No. 122549

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondant-Appellee, -vs- JOSEPH GRIFFIN Petitioner-Appellant	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-14-3800. There on appeal from the Circuit Court of Cook County, Illinois, No. 12 CR 13428; 13 CR 12564 (01). Honorable Thaddeus L. Wilson, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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REPLY BRIEF FOR PETITIONER-APPELLANT

I. The court below had appellate jurisdiction, so it should have resolved Joseph Griffin's monetary-credit claims.

The State fails to rebut that the appellate court had jurisdiction. In his opening brief to this Court, Griffin argued that the appellate court had jurisdiction because Griffin requested more sentencing credit, his request was denied, and there was nothing more to do. (De. br. 9-10). The State, arguing otherwise, misreads the term *judgment*, relies on outdated and off-point case law, and generally misses the point: Griffin requested credit, it was denied, and he had a right to redress in the appellate court. This Court should reinstate Griffin's appeal.

A. Applicable law (and response to State's forfeiture argument).

Griffin's brief addresses the relevant general law. (De. br. 8-9).

The State also argues that Griffin forfeited his claims. But in the appellate court, it agreed that these claims should be addressed, either

directly or through revestment. (State supplemental brief at 7-8, 9, 12). "[T]he State cannot assert a new theory inconsistent with the position it adopted in the appellate court." *People v. Henderson*, 2013 IL 114040, ¶¶ 23; *see also People v. Pendleton*, 223 Ill. 2d 458, 476 (2006) (finding that defendant waived unreasonable-assistance claim by not raising it in appellate court). Should this Court disregard the State's affirmative waiver, it should decline to find Griffin's forfeiture; as argued below, Griffin's fee argument can be considered through revestment and original jurisdiction (see pages 10-13 below). And, as the State concedes, his sentence-credit claims fall under *People v. Caballero*, 228 Ill. 2d 79, 87-88 (2008). (St. br. 16-17). Although the State urges this Court to overrule *Caballero*, this Court should decline, as argued on pages 14-16 below.

B. The appellate court denied Griffin his constitutional right to appeal.

The term *judgment* is far more flexible, and more context-dependent, than the State claims. The State argues that, in criminal cases, the sentence is the only judgment because it resolves the case. (St. br. 8, 9). This is often true, but not always. A judgment can include a "decree, determination, decision, order, or portion thereof." 134 Ill. 2d R. 2(b)(2); *see also People v. Savory*, 197 Ill. 2d 203, 201 (2001), *citing* Ill. Const. 1970, art. VI, § 6 (applying section 2(b)(2) to constitutional right to appeal). Thus, motion orders can be final and appealable. *See Savory*, 197 Ill. 2d 203, 210-11 (2001) (finding that DNA-testing-motion denial was final judgment; it was in a separate proceeding and resolved defendant's claim); *People v. Pawlaczyk*, 189 Ill. 2d 177, 186-87 (2000) (finding that motion order requiring witness to

testify before grand jury was final and appealable); *People v. A.L.*, 169 Ill. App. 3d 581, 584 (1st Dist. 1998) (finding that speedy-trial-motion denial was final and appealable).

As the State notes, in three early postwar cases, this Court declined to review mittimus errors. (St. br. 8, 10). *See People v. Anderson,* 407 Ill. 503, 505 (1950); *People v. Cox*, 401 Ill. 432, 434 (1948); *People v. Wells*, 393 Ill. 626, 628 (1946). But this case does not present mittimus issues in the sense presented in *Cox* or *Anderson* (*Wells* did not identify its issue). In *Cox*, the defendant asked that the mittimus conform to the judgment; in *Anderson*, that the judgment conform to the mittimus. *Cox*, 401 Ill. at 434; *Anderson*, 407 Ill. at 505. Griffin's motion did not argue that the mittimus and the judge's oral directive conflicted; he simply argued that he was owed more credit. (C. 142-44). As the State concedes, the circuit court could address this ministerial matter at any time. (St. br. 8-9). Because the circuit court had jurisdiction to address it, so did the appellate court. *See Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 119 (1978) (finding appellate jurisdiction where trial court had resolved all pending issues).

Further, neither *Anderson,* nor *Cox*, nor *Wells* addressed the issue posed here: whether an order is final and appealable. Rather, *Cox* and *Wells* centered on an historical quirk the legislature eliminated over 30 years ago. *Anderson*, as discussed below, also addressed unrelated issues.

In *Cox*, the defendant sought to correct alleged mittimus defects. This Court declined to address them, but not because it found that they were nonfinal. Rather, it declined because the mittimus was "not part of the

common-law record." 401 Ill. at 434. *See also People v. Wells*, 396 Ill. 626, 628 (1946) (using identical language). The legislature, however, has since abolished this historical quirk. *People v. Morrison*, 2016 IL App (4th) 140712, ¶¶ 33-35 (Harris, J., concurring). As the *Morrison* concurrence explained, in an earlier case, an appellate panel had criticized this quirk, noted its practical difficulties, and sought a legislative solution. *Id.*, ¶ 34 (Harris, J., concurring), *citing People v. Miles*, 117 Ill. App. 3d 257, 259 (4th Dist.1983). Two years later, the legislature obliged, eliminating the need for a separate mittimus. *Id.*, ¶ 35 (Harris, J., concurring) *citing* Ill. Rev. Stat. 1985, ch. 110, ¶ 2-1801 (eff. September 20, 1985) (now 735 ILCS 5/2-1801(a) (2016)). Now, contrary to the State's claim that the mittimus is not the judgment, "the written sentencing judgment serves as the mittimus." *Id.*, ¶ 35 (Harris, J., concurring). In *Cox* and *Wells*, in short, the appellants were arguing outside the record. As a matter of law (§ 2-1801), and of fact (C. 147), Griffin is not. Neither *Cox* nor *Wells* suggest that a sentence-credit denial is anything other than final or appealable.

Neither does *Anderson*. As the State notes, *Anderson* declined to remand for proper mittimi, reasoning that the circuit court's oral pronouncement controlled and that a corrected mittimus could be issued at any time. 407 Ill. at 505. Under Supreme Court Rule 615(b), however, reviewing courts can now "modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken." 134 Ill. 2d R. 615(b). A credit order is both subsequent to and dependent on the sentence; without a sentence to credit, there can be no credit. Under Rule

615(b), reviewing courts have routinely corrected mittimi, including by increasing the sentence credit issued at sentencing. *See, e.g. People v. Perez,* 2018 IL App (1st) 153629.

Further, although *Anderson* declined to act because a mittimus can be corrected "at any time." 407 Ill. at 505, more recently reviewing courts have routinely addressed errors correctable at any time. *See People v. Ligon*, 2016 IL 118023 ¶ 9 (allowing challenges to statute's constitutionality at any time); *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 67 (same, as to subject-matter jurisdiction); *People v. Caballero,* 228 Ill. 2d 79, 88 (2008) (same, as to monetary sentence credit); *People v. Townsell*, 209 Ill. 2d 543, 550 (2004) (same, as to former void-judgment rule); *People v. DiLorenzo,* 169 Ill. 2d 318, 321 (1996) (same, as to failure to charge an offense). And like *Cox* and *Wells*, *Anderson* never asked if a mittimus is a final order.

In sum, neither *Cox*, nor *Anderson*, nor *Wells* address the nature of a final and appealable order. Neither do they support the State's proposed distinction: between the judgment (which the State argues is appealable) and the mittimus (which it argues is not). (St. br. 4, 7-8). The State made a similar argument in *People v. Vara*, 2018 IL 121823. Specifically, it contrasted the judgment with a clerk's payment-status information sheet. *Vara*, 2018 IL 121823, ¶ 12, 23. Here, it asserts that Griffin's mittimus was nothing more than a copy of his judgment. (St. br. 8). But unlike with *Vara*'s payment-status sheet, the mittimus was signed by the judge. (C. 147). It is, therefore, a judicial act. *Vara*, ¶ 13. And unlike the *Vara* sheet, there is no distinction between the mittimus and the sentencing order. *See Morrison*,

2016 IL App (4th) 140712, ¶¶ 33-35 (Harris, J., concurring) (explaining that this distinction has been abolished). In short, nothing in *Cox*, nor *Anderson*, nor *Wells*, nor for that matter *Vara*, shows that a mittimus-correction motion denial is anything other than final and appealable.

The State acknowledges Griffin's cases addressing sentence-credit decisions and other *nunc pro tunc* orders. (St. br. 9-10, *citing People v. White*, 357 Ill. App. 3d 1070, 1073 (3d Dist. 2005); *In re Young's Estate*, 346 Ill. App. 257, 266 (1st Dist. 1952); *People v. Carlberg*, 181 Ill. App. 3d 819, 820-21 (1st Dist. 1989); and *Kooyenga v. Hertz Equip. Rentals, Inc.*, 79 Ill. App. 3d 1051, 1061 (1st Dist. 1979)). It calls these cases nonpersuasive, bare, and off-point. (St. br. 9-10). But this criticism applies far more to the State's cases.

For example, it is true that, generally, circuit courts lose jurisdiction 30 days after judgment. (St. br. 8, *citing People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011)). It is also true that courts retain residual jurisdiction to address "incidental" matters. (St. br. 8, *citing In re D.D.*, 212 Ill. 2d 410, 418 (2004)). And it is true that such matters include mittimus corrections. (St. br. 9, *citing People v. Latona*, 184 Ill. 2d 260, 278 (1998)). Nothing in those cases, however, even hints that sentence-credit denials might be anything other than appealable.

Neither does *People v. Salgado*, 353 Ill. App. 3d 101, 106-07 (1st Dist. 2004). (St. br. 9). The State does not suggest that *Salgado* involved a mittimus-correction motion. *Id.* The State ignores Griffin's arguments distinguishing *Salgado*. (De. br. 10-11). And unlike here, the *Salgado* order, denying its defendant free transcripts, was interlocutory. 353 Ill. App. 3d at

106-07. Interlocutory orders are "interim or temporary." Black's Law Dictionary, INTERLOCUTORY (10th ed. 2014). They are by definition nonfinal, as they do not resolve " all of the controversy between the parties." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 368 Ill. App. 3d 734, 742 (2d Dist. 2006). This case is unlike *Salgado*.

The State also calls the mittimus irrelevant, as Griffin is receiving the credit he earned. (St. br. 10). Because Griffin can only get the credit "fixed" by his "sentencing judgments," it reasons, the denial of his request for more credit did not affect his rights. (St. br. 10). Its argument fails on several levels.

First, as time-served credit is a ministerial matter, requesting more credit is not an attack on the sentence. *See People v. Buffkin*, 2016 IL App (2d) 140792, ¶ 7 n.2 (distinguishing requests to reduce sentence from requests to increase credit; the latter may be raised at any time). Because the sentence is distinct from credit against the sentence, a request for more credit does not disturb the finality of a trial court's judgment. *See People v. Wren*, 223 Ill. App. 3d 722, 731 (5th Dist. 1992), *cited with approval in People v. Caballero*, 228 Ill. 2d 79, 83-84 (2008) (granting defaulted time-served credit request in the interests of orderly administration of justice). Here, the judge issued a sentence, and he ordered credit against that sentence. (R.B. 10; C. 147). In his motion, Griffin alleged that the latter, and only the latter, was inaccurate. As the State itself concedes, Griffin "could move the circuit court to correct [the mittimus] at any time." (St. br. 9). His credit was not fixed.

Second, defendants have a right to earned credit, not merely to a sort

of declaratory judgment about credit. The State argues that Griffin had a right to 1,000 days of credit, even if the mittimus awarded zero. (St. br. 10). But if the mittimus had said zero, then Griffin would have served too much time. An incorrect credit order can indeed "affect" a defendant's right to credit. (St. br. 10).

And third, the State puts the cart before the horse. Jurisdiction rests not on whether Griffin's appeal had merit, but whether the motion denial "ascertain[ed] and fixe[d]" the issue "presented by the pleadings." *People v. Shinaul*, 2017 IL 120162, ¶ 10. The State is bootstrapping. In hindsight, as the State notes, we know that Griffin's original pleading lacked merit. But the merits cannot control jurisdiction. *See People v. Chairez*, 2018 IL 121417, ¶ 14, *citing Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 296 (2009) (Thomas, J., specially concurring) ("A court cannot rule on the constitutionality of a statute that is not before it, nor can the court rule on the merits of a case over which it lacks jurisdiction.").

Griffin agrees that his motion denial was not final "simply because it [was] the last one entered." (St. br. 11, *citing People v. Sears*, 85 Ill. 2d 253, 258 (1981)). But unlike in *Sears*, Griffin had no other way to appeal. In *Sears*, the trial judge denied a post-judgment motion. 85 Ill. 2d at 256. This Court found this denial nonfinal because it needed not be final to vindicate the movant's right to appeal. "[A]s a practical matter," *Sears* noted, "the denial of a timely first post-judgment motion is always reviewable," because, in appealing the underlying judgment, "the appellant may bring up all related orders * * * including the denial of a post-judgment motion." 85 Ill. 2d at 258.

In contrast, nothing subsumed Griffin's sentence-credit motion. Unlike in *Sears*, deeming Griffin's sentence-credit motion denial nonfinal would stop him from appealing his sentence-credit claim. *See In re Marriage of Breslow*, 306 Ill. App. 3d 41, 51 (1st Dist. 1999) (calling it "manifestly unfair to allow a party no avenue in which to seek appellate review"); *Kjellberg v. Muno*, 340 Ill. App. 133, 137 (1st Dist. 1950) (finding appeal-dismissal order final and appealable, as "otherwise there could be no review"). In short, unlike in *Sears*, the judge, in denying Griffin's motion, "dispose[d] of the complete controversy." (St. br. 12, *citing Shinaul*, 2017 IL 120162, ¶ 10)). This denial was final and appealable.

C. Nothing in Supreme Court Rule 604(d) affects this appeal.

To the extent the State is raising a Rule 604(d) issue (St. br. 16), Griffin has rebutted it. (De. br. 13-15).

II. The court below had revestment jurisdiction, so it should have resolved Joseph Griffin's improper-fee claims, as well as his uncontested monetary-credit claims.

The State fails to rebut that this Court should invoke revestment jurisdiction. (De. br. 16-22). Griffin argued that revestment occurred because the record contains all three elements: (1) active participation by the parties; (2) without objection; (3) in proceedings inconsistent with the judgment's merits. (De. br. 17-18). The State's responses contradict its theory in the appellate court. Further, they lack merit, failing to address the reason revestment jurisdiction exists – to create a necessary safety valve. (De. br. 22). This Court should therefore direct the appellate court to address all of Griffin's claims.

Initially, Griffin notes that the State agreed to revestment in the appellate court. Having agreed, it cannot reverse its position now; a party cannot assert a new theory inconsistent with the position it adopted in the appellate court. *See People v. Henderson*, 2013 IL 114040, ¶ 23 (barring State from arguing insufficient record for first time in this Court).

As to the merits, first, the State argues that this Court has never applied revestment on appeal. (St. br. 13). But neither has it done the opposite. It does not follow that the doctrine does not apply. *See People v. Bailey*, 2014 IL 115459, ¶ 13, *citing People v. Flowers*, 208 Ill.2d 291 (2003) (finding that *Flowers* did not support overruling revestment rule, as *Flowers* did not directly address question). This is simply a case of first impression.

Second, the State invokes the "bedrock principle" that agreement or waiver cannot create jurisdiction. (St. br. 13). The same principle, however,

governs trial-court jurisdiction. *See Flowers*, 208 Ill. 2d at 303 (noting that subject-matter jurisdictional defects cannot be waived). Still, this Court has upheld revestment. *Bailey*, 2014 IL 115459, ¶¶ 13-16. *Bailey* acknowledged that revestment, by its nature, "conflict[s] with our otherwise strict jurisdictional standards." *Id.* Yet it still reaffirmed revestment, as "an exception is, by its very nature, always in conflict with the underlying rule." *Id.,* ¶ 10. So too here.

Third, the State invokes language in *People v. Kaeding*, 98 Ill. 2d 237, 240 (1983) ("a court which has general jurisdiction"). (St. br. 13). *Kaeding*, however, addressed only circuit court revestment jurisdiction. *Id.* at 240-41. It never considered appellate jurisdiction. *Id.* Therefore, its circuit-court-jurisdiction discussion does not govern appellate-court jurisdiction. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 189 (2005), *quoting Nix v. Smith*, 32 Ill.2d 465, 470, 207 N.E.2d 460 (1965) (explaining that opinions "respon[d] to the issues before the court, and these opinions, like others, must be read in the light of the issues that were before the court for determination").

Fourth, the State argues that revestment would "produce no benefit." (St. br. 130. The parties, it reasons, can always "revest jurisdiction in the circuit court." But many *pro se* inmates have not the slightest idea of how to do that. To say that appellate revestment produces no benefit is to say that appointment of counsel produces no benefit. It is to say that judicial economy produces no benefit. And it is to say that when uneducated defendants fail to act, on their own, to correct their inaccurate credit, it produces no detriment.

Griffin addresses problems with *pro se* litigation and efficiency on pages 16-17 below.

Finally, the State attempts to distinguish *People v. Buffkin*, 2016 IL App (2d) 140792. It argues that, unlike in *Buffkin*, Griffin did not take a direct appeal. (St. br. 14). But neither did the *Buffkin* defendant. *Id.*, ¶ 2 (discussing case history).

What the State never even attempts to do is address the reasons for revestment jurisdiction. As Griffin noted, revestment exists to create a safety net, allowing courts to remedy injustices both sides want remedied. (De. br. 22). At no point in this litigation has the State disputed that Griffin was overcharged fines and fees. This is why revestment exists. This Court should apply it here.

III. Alternatively, the appellate court should have addressed Griffin's improper fees under its original jurisdiction.

As the State notes, original jurisdiction "exists only as a complement to the case already on review." (St. br. 15). As it also notes, "the appellate court lacks original jurisdiction when it lacks appellate jurisdiction." (St. br. 15). Griffin, however, argued that *if* this Court finds appellate jurisdiction to address his monetary-credit claims, it should *then*, under original jurisdiction, address his fee claims too. (De. br. 24). The State's argument is nonresponsive.

IV. The appellate court's opinion undermines its stated goal (and response to State's *Caballero* argument).

The State urges this Court to overrule *Caballero*, calling it an anomaly. (St. br. 17-18). With the void-sentence doctrine gone, it notes, only *per diem* credit claims can be raised at any time. (St. br. 17-18). But *Caballero* never applied the void-sentence doctrine. 228 Ill. 2d at 87-88. And the State fails to explain why this "anomaly" is undesirable. *Caballero* is an anomaly because it construes an anomalous statute; no other criminal-law statute allows relief "upon application of the defendant." *See* 725 ILCS 5/110-14. Anomaly status is no reason to overrule *Caballero*.

In fact, *Caballero* is now stronger than ever. *Caballero* upheld lower-court decisions forgiving procedural default. 228 Ill. 2d at 89. It noted that since those appellate decisions, the legislature had repeatedly amended the statute, leaving this forgiveness intact. *Id.* It reasoned that the legislature had thereby declined to overrule these decisions. *Id.* at 89. Since *Caballero*, the legislature has again amended the statute. *See* P.A. 100-1 (eff. June 9, 2017) (increasing daily credit to $30 for misdemeanors and many felonies). This Court and the appellate court have now allowed this forgiveness for 25 years. *See Caballero*, 228 Ill. 2d at 90, *citing, e.g., People v. Bennett*, 246 Ill. App. 3d 550, 551-52 (3d Dist. 1993). *Caballero*, therefore, should remain "a part of the statute until the legislature amends it contrary to that interpretation." *Id.*

The State also claims that overruling *Caballero* will further judicial economy. (De. br. 25; St. br. 18-19). It cannot dispute, however, that restricting fines-and-fees appeals will increase *pro se* trial-court litigation,

prompt more garbled pleadings, and further burden trial courts. (De. br. 25). In fact, the State seems to call that a good thing. *Pro se* litigation, the State suggests, will create what is now lacking: "consequences for overlooking the section 110-14 credit issue." (St. br. 18). But *pro se* litigation is a bad thing. Technical issues such as fines and fees are better handled by lawyers, and garbled pleadings will lead to garbled decisions and more appeals. *See People v. Edwards*, 197 Ill. 2d 239, 245 (2001) (noting that *pro se* petitioners often do not know their claims' bases and cannot distinguish crucial facts from tangential facts). Reaffirming courts' power to correct ministerial errors, like credit mistakes, when found by attorneys at any stage, will promote judicial economy. This Court should leave things as they are.

And repealing *Caballero* would not "shift" credit issues "away from the sentencing hearing." (St. br. 18). In every case, judges must assess sentence credit. 725 ILCS 5/10-114. In every case, they have the opportunity to do it right. Nothing in *Caballero* prevents them from doing it right. The real shift would be to saddle more litigation costs on defendants who have been denied proper credit, as many cannot draft even simple *pro se* pleadings. *See Halbert v. Michigan*, 545 U.S. 620, 621 (2005) (seven of ten inmates cannot write a brief letter correcting a credit card mistake or use a bus schedule; 16 percent are mentally ill).

Further, *Caballero* typically does not mandate a "time-consuming briefing." (St. br. 18). The State invokes a Westlaw search, the content of which it does not disclose, showing an average of about 73 *per diem* claims per year. (St. br. 18). But without *Caballero*, in an average year, the

appellate court would still have had to resolve each and every one of those 73 appeals. And many fines-and-fees claims involve boilerplate arguments, State concessions, and routine decisions. *See, e.g.*, *People v. Gomez*, 2018 IL App (1st) 150605, ¶ 45 (granting agreed 114-10 issue); *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 135 (same); *People v. Scott*, 2017 IL App (4th) 150529, ¶ 40 (same); *People v. Skillom*, 2017 IL App (2d) 150681, ¶¶ 31-32 (same). Few require a court to "receive evidence" or are "factually contentious." (St. br. 18-19).

The State also sees "systemic inefficiency" because "appellate advocates must search for credit claims in every collateral appeal." (St. br. 18). "Efficiency," however, means the "most effective and least wasteful means of doing a task * * *." *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996). An Assistant Appellate Defender's task is to defend defendants' rights. Improper credit deny defendants their rights. *See People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 10 (ordering $975 credit against $1,000 DUI fine); *People v. Vasquez*, 2013 IL App (2d) 120344 (ordering $1,595 credit against $3,000 fine); *People v. Jones*, 223 Ill. 2d 569, 573, 606 (2006) (ordering $604 credit against $1,224 fine). Challenging improper fines and fees is not wasteful. It is counsel's job.

Finally, the State urges this Court to dismiss Griffin's appeal in his unlawful use of weapons (UUW) case. It argues that, as to the UUW case, the notice of appeal was late, because the denial of Griffin's UUW motion was earlier than his motion addressing his other case. (St. br. 7). It acknowledges that Griffin received the single denial order only after the UUW appeal

deadline. (St. br. 7). It argues, however, that Griffin had to have requested a late notice of appeal. Not so. In *People v. Brown*, the defendant filed a notice of appeal 16 days late. 54 Ill. 2d 25, 26 (1973). The appellate court dismissed the petition "because no petition for leave to file a late notice of appeal was ever filed." *Brown*, 54 Ill. 2d at 26. This Court reversed. Finding that the appellate court had emphasized formality over substance, it reinstated the defendant's appeal. *Id.* at 26-27. This Court should too.

The State, arguing otherwise, cites *People v. Salem*, 2016 IL 118693. (St. br. 7). But this case is unlike *Salem*. In *Salem*, the defendant filed a late post-trial motion. *Salem*, 2016 IL 118693, ¶ 6. This made his notice of appeal untimely. *Id.,* ¶¶ 15-16. Unlike here, however, the *Salem* trial judge provided timely notice. *Id.,* ¶ 6. *Salem* distinguished *Brown* in part because the *Brown* trial court had failed to provide timely notice. *Id.,* ¶ 17. As *Salem* noted, this Court also drew a similar distinction in a previous case. *See id*., *citing People v. Frey,* 67 Ill. 2d 77, 84 (1977); *see also Frey*, 67 Ill. 2d at 84 (distinguishing *Brown* because defendant Michael Frey had received proper notice). Here, like in *Brown,* but unlike in *Salem* and in *Frey*, Griffin received untimely notice. More generally, Courts have also construed late notices of appeal as timely when faced with judge or clerk error. *See People v. Robinson*, 229 Ill. App. 3d 627, 628 (3d Dist. 1992) (judge misstated appeal deadline); *People v. Parrott*, 2017 IL App (3d) 150545, ¶¶ 18-20 (defendant asked to appeal on day 28, but clerk prepared notice of appeal on day 31). This Court should reinstate Griffin's appeal in full.

Alternatively, as in *Salem*, this Court should grant supervisory relief.

In *Salem*, this Court granted this relief due to trial-court confusion over the new-trial deadline motion. 2016 IL 118693, ¶ 22. Here, the notice Griffin received was potentially confusing, as it was single a letter addressing different orders with different deadlines. (C. 147). It was apparently confusing to Griffin, who filed a single notice of appeal addressing both cases. (C. 148). As in *Salem*, the late notice was not Griffin's fault, and granting relief would serve the interests of justice. *Id.*, ¶ 23. This Court should reinstate Griffin's appeal in full, including in his UUW case.

CONCLUSION

For the foregoing reasons, Joseph Griffin, petitioner-appellant, respectfully requests that this Court direct the appellate court to consider Griffin's appeal on the merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Michael H. Orenstein, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 19 pages.

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NOTICE AND PROOF OF SERVICE

Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 12, 2018, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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