ¶ 38 (quoting *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 31). This principle "is particularly useful when construing one term in a list 'to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to [legislative acts].'" *Corbett*, 2017 IL 121536, ¶ 32 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)).

Here, the other offenses listed in subsection (c-1.5) — "retail theft [and] driving on a revoked license due to unpaid financial obligations" — are low-level, nonviolent crimes, like drug use and simple possession, but unlike drug-induced homicide. Retail theft is an offense against property, and driving on a revoked license due to unpaid financial obligations is, like drug use or simple possession, an offense against the public. No offense listed in subsection (c-1.5) is a crime against a person, let alone a crime that involves the death of a person like drug-induced homicide. Moreover, retail theft is generally a Class A misdemeanor for a first offense and is, at maximum, a Class 2 felony. 720 ILCS 5/16-25(f)(1)-(3). Driving on a revoked license due

to unpaid financial obligations becomes a Class A misdemeanor only upon the third offense. 625 ILCS 5/6-303(a-7). No offense listed in subsection (c-1.5) is a Class X felony, the highest classification in Illinois except for the one reserved for "the most serious felony" of first-degree murder. *People v. Young*, 124 Ill. 2d 147, 160 (1988); *see also* 730 ILCS 5/5-4.5-10 (listing felony classes). That the General Assembly made drug-induced homicide a Class X felony, 720 ILCS 5/9-3.3(a), assigned it a mandatory minimum sentence of six years, 730 ILCS 5/5-4.5-25, and made it non-probationable, *id.* § 5-5-3(c)(2)(C), reflects the legislative determination that it is more serious than most offenses. *See People v. Johnson*, 237 Ill. 2d 81, 99 (2010) (that offense is non-probationable and bears higher felony classification and mandatory minimum sentence indicates legislature's determination that it is more serious). "It is the province of the legislature to determine the seriousness of an offense," *id.*, and here the legislature has determined that drug-induced homicide is much more serious than any offense enumerated in subsection (c-1.5).

Thus, the other offenses listed in subsection (c-1.5) confirm that the legislature saw fit to relax mandatory minimum sentences only for low-level, nonviolent offenses against property and the public, and not for serious offenses against persons like drug-induced homicide. Accordingly, the phrase "offense [that] involves the use or possession of drugs" in subsection (c-1.5) should be construed, in the light of its neighboring terms, as describing

offenses based on drug use and simple possession. *See, e.g.*, *Corbett*, 2017 IL 121536, ¶ 33 (construing "riding . . . trail" narrowly in light of neighboring terms listing other types of "trails" to which statute applied as including primitive, rustic, or unimproved riding trails); *Yates v. United States*, 574 U.S. 528, 544 (2015) (construing "tangible object" narrowly to refer to "objects used to record or preserve information" in light of neighboring terms "record [or] document").

A narrow construction is also appropriate because a broader construction would produce absurd results that the legislature did not intend. *See, e.g.*, *Wells*, 2023 IL 127169, ¶¶ 31, 35 (courts may consider consequences of construing a statute one way or another and "presume that the legislature did not intend absurdity or injustice"). Here, the appellate court concluded that drug-induced homicide requires delivery of a drug and thus "involves" drug possession within the meaning of subsection (c-1.5), because "without possession, a drug could not be delivered." A13, ¶ 33. But if that sort of "involvement" with drugs sufficed, then subsection (c-1.5) could be applied to any crime, however serious or violent, that necessitates the defendant's use or possession of a drug.

For example, under the appellate court's construction, criminal sexual assault would be eligible for reduced sentencing if it is aggravated because the defendant "deliver[ed] . . . any controlled substance to the victim" (such as rohypnol, the date rape drug) during the course of the offense, 720 ILCS

5/11-1.30(a)(7), because the defendant necessarily would have possessed a drug. And the appellate court's construction would also bring within subsection (c-1.5)'s ambit: (1) the drug-assisted versions of aggravated criminal sexual abuse, 720 ILCS 5/11-1.60(a)(7), and predatory criminal sexual assault of a child, *id.* § 11-1.40(a)(2)(D); (2) administering a drug to a child to promote child prostitution, *id.* § 11-14.4(a)(4); (3) forcing a child to ingest a drug during ritualized child abuse, *id.* § 12-33(a)(3); and (4) aggravated battery by delivering a drug to a person who suffers great bodily harm or permanent disability as a result of its use, *id.* § 12-3.05(g)(1).

The appellate court's construction would create absurd results because it extends subsection (c-1.5) to crimes, such as these, which are far more serious than the ones the General Assembly listed in the subsection. The construction would also make eligibility for reduced sentencing turn on arbitrary distinctions, which likewise violates this Court's principles of statutory interpretation. *See, e.g.*, *People v. Bradford*, 2016 IL 118674, ¶¶ 25-26 (rejecting statutory construction that would "arbitrarily" punish multiple acts of shoplifting in single course of conduct more strictly than single act of shoplifting of goods with same monetary value). For example, under the appellate court's construction, subsection (c-1.5) would apply to driving "under the influence of any intoxicating compound" or "any other drug," 625 ILCS 5/11-501(a)(3), (4), but not to driving "under the influence of alcohol," *id.* § 11-501(a)(2). And, as noted, the appellate court's construction

would make defendants who commit sexual assault and also drug the victim during the crime eligible for lesser sentences, without extending the same grace to defendants who commit sexual assault without doing so.

The appellate court should not have disregarded the absurd consequences created by its broad construction of subsection (c-1.5). This Court has warned that "dissecting an individual word or phrase from a statutory provision and mechanically applying to it a dictionary definition is clearly not the best way of ascertaining legislative intent." *Corbett*, 2017 IL 121536, ¶ 28. Yet that is what the appellate court did, when it mechanically applied a general dictionary definition of "involves," A12, ¶ 31, to give subsection (c-1.5)'s reference to the "use or possession of drugs" a broad meaning that is inconsistent with its neighboring terms and the General Assembly's determination in the Criminal Code that offenses involving the delivery of drugs are different from, and warrant more serious punishment than, drug use and simple possession.

Nor, relatedly, does interpreting subsection (c-1.5)'s reference to offenses involving "the use or possession of drugs" consistently with its neighboring terms "inject . . . an exception into" the subsection "for Class X felonies," as the appellate court submitted, A10-11, ¶ 30. Instead, "'a word is given more precise content by the neighboring words with which it is associated,'" *Villareal*, 2023 IL 127318, ¶ 38 (quoting *Corbett*, 2017 IL 121536, ¶ 31), and it is thus appropriate to consider subsection (c-1.5)'s

neighboring terms listing the low-level, nonviolent crimes the General Assembly made eligible for more lenient sentencing when ascertaining the "involvement" with drugs it contemplated.

The appellate court was also incorrect insofar as it reasoned that "[i]f the legislature wanted to limit subsection (c-1.5) to only use-or-possession drug offenses, it would not have modified the phrase 'use or possession of drugs' with the term 'involves.'" A14-15, ¶¶ 36-37. The word "involves" was necessary because "drug use" and "drug possession" are not specific criminal offenses but are instead types of conduct proscribed by various laws, including the Controlled Substances Act, 720 ILCS 570/402, the Methamphetamine Control and Community Protection Act, *id.* § 646/60, the Cannabis Control Act, *id.* § 550/4, and the Use of Intoxicating Compounds Act, *id.* § 690/1. Because "drug use" and "drug possession" are not themselves criminal offenses but are instead types of offenses, it would have made no sense for the General Assembly to specify that subsection (c-1.5) applies when "the offense *is* the use or possession of drugs." Thus, contrary to the appellate court's suggestion, construing subsection (c-1.5) as including drug use and simple possession offenses, but not more serious offenses, does not make the term "involves" "meaningless." A15, ¶ 37. Instead, the legislature's use of the word "involves" ensured that the subsection (c-1.5) extends to *all* use-or-possession offenses.

Nor, contrary to the appellate court's suggestion, is an offense involving the delivery of a drug — let alone drug-induced homicide — "closely . . . involved" with drug possession, and the court's reliance on *United States v. James*, 834 F.2d 92 (4th Cir. 1987), for the contrary proposition was misplaced. *See* A14-15, ¶ 36. *James* held that the possession of a controlled substance with intent to distribute was a "'felony violation of federal law involving the distribution . . . of [a] controlled substance,'" and thus was a "'drug trafficking crime'" for purposes of a federal statute criminalizing firearm possession during such crimes. 834 F.2d at 92 (quoting 18 U.S.C. § 924(c)(2)). *James* did not "observe[ ]" that "possession is closely and necessarily involved with distribution," A14, ¶ 36, but instead observed that "possession *with intent to distribute* is closely and necessarily involved with distribution." *James*, 834 F.2d at 92 (emphasis added). As *James* explained, those crimes are closely related because the former requires the intent to commit the latter, "the line between the two may depend on mere fortuities, such as whether police intervene before or after narcotics have actually changed hands," and armed possession with intent to distribute can risk the same kind of violence as armed distribution, violence the statute was intended to deter. *Id.* But subsection (c-1.5) contains no references to "possession with intent to deliver" (as possession with intent to distribute is called in Illinois, *e.g.*, 720 ILCS 570/401), or to any "drug trafficking crimes." Thus, *James* sheds no light on the proper construction of subsection (c-1.5).

Finally, the appellate court was also incorrect that limiting subsection (c-1.5) to drug use and simple possession offenses would frustrate the General Assembly's purpose, which the court described as "to undo the harm that the extensive mandatory minimum sentencing laws created." A14-15, ¶ 36. The single citation the court provided for that proposition, *In re S.P.*, 297 Ill. App. 3d 234, 238 (1st Dist. 1998), does not address subsection (c-1.5). And, as explained, subsection (c-1.5)'s language, as a whole, shows that it was meant only to except certain categories of low-level, nonviolent crimes from mandatory minimum sentences (and then only when the statute's additional requirements are also met). Had the General Assembly intended to exempt more serious crimes, it would have done so expressly.

In sum, properly interpreted, subsection (c-1.5)'s reference to "offense[s] involv[ing] the use or possession of drugs" extends to low-level, nonviolent offenses based on drug use or simple possession, and not to more serious crimes of the sort not referenced anywhere in the statute, such as delivery of a controlled substance, let alone drug-induced homicide.

B. The legislative history confirms that the legislature intended to relax mandatory minimum sentences only for low-level, nonviolent crimes.

Because the plain language of subsection (c-1.5) is clear, this Court need not resort to the legislative history. And the appellate court plainly erred in *beginning* its analysis of subsection (c-1.5) by considering legislative history, A9-10, ¶ 27, because "[i]t is only when the meaning of a statute is ambiguous that a court looks beyond the statutory language and considers

the purpose of the law, the evils it was intended to remedy, and the legislative history of the statute," *Castillo*, 2022 IL 127894, ¶ 34.

But if there were any doubt as to the subsection (c-1.5)'s plain meaning, the subsection's legislative history strongly supports the same construction as its text. Indeed, when the relevant language was added to House Bill 3653 and enacted as part of Public Act 101-652, its chief House sponsor explicitly characterized the sentencing reform as "a provision to provide for more judicial discretion for lower level, non-violent offenses." *See* 101st Ill. Gen. Assem., House Proceedings, Jan. 13, 2021, at 6-7 (statement of Rep. Slaughter).

And the subsection's earlier legislative history likewise confirms that it was meant to apply only to low-level, nonviolent offenses. The provision was initially worded more broadly, but was then amended to narrow its scope before it was passed into law. The first version of the subsection, introduced in House Bill 1587, would have applied to *all* offenses, except "a sex offense under Article 11 of the Criminal Code of 2012 or an offense involving the infliction of great bodily harm[.]" *See* House Bill 1587 (as introduced), 101st Ill. Gen. Assem., filed Jan. 30, 2019, at 1, 6-8. This bill was twice amended to expand the list of exceptions. *See* First Amendment to House Bill 1587, 101st Ill. Gen. Assem., filed March, 14, 2019 (replacing language with exception for any "crime of violence as defined in Section 2 of the Crimes Victim Compensation Act [740 ILCS 45/2]"); Second Amendment to House Bill 1587,

filed March 21, 2019, at 7-8 (expanding list of ineligible crimes to include robbery and all sex offenses). Finally, the House replaced the list of crimes *ineligible* for reduced sentencing with the current list of eligible crimes, namely "offense[s] involv[ing] the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations." Fourth Amendment to House Bill 1587, 101st Ill. Gen. Assem., filed Apr. 5, 2019, at 7.

These amendments, which progressively narrowed the provision's scope to prevent it from applying to serious or violent crimes, unmistakably show the legislative intent to avoid that result. *See People v. Reid*, 179 Ill. 2d 297, 316 (1997) (Senate amendment changing bill's language to avoid particular result was "clear expression of legislative intent"); *Charles v. Seigfried*, 165 Ill. 2d 482, 499-502 (1995) (amendment deleting language from later-enacted bill and defeat of other bills with similar language were "clear refusals" to enact it).

Statements in a debate just before House Bill 1587 passed in the House confirm that the legislators who voted to pass it did not believe that it applied to serious or violent crimes. After an opponent argued that the bill would allow for "the possibility of reduction of sentencing" for serious offenses, including "drug-induced homicides," 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175-76 (statement of Rep. Bryant), the bill's sponsor explained that this statement reflected a "misunderstanding about

the bill" because "an amendment . . . was adopted," and the amended bill "only refers to offenses only involving drug use or possession, retail theft, or driving on a revoked license for unpaid financial obligation," *id.* at 176 (statement of Rep. Harper).

To be sure, in the Senate, Senator McClure argued that House Bill 1587's language referring to "offense[s] involv[ing]" drug use or possession "is so broad and ambiguous" that courts could potentially apply the law to violent "Class X felonies involving the use of drugs." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 17-19. The appellate court suggested that this statement meant that legislators were "[a]ware" when they voted on the bill that enacted subsection (c-1.5) that it "could encompass" Class X felonies, and therefore intended that the subsection extend to such offenses. A15, ¶ 38. But this ignores that Senator McClure made this statement in May 2019, immediately after which the Senate rejected House Bill 1587 and it was tabled. 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 17-20. It is not clear that anyone in the House or Senate who later voted to adopt subsection (c-1.5) in January 2021 (as part of a different bill) recalled McClure's remarks from a year and a half earlier. And, in any event, one comment by a single legislator generally does not shed light on the General Assembly's intent. *See People v. R.L.*, 158 Ill. 2d 432, 442 (1994).

In sum, subsection (c-1.5)'s text and legislative history show that the General Assembly intended to permit deviation from mandatory minimum

sentences only for the listed categories of low-level, nonviolent offenses, and the appellate court's construction of subsection (c-1.5) to include drug-induced homicide thwarts that intent. Accordingly, this Court should hold that subsection (c-1.5)'s reference to offenses "involv[ing] the use or possession of drugs" extends to low-level offenses based on the specified conduct of drug use or simple possession, and not more serious crimes such as delivery of controlled substances, much less drug-induced homicide.

CONCLUSION

This Court should reverse that portion of the appellate court's judgment that vacated defendant's sentence, reinstate defendant's mandatory minimum six-year prison sentence, and remand to the circuit court to modify defendant's restitution order.

September 10, 2024

Respectfully submitted,

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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, and the certificate of service, is 27 pages.

/s/ Aaron M. Williams
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 10, 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 served the person below at the registered email address:

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APPENDIX

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

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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

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

OPINION

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

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

¶ 2 I. BACKGROUND

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

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

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

> "That on or about August 12, 2017, *** [defendant] committed the offense of DRUG-INDUCED HOMICIDE, *** in that said defendant, while committing a violation of the Controlled Substances Act, Section 40l(d) of Act 570 of Chapter 720 of the Illinois Compiled Statutes [(720 ILCS 570/401(d) (West 2018))], unlawfully delivered heroin, a controlled substance, containing fentanyl, to *** Haseltine, and *** Haseltine['s] death was caused by the injection, inhalation, absorption, or ingestion of that controlled substance."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¶ 22 This timely appeal followed.

¶ 23 II. ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The court also observed:

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

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

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

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

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

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

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

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

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

¶ 41 B. Restitution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¶ 57 III. CONCLUSION

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

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

¶ 60 JUSTICE JORGENSEN, specially concurring:

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

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

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

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

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

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

gullible. People that aren't very good quality, they have a tendency to gravitate towards her due to the fact that she's a target because she -- because she is naive and gullible.

MR. TOMCZAK: No further questions.

MR. SHLIFKA: No questions.

THE COURT: Thank you very much.

(Witness excused.)

MR. TOMCZAK: Judge, I'd like to close my case with Defendant's Exhibit No. 1 which is a clinical psychological evaluation which I tendered earlier to the Court and Mr. Shlifka. I can hand Your Honor our copy of that.

THE COURT: All right. It will be admitted.

Let me do this. I'm gonna take a short recess before argument, about six or seven minutes. And then we'll come back. So, about ten minutes to three.

(Short recess.)

THE COURT: Do you rest?

MR. TOMCZAK: Yes.

THE COURT: Argument, Mr. Shlifka.

MR. SHLIFKA: You almost have to wonder how a person becomes 37 years old, is that gullible, that

naive, is taken advantage by everybody they meet. Can't make decisions on their own. Totally co-dependent. And now finds herself in this predicament.

You also have to wonder if the Krystle Hoffman some of these witnesses were talking about today is the same Krystle Hoffman who is sitting before the Court.

What did we hear from Anthony Aloisio? All she ever wanted to do was help Kevin get off of drugs. She helped him for five years.

From Melissa Schuberth, Krystle Hoffman was very against drugs, always trying to help.

From Thany Haddon, she was always trying to help me make the right decision. She got me out of this abusive relationship.

Every one of these witnesses talk about how gullible and naive she is. But I ask this question.

Why didn't Krystle Hoffman care about Lorna as much as she did about everyone else in her life? What was it about Lorna that made her say I'm not gonna help her beat this addiction when she's calling me for drugs, I'm not gonna tell her she should get treatment, I'm gonna ignore your pleas for me to

assist you. I'm gonna facilitate a vehicle that killed you.

And to hear Mr. Aloisio, and I feel sorry that he lost his son, when he said something along the line of Kevin chose his path and so did Lorna. As if Lorna somehow said I want to die by fentanyl.

Lorna didn't choose to die from fentanyl poisoning. She chose to ask somebody she trusted for heroin.

Krystle Hoffman knows this demon of heroin. She lived with it with Kevin. And while she was trying to help Kevin get off of it, all she's doing is enabling Lorna. Delivering the package of death.

And here's the other thing, we don't really know what month Krystle visited her friend Melissa in Nashville, but it's very clear that right when Krystle is living with this Kevin demon and his addiction doesn't stop her from taking those drugs to Lorna's house.

And the most interesting thing we heard from mitigation witnesses was from Valerie Carter. Krystle Hoffman is honest to a fault.

I ask the Court to consider that testimony in the context of the 27-minute statement we watched

earlier where Krystle Hoffman, knowing that her friend died of an overdose of drugs she made sure got to her friend, thought she was going to outsmart the police with one lie after another.

I brought her a debit card. That's the only time I was there that day. She messaged me her address to bring the debit card to her. I pulled up and gave her the debit card. She left it at my house.

Well, the police start questioning her and she finally admits that whole debit card thing was a lie. What did she say? She told me if anyone asks, just say it was a debit card.

Think about this for a second. Why does she have to lie now? Lorna's dead. Lorna's not gonna come back.

MR. TOMCZAK: I want the Court to know that she has pled blind. She pled guilty to lying.

THE COURT: I understand your objection. It's overruled.

MR. SHLIFKA: Who is she trying to protect by perpetuating that lie about the debit card? It's not Lorna. Lorna is in no position to complain anymore.

She's trying to protect herself with a lie

hoping the police will let her go because she doesn't know what the police know and they gradually confront her with more information.

One of the first things she said in the interview, 'cause she knows why she's there at that point, she doesn't know that that text conversation is in the hands of those police officers talking to her, then she changes the story. Okay, she asked my roommate to find weed and he couldn't find it. That's not what those text messages showed. It's just another lie.

Then we talk about the officers confront her with this Western Union transaction. She tries to deflect, Mark has a heroin problem, he got it for her. That's not what those text messages show.

Mark asked me to drive for him. Not what the text messages show. This is one lie after another.

At one point she says I didn't know he gave heroin to her. Later she admits it. You look at the text messages, she set this thing up.

He told me he was getting her weed. I was like okay. Lie. Heroin, I didn't know it was heroin I didn't know until he got there it was heroin. Lie.

Till finally they asked, after confronting her with all this evidence against her, the Western Union transaction, those text messages between her and Lorna. You knew it was heroin. Yeah, I guess. We don't want you to guess, and she knows it's heroin.

Honest to a fault? Hardly.

We submitted our sentencing memorandum in this case. As the Court mentioned this defendant is charged with a Class X Felony, sentencing range is 6 to 30 years.

And there's a request by defense to be sentenced under 730 ILCS 5/5-4-1(c)-1.5. A little provision passed as part of the SAFE-T Act which as of right now has questionable constitutionality. But let's talk about this provision, whether or not it applies to Krystle Hoffman for this offense.

One paragraph in an existing statute in the Code of Corrections, the Court can look all day long, you'll find absolutely no legislative debate on this provision at all, not one single word uttered in Springfield in public to pass this statute. Nothing to show how it's meant to be applied.

For example, let's say it does apply. What

period of probation can the Court impose? Up to 24 months, 30 months, 48 months? We don't know because there's no such thing for a Class X Felony.

To whom does it apply? All we have is the language of the statute.

And let's talk about the statute. It refers to cases, and I'm starting at parentheses No. 1, the offense involves the use or possession of drugs.

Well, we know this case has nothing to do with the use of drugs. Krystle Hoffman is not charged with using drugs. Every single witness said she's not a drug user. Presentence report says she's not a drug user. Time and time again, I'm not the drug user.

Does this offense involve possession of drugs? I suppose in a theoretical way it does, one has to possess drugs before one can deliver them. But did Krystle Hoffman possess drugs?

According to her, no, she didn't. Mark did. Mark is the one who handed the drugs to Lorna. I didn't possess them, Mark did.

Let's take the law of responsibility in consideration here because that's why she's here,

based on her statement. If you believe she didn't hand those drugs to Lorna. Mark was there.

Why would the legislature say use or possession or delivery of drugs. If it was meant to apply to a case like drug-induced homicide, which has as an element of this offense delivery of a controlled substance, not possession, not use, but delivery. Legislature could have put delivery in that statute, chose not to.

But let's look at the other enumerated offenses in that statute to try to ascertain what the purpose of this statute is and to what offenses it should apply.

There's only two other situations in which the statute applies. Retail theft and driving while license revoked when the revocation is based on unpaid financial obligations. Low level, nonviolent crimes.

Let's look at one interpretation. This case would apply to a serial murderer if it involves possession of drugs. And retail theft and driving while license revoked when the revocation is based upon unpaid financial obligations.

It can apply to an armed robbery if it

involves the use of drugs. It can apply to predatory criminal sexual assault of a child if it involves the use of drugs. It can apply to aggravated criminal sexual assault if it involves the use of drugs. Aggravated vehicular hijacking, that would be absurd. It would be absolutely absurd to think this.

This legislature, when this provision was enacted, contemplated, well, we think the Court should have the option of giving probation for killing somebody.

MR. TOMCZAK: I would object. There's no legislative history regarding this argument. I ask that you disregard it.

THE COURT: It's argument.

MR. SHLIFKA: It would be absurd. Think about that for a second. Because there's other factors in this statute.

For this statute to apply, even assuming it could apply to an offense like drug-induced homicide, the Court would have to find the defendant does not pose a risk to public safety.

You would be hard pressed to say there was no risk to public safety when you're the vehicle between a controlled substance and somebody's death.

And the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment. Hard to say that justice would require probation. Again, when you're the vehicle between a drug and somebody's death.

I would submit this statute has nothing to do with an offense like drug-induced homicide. Instead, I would submit this has more to do with what is commonly known as the war on drugs in the 1980's. I've given a copy to Court and counsel.

Starting with an undated article entitled Who Goes to Prison for Drug Offenses, Rebuttal to the New York State District Attorney's Association, and refers to a document issued by the New York State District Attorney's Association from 1999.

What it does is attacks the mandatory minimum sentencing laws that were imposed in the '80s for drug cases and how drug users were being what some people would say warehoused in prison for having an addiction.

No. 2, an article by the ACLU, American Civil Liberties Union, from July/August of 2001. The drug war is the new Jim Crowe. Same argument, same refrain, same chorus, attacking how laws, mandatory

minimums for drug cases for incarcerating not only drug addicts but drug addicts of color.

Then we have an article which is undated from the Council on Criminal Justice. Eliminate mandatory minimum sentences for drug crimes. And as far as the date goes, it does cite some legislation from 2018, so it's a little bit more recent, with actually the same arguments are made in the prior two articles.

But I think what really drives this home is an article that appeared -- story that appeared in the Chicago Tribune, September 14, 2022. It's a story about a man named Michael Lightfoot, who was approximately 48 years old. And Michael Lightfoot prior to that date had two prior convictions for Class X felonies.

And the Court knows Illinois has a three strikes law, when you commit your third Class X Felony, you go to prison for life, regardless of the charge.

Well, Michael Lightfoot in 2004 was found to be in possession of six grams of cocaine at his house, $702, and this all happened within five hundred feet of a park. And he was charged with

possession of controlled substance with intent to deliver, a Class X Felony. He's now serving a mandatory life sentence.

I submit 730 ILCS 5/5-4-1(c)-1.5 is meant to address the Michael Lightfoot story, not to people who are the vehicle of a drug that killed somebody.

Let me move on to what is an appropriate sentence for this defendant for delivering the drugs that killed Lorna Haseltine.

On the day of her own sister's graduation party, the Court heard how it was her own son who found his mom lifeless in the bathroom.

We look at the factors in aggravation, we look at the factors in mitigation, try to fashion an appropriate sentence.

Factors in aggravation, serious harm is an element of this offense. It's already factored into this charge.

Factor No. 2 is interesting in this context, why does a woman like Krystle Hoffman do this, unless she gets something out of it.

The defendant received compensation for today's events. Money was exchanged. She picked up the money.

Factor 3, the defendant has a history of prior delinquency or criminal activity. Another interesting factor because although prior to this day she has no criminal history, but what we learn, notwithstanding Suzanne Rubin's testimony regarding the defendant's likelihood for recidivism, we learned recently when the presentence report was filed on March 14, 2022, Krystle Hoffman is charged in Perry County, Illinois driving under the influence of alcohol.

Now, I guess the fact she has a history of anxiety and depression and all the medical issues are contained not only in this report but the report of Doctor Karen Smith, licensed clinical professional counsellor, self-medication may be a way to deal with her own demons now. Remember the demons she fought so hard against, they're now her ally.

Doesn't mean you have to get behind the wheel of a car and drive. She's committing a crime while on bond for killing somebody. It's hard to say there's no likelihood of recidivism with that factual scenario, it just doesn't make any sense.

Factor 7, the sentence is necessary to deter others from committing the same crime. Applies

in this case just like every other case.

The Court has seen the text message conversation. Krystle Hoffman was instrumental in this transaction. It doesn't happen without Krystle Hoffman, this particular transaction.

And yet knowing, knowing that she facilitated this delivery of heroin to Lorna, a person she referred to in the statement as a friend of hers, her ability to try to lie her way out of this shows what type of rehabilitative potential she really has.

Along the lines of rehabilitative potential, I would direct the Court to People vs. Peterson. It's a Second District Illinois Appellate Court case from 2021, cited at 2021 Ill. App. 2d 191001.

The facts aren't all that enlightening but what the court says, and I quote, in fashioning a sentence -- I'm sorry, page 4 of 5, paragraph 24, about six lines down. In fashioning a sentence, the trial court need not give a defendant's rehabilitative potential greater weight than the seriousness of the offense.

The offense doesn't get much more serious

than a Class X Felony which caused somebody's death.

Other factors in aggravation, I suspect there's one about how the victim had something to do with facilitating the act, somehow asking for heroin is not facilitating your own death.

There are some mental health issues that are raised as a factor in mitigation. There are a couple factors that exist but none of them, even if this new statute were to apply, that suggest this defendant is worthy of anything other than what the legislature has determined to be an appropriate sentence for drug-induced homicide.

As counsel mentioned just a little while ago, there was a blind plea in this case, Miss Hoffman did plead guilty. She did accept some responsibility. We still have the fact that Lorna is gone. Left a son behind.

I am asking this Court, based on the facts of this case, based on the defendant's statement, her attempts to try to talk her way out of this incident, the fact that even while on bond for this felony, she has committed another crime, based on the presentence report. We're asking the Court to sentence Krystle Hoffman to ten years in the Illinois Department of

Corrections.

If the defendant has elected new law, there are some mandatory assessments, specifically the $549 generic criminal felony assessment, a fine of up to $25,000. Leave that to the Court's discretion.

We are also asking the Court impose restitution for the funeral expenses for Lorna Haseltine for $4,492.64.

And to that end, I would point out the defendant has $4,500 available in bond money. $7 in change more than what is needed to pay for these funeral expenses. I would ask that restitution come directly out of that bond money so it can be paid immediately.

As a consequence of this conviction, the defendant would be required to submit a specimen for DNA indexing and pay the fee.

She would receive a sentence credit of two days from November 16th to November 17, 2018. She would receive a pretrial detention credit against any fine, $30 a day for a total credit of $60.

The lies stop here. Responsibility starts here. Thank you.

THE COURT: Mr. Tomczak.

MR. TOMCZAK: Thank you, Judge.

Judge, I'd like to, with Your Honor's permission, address Mr. Shlifka's argument before getting to some of mine. And I'd like to address the allegation about the videotape statement.

He's asking for a 10-year sentence. So, there's something about this case that's way over the minimum. It's because this girl, that's never been involved in the criminal justice system, didn't do a Shlifka confession. The immediate, unadulterated, unhesitated, complete giving it all up immediately without hesitating one bit, without twisting, without using any police work to get it out, nothing. It should all just come flowing right out. Or you go to ten. 'Cause that's the only thing, the only aggravating factor.

I ask you to consider this. She gave him the case against her. Krystle gave him this case that comes to court today. Without that statement, we wouldn't be here today, the family wouldn't have any responsibility for this. Except for her being honest and making a statement. She gave him the case. But she gave him more than that.

She gave him Mark Matthews and David Shreen

(phonetic). David Shreen was actually the guy that sold the drugs, that delivered the drugs. Did David Shreen deliver any other drugs to anybody else who died since he was not investigated or interviewed in this case.

MR. SHLIFKA: Objection, no evidence of that.

THE COURT: Overruled.

MR. TOMCZAK: What about Mark Matthews? He was there. Did they track him down? No, they didn't. The war on drugs, like those two guys, they're gone. That doesn't bring Lorna back.

But let's not act like we're fighting the war on drugs and let those guys walk away. That's 30 years this law has been around. She told him where they were, where is David Shreen? How does this stop anything? She gave you your case.

I'm sorry, Lorna did nothing, but I'm sad she did order the drugs, she did want those drugs. It's a sad thing. And it happened. She did not ask to die. But she did ask for the drugs to a gullible person with an abusive person, drug addict boyfriend. Most gullible person. That's the one thing you know about her, she's gullible.

Please, Your Honor, don't ignore the law.

But you can't just ignore the law 'cause you don't agree with it. The legislature wasn't limiting anything.

Let me tell you, the war on drugs started in 1980. I know about the war on drugs. Say this directly, this case is not going to affect the war on drugs. I think anyone who heard the sentencing hearing knows that this isn't gonna change anything.

In any event, let me say this, of course the State does not support this new law. And it is an issue across this country, minimum mandatory sentencing. Because the way our constitution was set up, you decide who goes to prison, Your Honor does, and no one else should be able to make that decision.

The legislature decided to give the government the right to choose to file charges which takes that discretion away from you and that's wrong. It's not the way it's supposed to be. It's supposed to be Your Honor the one who makes the decision and that's maybe what this law was about. It's placing the discretion exactly where it's it's supposed to be.

Why? This is a political office, they run for office, they gotta get elected. The Court sits

there for retention and that's it, you're there and that's it. That's why the decision to do this should be in the Court's hand and not in anybody else's hands right now.

I'd like to add some issues in mitigation. Factors in mitigation that I'm gonna ask Your Honor to find, based on the testimony that you heard today, would be 730 ILCS 5/5-5-3.1.

No. 2, defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another. The mindset of the defendant is what the focus of that particular section.

Defendant acted under a strong provocation. I would leave that to your judgment.

I will submit that 5 does apply. That the defendant's criminal conduct was induced or facilitated by someone other than the defendant in this case. She didn't start this whole thing, she was doing it with the boyfriend. I ask you to make that finding.

No. 7, the defendant has no history of prior delinquency. She didn't when she did this. The DUI did happen, but Mr. Shlifka, and I appreciate

it, did not file a motion to increase her bail bond during the pendency of her case.

The character of the defendant's criminal conduct was a result of circumstances unlikely to recur. I believe that is the case. She's learned her lesson, she moved away from Kevin, she's getting counselling, she's doing what she needs to do to address the demons that she has.

The defendant is particularly likely to comply with the terms of a period of probation. I'm gonna ask you to make that finding.

No. 16 is a unique factor in mitigation, based on the report of Doctor Karen Smith. At the time of the offense, the defendant was suffering from a serious mental illness which, though insufficient to establish a defense of insanity, substantially affected his or her ability to understand the nature of his or her acts or to control his or her conduct to the requirements of the law. I would ask you to make that finding.

You will note in Dr. Smith's report the two prior suicide attempts and the diagnosis of major depressive disorder reoccurrence, severe without psychosis. It's a serious mental illness.

I'd like to address the issue of the new law, 5/5-4.1. It returns the ultimate authority for sentencing defendants who are facing mandatory prison time, especially those with no prior record, back to the Court where most citizens believe it belongs.

First, the Court must find that the crime involves the use or possession of drugs. Use or possession.

Judge, the statute does not delineate whether use or possession involves a defendant, a victim or a witness. It does not say that. There's no reason to believe that this might not include the victim in this case.

In this particular case, obviously for a drug-induced homicide, the use alone is a part of the case as it resulted in the death of decedent in this matter. Clearly, there is use involved in this case and you can go beyond that just a general understanding what it involved, who was involved.

To say that this case does not involve the use of heroin, I think we belied, I don't think the record would support a statement such as that. And the statute is ambiguous and that's not your fault and not Mr. Shlifka's fault. The statute should be

interpreted, especially a sentencing statute, should be interpreted in favor of the defendant, and there is an ambiguity in this matter.

But, Judge, the use in a drug-induced homicide with drugs, had they not been used, the crime would not have occurred, the use is -- we could find that that factor exists.

And it says or possession. And possession -- I know what Mr. Shlifka is going to prepare for 720 ILCS 570/102. It's the definition of delivery. It means the actual constructive or attempted transfer or possession of a controlled substance with or without compensation.

So, even in a delivery issue, to say that possession is not involved in that, I think you have to say even in the delivery, there was a possession involved prior to the actual act of delivery. So I think that would also be available to the Court. Any one of those would meet that first criteria.

It's a mandatory prison case. The defendant does not pose a risk to the public, so let's look at the nature of the crime we have and why this crime was created.

This is a drug-induced homicide. If you

think to yourself, all right, all the people in our society with all their little jobs, who is drug-induced homicide directed to? It's drug users. The drug dealer.

And that's who David Shreen, Mark Matthews, maybe one of those guys that look at Your Honor and say I promise you I will never deliver drugs again. I know I was a drug dealer, but I promise you I'll never do that again.

That's the danger to society relative to this crime. We know that's not gonna happen with her. She never was that in this case, she never will be that in this case. She's not a drug dealer and never was.

I'm in complete disagreement with the compensation. There was not compensation. We'll talk about that later. But as far as whether she received anything, she didn't receive anything.

There's just no evidence, there's no evidence that's been presented that she poses a danger to the public. She gave Mark his case. She gave him the case against the two guys that also participated in this delivery. We would not be here today without her cooperating with the police.

Judge, this is also, I would submit the Court would want to consider what we learned about her today. This need, desire, I don't know, this need to always have to be the person that's helping. Always has to be the one that gets there. 99 of a hundred times she's doing nothing but good.

And one time in her life she's thinking she's helping and she's not. She did a terrible thing. But that's something we learned about her, she's always there for anybody else.

I think the best example was Thany, what an amazing witness. I'll be honest, when I first interviewed her, this woman helped her out of an abusive relationship after getting beat up and talked her out of it. It's amazing what the average Joe can do.

And I think to some degree how much help she offered, the consistent always there to help. It plays into this offense. That's why I felt this one, that the interest of justice applies.

This is different than drug-induced homicide, this is not what this law was created for. But what I'm saying is yes, the fact of the matter is it's her nature that brought her today. Not a

criminal nature, not a criminal mind. Always helping, always wanting to help.

The counsellor said the perfect storm. A gullible helper, an abusive drug addict. The combination of the two.

It's easy for us to say why didn't she just walk away. Between the psychological report from Doctor Smith and the testimony of Miss Rubin, she was stuck. It's her nature, circling in this cycle of up and down. The perfect storm, Judge.

How do we know? After being charged, she stayed with him.

She suffers from severe mental illness but she has sought counselling, Judge. She has attempted suicide but she has stayed in counselling and she's consistently in her counselling with Miss Rubin.

The Court can find she has remorse. She knows she did wrong. She can't live with it.

There's no evidence that Krystle Hoffman is a risk to anyone, other than somebody who might need some help.

We seek justice, we seek it because sometimes it might not be so easy to find. Justice certainly involves punishment for a person's actions

consistent with that person's involvement and her mental state or motivation at the time.

There's punishment to be had here. There's no question. The unrebutted facts are that Krystle's being co-dependent and mentally ill, ignored family and friends to leave Kevin and to get out of the situation. Instead she always thought she could save him.

Like any friend or family member of any addict, she wouldn't, she couldn't give up on that. That's her nature. That's the nature of being a friend of a family member. You wouldn't and you couldn't give up and she didn't do it the right way. But that's the one thing we know.

Your Honor, as you also seek justice in this case, I urge you to look to the testimony of Kevin's dad. He knows what it's like to lose a loved one to drugs. He knows Krystle was with Kevin. He knows and told you how Krystle fought hard to save him, how she got him off of drugs and he turned to alcohol.

Your Honor, we're in a courtroom sentencing someone to a sentence of drug-induced homicide. The evidence is she worked to get people off of drugs.

It's twisted beyond belief right now. And this is what she did, she got caught up, she got pushed into it.

How often do you think you would be sentencing someone for a drug-induced homicide, for dealing drugs and killing people, who is actually obsessed with getting someone off of drugs?

Judge, that's the real Krystle Hoffman, the one that I told you about, that's the real Krystle Hoffman. She stuck with him. You know her mindset, if he lost his son and she was involved with him, he told her to leave.

In the interest of justice, considering mercy here, Your Honor, as you sentence a person for drug-induced homicide who never used hard drugs, never sold drugs, never profited in any way from the sale drugs, who cooperated completely when approached by the police and told them who actually sold the drugs, who provided the drugs.

Someone who knew nothing about this life until she fell in love with Kevin, and then instead of getting involved in drugs, she spent all her efforts fighting Kevin's drug use.

Her mental illness may have inhibited her

ability to get out of the relationship. That's important to consider.

Obviously the 30-year-old law of drug-induced homicide was not created with Krystle Hoffman as the target. This was not who this law was created to. It was to the drug dealers. She simply is not that person. She fought back.

Judge, we respectfully ask you to consider finding the mandatory prison offense, finding the use and possession involved in this case, finding that she's not a risk and consider in the interest of justice to provide a sentence below six years.

Thank you.

THE COURT: Thank you, Mr. Tomczak.

Miss Hoffman, you have the right to make a statement directly to the Court telling me anything that you think I should know before I impose sentence. It's called a statement in allocution.

It's voluntary, you don't have to make a statement, but if you would like to do so, you can do that now. You can do that from where you're seated but I'm gonna ask that you speak loudly so that the court reporter can hear you.

THE DEFENDANT: Your Honor, I would like the

Court to know that I made a decision to plead guilty because I did not want prolong this any longer. I know it was wrong.

I have always held two jobs and never needed anyone to pay my way. I have always been the person to take extra shifts.

My worst fault is that I always feel the need to help people when I see someone needs it. People use that trait for the wrong reason and I know that now. Part of the reason I am here today. I am thankful for my friends and family for coming here to tell you about me.

I met Kevin in 2015, I fell completely in love with him. After I fell in love hard with Kevin, I first learned he was a heroin user. My life was trying to get Kevin to stop withdrawals or simply taking heroin.

When I say this, I'm not asking for sympathy because I know I put myself in the situation. I say it only to hope you will understand my situation at the time.

In standing here today, I want the Court to know I take full responsibility for my actions. It was selfish of me to risk Lorna's life because I

didn't want to watch Kevin go through withdrawals

I want them to know I'm very sorry for the shame I have brought on our family. I love you. In the end I hope Lorna's family knows how sorry I am for getting involved in this and for their loss.

Thank you.

THE COURT: All right, thank you.

Let me do this. Let me take some time and I'll come back and I'll sentence and may be close to 4:30 by the time I come back.

(Short recess.)

THE COURT: Court has considered the presentence investigation report, the evidence presented by the State, including the testimony of Stanley Haseltine, the exhibits admitted into evidence, and the victim impact statement given by Marissa Haseltine.

The Court has similarly considered the evidence presented by the defendant, that being the testimony of Anthony Aloisio, the father of Kevin, the testimony of Melissa Schuberth, the woman who was in the abusive relationship that was assisted and getting away from that relationship by Ms. Hoffman, the testimony of Ms. Hoffman's father Terry, the testimony of Suzanne Rubin, credible testimony about

the issues faced by Miss Hoffman unrelated to these criminal proceedings.

The Court has also considered the testimony of Donna Carter, Misty McKinney and Valerie Carter, as well as Miss Hoffman's statement in allocution.

The Court has considered all the statutory and nonstatutory factors in aggravation and mitigation, whether specifically mentioned or not, as well as the history and character of the defendant.

And having due regard for the seriousness of the offense and with the objective of restoring Miss Hoffman to useful citizenship, I would find as follows:

One, as I mentioned earlier, Miss Hoffman is not eligible for impact incarceration.

As to factors in aggravation, I find that Factor 1, the defendant's conduct caused or threatened serious harm, that does apply.

And Factor 7, a sentence is necessary to deter others from committing the same crime, would similarly apply.

I give no weight to Miss Hoffman being charged with the offense of DUI earlier this user. I would note that she accepted responsibility for that

offense shortly after being charged.

As to factors in mitigation, I find that the following factors apply:

2, the defendant did not contemplate her criminal conduct would cause or threaten serious physical harm to another.

7, that the defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.

8, that the defendant's criminal conduct was the result of circumstances unlikely to recur.

9, that the character and attitudes of the defendant indicate she is unlikely to commit another crime.

I will find that Factor 10 applies, the defendant is particularly likely to comply with the terms of a period of probation based on the testimony that was presented in mitigation.

However, I do not believe that Factor 5, as argued by defense, nor Factor 12 applies to the circumstances here.

While I found that Factor 10 in mitigation applies, the Court is faced with the situation

whether to apply provisions of the 730 ILCS 5-4-1, subparagraph(C)1.5.

Based upon the testimony today, I would find that Miss Hoffman does not pose a risk to public safety. The State, the defendant and the victim's family all seek justice. But there is no agreement as to what form that justice should take.

Certainly if the Court had broad discretion in imposing a sentence, it may very well be that a term of probation would be appropriate under the very specific facts of this case.

The Court is aware that no sentence that I impose will return Lorna Haseltine to her family. And the imposition of a sentence in this case is not for purposes of retribution.

Do the events of August 12, 2017 involve the use or possession of drugs? I believe that it did.

I cannot address what did or did not happen to the others named by Miss Hoffman. The police did nothing about them, then shame on them, that's not before me today.

As to the State's argument about the dirth of legislative intent from the General Assembly who

enacted the amendment to the statute, that seems to be a problem with the entire SAFE-T Act. It's not something I can address today.

Nonetheless, I find that the phrase use or possession of drugs in conjunction with a mandatory minimum sentence as set forth in the statute does not apply to the offense of drug-induced homicide, a Class X Felony.

Accordingly, I sentence the defendant Krystle Hoffman to six years in the Department of Corrections, to be followed by an additional 18 months of mandatory supervised release.

I will impose the generic criminal felony assessment of $549.

Miss Hoffman will be required to submit to DNA indexing and pay the fee of $250 for that offense.

She will be given a sentence credit of two days for time previously served in the county jail. And she would be entitled to a pretrial detention credit against any fine imposed in the amount of $60, that being $30 per day.

I will order that she pay restitution to Stanley Hazeltine in the amount of $4,492.64.

I'm going to order that she pay a fine of $560.

I will direct that the restitution be paid from the available bond money before applying any remainder to the other assessments.

State require anything in addition?

MR. SHLIFKA: Judge, the only thing I would point out, there's a partial exoneration of the bond, there's 2,000 less. So there's 2,500 available. But I would ask that that go to restitution first.

MR. TOMCZAK: No objection, Judge.

THE COURT: Thank you for bringing that to my attention. I will order that.

MR. SHLIFKA: We need a date for that, that it needs to be paid by.

(Pause.)

THE COURT: I'll say that the balance should be paid by June 30, 2023.

MR. TOMCZAK: Your Honor, if I may, I want to preserve my issue about the SAFE-T Act, so I'm gonna file a motion to reconsider strictly on that alone, in like 29 days. If it's okay with Mark, we can set that for presentation, I want to preserve this issue.

THE COURT: That's fine.

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

THE PEOPLE OF THE STATE OF ILLINOIS,

v.

Krystle Hoffman

Defendant *(First, middle, last name)*

Case Numbers 18CF395

States Attorney Shifka Deft. Attorney Tomczak

Court Reporter KN Deputy Clerk AF

1. Fines

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

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

Defendant has elected *(Check one)*:

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

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

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

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

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

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

Offense _____ a Class _____ Misdemeanor/Felony $ _____

Total Fine Amount $ 560.00

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

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

Total Criminal Assessment Amount $ 549.00

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

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

Total Conditional Assessment Amount $_____

4. Other Assessments

- ☒ Restitution (See supplemental order) $ 4492.64
- ☐ Probation/Supervision Fee $_____ months x _____ months until __/__/__ __:__ am $_____
  - ☐ Comply with all conditions set out in the corresponding order.
  - ☐ Shall not violate any laws of any jurisdiction, including Federal, State or Local Ordinances.
- ☐ Public Defender assessment $_____
- ☐ Victim Impact Panel $_____
- ☐ Kendall County Jail Weekend/Work Release Fee $_____
- ☐ GPS Fee $_____
- ☒ DNA Indexing Fee $ 250.00
- ☐ Other $_____

5. Credits (to be applied before offsets) 2,500.00

- ☒ Bond Applied to Restitution first ($4000.00)
- ☒ Credit for time served 2 day(s) x $30 day credit ($60.00)

Total Credits ($2560.00)

WAIVER SECTION

Total amount due shall be paid by 6/30/23. **Total Amount Due** $ 3291.64

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

☒ **INCARCERATION**

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

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

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

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

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

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

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

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

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

☐ **COUNSELING**

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

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

☐ Shall complete an Illinois Certified Domestic Violence Counseling Program.

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

OTHER CONDITIONS

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

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

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

☐ Shall not enter upon the property of _____.

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

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

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

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

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

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

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

ALL TERMS AND CONDITIONS TO BE COMPLETED BY SAID DATE.

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

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

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

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

☒ Other: Appeal rights given

12/19/22
Date

Judge

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

_____Signature of Defendant

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

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

NOTICE OF APPEAL

An appeal is taken from the judgment described herein:

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

Matthew G. Prochaska

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

Index to the Record on Appeal

Common Law Record (C__)

Impounded Common Law Record (CI __)

Report of Proceedings (R__)

Exhibits