No. 127169

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, -vs- ANGELA J. WELLS, Petitioner-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-18-0344. There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 01 CF 344. Honorable Paul Gilfillan, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLEE

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

JONATHAN KRIEGER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLEE

ORAL ARGUMENT REQUESTED

E-FILED
7/6/2022 2:48 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

Page

Issues Presented for Review **1**

Statute Involved **2**

Statement of Facts **4**

Argument **12**

Given the substantial merits of Angela Wells's petition, the structure and purpose of section 2-1401(b-5), and the equitable principles at issue, the circuit court's due process violation in dismissing Angela's petition was not harmless. **12**

735 ILCS 5/2-1401(b-5) (West 2016) 12

People v. Stoecker, 2020 IL 124807 13

People v. Jolly, 2014 IL 117142 13

A. The circuit court violated Angela's right to due process when it prematurely dismissed her petition. **13**

Warren Cnty. Soil & Water Conservation Dist. v. Walters, 2015 IL 117783 13

People v. Stoecker, 2020 IL 124807 15

People v. Rucker, 2018 IL App (2d) 150855 15

735 ILCS 5/2-1401(a) (West 2016) 13, 14

735 ILCS 5/2-1401(c) (West 2016) 14

735 ILCS 5/2-1401(b-5) (West 2016) 14

U.S. Const. amend. XIV, § 1 15

Ill. Const. 1970, art. 1, § 2 15

B. The due process violation below was not harmless. . . . 15

People v. Stoecker, 2020 IL 124807 15

People v. Ross, 367 Ill. App. 3d 890 (1st Dist. 2006). 15

English v. Cowell, 10 F.3d 434 (7th Cir. 1993) 16

1. Angela has undisputedly made sufficient averments on the five statutory requirements of section 2-1401(b-5). . 16

735 ILCS 5/2-1401(b-5) (West 2016) 16, 17

720 ILCS 5/2-8 (West 2016) 16

750 ILCS 60/103(1) (West 2016) 16

People v. Sanders, 2016 IL 118123 17

In re Marriage of Goesel, 2017 IL 122046 17

Buenz v. Frontline Transp. Co., 227 Ill. 2d 302 (2008). 17

Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) 17

2. Angela's petition is timely since subsection (b-5) has no time limit. 17

a. Subsection (b-5) creates a stand-alone claim, without any time limit. 18

735 ILCS 5/2-1401(b-5) (West 2016) 18, 22

735 ILCS 5/2-1401(b-5)(4) (West 2016) 19, 20, 23

735 ILCS 5/2-1401(b-5)(3) (West 2016) 20

735 ILCS 5/2-1401(b-5)(5) (West 2016) 20

735 ILCS 5/122-1(c) (West 2016) 20

735 ILCS 5/2-1401(c) (West 2020) 20

735 ILCS 5/2-1401(c-5) (West 2020) 20

735 ILCS 5/2-1401(b-10) (eff. Aug. 16, 2019) 21

730 ILCS 5/5-5-3.1(a)(15) (West 2016) 22

735 ILCS 5/2-1401(f) (West 2016) 22

Ill. Rev. Stat. 1955, ch. 110, ¶ 72(3) 23

735 ILCS 5/2-1401(b-5)(2). 23

In re Marriage of Dahm-Schell & Schell, 2021 IL 126802 18

United States v. Glispie, 2020 IL 125483 18

Valfer v. Evanston Northwest Healthcare, 2016 IL 119220 . . . 18

Illinois State Treasurer v. Illinois Workers' Comp. Comm'n, 2015 IL 117418 19

People v. Robinson, 2020 IL 123849 . . . . . 20, 21

People v. Ortiz, 235 Ill. 2d 319 (2009) 19, 20

People v. Abusharif, 2021 IL App (2d) 191031 . . . . . 21, 23

People v. Stoecker, 2020 IL 124807 22

PNC Bank, Nat'l Ass'n v. Kusmierz, 2022 IL 126606 22

People v. Maggette, 195 Ill. 2d 336 (2001) 22

N.L.R.B. v. SW General, Inc., 137 S. Ct. 929 (2017) 23

People v. R.L., 158 Ill. 2d 432 (1994) 23

99th Ill. Gen. Assem., House Proceedings, May 25, 2015 23

b. Finding no time limit for subsection (b-5) claims is consistent with the statute's purpose. 24

People v. Gray, 2017 IL 120958 25

Calloway v. Kinkelaar, 168 Ill. 2d 312 (1995) 25

People v. Trzeciak, 2013 IL 114491 25

Rushton v. Dep't of Corr., 2019 IL 124552 26

Atkins v. Deere & Co., 177 Ill. 2d 222 (1997) 26

People v. Johnson, 2017 IL 120310 26

People v. Smith, 307 Ill. App. 3d 414 (1st Dist. 1999) 26

Sharon G. Smith *et al.*, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief Updated Release* (2018) 24

Illinois State Police, *Crime in Illinois 2020* 24

Karuna Chibber *et al.*, *Domestic Violence Literature Review: Analysis Report* (July 2016) 24

U.S. Dep't of Justice & U.S. Dep't of Health & Human Services, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act* 3 (May 1996) 25

3. Even if the two-year limit generally applies, Angela was under legal disability until section 2-1401(b-5) was passed. 26

735 ILCS 5/2-1401(c) (West 2016) 27

In re Marriage of Vanek, 247 Ill. App. 3d 377 (1st Dist. 1993) 27

People v. Shines, 2015 IL App (1st) 121070 . . . . . 27, 28

People v. Hughes, 2015 IL 117242 28

In re Detention of Swope, 213 Ill. 2d 210 (2004) 28

Wilkins v. Dellenback, 149 Ill. App. 3d 549 (2d Dist. 1986) . . . 28

People v. Liner, 2015 IL App (3d) 140167 28

People v. Jennings, 279 Ill. App. 3d 406 (4th Dist. 1996) 29

Gruszeczka v. Illinois Workers' Comp. Comm'n, 2013 IL 114212 29

People v. Abusharif, 2021 IL App (2d) 191031 29

People v. Donoho, 2021 IL App (5th) 190086-U 29

4. Even if the two-year limit generally applies, that limit should be waived on equitable grounds, given Angela's strong claim for sentencing relief.. 29

Ellman v. De Ruiter, 412 Ill. 285 (1952) 30

Warren Cnty. Soil & Water Conservation Dist. v. Walters, 2015 IL 117783 . . . . . 30, 33, 34

Hoyne Sav. & Loan Ass'n v. Hare, 60 Ill. 2d 84 (1974) 30

People v. Lawton, 212 Ill. 2d 285 (2004) 30, 33, 36

Mrugala v. Fairfield Ford, Inc., 325 Ill. App. 3d 484 (1st Dist. 2001) 33

Saeed v. Bank of Ravenswood, 101 Ill. App. 3d 20 (1st Dist. 1981) 34

People v. Cathey, 2019 IL App (1st) 153118 34

People v. Madej, 193 Ill. 2d 395 (2000) 34

Crowell v. Bilandic, 81 Ill. 2d 422 (1980) 34

Withers v. People, 23 Ill. 2d 131 (1961) 34

Morgan v. People, 16 Ill. 2d 374 (1959) 34

People v. Colletti, 48 Ill. 2d 135 (1971) 35

People v. Thompson, 2015 IL 118151 34

People v. Gosier, 205 Ill. 2d 198 (2001) 35

Fisher v. Rhodes, 22 Ill. App. 3d 978 (2d Dist. 1974) 35

People v. Richardson, 2015 IL 118255 35

Petersen v. Wallach, 198 Ill. 2d 439 (2002) 35

Cutinello v. Whitley, 161 Ill. 2d 409 (1994) 35

U.S. Fid. & Guar. Co. v. Dickason, 277 Ill. 77 (1917) 35

McDunn v. Williams, 156 Ill. 2d 288 (1993) 36

In re Estate of Funk, 221 Ill. 2d 30 (2006). 36

People v. Coty, 2020 IL 123972 36

Eighner v. Tiernan, 2021 IL 126101 36

In re J.T., 221 Ill. 2d 338 (2006) 36

Ill. Const. 1970, art. VI, §16 36

735 ILCS 5/2-1401(a) (West 2016) 30

730 ILCS 5/5-8-1(a)(1)(a) (West 2000) 32

730 ILCS 5/5-5-3.1(a)(4) (West 2000) 32

730 5/5-5-3.1(a)(5), (8) (West 2000) 33

5. Contrary to the State's assertion, Angela's arguments on timeliness are properly before this Court.. 36

Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) 36

Ill. S. Ct. R. 23(e) (eff. Jan. 1, 2021) 37

Ill. S. Ct. R. 318(a) (eff. Oct. 1, 2020) 38

People v. Pinkonsly, 207 Ill. 2d 555 (2003) 37

People v. Rish, 2021 IL App (3d) 190446. 37

People v. Rucker, 2018 IL App (2d) 150855. 37

Olivia Stovicek, *If Illinois Defendants Never Told Jury of Their Own Abuse, Now a Second Chance*, Injustice Watch (Feb. 27, 2019) 37

6. The State has forfeited its argument that guilty pleas are excluded from subsection (b-5) and the State's position, in any event, is without merit. 38

People v. Sophanavong, 2020 IL 124337 . . . . . 38, 39, 40

In re Marriage of Goesel, 2017 IL 122046 . . . . . 39, 40

Wisam 1, Inc. v. Illinois Liquor Control Comm'n, 2014 IL 116173 39

People v. McKown, 236 Ill. 2d 278 (2010) 39

People v. Boykins, 2017 IL 121365 40

People v. O'Connell, 227 Ill. 2d 31 (2007) 40

People v. Reed, 2020 IL 124940 . . . . . 41, 43

People v. Jones, 2021 IL 126432 42

United States v. Bradley, 400 F.3d 459 (6th Cir. 2005) 42

People v. Hatter, 2021 IL 125981. 43

735 ILCS 5/2-1401(b-5) (West 2016) 42

725 ILCS 5/116-3(a)(1), (2) (West 2010) 40

725 ILCS 5/116-3(b)(1) (West 2010). 40

735 ILCS 5/2-1401(b-5)(4) (West 2016) 41

735 ILCS 5/2-1401(b-5)(3) (West 2016) 42

730 ILCS 5/5-5-3.1(a)(15) (West 2016) 43

Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001) 40

7. The substantial merits of Angela's arguments starkly distinguish her case from *People v. Stoecker*, where this Court found a premature ruling to be harmless. 43

People v. Stoecker, 2020 IL 124807 . . . . . 43, 44

Warren Cnty. Soil & Water Conservation Dist. v. Walters, 2015 IL 117783 44

English v. Cowell, 10 F.3d 434 (7th Cir. 1993) 45

D. Conclusion. 45

People v. Ward, 2021 IL App (2d) 190243 45

Conclusion 47

Appendix to the Brief. A-1

ISSUE PRESENTED FOR REVIEW

Was the circuit court's violation of Angela Wells's due process rights reversible error, where the court dismissed Angela's section 2-1401 petition without giving her an opportunity to respond to the State's motion to dismiss and the due process violation was not harmless?

STATUTE INVOLVED

735 ILCS 5/2-1401 (West 2016)[1]

§ 2-1401. Relief from judgments.

(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided in the Illinois Parentage Act of 2015, there shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule.

(b-5) A movant may present a meritorious claim under this Section if the allegations in the petition establish each of the following by a preponderance of the evidence:

(1) the movant was convicted of a forcible felony;

(2) the movant's participation in the offense was related to him or her previously having been a victim of domestic violence as perpetrated by an intimate partner;

(3) no evidence of domestic violence against the movant was presented at the movant's sentencing hearing;

(4) the movant was unaware of the mitigating nature of the evidence of the domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence; and

---

[1] The State's opening brief quotes a version of section 2-1401 that was not effective at the time of the filing or at the time of the circuit court's ruling (both in 2018) and is not "identical in all material respects" to the applicable statute. See St. Br. 12 n.4, 2 4 (citing version reflecting subsequent amendments made by Public Acts 100-1048, 101-27 and 101-411).

(5) the new evidence of domestic violence against the movant is material and noncumulative to other evidence offered at the sentencing hearing, and is of such a conclusive character that it would likely change the sentence imposed by the original trial court.

Nothing in this subsection (b-5) shall prevent a movant from applying for any other relief under this Section or any other law otherwise available to him or her.

As used in this subsection (b-5):

"Domestic violence" means abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986.

"Forcible felony" has the meaning ascribed to the term in Section 2-8 of the Criminal Code of 2012.

"Intimate partner" means a spouse or former spouse, persons who have or allegedly have had a child in common, or persons who have or have had a dating or engagement relationship.

(c) Except as provided in Section 20b of the Adoption Act and Section 2-32 of the Juvenile Court Act of 1987 or in a petition based upon Section 116-3 of the Code of Criminal Procedure of 1963, the petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.

(d) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation.

* * *

(f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

STATEMENT OF FACTS

Angela Wells pled guilty to first degree murder in 2001, in exchange for a sentence of 40 years in prison. In 2017, she filed a petition under section 2-1401(b-5) of the Code of Civil Procedure, which allows for sentencing relief for victims of domestic violence. Angela's petition alleged that her husband, Ronald Wells, subjected her to a decade of physical, verbal, and emotional abuse. The circuit court dismissed the petition but the appellate court reversed, finding the court's premature dismissal of the petition violated due process and that the error was not harmless.

Guilty plea

Angela and Ronald were charged in Peoria County with the first degree murder of Jamie Weyrick and with concealment of a homicidal death. (C. 9 12.) About six months later, Angela entered a negotiated guilty plea to one count of first degree murder in exchange for a sentence of 40 years in prison. (R. 22 33.) As part of the plea agreement, Angela would also testify truthfully at Ronald's trial. (R. 23.)

The factual basis showed that Weyrick had gone missing in March 2001 after having last been seen with Ronald Wells. (R. 28.) Weyrick had received a large income tax refund around that time. (R. 28.) Weyrick's body was subsequently found buried in the backyard of the Wells home. (R. 29.) An autopsy showed the cause of death was multiple blunt force injuries, sharp force injuries, and asphyxia. (R. 29 30.)

In one statement to police, Angela said she came home and found

Weyrick already dead. (R. 30.) Angela later told police that she was at home with her four children when Ronald arrived with Weyrick. (R. 30 31.) When Weyrick was upstairs, Ronald told Angela he intended to kill Weyrick and take his money. (R. 31.) Angela pleaded with Ronald not to, but he ignored her. (R. 31.) She later heard the sounds of a struggle upstairs and then saw Ronald chasing Weyrick downstairs. (R. 31.) Ronald then stabbed Weyrick until, Angela believed, he was dead. (R. 31.) Ronald told Angela to help him carry Weyrick to a basement freezer and put him there, which she did. (R. 31.) Ronald took some money, apparently from Weyrick, and left the house. (R. 31.)

According to the factual basis, Angela later heard sounds coming from the freezer and realized Weyrick was still alive. (R. 31 32.) She hit him with a hammer and "gave [him] additional stab wounds." (R. 32.) At some point she told her 13-year-old stepson Destin to sit on the freezer. (R. 32.) The two sat on the freezer until Weyrick died. (R. 32.) The next day Ronald and Angela buried the body in their backyard. (R. 32.) If the case went to trial, the State would also call Destin, who would recall his stepmother summoning him downstairs, and seeing her "inflict injuries on Mr. Wells [*sic*]." (R. 32.)

The court accepted Angela's plea and then held a sentencing hearing. (R. 33 35.) The parties waived the pre-sentence investigation report and the State noted Angela's prior misdemeanor convictions for possession of cannabis and possession of drug paraphernalia. (R. 34.) The prosecutor said that the Weyrick family "do not particularly agree" with the plea deal but

"would prefer a sentence of natural life." (R. 34.) In allocution, Angela apologized to Weyrick's family. (R. 35.) The court imposed the agreed-upon sentence of 40 years in prison. (R. 35.)

A motion to withdraw guilty plea was filed in Angela's name, but she disclaimed any knowledge of the motion. (C. 54, 56; R. 43 44.) Angela did not want any contact with Ronald, who she believed had written the motion. (R. 44.)

Ronald Wells was later convicted of first degree murder and concealment of a homicidal death and sentenced to natural life. Ronald's convictions were affirmed. *People v. Wells*, 346 Ill. App. 3d 1065 (3d Dist. 2004).

Previous collateral filings

In 2006, someone filed a power of attorney, apparently signed by Angela, giving Ronald the authority to represent Angela in post-conviction and section 2-1401 petitions. (C. 138.) Ronald then filed a section 2-1401 petition on Angela's behalf. (C. 139 43.) The court struck the petition, since Ronald was not an attorney. (C. 150, 298.)

In the decade that followed, Ronald drafted one post-conviction petition and three section 2-1401 petitions that were filed in Angela's name. (See C. 153 204, 238 296, 403 19, 460 92, 527 51; see also C. 344 58, 425 33.) Each petition was denied. (C. 360 61, 511, 552.) The rulings, when appealed, were affirmed on appeal. Order, *People v. Wells*, No. 3-07-0632 (Dec. 15, 2008); Order, *People v. Wells*, No. 3-08-0545 (Jan. 29, 2009); Order, No. 3-09-

0502 (June 23, 2010) (allowing appellate counsels' *Finley* motions) (C. 397 401, 454 57).

Proceedings in this appeal

On December 20, 2017, Angela put into her prison's mail system a petition under section 2-1401(b-5), which allows for sentencing relief for victims of domestic violence. (C. 561.) The petition addressed each of the showings set out in subsection (b-5).

Angela noted initially that the crime was a forcible felony and then explained her history as a victim of domestic violence. (C. 555 56.) Angela had been with Ronald since they were both 15 years old. (C. 555.) He was nice at first but became very controlling and abusive, abuse that lasted from 1990 through 2001, the year of the offense. (C. 555.) Angela averred, "Petitioner has been: punched, kicked, slapped, [and] drag[ged] on the floor on a regular basis for years." (C. 556.) Once Ronald held a gun to Angela's head and pulled the trigger, but the gum jammed. (C. 555 56.) The petition listed several injuries caused by his abuse a shotgun wound in the arm, a black eye, trauma to her left foot, and pain in her neck, a knee, and a finger. (C. 555 56.) Angela had gone to the hospital but had lied about the origins of the injuries, since Ronald was with her. (C. 556.)

Ronald also verbally abused her, telling her she was no good, no one would want her, and that "if she did not do as he wanted that her [*sic*] would hurt her or the kids." (C. 556.) He made Angela quit jobs because he was paranoid that she would cheat on him. (C. 556.) Angela averred that she was

too scared to leave because she was afraid he would kill her. (C. 555.)

The petition contended that the crime was connected to Angela being a victim of domestic violence because she acted out of "fear and compulsion . . . instilled in [her] from her home life," and specifically "fear from intimidation by the co-defendant/husband of physical violence she would suffer and threats of peril." (C. 555, 557.) Angela also affirmed that no evidence of Ronald's abuse was presented at sentencing, that she was unaware of the significance of the domestic violence, and that the domestic violence evidence was of a conclusive character. (C. 557 58.)

Angela attached numerous exhibits to her petition, including an affidavit in which she avers she was afraid to speak out about being a victim of domestic violence. (C. 589.) Medical records, which use a technical shorthand, apparently refer to head pain radiating to her neck, a fractured toe, a sprained knee, and a fractured finger. (C. 567 72.) These are attributed to working at a nursing home ("N.H.") and "stepping in hole." (C. 568, 570.)

Another exhibit, a DCFS form from April 2001, includes Angela's father's statement that Ronald had physically abused her for years, but that she would not leave him. (C. 577.) In a document mentioning commutation, Angela recounts attacking Weyrick. (C. 579.) She avers that she knew she could have called the police but was afraid Ronald was coming back. (C. 579.) She averred, "I believe I would have met the same fate as my victim because imminent bodily harm would have been inflicted upon me if I didn't do what my co-defendant/husband said." (C. 579) (all-caps omitted).

Angela also attached letters from Ronald to her. In one letter, dated January 24, 2017, Ronald claimed he had fought for her case harder than he had fought for his own. (C. 583.) He claimed he did "some real fucked up shit in my life because I fell in love with a conceited low down whore that destroyed me." (C. 584.) Ronald claimed Angela was not fighting her case because of "[t]hem dykes or them c/o's you're fucking and sucking." (C. 584.) He had seen other "nigga bitches" engage in "man hating shit" when they "start fucking & sucking there." (C. 584.) Ronald threatened to "do what I got to do" if Angela did not give him a tape he was seeking. (C. 584 85.)

In another letter to Angela, dated (in different handwriting) July 2017, Ronald acknowledged that she had asked him to stop fighting for her, and did not need his help. (C. 586.) Ronald responded to Angela's request for "an affidavit on how I use to beat your ass," writing, "Why in the hell would I give you an affidavit talking about the times that I put my hands on you," instead of raising a different claim. (C. 586.) He continued, "Get off that bullshit, you know I put my hands on you, it wasn't right, but my putting my hands on you ain't got nothing to do with this case and why it happen." (C. 586 87.)

Almost six weeks after the petition was filed, the court entered an order docketing the petition and giving the State 30 days to respond. (C. 590.) The State filed a motion to dismiss, claiming: (a) the statute did not apply because there was "no sentencing" in Angela's case; (b) Angela waived her claim by entering a negotiated plea and not raising this issue in a postplea motion; (c) the petition was untimely; (d) section 2-1401(b-5) does not apply

retroactively; (e) Angela did not prove she was a victim of domestic violence; and (f) "it is clear" Angela stabbed Weyrick out of fear of Weyrick, not of "the Defendant." (C. 592 94.) The State filed its motion to dismiss on March 14, 2018, and averred that it mailed Angela a copy that day. (See C. 595 96.)

The court did not wait for Angela's response before ruling. A week after the State's motion was filed, on March 21, 2018, the court dismissed Angela's petition. In its order, the court found the petition was "not available . . . for those reasons listed in the State's Motion to Dismiss at sections I and II thereof," (*i.e.*, points (a)-(d) above). (C. 596.) The court found Angela "was aware of the claimed abuse in 2001." (C. 596.) In addition, Angela waited too long over two years, by its count since the effective date of section 2-1401(b-5) to file a petition. (C. 596.) The court found Angela's petition "is dismissed on the merits, no legal basis existing to support same." (C. 596.)

Angela filed a motion to reconsider, disputing the finding of no due diligence, and asking for a hearing and the ability to subpoena witnesses, which the court denied. (C. 597 607.)

Appellate court decision

On appeal, Angela argued that the allegations in her petition warranted the vacatur of her guilty plea and a remand for further proceedings. She contended in the alternative that the court's premature dismissal of her petition violated due process. The State conceded the due process violation but claimed the error was harmless, arguing that the petition was untimely, that the issue was forfeited, that a postplea motion

would not have been successful, and that the evidence of domestic violence was of insufficiently conclusive character.

The appellate court, accepting the State's concession, found that the court's hasty dismissal of Angela's petition violated due process. *People v. Wells*, 2021 IL App (3d) 180344-U, ¶ 29. Further, the court held, "we cannot say that the trial court's error in prematurely dismissing defendant's 2-1401(b-5) petition 'on the merits' as a final order, without giving defendant an opportunity to reasonably respond to the State's motion to dismiss, was harmless." Order, ¶ 33. The court's violation of Angela's rights was not harmless since it prevented her from developing arguments about timeliness and diligence. Order, ¶¶ 32 33. The court remanded for further proceedings. Order, ¶ 33.

The State then filed a petition for leave to appeal. In that petition, the State argued only that Angela's petition was not timely filed. Pet. 2, 7 12.

ARGUMENT

Given the substantial merits of Angela Wells's petition, the structure and purpose of section 2-1401(b-5), and the equitable principles at issue, the circuit court's due process violation in dismissing Angela's petition was not harmless.

Angela Wells is the survivor of decades of physical, emotional, and verbal abuse at the hands of her husband Ronald. Her participation in the murder was intimately tied with her being a survivor of Ronald's abuse. Yet when Angela sought sentencing relief under section 2-1401(b-5) of the Code of Civil Procedure, the trial court short-circuited the proceedings, granting the State's motion to dismiss Angela's petition without giving her a chance to respond. *Infra* Argument A. The State concedes that the court's premature ruling violated Angela's right to due process. St. Br. 16.

The only issue in dispute is whether the due process violation can be excused as harmless. The State has not remotely met this showing. It does not dispute Angela's proof of any of the five requirements of subsection (b-5), requirements, which together "present a meritorious claim." 735 ILCS 5/2-1401(b-5) (West 2016); *infra* Section B.1. And Angela has viable responses to the procedural points raised by the State, that the petition was allegedly untimely and waived by Angela's guilty plea. Both the structure and purpose of subsection (b-5) show the two-year limit does not apply. *Infra* Section B.2. Even if the limit applied, it should be tolled since Angela was acting under legal disability. *Infra* Section B.3. And the equitable origins of section 2-1401 support allowing Angela's claim to go forward. *Infra* Section B.4. The State's

claim of waiver by guilty plea is twice forfeited and cannot be squared with the plain language of subsection (b-5) and actual innocence precedent, which provides the template for subsection (b-5). *Infra* Section B.6. The substantial merits of Angela's arguments starkly distinguish her case from *People v. Stoecker*, 2020 IL 124807, where this Court found a premature ruling to be harmless. *Infra* Section B.7.

As the appellate court found, the trial court's due process violation was not harmless since it deprived Angela of a chance to respond to the State's claims. *People v. Wells*, 2021 IL App (3d) 180344-U, ¶ 33. Since the court's error was not harmless, this Court should affirm the judgment of the appellate court and remand for further proceedings.

The questions raised in this appeal are purely legal in nature, so review is *de novo.* See *People v. Stoecker*, 2020 IL 124807, ¶ 17 (applying *de novo* standard to question of whether due process was violated); *People v. Jolly*, 2014 IL 117142, ¶ 28 (applying *de novo* standard to whether procedural error was harmless); St. Br. 15.

A. The circuit court violated Angela's right to due process when it prematurely dismissed her petition.

It is not disputed that the court violated Angela's due process rights by granting the State's motion to dismiss her petition without giving her a chance to respond.

Section 2-1401 sets out a statutory procedure for raising factual and legal challenges to judgments. *Warren Cnty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 41; 735 ILCS 5/2-1401(a) (West 2016). Claims

are generally raised under subsection (a), which recognizes a remedy that can be filed after 30 days from a judgment. 735 ILCS 5/2-1401(a). Subsection (c) provides a general two-year limit from judgment except when the petitioner "is under legal disability or duress or the ground for relief is fraudulently concealed." 735 ILCS 5/2-1401(c).

Subsection (b-5) recognizes a stand-alone claim within section 2-1401, part of Illinois's effort to recognize the harms caused by domestic violence. Under subsection (b-5), a movant states "a meritorious claim under this Section" by proving, by a preponderance of the evidence, that:

> (1) the movant was convicted of a forcible felony;
>
> (2) the movant's participation in the offense was related to him or her previously having been a victim of domestic violence as perpetrated by an intimate partner;
>
> (3) no evidence of domestic violence against the movant was presented at the movant's sentencing hearing;
>
> (4) the movant was unaware of the mitigating nature of the evidence of the domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence; and
>
> (5) the new evidence of domestic violence against the movant is material and noncumulative to other evidence offered at the sentencing hearing, and is of such a conclusive character that it would likely change the sentence imposed by the original trial court.

735 ILCS 5/2-1401(b-5).

Angela's subsection (b-5) petition detailed Ronald's abuse of her and connected it to her role in the murder of Jamie Weyrick. (C. 554 89.) She alleged that she had satisfied all five showings of subsection (b-5) and

corroborated her claim with medical reports, letters, and other documents. (C. 554 89.) The State filed its motion to dismiss Angela's petition on March 14, 2018. (C. 591 95; see C. 596.) A week later, on March 21, 2018, the court denied Angela's petition. (C. 596.)

As the State concedes, the court's ruling violated Angela's due process rights. See St. Br. 16 (court's hasty ruling "did not give petitioner a reasonable opportunity to respond to the motion"). "Illinois courts have recognized that basic notions of fairness dictate that a petitioner be afforded notice of, and a meaningful opportunity to respond to, any motion or responsive pleading by the State." *People v. Stoecker*, 2020 IL 124807, ¶ 20; see U.S. Const. amend. XIV, § 1; Ill. Const. 1970, art. 1, § 2. A petitioner's right to procedural process "is of utmost importance." *Stoecker*, 2020 IL 124807 ¶ 22. Due process is violated when a petitioner is not given an opportunity to respond to the State's motion to dismiss. See *id.*, ¶¶ 20 22; *People v. Rucker*, 2018 IL App (2d) 150855, ¶¶ 17 30. Angela, by being denied a chance to respond to the State's motion, was denied due process. *People v. Wells*, 2021 IL App (3d) 180344-U, ¶ 29; St. Br. 16.

B. The due process violation below was not harmless.

The violation of Angela's due process rights was not harmless. In the section 2-1401 context, a due process violation is harmless only if a petition's claims are "patently incurable as a matter of law" and "no additional proceedings would have enabled [the petitioner] to prevail on his claim for relief." *People v. Stoecker*, 2020 IL 124807, ¶ 26; see also *People v. Ross*, 367

Ill. App. 3d 890, 894 (1st Dist. 2006) (trial court's failure to notify defendant of insufficiency of *mandamus* petition was reversible error where petitioner "might appropriately correct" flaws in the petition); *English v. Cowell*, 10 F.3d 434, 438 40 (7th Cir. 1993) (finding no harmless error from premature ruling since litigant "was deprived of any opportunity to espouse relevant arguments in the court below and remand would not amount to a waste of judicial resources").

Angela's petition has a solid basis in law and fact with no evident flaws that would render the claim patently incurable. The due process violation was thus not harmless.

1. Angela has undisputedly made sufficient averments on the five statutory requirements of section 2-1401(b-5).

Angela's petition satisfies the five requirements of section 2-1401(b-5). See 735 ILCS 5/2-1401(b-5) (West 2016). The State does not argue otherwise. The court's premature ruling thus prevented Angela from going forward with a viable section 2-1401(b-5) claim.

Specifically, Angela has shown (1) the crime was a forcible felony, (C. 49 50), 720 ILCS 5/2-8; (2) Angela's participation in the murder of Jamie Weyrick was related to a decade of physical, emotional, and verbal abuse by Ronald (C. 555 57, 566 72, 579, 584 87; R. 31 32); 750 ILCS 60/103(1); (3) no evidence of domestic violence was presented at Angela's sentencing hearing (R. 34 35); (4) Angela was unaware of the mitigating nature of the evidence of abuse and could not have learned of it sooner through diligence (C. 557); and (5) the evidence of Ronald's abuse was not cumulative but was

instead material and of such a conclusive character that it would likely change the sentence imposed (see C. 555 58, 577, 579 80; R. 29 32, 35); *infra* pp. 30 33 .

Altogether Angela's averments on all five requirements, if proven, "state[] a meritorious claim" under subsection (b-5). See 735 ILCS 5/2-1401(b-5). Since Angela's petition was dismissed on the pleadings, the averments in her petition must be assumed to be true. *People v. Sanders*, 2016 IL 118123, ¶ 37.

The State has not disputed any of Angela's showings, either in its petition for leave to appeal or in its opening brief. By not challenging these showings, the State has forfeited any such challenge. See *In re Marriage of Goesel*, 2017 IL 122046, ¶ 12 (failure to raise issue in petition for leave to appeal forfeits issue); *Buenz v. Frontline Transp. Co.*, 227 Ill. 2d 302, 320 (2008) (same); Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not raised in opening brief are forfeited). The circuit court's premature ruling was not harmless as to the merits of Angela's subsection (b-5) claim.

2. Angela's petition is timely since subsection (b-5) has no time limit.

The State argues that Angela's petition was untimely. St. Br. 17 28. But the circuit court's premature ruling prevented Angela from responding to the State's timeliness argument. *People v. Wells*, 2021 IL App (3d) 180344-U, ¶ 33. Angela had an array of viable arguments to raise in response: that subsection (b-5) claims are not subject to the two-year limit, that she was acting under a legal disability, and that dismissing her claim would cause an

injustice. See *infra* pp. 26 36. Initially, though, Angela's petition was timely under the stand-alone provision of subsection (b-5). Both the structure and the purpose of subsection (b-5) demonstrate this.

a. Subsection (b-5) creates a stand-alone claim, without any time limit.

In enacting subsection (b-5), the legislature imposed no time limit on the filing of petitions under this provision. On remand, Angela could thus show that her petition was timely.

"When construing a statute, this court's primary objective is to ascertain and give effect to the intent of the legislature." *In re Marriage of Dahm-Schell & Schell*, 2021 IL 126802, ¶ 35. The best evidence of this intent is the statutory language, considered "in the context of the entire statute . . . the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another." *United States v. Glispie*, 2020 IL 125483, ¶ 10. Reviewing courts should not interpret statutes in a way that renders statutory language superfluous or produces an absurd or unjust result. *Valfer v. Evanston Northwest Healthcare*, 2016 IL 119220, ¶ 22.

By its plain language, subsection (b-5) creates a stand-alone collateral remedy without any time limit. While section 2-1401 can be used to challenge a range of civil and criminal situations, subsection (b-5) establishes a specific type of claim on the merits if the five requirements are proven, there is "a meritorious claim." 735 ILCS 5/2-1401(b-5) (West 2016). And subsection (b-5) claims have a unique diligence requirement, that "the movant was unaware

of the mitigating nature of the evidence of the domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence." 735 ILCS 5/2-1401(b-5)(4). Subsection (b-5) contains no other limitation on such claims. "Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Illinois State Treasurer v. Illinois Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 21.

In addition, the language used in subsection (b-5) mirrors the standard for actual innocence claims, which have no time limit. Actual innocence claims require evidence that is "newly discovered; material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial." *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009) (quotation marks omitted). These requirements are echoed in subsection (b-5):

Subsection (b-5)	*Actual innocence law*
"no evidence of domestic violence against the movant was presented at the movant's sentencing hearing"	evidence is "newly discovered"
"the movant was unaware of the mitigating nature of the evidence of the domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence"	"petitioner could not have discovered [evidence] earlier through the exercise of due diligence"
evidence of domestic violence is "material and noncumulative to other evidence offered at the sentencing hearing, and is of such a conclusive character that it would likely change the sentence	new evidence is "material and not merely cumulative; and of such conclusive character that it would probably change the result on retrial"

Subsection (b-5) *Actual innocence law*

imposed by the original trial court"

735 ILCS 5/2-1401(b-5)(3), (4), (5) (West 2016); *People v. Robinson*, 2020 IL 123849, ¶ 47; *Ortiz*, 235 Ill. 2d at 333 (quotation marks omitted). And actual innocence claims have no time limit. 735 ILCS 5/122-1(c). Subsection (b-5)'s lack of a timing requirement supports the statutory purpose of allowing domestic violence victims to obtain sentencing relief when the requirements of the provision are satisfied.

The State, however, looks to nearby provisions, contending that the general two-year limitation from judgment in subsection (c) applies to subsection (b-5). St. Br. 18 19; see 735 ILCS 5/2-1401(c). This interpretation, though, is directly contrary to the framing of subsection (b-5) as creating a stand-alone claim.

In support of applying the general two-year deadline, the State cites instances where the legislature has specifically excluded claims from the two-year limit. According to the State, the failure to do so here shows the two-year limit applies. St. Br. 21 22. The State's cited exceptions, though, generally do not concern stand-alone "meritorious claim[s]" like the one in subsection (b-5), with distinct diligence requirements. See 735 ILCS 5/2-1401(c) (West 2020) (c), (c-5) (setting out exceptions for claims under the Cannabis Control Act and based on immigration consequences). The structure of subsection (b-5) thus distinguishes these exceptions.

Subsection (b-10), passed 3½ years after subsection (b-5), does purport

to address a stand-alone "meritorious claim," based on a connection between the crime and the petitioner's post-partum depression or psychosis. See 735 ILCS 5/2-1401(b-10) (eff. Aug. 16, 2019). But that provision's diligence requirement does not hinge solely on a defendant's awareness of the mitigating value of post-partum illness. A petitioner satisfies the subsection (b-10) requirement by showing:

> she was unaware of the mitigating nature of the evidence *or, if aware,* was at the time unable to present this defense due to suffering from post-partum depression or post-partum psychosis, or, at the time of trial or sentencing, neither was a recognized mental illness and as such, she was unable to receive proper treatment.

735 ILCS 5/2-1401(b-10) (emphasis added). Critically, subsection (b-10) departs from actual innocence logic by allowing claims based on a fact known to the defendant at the time of trial. *Cf. Robinson*, 2020 IL 123849, ¶ 47 (actual innocence petitioner must show, *inter alia*, "evidence that was discovered after trial"). This break from actual innocence logic might lead a court to impose the two-year limit. The legislature would thus need to expressly exclude subsection (b-10) claims but not subsection (b-5) claims from the two-year limit.

The State also errs in assuming that all exceptions to the two-year limit are explicitly stated. See St. Br. 21 (discussing *expressio unius* canon); *People v. Abusharif*, 2021 IL App (2d) 191031, ¶ 16 (finding petition untimely because "the legislature did not specially exempt domestic-violence mitigation claims from the two-year limitations period in subsection (c)"). As the State acknowledges elsewhere, void judgments are excluded from the

two-year limit, St. Br. 17; *People v. Stoecker*, 2020 IL 124807, ¶ 28. Yet subsection (c) does not mention void judgments. Instead courts have interpreted general language in subsection (f) about preexisting rights to excuse the two-year limit. See *PNC Bank, Nat'l Ass'n v. Kusmierz*, 2022 IL 126606, ¶ 15; 735 ILCS 5/2-1401(f) ("Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief."). The language in subsection (f) is notably echoed in subsection (b-5). 735 ILCS 5/2-1401(b-5) ("Nothing in this subsection (b-5) shall prevent a movant from applying for any other relief under this Section or any other law otherwise available to him or her."). The State's claim that all exceptions must be explicit is mistaken.

The State's position also runs afoul of the rule that "[a] court should construe a statute, if possible, so that no term is rendered superfluous or meaningless." *People v. Maggette*, 195 Ill. 2d 336, 350 (2001). When the legislature enacted subsection (b-5), it also added as a statutory mitigating factor when a domestic violence victim's history of being abused "tended to excuse or justify the defendant's criminal conduct." 730 ILCS 5/5-5-3.1(a)(15). This mitigating factor, along with the general provisions of section 2-1401, would allow a recently sentenced defendant to introduce battering evidence in a general section 2-1401 petition. But that would largely duplicate the work of subsection (b-5). The non-superfluous construction is the one that makes the most sense: in passing both provisions, the legislature intended to provide an avenue for relief to qualified petitioners, regardless of the date of

their convictions.

Lastly, the State alludes to legislative history it claims supports applying a two-year limit. St. Br. 22. It cites Representative Christian Mitchell's comments that relief might be possible "for up to two years after the original sentencing" given the time it takes for victims "to understand what's happened to them," and that only "some of these folks inside the system" could obtain relief. 99th Ill. Gen. Assem., House Proceedings, May 25, 2015, at 29; see *Abusharif*, 2021 IL App (2d) 191031, ¶ 16 (finding these comments show "clear legislative intent" to impose two-year limit).

The cited comments shows the perils of relying on individual floor statements, which "rank among the least illuminating forms of legislative history." *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 943 (2017); see *People v. R.L.*, 158 Ill. 2d 432, 442 (1994) ("[C]ourts generally give statements by individual legislators in a floor debate little weight when searching for the intent of the entire legislative body."). Here, the cited statements reflect a lack of familiarity with the legislation. The two-year limit was not added by Public Act 99-384, but long preexisted the act. See Ill. Rev. Stat. 1955, ch. 110, ¶ 72(3). The diligence requirement hinges on a defendant's realization of the mitigating value of a history of being abused, not the discovery of the abuse. 735 ILCS 5/2-1401(b-5)(4). That a legislator only said "some" petitioners might succeed sheds no light on the question of time limits, since the requirements of subsection (b-5) already narrow the class of petitioners by, for example, requiring a link between the abuse and the crime. See 735

ILCS 5/2-1401(b-5)(2). The legislative history, like the rest of the State's arguments, does not support applying the two-year limit to stand-alone claims under subsection (b-5).

b. Finding no time limit for subsection (b-5) claims is consistent with the statute's purpose.

The State's claim that the two-year limit applies also contravenes the legislative purpose in enacting the provision to allow victims of domestic violence to obtain sentencing relief for crimes related to the abuse.

The legislature, in passing subsection (b-5) in 2015, recognized the serious societal harm caused by domestic violence. In the United States, 36.4% of women and 33.6% of men experienced intimate partner violence in their lifetimes. Sharon G. Smith *et al.*, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief Updated Release* 8 9 (2018), https://bit.ly/3K2wMLR. In 2020 in Illinois, 101,635 incidents of domestic violence were reported to law enforcement. Illinois State Police, *Crime in Illinois 2020* 246. This abuse takes a terrible toll. Domestic violence has been linked to "adverse and long-term health consequences," including injury, weakened immune system, health risk behaviors, depression, post-traumatic stress disorder, unintended pregnancy, and sexually transmitted diseases. Karuna Chibber *et al.*, *Domestic Violence Literature Review: Analysis Report* 3 4 (July 2016), https://bit.ly/3uLCEmi.

Subsection (b-5) addresses a key aspect of domestic violence law neglected by previous legislation: the treatment of domestic violence victims who subsequently commit crimes. Victims of domestic violence sometimes

commit crimes, including violent acts, to avoid further abuse. See U.S. Dep't of Justice & U.S. Dep't of Health & Human Services, *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act* 3 (May 1996), https://www.ncjrs.gov/pdffiles/batter.pdf. Subsection (b-5) recognizes the connection between a defendant's crime and a prior history of abuse by a spouse or partner.

Given the extent of domestic violence, and the recognized link between being abused and committing crimes, it would be contrary to the legislative purpose to limit relief to only recent survivors of domestic violence. This Court has previously interpreted statutes to further the legislative purpose of combating domestic violence. See *People v. Gray*, 2017 IL 120958, ¶¶ 55 67 (in upholding domestic battery conviction, finding "the absence of a time limit on former dating relationships . . . was reasonable and rationally related to the statutory purpose of curbing domestic violence"); *Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995) (recognizing implicit cause of action for civil damages "[t]o give effect to the legislature's purposes and intent in enacting the Domestic Violence Act"); see also *People v. Trzeciak*, 2013 IL 114491, ¶¶ 46 52 (excluding threats from marital privilege based on breakdown of marital relationship). Here, similarly, subsection (b-5) should be read to promote the legislature's purpose of providing sentencing relief for victims of domestic violence. Since importing subsection (c)'s two-year limit would thwart that purpose, that provision does not apply.

The State does not acknowledge the systemic problem of domestic violence and scarcely mentions the purpose of subsection (b-5). This is a severe flaw in its argument, given that a reviewing court's "primary objective" in construing a statute is "to ascertain and give effect to the intent of the legislature. See *Rushton v. Dep't of Corr.*, 2019 IL 124552, ¶ 14.

Even if this Court finds the lack of an explicit exception compelling, it should find, given the manifest purpose of subsection (b-5), that the omission of a specific exception in subsection (c) was inadvertent. Courts may supply missing language when "obedience to the literal language of the statute would produce a result that is clearly and demonstrably at odds with the legislature's intent." *Atkins v. Deere & Co.*, 177 Ill. 2d 222, 238 (1997). Here, given the legislature's clear intent to provide a new vehicle for sentencing relief for victims of domestic violence, the omission of an explicit exception to the two-year limitation was an oversight which this Court may correct. See *People v. Johnson*, 2017 IL 120310, ¶ 24 (given purpose of statute, inserting statutory language "omitted by oversight"); *People v. Smith*, 307 Ill. App. 3d 414, 422 (1st Dist. 1999) (inserting penalty language omitted from statute based on "inadvertent mistake" to reflect legislative intent to punish solicitation of minors).

3. Even if the two-year limit generally applies, Angela was under legal disability until section 2-1401(b-5) was passed.

The due process violation below was also not harmless since Angela could argue on remand that a legal disability precluded her from raising the

claim sooner. Subsection (c) excludes from the two-year limit time when "the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed." 735 ILCS 5/2-1401(c) (West 2016). Here, on remand, Angela could show that she was under legal disability until subsection (b-5) was enacted.

In *In re Marriage of Vanek*, 247 Ill. App. 3d 377 (1st Dist. 1993), the appellate court found the absence of a legal basis for a claim amounted to a "legal disability." In that case, the petitioner had sought payments from her ex-husband's military pension nine years after the dissolution of their marriage. *Vanek*, 247 Ill. App. 3d at 378. At the time of the dissolution judgment, a federal law precluded division of military pensions in state dissolution proceedings, but later actions by Congress and the Illinois legislature allowed such divisions. *Id*. at 378 79. The appellate court found the petitioner was under legal disability until Congress permitted such divisions and thus counted the two-year limit from the effective date. *Id*. at 380.

In this case, similarly, Angela was also under a legal disability from the time of her sentencing since Illinois had not yet recognized relief under subsection (b-5). When Public Act 99-384 was enacted, the disability was removed. See *Vanek*, 247 Ill. App. 3d at 380. The legislation was effective January 1, 2016. And Angela's petition was timely filed within the two-year limitation under the mailbox rule, having been mailed from prison on December 20, 2017, before January 1, 2018. (C. 561); see *People v. Shines*,

2015 IL App (1st) 121070, ¶ 31 ("Under the mailbox rule, pleadings, including posttrial motions, are considered timely filed on the day they are placed in the prison mail system by an incarcerated defendant." (citations omitted)). Angela thus filed the petition within two years of the enactment of subsection (b-5). The State does not dispute this fact in its Argument.

Instead, in a footnote in its statement of facts, the State appears to challenge the filing date, claiming it was outside the two-year limit. St. Br. 12 n.3. This is a change of position, one this Court should not permit. When Angela cited the December 2017 filing date in the appellate court, the State did not dispute this filing date in its response brief. See App. Ct. Def. Br. 20. And in its petition for leave to appeal, the State averred that Angela's petition was filed "[i]n December 2017." State's Pet. for Leave to Appeal 5. "[A] party cannot complain of error that it brought about or participated in." *People v. Hughes*, 2015 IL 117242, ¶ 33; accord *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). The State, having acquiesced to Angela's account of the filing date, has lost any challenge to the filing date.

Moreover, the State's new position is legally incorrect as well. Its authority, *Wilkins v. Dellenback*, excluded section 2-1401 petitions from the mailbox rule because they were "pleadings," initiating a new proceeding rather than continuing earlier proceedings. 149 Ill. App. 3d 549, 553 54 (2d Dist. 1986). *Wilkins*, though, was a case involving non-incarcerated litigants. See *id.* at 551. For incarcerated litigants, the mailbox rule is broader, applying to all "pleadings." *Shines*, 2015 IL App (1st) 121070, ¶ 31; *People v.*

Liner, 2015 IL App (3d) 140167, ¶ 13; *People v. Jennings*, 279 Ill. App. 3d 406, 413 (4th Dist. 1996). Given the "vagaries of the prison mail system," the mailbox rule applies to the filing post-conviction petitions, "even though [those petitions] commence new actions." *Gruszeczka v. Illinois Workers' Comp. Comm'n*, 2013 IL 114212, ¶ 22 n.3. Incarcerated section 2-1401 petitioners, like Angela, are subject to the same prison mail systems. The rule for non-incarcerated litigants has no place in this appeal.

The State also, without mentioning *Vanek*, cites authority that applying *Vanek* to subsection (b-5) claims would "effectively eradicate[]" the time limits of subsection (c). St. Br. 23 24, citing *People v. Abusharif*, 2021 IL App (2d) 191031, ¶ 14; and *People v. Donoho*, 2021 IL App (5th) 190086-U, ¶ 18 (adopting *Vanek* would render time limits "meaningless"). To the contrary, *Vanek* requires only applying subsection (c)'s legal disability exception. Once subsection (b-5) was passed, petitioners with older convictions had a two-year period to file, a period that closed on December 31, 2017. *Vanek* thus faithfully applies the two-year limit for subsection (b-5) petitioners. Since Angela has a viable legal disability claim under *Vanek*, her petition is not patently incurable as to timeliness.

4. Even if the two-year limit generally applies, that limit should be waived on equitable grounds, given Angela's strong claim for sentencing relief.

In addition, even if the two-year deadline would normally apply, Angela's claim is not "patently incurable" since equity compels that her claim be heard. By prematurely dismissing Angela's petition, the court deprived

her of the chance to argue that her claim should be addressed under section 2-1401's broad equitable powers.

The section 2-1401 remedy arose from common law writs issued by courts of chancery. See *Ellman v. De Ruiter*, 412 Ill. 285, 290 91 (1952) (tracing section 2-1401's origins and development from the common law writ of *coram nobis*); 735 ILCS 5/2-1401(a) (West 2016) (abolishing common law writs but allowing same relief under section 2-1401). Given this lineage, section 2-1401 petitions "may . . . be addressed to the equitable powers of the court, when the exercise of such power is necessary to prevent injustice." *Ellman*, 412 Ill. 285 at 292; accord *Warren Cnty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶ 34. "[A] court of equity is not bound by strict formulas but may 'shape its remedy to meet the demands of justice in every case, however peculiar.'" *Hoyne Sav. & Loan Ass'n v. Hare*, 60 Ill. 2d 84, 90 (1974) (citations omitted). Based on principles of equity, "[r]elief should be granted under section 2-1401 when necessary to achieve justice." *People v. Lawton*, 212 Ill. 2d 285, 298 (2004).

Here, on remand, Angela could present strong equities favoring allowing her petition to proceed. Angela was the victim of decade-long physical, verbal, and emotional abuse at the hands of her husband Ronald. (C. 555 56, 577, 586.) Ronald "punched, kicked, slapped, [and] drag[ged] [Angela] on the floor on a regular basis for years," and held a gun to her head and pulled the trigger. (C. 555 56.) (The gun jammed.) Over the years, Ronald's acts of physical abuse left Angela with a gunshot wound in her arm

and a black eye. (C. 555 56.) In a letter attached to Angela's petition, Ronald referred to "the times that I put my hands on you" and "how I use[d] to beat your ass." (C. 586 87.)

Ronald was also verbally abusive. He told Angela "she was no good, no one else was going to want her, [and] that if she did not do as he wanted that he[] would hurt her or the kids." (C. 556.) He also tried to isolate Angela from the outside world, making her quit jobs because he thought she would cheat on him. (C. 556.) This abuse continued from Ronald's prison cell. In a letter, Ronald called Angela a "conceited low down whore," and said she was "fucking and sucking" "dykes" while incarcerated. (C. 584.) He also threatened Angela, giving her two weeks to produce a certain tape or he would "treat [her] and anybody with [her] like anybody else who's trying to hurt me or keep me down." (C. 584 85.)

And Ronald continued to attempt to control Angela through the courts, preventing her from raising claims in her own interest. After Angela pled guilty, someone filed a motion to withdraw guilty plea in her name but without her knowledge or authority. (C. 54, 56; R. 43 44.) At the hearing on the motion, plea counsel expressed Angela's belief that Ronald wrote the motion and her desire to "have no contact or input whatsoever" from him. (R. 44.) Yet Ronald then obtained an (invalid) power of attorney from Angela and drafted numerous pleadings in her case, sometimes with her signature and sometimes not. (C. 138 43, 153 204, 229 32, 238 296, 344 58, 366 72, 376 78, 384 90, 403 19, 425 33, 460 92, 527 51).

This evidence of domestic violence would offer crucial context for Angela's actions. Angela only participated in the crime after Ronald, over her pleas not to, stabbed Jamie Weyrick, apparently to death. (R. 31.) After Ronald enlisted Angela to place Weyrick in a basement freezer and then left the house, Angela heard sounds coming from the freezer. (R. 31.) She then struck and stabbed Weyrick and sat on the freezer, with her stepson, until Weyrick died. (R. 31 32.) Angela averred that she was afraid Ronald would kill her if she did not kill Weyrick. (C. 579.) What seems like callousness to human life appears more like a desperate, tragic act of self-protection given the context that Ronald previously pulled the trigger on a gun held to Angela's head. (C. 555 56.) And that he violently assaulted her "on a regular basis for years." (C. 555.) And that he threatened to hurt her and her children. (C. 556.)

On remand, Angela could argue that the evidence of Ronald's abuse, and its connection with the crime, call out for a lesser sentence. The 40-year sentence imposed, the middle of the range, was already on the high side given the circumstances of the killing and Angela's background. See 730 ILCS 5/5-8-1(a)(1)(a) (West 2000) (range for first degree murder is 20 60 years). Angela's role in the killing of Weyrick was unplanned and she had only minor misdemeanor convictions. (R. 34.) And the evidence of domestic violence reduces Angela's culpability and shows the unlikelihood of her reoffending important facts in assessing a sentence. See 730 ILCS 5/5-5-3.1(a)(4) (recognizing as mitigation if there are "substantial grounds

tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense"); *id.* 5/5-5-3.1(a)(5), (8) (recognizing as factors in mitigation if criminal conduct "was induced or facilitated by someone other than the defendant" or "the result of circumstances unlikely to recur").

Yet Angela never got a chance to counter the State's assertions and fully litigate her petition. The circuit court's hasty dismissal robbed her of the chance to respond to the State's motion. Given the manifest merits of Angela's petition, affirming the circuit court's judgment as the State urges would be unjust. Thus, even if this Court were to find that the two-year limit would generally apply, it should nonetheless allow the petition to proceed "to prevent injustice." See *Walters*, 2015 IL 117783, ¶ 34; *Lawton*, 212 Ill. 2d at 299 302 (allowing sexually dangerous persons to raise otherwise not cognizable ineffective assistance of counsel claims in section 2-1401 petitions, given the liberty interests at stake, citing "the equitable powers of the circuit court to prevent enforcement of a judgment when doing so would be unfair, unjust, or unconscionable").

The State does not address any of the equities favoring allowing Angela's petition to proceed. Instead, it suggests that equity plays a role in section 2-1401 decisions only as to due diligence or, contradictorily, only as to merits determinations. St. Br. 28. Neither position is true courts apply equity to a range of issues in section 2-1401 proceedings. See, *e.g.*, *Lawton*, 212 Ill. 2d at 299 302; *Mrugala v. Fairfield Ford, Inc.*, 325 Ill. App. 3d 484, 488 (1st Dist. 2001) (noting "equitable exception" to service requirements for

section 2-1401 petitions); *Saeed v. Bank of Ravenswood*, 101 Ill. App. 3d 20, 26 (1st Dist. 1981) (citing "flexible" remedy of section 2-1401 petition to allow plaintiff to reinstate proceeding on returning to the U.S.); see also *Walters*, 2015 IL 117783, ¶ 49 (equity only not a consideration for the "specific niche" of section 2-1401 petitions raising a claim of a void judgment).

Importantly, "a section 2-1401 petition that raises a fact-dependent challenge to a final judgment or order must be resolved by considering the particular facts, circumstances, and equities of the underlying case." *Walters*, 2015 IL 117783, ¶ 50. And applying the two-year limit of subsection (c) "requires a court to make fact determinations because exceptions are allowed for delays attributable to disability, duress, or fraudulent concealment." *People v. Cathey*, 2019 IL App (1st) 153118, ¶ 18. Angela's argument for equitable relief depends on a similar fact-specific inquiry.

The State's apparent position that this Court cannot use equity to excuse an untimely petition is not supported by the cases the State cites. See St. Br. 17 19, 26 27. None of the cited cases bar the consideration of equity in section 2-1401 proceedings. And none addressed due process violations based on a court's denial of a litigant's ability to respond. Instead the cases typically address, and reject, specific claims by petitioners that their petitions fell within an explicit exception to the two-year limit. See *People v. Madej*, 193 Ill. 2d 395, 402 03 (2000) (fraudulent concealment not proven); *Crowell v. Bilandic*, 81 Ill. 2d 422, 428 29 (1980) (same); *Withers v. People*, 23 Ill. 2d 131, 133 36 (1961) (legal disability not proven); *Morgan v. People*, 16 Ill. 2d

374, 377 78 (1959) (same); *People v. Colletti*, 48 Ill. 2d 135, 137 (1971) (fraudulent concealment not proven); see also *People v. Thompson*, 2015 IL 118151, ¶¶ 30 44 (void judgment exception not proven). Other cases in the State's brief merely cite and apply the two-year limit in the absence of any argument for an exception by the petitioner. See, *e.g.*, *People v. Gosier*, 205 Ill. 2d 198, 207 (2001); *Fisher v. Rhodes*, 22 Ill. App. 3d 978, 981 82 (2d Dist. 1974).

The remainder of the State's cited authority largely concerns statutes without equitable dimensions and thus have no application to Angela's appeal. See St. Br. 17, 23 26 (citing, *e.g.*, *People v. Richardson*, 2015 IL 118255, ¶ 10 (Juvenile Court Act); *Petersen v. Wallach*, 198 Ill. 2d 439, 443 (2002) (statute of repose for attorney malpractice); *Cutinello v. Whitley*, 161 Ill. 2d 409, 414 (1994) (County Motor Fuel Tax Law)). A handful of the cited cases in fact discuss equitable tolling, holdings not acknowledged by the State. The cases do not involve section 2-1401 or due process violations, so they offer limited guidance, but they broadly rebut the State's claim that equity plays no role in assessing timeliness. See, *e.g.*, *U.S. Fid. & Guar. Co. v. Dickason*, 277 Ill. 77, 84 87 (1917) (in context of Illinois general statute of limitations, finding equitable estoppel not proven).

The State admits that its position is, or at least appears to be, harsh and unjust. See St. Br. 25 26 (citing cases applying statutes of limitations though they are "harsh," "seemingly capricious," and "appear[] unfair"). But the equitable powers of section 2-1401 provide a pathway to a just result. See

Lawton, 212 Ill. 2d at 298. The court's premature ruling prevented Angela from arguing that denying her relief would be unjust.

Finding an equitable exception to the two-year limit would also be consistent with this Court's supervisory power under the Illinois Constitution. See *McDunn v. Williams*, 156 Ill. 2d 288, 300 03 (1993); Ill. Const. 1970, art. VI, §16. This Court's supervisory power "is unlimited in extent and hampered by no specific rules or means for its exercise." *In re Estate of Funk*, 221 Ill. 2d 30, 97 98 (2006); accord *People v. Coty*, 2020 IL 123972, ¶ 49. Though supervisory authority is "invoked with restraint," it is used when fundamental fairness requires its use. See *Eighner v. Tiernan*, 2021 IL 126101, ¶ 29; *In re J.T.*, 221 Ill. 2d 338, 347 (2006). By cutting off Angela's chance to respond to the State's timeliness objections, the circuit court's ruling was fundamentally unfair. If this Court does not remand based on section 2-1401's equitable powers, Angela respectfully asks that it remand under its supervisory authority.

5. Contrary to the State's assertion, Angela's arguments on timeliness are properly before this Court.

The State also suggests that Angela's arguments on timeliness are somehow forfeited, a suggestion lacking in legal or factual support. While conceding a due process violation occurred, the State claims "the People asserted their statute of limitations defense in their motion to dismiss," and that Angela "raised none of the[] grounds for tolling in her petition or motion to reconsider." St. Br. 29. But the State does not flesh this claim out into an argument supported by law, so any forfeiture claim is itself forfeited. See Ill.

S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points lacking "citation of the authorities" are forfeited).

Moreover, the State's suggestion also cannot be reconciled with section 2-1401 case law. Angela was under no obligation to raise timeliness in her petition since time limits are an affirmative defense that the State can waive or forfeit. See *People v. Pinkonsly*, 207 Ill. 2d 555, 564 (2003). Indeed in other subsection (b-5) cases, the State has waived the two-year limit. See *People v. Rish*, 2021 IL App (3d) 190446, ¶ 21 (noting State's withdrawal of untimeliness claim against section 2-1401(b-5) petitioner on appeal)[2]; Olivia Stovicek, *If Illinois Defendants Never Told Jury of Their Own Abuse, Now a Second Chance*, Injustice Watch (Feb. 27, 2019), https://bit.ly/ 3NywkH0 (noting Cook County State's Attorney's Office has "stopped arguing that petitions from survivors convicted more than two years before are time-barred"). And a motion to reconsider is not an adequate substitute for a chance to respond before the ruling. See *People v. Rucker*, 2018 IL App (2d) 150855, ¶ 29 (noting shift of burden of persuasion to defendant at motion-to-reconsider stage).

The State's forfeiture suggestion is also belied by the specific proceedings below. The litigation of the State's motion to dismiss did not give

---

[2] *Rish*, despite the lack of an "-U" in the citation, includes the disclaimer for a Rule 23 order. To comply with Ill. S. Ct. R. 23(e) (eff. Jan. 1, 2021), appellate counsel is providing a copy of the order to this Court and the State by including in this brief's Appendix a copy of the *Rish* order, along with the *Donoho* decision previously cited and relied upon by the State.

Angela notice about the nature of the timeliness objection. The State's motion cited the two-year limit in the context of a claim about the Statute on Statutes and retroactivity (C. 592 93), an argument the State has wisely abandoned on appeal. And the circuit court's dismissal order appeared to accept (consistent with *Vanek*) that the two-year limit started on January 1, 2016. (C. 596) (finding "Defendant did not show diligence in waiting more than 2 years (1-1-16 to 1-3-18) to file her claim"). This finding, though contrary to the mailbox rule (*supra* pp. 28 29), would not give Angela notice that she needed to raise a broader response on the question of timeliness. Further, an appellee "may seek and obtain any relief warranted by the record on appeal." Ill. S. Ct. R. 318(a) (eff. Oct. 1, 2020). Contrary to the State's intimation, Angela's arguments concerning the lack of harmless error as to timeliness are properly before this Court.

6. The State has forfeited its argument that guilty pleas are excluded from subsection (b-5) and the State's position, in any event, is without merit.

In its brief, the State raises an argument brand new to this appeal, that Angela waived any subsection (b-5) claim by pleading guilty. St. Br. 29 35. By not raising the argument sooner in the appeal, the State has forfeited it. And the State's waiver claim, regardless, is rebutted by the statute's plain language and by this Court's decision in *People v. Reed*, 2020 IL 124940.

An appellant before this Court forfeits a claim by not raising it in their appellate court brief or petition for leave to appeal. See *People v. Sophanavong*, 2020 IL 124337, ¶ 21 (claim forfeited by not being raised in

appellate court); *In re Marriage of Goesel*, 2017 IL 122046, ¶ 12 (claim forfeited by not being raised in petition for leave to appeal); *Wisam 1, Inc. v. Illinois Liquor Control Comm'n*, 2014 IL 116173, ¶ 23 (same); *People v. McKown*, 236 Ill. 2d 278, 308 (2010) (claim forfeited by not being raised in appellate court). "[T]he doctrine of forfeiture applies to the State as well as to defendant." *Sophanavong*, 2020 IL 124337, ¶ 21.

The State has forfeited its waiver argument by not raising that argument in the appellate court. In the appellate court, as in this Court, Angela argued that her guilty plea did not waive subsection (b-5) relief since subsection (b-5) is modeled on actual innocence precedent, which allows petitioners who pled guilty to raise actual innocence claims. See App. Ct. Def. Br. 22 23. The State offered no response on this point. It instead raised a different waiver claim that Angela had waived affirmative defenses by pleading guilty and by withdrawing the postplea motion filed in her name. App. Ct. St. Br. 17 20. The State does not raise this claim in this Court, but instead argues a different claim. By not arguing in the appellate court that the guilty plea waived section 2-1401(b-5) relief, the State has lost that argument in this Court.

The State forfeited its waiver argument a second time by failing to raise the argument in its petition for leave to appeal. The State's petition argued that the due process violation was harmless on only one ground, that "defendant's petition was untimely and she alleged none of the statutory grounds that would permit her to avoid the two-year limitations period." St.

Pet. for Leave to Appeal 7. The State's failure to raise waiver in its petition for leave to appeal prevents it from raising waiver now. The State should be held to its forfeiture of the waiver argument. See *Sophanavong*, 2020 IL 124337, ¶ 21; *Marriage of Goesel*, 2017 IL 122046, ¶ 12.

In any event, defendants convicted based on a guilty plea may raise claims under subsection (b-5). Most importantly, nothing in subsection (b-5) precludes a defendant who pled guilty from raising a challenge. The procedural events mentioned in the provision being "convicted of a forcible felony" and having had a "sentencing hearing" occur in guilty pleas. The statute's reference to the "original trial court" is a synonym for the circuit court. See, *e.g.*, Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001) (setting out admonitions given by "trial court" following guilty plea); *People v. Boykins*, 2017 IL 121365, ¶ 13 (referring to advice of "trial court" during guilty plea proceedings).

Notably, the legislature knows how to exclude guilty-plea convictions from collateral remedies, as it did in an older version of the forensic testing statute. That version (later changed) granted forensic testing to defendants when, *inter alia*, testing did not occur or was not available "at the time of trial" and "identity was the issue in the trial which resulted in his or her conviction." See 725 ILCS 5/116-3(a)(1), (2) (West 2010); *id.* 116-3(b)(1). Based on this "plain and unambiguous language," this Court found the legislature limited forensic testing to defendants convicted after a trial, thus excluding defendants who pled guilty. *People v. O'Connell*, 227 Ill. 2d 31, 37

(2007). Here, by contrast, the plain and unambiguous language of subsection (b-5) encompasses guilty pleas.

In addition, excluding guilty pleas would run counter to *People v. Reed*, which held that actual innocence claims are not waived by the entry of a guilty plea. 2020 IL 124940, ¶ 37. Your Honors in *Reed* rejected the State's claim of waiver, finding that the crucial interest in protecting innocent defendants required petitioners with new evidence be given a chance to raise their claims. *Id*., ¶¶ 24 37. The Court found "[t]he purpose of our criminal justice system is to seek justice" and noted this Court's "long-established preference for life and liberty over holding defendant to his plea." *Id*., ¶¶ 32, 36. *Reed* thus allowed petitioners who pled guilty to raise actual innocence claims, albeit under a more stringent standard. *Id*., ¶ 48.

The logic of *Reed* applies to section 2-1401(b-5) claims. Critically, the requirements in section 2-1401(b-5) largely mirror those for actual innocence claims. See *supra* pp. 19 20. Subsection (b-5) reflects the legislature's concern that sentences imposed on a domestic violence survivor might not reflect the role of abuse leading to the crime. This concern applies equally to defendants convicted following a trial and those convicted as the result of a guilty plea. And like innocent defendants, defendants who are victims of domestic violence might plead guilty (or agree to a lengthy sentence) despite having a valid claim in this instance, one in mitigation based on "unaware[ness] of the mitigating nature of the evidence of the domestic violence at the time of sentencing." 735 ILCS 5/2-1401(b-5)(4) (West 2016). As in *Reed*, there is no

reason to treat guilty pleas differently from trials.

Because the State's waiver claim disregards the statutory language of subsection (b-5) and the origins of subsection (b-5) in actual innocence caselaw, it should be rejected.

The State's waiver argument rests on a flawed analogy to cases finding that guilty pleas waive later beneficial changes in common law precedent or sentencing statutes. See, *e.g.*, *People v. Jones*, 2021 IL 126432, ¶¶ 24 27 (guilty plea waived challenge based on later protections for juvenile offenders under *Miller v. Alabama*, 567 U.S. 460 (2012)); *United States v. Bradley*, 400 F.3d 459, 463 (6th Cir. 2005) (guilty plea waived challenge based on later enacted statute making sentencing guidelines discretionary); St. Br. 30 32. Subsection (b-5), though, is not akin to those changes; it explicitly allows petitioners to attack preexisting convictions when "no evidence of domestic violence against the movant was presented at the movant's sentencing hearing." 735 ILCS 5/2-1401(b-5)(3) (West 2016). When evidence of abuse is of sufficiently conclusive character and other conditions are met, the petitioner is entitled to sentencing relief. 735 ILCS 5/2-1401(b-5). Subsection (b-5) thus assumes courts will conduct the sort of counterfactual analysis considering evidence at the plea in light of other evidence the State claims is "nearly impossible." See St. Br. 33.

To try to fit Angela's case into these rubrics, the State conflates subsection (b-5) and section 5-5-3.1(a)(15) of the Unified Code of Corrections, which added a factor related to domestic violence to the lists of statutory

mitigating factors. See 730 ILCS 5/5-5-3.1(a)(15); St. Br. 30. To be clear, Angela raises no claim that section 5-5-3.1(a)(15) applies retroactively. Her only argument is under subsection (b-5).

And applying subsection (b-5) to guilty pleas does not impose any inordinate difficulties on the circuit court. In other contexts, courts ably reassess evidence offered at a guilty plea in light of newly presented evidence. See *Reed*, 2020 IL 124940, ¶¶ 52 53 (comparing newly discovered evidence to evidence at guilty plea); *People v. Hatter*, 2021 IL 125981, ¶¶ 37 40 (comparing defenses alleged in petition with facts alleged at plea). The State in fact hints at a variation on such an argument when it cites the nature of Angela's crime and the preferences of the victim's family. See St. Br. 33 34. These points, though undeveloped (the State does not cite the record), show that the requirements of subsection (b-5) are matters that can be proven or not proven in the guilty plea context.

All and all, the State's waiver claim has been forfeited and is rebutted by the plain language of subsection (b-5) and that provision's origins in actual innocence caselaw.

7. The substantial merits of Angela's arguments starkly distinguish her case from *People v. Stoecker*, where this Court found a premature ruling to be harmless.

Given the many viable arguments Angela had in favor of relief, her case on harmless error is nothing like *People v. Stoecker*, 2020 IL 124807. As this Court recognized in *Stoecker*, in making this assessment, "each case is to be judged on its own specific facts." 2020 IL 124807, ¶ 25.

In *Stoecker,* the petitioner filed a section 2-1401 petition arguing that his 1998 sentencing hearing violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Stoecker*, 2020 IL 124807, ¶¶ 3, 7. Stoecker had raised this issue in prior collateral filings, each time without success. *Id.*, ¶¶ 4 7. When he filed another petition raising the *Apprendi* claim, the State filed a motion to dismiss. *Id.*, ¶ 9. The circuit court, waiting only four days, denied the petition. *Id.*, ¶ 10. On appeal, this Court found a due process violation but that the error was harmless since "petitioner's claims were untenable as a matter of law and where additional proceedings would not enable him to prevail on his claim for relief." *Id.*, ¶ 33. Specifically, Stoecker's petition was untimely, his argument that the judgment was void lacked merit, and the claim was barred by *res judicata. Id.*, ¶¶ 27 31. In addition, Stoecker was not diligent in bringing a related claim since that claim could have been raised on direct appeal. *Id.* ¶ 32. Stoecker's claims were thus "procedurally defaulted and patently incurable as a matter of law." *Id.*, ¶ 26.

In contrast, the due process violation here was not harmless. The State does not dispute that Angela has met the five requirements of section 2-1401(b-5). See *supra* pp. 16 17. She has viable arguments showing her petition is timely and her claims grounded in the structure, language, and purpose of subsection (b-5), as well as the general equitable nature of section 2-1401. See *supra* pp. 16 36. Stoecker only argued that his sentence was a void judgment, a rare type of section 2-1401 claim *not* subject to equity. See *Warren Cnty. Soil & Water Conservation Dist. v. Walters*, 2015 IL 117783,

¶ 49. Stoecker also lacked arguments Angela can bring about the State's invited error and forfeiture of claims, including the State's twice forfeited claim that her guilty plea waived the subsection (b-5) claim. See *supra* pp. 17, 36, 38 40.

In contrast to *Stoecker*, a remand of Angela's petition would not be a waste of resources. Her substantial arguments in favor of relief show the due process violation here was not harmless. See *English v. Cowell*, 10 F.3d 434, 438 40 (7th Cir. 1993) (finding due process violation not harmless because litigant could "espouse relevant arguments in the court below"). Further, it remains possible the State on remand would waive any procedural objections, as it has done in other cases. See *supra* p. 37 (noting instances where State waived application of two-year limit). Unlike the petition in *Stoecker*, Angela's petition was not palpably incurable. Angela should be given a chance to respond to the State's motion to dismiss.

D. Conclusion

"Domestic violence is a serious problem in our state and in our entire country." *People v. Ward*, 2021 IL App (2d) 190243, ¶ 61. In enacting subsection (b-5), the legislature gave victims whose crimes were connected to their abuse a chance at sentencing relief. Angela's petition undisputedly made showings supporting subsection (b-5) relief: her participation in the murder was the result of a horrific history of abuse by her husband Ronald, and knowledge of this abuse would likely result in a lower sentence.

Yet the circuit court granted the State's motion to dismiss without

giving Angela a chance to respond, violating Angela's right to due process. The State on appeal would excuse the court's due process violation. Its arguments, though, run afoul of the purposes of subsection (b-5) and the equitable nature of section 2-1401. The court's violation of Angela's due process rights is not harmless, since Angela could prove on remand that her claim had merit and was timely filed. Angela thus respectfully requests this Court affirm the judgment of the appellate court and remand for further proceedings.

CONCLUSION

The trial court's due process violation in denying Angela Wells's section 2-1401(b-5) petition was not harmless. Accordingly, Angela respectfully requests that this Court affirm the appellate court judgment, reverse the circuit court's judgment, and remand for further section 2-1401(b-5) proceedings.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

JONATHAN KRIEGER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLEE

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 47 pages.

/s/Jonathan Krieger
JONATHAN KRIEGER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

People v. Rish, 2021 IL App (3d) 190446 (Rule 23 order). A-1

People v. Donoho, 2021 IL App (5th) 190086-U A-18

2021 IL App (3d) 190446

Order filed July 22, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-19-0446
v.	)	Circuit No. 87-CF-321
	)	
NANCY RISH,	)	Honorable Michael C. Sabol, Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE LYTTON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt dissented.

ORDER

¶ 1 *Held*: Defendant's allegations in her petition, supported by attached affidavits and exhibits, that no evidence of domestic violence was presented at her sentencing hearing and that the evidence was of such a conclusive character that it would likely change her natural life sentence were sufficient to state a claim for relief under section 2-1401(b-5) of the Code of Civil Procedure.

¶ 2 Defendant, Nancy Rish, was convicted of first degree murder and aggravated kidnapping and sentenced to concurrent terms of natural life and 30 years imprisonment. She filed a petition for relief from judgment under section 2-1401(b-5) of the Code of Civil Procedure (Code) (735

ILCS 5/2-1401(b-5) (West 2018)), seeking a resentencing hearing based on evidence that she was the victim of domestic abuse committed by her codefendant, Daniel Edwards. Defendant argues that the trial court erred in granting the State's section 2-615 motion to dismiss because the allegations in her petition, when viewed in a light most favorable to her, are sufficient to state a claim for relief under section 2-1401(b-5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(b-5) (West 2016)). We reverse and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In October 1987, defendant Nancy Rish was charged with first degree murder and aggravated kidnapping for abducting Stephen Small, a wealthy Kankakee businessman, and burying him alive in an attempt to collect $1 million in ransom. The State charged defendant based on an accountability theory, alleging that defendant promoted, aided, and facilitated her boyfriend, Edwards, in the kidnapping scheme.

¶ 5 At trial, the evidence revealed that Small was lured away from his home after receiving a call at 12:30 a.m. on the morning of September 2, 1987. Someone on the other end of the line informed Small that there had been a break-in at the Bradley house, a property Small was renovating. A few minutes later, Small's son heard the garage door open and close. The phone rang again at 3:30 a.m. and Small's wife answered. She was told that her husband was being held for ransom and that she was not to contact the F.B.I. or police. She then heard her husband's voice. He indicated that the call was not a joke, that he was being held captive in a box that was covered with sand, and that he had enough air for 24 to 48 hours.

¶ 6 Defendant's sister contacted the Federal Bureau of Investigations (FBI) shortly after the phone call. FBI agents testified that on September 4, following two days of surveillance and a search of the house where defendant and Edwards lived, they discovered Small's body in a wooden

box buried in a rural area near Aroma Park. Small had been buried alive and died as a result of "asphyxia due to suffocation."

¶ 7 Agents took defendant and Edwards into custody on the morning of September 4, 1987, before Small's body was found. Between September 4 and September 8, 1987, defendant gave 8 statements to investigators. In each one, she denied participating in the kidnapping plan and claimed she had no knowledge that Edwards had buried Small alive.

¶ 8 During defendant's initial interview, she denied any knowledge of Edwards' kidnapping plan. Later that afternoon, she told officers that she drove Edwards around before and after Small was kidnapped, but she gave conflicting accounts of the locations they visited.

¶ 9 Defendant was interviewed again on September 6, two days after agent's found Small's body. Detectives specifically asked her if she knew anything about the box. Defendant admitted that Edwards built a box in their garage, but she claimed he sold it in May or June. In an interview the next day, she admitted that her story about the box was a fabrication and that the box remained in the garage until August 31. She also admitted that on the evening of September 1, she followed Edwards to Kankakee, where he parked his van and got into her car. She dropped Edwards off at Cobb Park, one block from the Small residence, and around 3 a.m. the next morning, she picked him up from a remote location near Small's burial site. Defendant also told officers that on the night of August 30, 1987, she and Edwards "got into an argument" and he ran upstairs, got a gun, pointed it at his head, and indicated that he was going to kill defendant, her son, and himself.

¶ 10 In her final statement to police on September 8, 1987, defendant admitted that after she picked Edwards up in Kankakee but before she dropped him off at Cobb Park, she drove him to a gas station where he used a pay phone around 12:30 a.m. She also amended the account of her argument with Edwards on August 30, stating that Edwards actually pointed the gun at her head.

¶ 11 At trial, defendant claimed that she was unaware of the plan to kidnap Small. She supported that theory with her own testimony, which was substantially similar to the statements she gave to investigators in her final two interviews. She also testified about several domestic disputes she had with Edwards. When asked by her attorney why she lied to police in her interviews, she responded that she did so because she realized that Edwards had used her and she was "scared to tell the truth."

¶ 12 The jury convicted defendant of murder and kidnapping. At the sentencing hearing, defendant's mother, her sisters, and a friend provided testimony regarding defendant's good character, her quiet nature, and her devotion to her son. Her three sisters testified that defendant was the youngest of four girls and that she grew up in an abusive household. Defendant's father was an alcoholic and physically and mentally abused defendant's mother for years. Defendant's mother testified that defendant was a good mother. She agreed that her husband was violent and aggressive and testified that he became more abusive after defendant was born. Kathy Goodrich testified that she was one of defendant's closest friends. She also stated that defendant was a good person who loved her son. Goodrich described Edwards as a "shady character" with friends who lied and stole from people. All of the witnesses testified that they did not like Edwards; they described him as distant and overbearing. No one testified that Edwards physically or mentally abused defendant or her son.

¶ 13 The trial court considered the possibility of defendant's rehabilitation and weighed it against the factors of deterrence and retribution. It then sentenced defendant to a term of natural life imprisonment for first degree murder, to be served concurrently with a term of 30 years imprisonment for aggravated kidnapping.

¶ 14 On direct appeal, defendant argued that the evidence was insufficient to prove her knowing participation in the kidnapping and murder and that her sentence was excessive. This court affirmed her convictions and sentence. *People v. Rish*, 208 Ill. App. 3d 751 (1991). Subsequently, defendant filed a 16-count postconviction petition, a federal *habeas corpus* petition and a clemency petition, none of which were successful in overturning the jury's verdict or her sentence.

¶ 15 In 2015, defendant filed a successive postconviction petition. In her petition, she alleged actual innocence, claiming that she was an unwitting accomplice. She supported her claim with an affidavit from Edwards and a deposition, in which Edwards stated that he never told defendant about the kidnapping plot and that he actively worked to conceal it from her. The trial court dismissed defendant's petition at the second stage, and we affirmed, concluding that the affidavits were cumulative of evidence the jury received from defendant's own testimony and they were not so conclusive in character that the information would have changed the result on retrial. *People v. Rish*, 2017 IL App (3d) 160091-U, ¶ 28.

¶ 16 In December 2017, defendant filed this petition for relief from judgment pursuant to section 2-1401(b-5) Code. She claimed that new domestic violence laws and the amended sentencing factors in section 5-5-3.1(a) of the Unified Code of Corrections (Code of Corrections) (730 ILCS 5/5-5-3.1(a) (West 2016)) required a resentencing hearing at which she could present mitigating evidence that she was the victim of domestic violence at the hands of her co-defendant, Edwards. She claimed that "[n]o evidence of domestic violence against Petitioner was presented at her sentencing hearing" and that she was "unaware of the mitigating nature of the evidence of domestic violence at the time of sentencing in 1988." In addition, defendant alleged that the new domestic violence evidence was material, in that it would lessen her culpability and the severely harsh sentence of natural life imposed by the trial court.

¶ 17 In support of the domestic violence claims, defendant alleged that "[o]n or about August 31 and September 1, 1987, Edwards was preparing to commit the kidnapping of [Small] *** and used domestic violence as defined in the Domestic Violence Act to coerce Petitioner to drive him to and pick him up from the area where he would carry out his planned kidnapping." The petition further alleged that "Edwards threatened [her] with a gun, saying he would kill her and her 8 year old son if she did not assist him" and that Edwards "used domestic violence to harass and intimidate [her] to coerce her unwitting assistance in his offense by telling her that he was being threatened by someone who would kill him, his ex-wife, and his children if [Edwards] did not do what this person told him to do."

¶ 18 Attached to the petition were several affidavits documenting Edwards's threats and physical abuse and detailing defendant's life of physical and verbal abuse by her father. Defendant's friend, Lori Brault, described a conversation that she had with defendant in July 1987 in which defendant said that Edwards was "crazy," that he had a gun, and that she was afraid for herself and her son. Defendant told Brault that she was trying desperately to get away from Edwards. In another affidavit, defendant's friend, Kathy Goodrich, stated that Edwards called her and her husband from the Kankakee County jail shortly after he was arrested for kidnapping Small and told them that he yelled at defendant and her son and threatened to kill them both if defendant did not drive him and pick him up from the location where he buried Small. In a third affidavit, Lori Guimond, defendant's sister, stated that defendant's father was physically abusive toward defendant's mother. She said that defendant learned from her mother not to discuss the abuse with anyone and to take care of herself.

¶ 19 Excerpts from the 2015 evidence deposition of Edwards were included as an exhibit. In his deposition, Edwards stated that he disguised his voice and made angry calls to defendant's home

at the time of the kidnapping to make defendant believe that she and her son were in danger of death or great bodily harm. Defendant also described numerous acts of physical abuse, violence, and intimidation that he committed against defendant in the months leading up to Small's kidnapping.

¶ 20 Defendant also attached a letter written by Dr. Michelle Van Natta, a professor of sociology from Northwestern University. Dr. Van Natta opined that defendant's affidavit and the affidavits of others attached to the petition supported her claims of serious domestic violence. She stated that these experiences most likely affected defendant's behavior and had a strong influence on her compliance with Edwards's demands.

¶ 21 The State filed a motion to dismiss defendant's petition on timeliness grounds, asserting that it was time-barred because defendant failed to file it within two years of her sentence. The trial court granted the State's motion, and defendant appealed. On appeal, the State withdrew from its position and filed an agreed motion for summary remand, waiving the two-year limit defense. We granted the State's motion and remanded for further proceedings.

¶ 22 On remand, the State filed a motion to dismiss under section 2-615 of the Code, claiming that defendant failed to state a cause of action upon which a new sentencing hearing could be ordered. It argued that the allegations of abuse failed to demonstrate that the evidence was of such conclusive character that it would likely change the sentence imposed by the sentencing court. The State maintained that the trial court's sentence rested on the "horrific nature of the crime in which [defendant] played an integral part" and that the evidence of domestic violence could not overcome the most important aggravating factor at sentencing, the seriousness of the crime. In response, defendant argued that the new evidence of domestic violence and the amended sentencing statute

warranted a resentencing hearing and that her petition sufficiently stated a cause of action under section 2-1401(b-5) to overcome a motion to dismiss.

¶ 23 The trial court granted the State's motion to dismiss, finding that defendant failed to allege facts "sufficient to show that the new evidence of domestic violence against the defendant is of such a conclusive character that it would likely change the sentence imposed by the original trial court." At the conclusion of the hearing, defense counsel asked the court to clarify its ruling for the purpose of amending the petition. The court responded, "What facts may be out there I don't know, but it isn't sufficient—in my opinion, it isn't sufficiently pled as to Element 5."

¶ 24 II. ANALYSIS

¶ 25 A. Section 2-615 Dismissal

¶ 26 Defendant argues that the trial court erred in granting the State's section 2-615 motion to dismiss her section 2-1401 petition where the State failed to identify any defect in the pleadings and, instead, improperly assessed the merits of her petition.

¶ 27 A motion to dismiss under section 2-615 of the Code challenges the legal sufficiency of the petition solely on the basis of defects on the face of the pleading. *In re Marriage of Van Ert*, 2016 IL App (3d) 150433, ¶ 14. A cause of action should not be dismissed under section 2-615 unless it is apparent that the petitioner cannot prove any set of facts that would entitle her to relief. *Id.* At the motion to dismiss stage, all well-pleaded facts are taken as true, and the crucial inquiry is whether the allegations in the petition, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Id.* A petition should be dismissed under section 2-615 only if it is clearly apparent from the petition that no set of facts can be proved that would entitle the petition to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). When ruling on a section 2-615 motion, the trial court should only consider

the allegations in the pleadings. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003). Exhibits attached to the petition are part of the complaint and may be considered in support of the allegations in the pleading. *Van Ert*, 2016 IL App (3d) 150433, ¶ 14.

¶ 28 Because a motion to dismiss under section 2-615 tests only the legal sufficiency of the pleadings based on facial defects, "[i]t does not assess the underlying facts." *Heastie v. Roberts*, 226 Ill. 2d 515, 538 (2007). "What the evidence presented at trial showed or failed to show is therefore irrelevant to the determination of whether [the] motion to dismiss was properly granted." *Id.*

¶ 29 A proceeding under section 2-1401 of the Code provides a forum by which final orders and judgments may be vacated or modified in civil or criminal proceeding. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). While section 2-1401 petitions are normally used as a vehicle to bring facts to the attention of the trial court which, if known at the time of judgment, would have precluded its entry, they may also be used to challenge a purportedly defective judgment for legal reasons. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 41.

¶ 30 Effective January 1, 2016, the General Assembly enacted Public Act 99-0384 (Pub. Act 99-0384, eff. Jan. 1, 2016), amending section 5-5-3.1(a) of the Code of Corrections (730 ILCS 5/5-5-3.1(a) (West 2016)) to allow courts to consider domestic violence as a mitigating factor at sentencing. Section 5-5-3.1(a) provides:

> "[T]he following grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment:
>
> * * *

> (15) At the time of the offense, the defendant is or had been the victim of domestic violence and the effects of the domestic violence tended to excuse the defendant's criminal conduct." *Id.* § 5-5-3.1(a)(15).

¶ 31 Public Act 99-0384 also amended section 2-1401 of the Code to include subsection (b-5), which allows for relief from judgment based on new evidence of domestic violence. Thus, as of January 2016, a petitioner may present a meritorious claim for postjudgment relief under section 2-1401(b-5) if the allegations in the petition establish each of the following by a preponderance of the evidence:

> "(1) the movant was convicted of a forcible felony;
>
> (2) the movant's participation in the offense was related to him or her previously having been a victim of domestic violence as perpetrated by an intimate partner;
>
> (3) no evidence of domestic violence against the movant was presented at the movant's sentencing hearing;
>
> (4) the movant was unaware of the mitigating nature of the evidence of the domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence; and
>
> (5) the new evidence of domestic violence against the movant is material and noncumulative to other evidence offered at the sentencing hearing, and is of such a conclusive character that it would likely change the sentence imposed by the original trial court." 735 ILCS 5/2-1401(b-5) (1)-(5) (West 2018).

As used in subsection (b-5), the term "domestic violence" means "abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986." *Id.* § 2-1401(b-5). Abuse includes physical abuse and harassment. See 750 ILCS 60/103(l) (West 2018).

¶ 32 Defendant filed a petition for relief from judgment under section 2-1401(b-5) in December 2017, seeking a resentencing hearing to allow the court to consider evidence of domestic violence as a mitigating factor in imposing an appropriate sentence. The petition alleged that: (1) defendant was convicted of a forcible felony; (2) Edwards manipulated and coerced defendant's participation through acts of domestic violence; (3) evidence of those acts of domestic violence was not presented at the original sentencing hearing; and (4) she was unaware of the mitigating nature of the domestic violence evidence at the sentencing in 1988. Defendant further alleged that, based on the new mitigating sentencing provision in section 5-5-3.1(a) of the Code of Corrections, the evidence of domestic violence was material and would likely reduce her severely harsh sentence of natural life. Defendant attached affidavits from friends and family and excerpts of Edwards's own statements describing acts of physical and mental abuse that he committed against defendant, including intimidation and threats of bodily harm to her son. She also attached the transcript of witness testimony from the sentencing hearing in which no one mentioned Edwards' acts of domestic violence. In light of these allegations contained in the pleadings, we are compelled to conclude that defendant set forth all five elements of a section 2-1401(b-5) claim and that dismissal under section 2-615 was improper.

¶ 33 The State argues that the evidence of domestic violence cited by defendant cannot support her claim because it was not "newly discovered." The State asserts that because domestic abuse evidence was presented at trial through defendant's testimony and her statements to police, she cannot satisfy the third element—that no evidence of domestic abuse was presented at sentencing.

¶ 34 The State's interpretation of the requirements of section 2-1401(b-5) defies the basic tenants of statutory construction. The plain language of the third element states that the petitioner must demonstrate "no evidence of domestic violence against the movant was presented at the

movant's sentencing hearing." The statute does not require the petitioner to show that no evidence was presented at the movant's *trial* or sentencing hearing. Where the terms of a statute are plain and unambiguous, we will not depart from that language and read into the statute exceptions, limitations or conditions that the legislature did not express. See *People v. Shinaul*, 2017 IL 120162, ¶ 17. By its plain terms, section 2-1401(b-5) demonstrates the legislature's intent that a sentence reflect the mitigating nature of domestic abuse so that when such evidence is not put forward at an original sentencing hearing, a new sentencing hearing can be conducted. Here, defendant's petition clearly alleges that no domestic violence evidence was presented at the sentencing hearing and the attached affidavits and exhibits support that allegation.

¶ 35 With the State's position in mind, the dissent maintains that the evidence of domestic violence against defendant was not new and that this theory has been repeatedly rejected. The record, however, simply does not support that conclusion. At trial, defendant maintained that she was an unwitting accomplice. At sentencing, defendant presented evidence of her good character and Edwards' bad character. On direct appeal, she claimed that the evidence failed to show she knew about the plan. In collateral proceedings, she continued to challenge her conviction, claiming again that she had no knowledge of the kidnapping plan. Time and again, defendant maintained that she was unaware of the plan to kidnap Small and hold him for ransom. But she never claimed that Edwards' acts of domestic abuse against her lessened her culpability, nor did she present evidence in support of that claim. That is the argument she is attempting to assert in her petition; that is the claim that survives a section 2-615 dismissal.

¶ 36 In granting the State's section 2-615 motion, the trial court reached beyond the face of the petition and inappropriately ruled on the merits of defendant's claim. The trial court noted that the original sentencing court found the murder exceptionally brutal and heinous and that the nature of

the crime demanded a severe sentence. It then ruled that the petition "does not allege facts sufficient to show that the new evidence of domestic violence against the defendant is of such a conclusive character that it would likely change the sentence imposed by the original trial court." However, the court failed to identify any defects on the face of the petition. It weighed the evidence of domestic violence, adjudicated the merits, and found the petition wanting. As cautioned in *Heastie*, in ruling on a motion for failure to state a claim, a court may not "assess the underlying facts." *Heastie*, 226 Ill. 2d at 538. In this case, the trial court inappropriately assessed the underlying facts.

¶ 37 The allegations in defendant's petition and the supporting exhibits are sufficient to state a claim for relief under section 2-1401(b-5). Accordingly, we reverse the trial court's dismissal of the petition under section 2-615 and remand for further proceedings.

¶ 38 B. Reassignment to a Different Trial Judge

¶ 39 Defendant asks us to remove the trial judge and assign the case to a different judge on remand. She claims that because the trial judge improperly considered the merits of the case and concluded that the new evidence of domestic violence was not of such a conclusive character that it would affect the original sentence imposed, she would be substantially prejudiced if her case were remanded to the same judge. We agree.

¶ 40 Illinois Supreme Court Rule 366(a)(5) gives a reviewing court the authority, in its discretion, to reassign a matter to a new judge on remand. Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994); *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 45. However, the decision to reassign a judge is not one to be made lightly. *People v. Vance*, 76 Ill. 2d 171, 179 (1976). In order to obtain a new judge on remand, the defendant must show "[s]omething more" than the trial judge presiding over an earlier proceeding and an unfavorable ruling. *Id.* at 181. "A defendant can show 'something

more' by demonstrating 'animosity, hostility, ill will, or distrust' [citation], or 'prejudice, predilections or arbitrariness' [citation]." *People v. Reyes*, 369 Ill. App. 3d 1, 25 (2006). Evidence that a judge is predisposed on a substantive issue in a case is proof of prejudice. See *Serrano*, 2016 IL App (1st) 133493, ¶ 45; see also *Reyes*, 369 Ill. App. 3d at 26 (trial judge replaced on remand for inappropriately addressing merits of new evidence that defendants' confessions were coerced at the first stage of postconviction proceedings).

¶ 41 Where a judge gives the impression that new evidence is insufficient to meet the burden at the first stage of a petition for relief from judgment, a defendant "would be 'substantially prejudiced' [citation] if the case were remanded to the same trial judge." *Reyes*, 369 Ill. App. 3d at 26 (quoting *People v. Hall*, 157 Ill. 2d 324, 331 (1993)). Reassignment of a trial judge on remand is appropriate if the judge's prejudice or predilections would interfere with the administration of fair and impartial justice. See generally *Hall*, 157 Ill. 2d at 332; *Vance*, 76 Ill. 2d at 181-82

¶ 42 In *Serrano*, the defendant filed a postconviction petition alleging actual innocence. *Serrano*, 2016 IL App (1st) 133493, ¶ 12. Following a third-stage evidentiary hearing, the trial court granted the State's motion for a directed finding. The defendant appealed, arguing that he had presented sufficient evidence to meet the directed finding threshold and that a new judge was necessary on remand. He claimed that because the judge had already ruled that no contrary verdict could ever stand and expressed disregard for the evidence presented, it would be "worthless" to send the case back to the same judge. *Id.* ¶ 45. The reviewing court agreed, stating that a new judge was required because the postconviction court "gave the impression that it was flatly unwilling to consider the evidence offered by petitioner." *Id.*

¶ 43 Similarly, the trial judge in this case improperly prejudged a central issue in defendant's petition for relief from judgment—whether new evidence of domestic violence against her is

sufficient to warrant resentencing. In ruling on whether defendant's petition should be dismissed, the trial judge concluded that "the petition does not allege facts sufficient to show the new evidence of domestic violence against the defendant is of such a conclusive character that it would likely change the sentence imposed by the original trial court." While such a conclusion may be invited at a hearing on the merits of a 2-1401(b-5) petition, it is not warranted at the pleadings stage. The trial judge also remarked that he did not know "what facts *** if any" would have changed the sentence imposed. Given the judge's comments in ruling on the motion to dismiss, we find that defendant would be substantially prejudiced if her case was remanded to the same trial judge. See *Serrano*, 2016 IL App (1st) 133493, ¶ 45. Accordingly, the interests of fairness and justice would be best served by assigning this case to a different judge to address the merits of the petition.

¶ 44 III. CONCLUSION

¶ 45 The trial court's order dismissing defendant's 2-1401(b-5) petition is reversed, and the cause is remanded to presiding judge of the circuit court with directions to assign the case to a different judge to adjudicate the reinstated proceedings.

¶ 46 Reversed and remanded with directions.

¶ 47 JUSTICE SCHMIDT, dissenting:

¶ 48 Defendant's petition seeks relief from her natural life sentence based on her allegations of domestic abuse. Specifically, she alleged that Edwards threatened her and her son with a gun, made threatening phone calls with a disguised voice, on several occasions he grabbed her arm and shoved her onto chairs, and he pulled the phone out of the wall when defendant attempted to call the police. According to defendant, she complied with Edwards' demands and unwittingly aided the kidnapping scheme out of fear. In light of this, defendant sought a new sentencing hearing to present this evidence to mitigate her sentence.

¶ 49 The majority finds the above allegations of domestic abuse sufficient to state a claim for relief under section 2-1401(b-5) of the Code (735 ILCS 5/2-1401(b-5)(3) (West 2018)). The majority finds that she sufficiently alleged that no evidence of domestic violence was presented at her sentencing hearing. This evidence is not new. We should affirm the dismissal of her section 2-1401(b-5) petition.

¶ 50 "A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition. [Citations.]" *People v. Haynes*, 192 Ill. 2d 437, 461 (2000). "[A] section 2-1401 petition *** requires the court to determine whether facts exist that were unknown to the court at the time of trial and would have prevented entry of the judgment." *People v. Pinkonsly*, 207 Ill. 2d 555, 566 (2003).

¶ 51 Here, defendant must plead that "no evidence of domestic violence against the movant was presented at the movant's sentencing hearing." 735 ILCS 5/2-1401(b-5)(3) (West 2018).[1] At trial, the State presented defendant's statements to police. In one statement, she told police that Edwards pointed a gun at his head and threatened to kill her, her son, and himself. She later changed her story and told police that Edwards had pointed the gun at her. In her own testimony, she described domestic disputes between her and Edwards. She claimed that she provided false statements to the police due to her fear of Edwards. The sentencing court heard all the evidence presented at trial. The court, therefore, knew of—and considered—the allegations of domestic abuse at the time it

[1]While the trial court did not specifically address this element, we may affirm on any basis supported by the record. See *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008).

imposed the sentence. Thus, the court was keenly aware of the allegations of domestic abuse at the time it imposed the sentence. This is not new evidence.

¶ 52 We should affirm the trial court.

2021 IL App (5th) 190086-U

NO. 5-19-0086

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jefferson County.
	)	
v.	)	No. 06-CF-425
	)	
KRYSTA DONOHO,	)	Honorable
	)	Eric J. Dirnbeck,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order dismissing the defendant's petition for relief from judgment pursuant to 735 ILCS 5/2-1401(b-5) (West 2016) is affirmed where the plain language of the statute indicates that it only allows petitioners to seek relief two years after judgment of conviction and sentence is entered and where the defendant filed her petition for relief from judgment over two years after the underlying judgment was entered.

¶ 2 This is an appeal arising from an order of the circuit court of Jefferson County dismissing the petition for relief from judgment pursuant to section 2-1401(b-5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(b-5) (West 2016)) filed by the defendant, Krysta Donoho. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The defendant was charged by indictment with first degree murder and robbery relating to events that occurred on July 1, 2006, which resulted in the death of the victim, Randy Farrar. Following a jury trial, the defendant was convicted of first degree murder and robbery. On March 18, 2008, the trial court sentenced the defendant to 45 years' imprisonment, to be followed by 3 years of mandatory supervised release. Thereafter, the defendant appealed, arguing that (1) the State failed to prove her guilty of felony murder beyond a reasonable doubt, (2) the court failed to adequately inquire whether prospective jurors understood the principles of Illinois Supreme Court Rule 431(b) (eff. May 1, 2007), (3) the court abused its discretion by considering a factor inherent in the offense when rendering its sentence, and (4) she was entitled to additional credit against her DNA fine for time spent in presentence investigation. See *People v. Donoho*, 2011 IL App (5th) 080354-U. On November 18, 2011, this court affirmed the defendant's conviction and sentence. *Id*. ¶¶ 36-37.

¶ 5 On September 4, 2012, the defendant filed her first *pro se* postconviction petition, raising only the issue of whether the trial court erred in failing to grant defense's motion for change of venue. On November 29, 2012, the court dismissed the defendant's petition at the first stage. The defendant appealed, but later voluntarily dismissed the appeal.

¶ 6 Meanwhile, the defendant filed a successive postconviction petition on August 11, 2014, raising several issues irrelevant to this appeal. The trial court denied the successive petition on the grounds that the issues raised therein could have been raised either on direct appeal or in the first postconviction petition. The defendant appealed, and this court

affirmed, concluding that the defendant had "failed to establish cause for not raising her ineffective assistance of trial counsel claims in her first postconviction petition," and, therefore, "failed to satisfy the cause-and-prejudice test." See *People v. Donoho*, 2018 IL App (5th) 140501-U, ¶¶ 20-21.

¶ 7 Relevant to this appeal, on December 6, 2017, the defendant filed a petition for relief from judgment pursuant to section 2-1401(b-5) of the Code (735 ILCS 5/2-1401(b-5) (West 2016)), which alleged that: (1) her participation in the murder and robbery of the victim on July 1, 2006, was related to her previously having been a victim of domestic violence as perpetrated by her intimate partner and codefendant, Demetrius Cole; (2) Cole was 10 inches taller than her, outweighed her by 100 pounds, routinely slapped, punched, and kicked her, made her afraid to stand up to him or try to leave him, and this domestic violence helped to explain and mitigate her conduct; (3) no evidence of domestic violence perpetrated against her was presented at her sentencing hearing; (4) because the mitigation statute for domestic violence victims (730 ILCS 5/5-5-3.1(a)(15) (West 2016)) became law on January 1, 2016, she was unaware of the mitigating nature of the evidence of domestic violence at the time of sentencing and could not have learned of its significance sooner through diligence; (5) the new evidence of domestic violence committed against her was material and noncumulative to other evidence offered at the sentencing hearing, and was of such a conclusive character that it would likely change the 45-year sentence imposed by the trial court; and (6) if the sentencing court had known how violently Cole treated her, the court likely would not have given her the same sentence that it gave him (45 years' imprisonment). The defendant requested an evidentiary hearing on her petition. Attached

to the petition was an affidavit from her sister, Cynthia Christian, who stated that when the defendant was dating Cole, he was almost always with the defendant and would not allow her to be alone, and that the defendant said she felt trapped in her relationship with Cole. On January 2, 2018, the State filed a motion to dismiss the defendant's petition arguing that it was not timely filed.

¶ 8 On May 4, 2018, the defendant filed a *pro se* "Reply Brief," which essentially quoted section 2-1401(b-5) (735 ILCS 5/2-1401(b-5) (West 2016)). She also cited to case law relevant to the filing of postconviction petitions, rather than section 2-1401 petitions, and argued that petitioners have been allowed to file beyond the limitations deadline when their claims were based on changes in the law that were not announced until after the statutory deadline had passed.

¶ 9 On June 18, 2018, the State filed a "Reply to Defendant's Reply Brief," arguing, *inter alia*, that Public Act 99-384 (eff. Jan. 1, 2016), the enacting measure for subsection (b-5), expressed the legislative intent that the opportunity to reopen sentencing hearings based on the new law only extended to judgments less than two years old as of January 1, 2016, and if the legislature intended the provision to otherwise apply, it would have so stated. The State requested that the trial court follow the body of law referenced and summarized in *People v. Hunter*, 2016 IL App (1st) 141904. The State asserted that, as in this case, *Hunter* involved a statutory amendment that required consideration of newly enumerated factors in mitigation, the amendment contained an explicit effective date, and it did not apply retroactively. As a result, the State requested that the trial court enter an order dismissing the defendant's petition as untimely.

¶ 10 On August 7, 2018, the trial court appointed counsel to represent the defendant. On February 5, 2019, the defendant's counsel filed a memorandum in support of the defendant's petition. Citing to a Cook County circuit court ruling announced from the bench on August 28, 2018 (*People v. Benford*, No. 95-CR-4733, Cir. Ct. Cook County) and an unpublished Rule 23 order from the Second District Appellate Court (*People v. Lee*, 2018 IL App (2d) 180004-U), counsel argued, *inter alia*, that since 2016, the interpretation of the amendment to section 2-1401(b-5) has divided the courts, causing a split over the retroactivity of the amendment. Counsel further asserted that "[t]he basis for the relief created by the amendment in subsection (b-5) is comparable to a legal disability or concealment because of the pre-existing legal prohibition on the presentation of domestic violence evidence," and that "a two-year limitation on petitions under subsection (b-5) should not be applied to this amendment." Therefore, counsel maintained that since the defendant filed her petition within two years of the passage of the 2016 amendment, the court should find that it was timely filed.

¶ 11 On February 5, 2019, a hearing was held on the State's motion to dismiss the defendant's petition. The State reiterated what it argued in its "Reply to Defendant's Reply Brief," that by choosing section 2-1401 of the Code as the vehicle to codify this change in the law, the legislature acted with knowledge of those consequences, and, therefore, it did not intend the domestic violence mitigation provision to be available for more than two years after sentencing. If the legislature intended the provision to apply retroactively, the State argued, it would have so stated "instead of including an effective date *** in a mechanism that has by itself a statutory two-year period." The defendant's counsel

essentially relied on the same arguments made in the memorandum. Upon hearing counsels' arguments, the trial court indicated that it would take the matter under advisement.

¶ 12 On February 19, 2019, the trial court granted the State's motion to dismiss the defendant's petition by docket entry. The court stated:

> "The Attorneys herein agree that there is no binding authority to guide this Court in its interpretation of 735 ILCS 2-1401(b-5) as it relates to the State's motion to dismiss defendant's 2-1401 Petition as untimely. Accordingly, the State's Motion to Dismiss must be decided by applying the rules of statutory construction. It should be noted that Supreme Court Rule 23(e)(1) makes it clear that an 'order entered under subpart (b) or (c) of [said] rule is not precedential and may not be cited by any party ...' (There are exceptions that follow that do not apply). The case of *People v. Lee*, 2018 IL App (2d) 180004-U is just such a case, *i.e.*, it was disposed of by the issuance of a Rule 23 Order. While the provisions of Rule 23 may prevent parties from citing such an opinion as precedent, this court has opted to refer to *People v. Lee* for the purpose of not having to 're-invent the wheel.' The facts, relevant procedural history and arguments in *People v. Lee* are very similar and this Court agrees with the analysis of the timeliness issue as stated by the Second District Appellate Court. Accordingly, the State's Motion to Dismiss is granted."

¶ 13 On February 26, 2019, the trial court entered a written order granting the State's motion to dismiss the defendant's petition for relief from judgment pursuant to section 2-1401(b-5) stating, in relevant part, that the petition "was not filed within the 2-year period provided for at 735 ILCS 5/2-1401(c)"; the defendant "was not under legal disability or duress during the applicable 2-year period"; "the grounds for relief were not fraudulently concealed from Defendant during the applicable 2-year period"; and "the provisions of 735 ILCS 5/2-1401(b-5) do not apply retroactively to the Defendant."

¶ 14 The defendant filed a notice of appeal on February 25, 2019, and an amended notice of appeal was filed on March 1, 2019.

¶ 15 II. ANALYSIS

¶ 16 The purpose of a section 2-1401 petition is to bring before the trial court facts not appearing in the record which, if known to the court at the time the judgment was entered, would have prevented entry of the judgment. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). Although a petition brought pursuant to the statute is usually characterized as a civil remedy, its remedial powers extend to criminal cases. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). A defendant may present a meritorious claim under section 2-1401(b-5) if she establishes that: (1) she was convicted of a forcible felony; (2) her participation in the offense was related to her being a victim of domestic violence; (3) no evidence of domestic violence was presented at the sentencing hearing; (4) she was unaware of the mitigating nature of the domestic violence and could not have learned of its significance sooner through diligence; and (5) the new evidence is material, noncumulative, and so conclusive that it likely would have changed the sentence. 735 ILCS 5/2-1401(b-5) (West 2016).

¶ 17 On appeal, the defendant contends that the trial court erred in dismissing her petition for relief from judgment as untimely because the limitations period was tolled until January 1, 2016, when section 2-1401(b-5) became law. An issue involving statutory interpretation is a question of law subject to *de novo* review. *Gibbs v. Madison County Sheriff's Department*, 326 Ill. App. 3d 473, 475 (2001). The primary goal of statutory interpretation is to ascertain and give effect to the true intent of the legislature. *Id*. at 476. The best evidence of legislative intent is the language of the statute itself. *Id*. "Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Krohe v. City of Bloomington*, 204 Ill. 2d 392,

395 (2003). If the statute is ambiguous, however, courts may look to other sources, such as legislative history, to ascertain the legislature's intent. *Id.* Nonetheless, when reviewing a statute, we presume that the legislature did not intend to create absurd, unjust, or inconvenient results. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006). "Courts should consider a statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it and avoiding constructions which would render any term meaningless or superfluous." *Id.* Reviewing courts should not depart from the plain and unambiguous language of the statute by reading into it exceptions, conditions, or limitations that the legislature did not express. *Gibbs*, 326 Ill. App. 3d at 476.

¶ 18 Under section 2-1401(c), a petition for relief from a judgment must be filed no later than two years after the entry of the relevant order or judgment. 735 ILCS 5/2-1401(c) (West 2016). However, the time period during which a person seeking relief is under legal disability or duress, or the ground for relief is fraudulently concealed,[1] shall be excluded in calculating the two-year period. *Id.* In this case, it is undisputed that the defendant sought relief from a judgment that was entered in 2008, well over two years old. Nevertheless, she claims that she was under a legal disability until section 2-1401(b-5) took effect and should be exempted from the two-year limitations period.

¶ 19 The record in this case does not indicate that the defendant was under any cognizable legal disability. In fact, she has not alleged that she could not bring her claim because of incompetence, serious mental disorder, or minority. See *In re Doe*, 301 Ill. App. 3d 123,

[1]The defendant has not alleged that there was any duress or fraudulent concealment that prevented her from bringing her claim within the two-year period.

126-27 (1998); *In re Adoption of Rayborn*, 32 Ill. App. 3d 913, 915 (1975). Instead, the defendant contends that her "literal inability" to bring her claim because section 2-1401(b-5) was not enacted until January 1, 2016, and that "the legal basis for the claim had not yet come into existence," should be found equivalent to a legal disability. We disagree, as we find that the temporal limits of section 2-1401(c) would effectively be rendered meaningless if legal disability included the absence of a statute or amendment. See *Fisher*, 221 Ill. 2d at 112. To adopt the defendant's position would be to depart from the plain language of the statute and read into it an exception to the limitations period that the legislature did not express, which we cannot do. See *Gibbs*, 326 Ill. App. 3d at 476.

¶ 20 In support of her position, the defendant cites to *In re Marriage of Vanek*, 247 Ill. App. 3d 377, 378-80 (1993), a case that dealt with a petition for relief from judgment filed after a change in the law. However, we note that the portion of the *Vanek* decision that the defendant relies upon, that the absence of a legal basis for a claim amounts to a legal disability, constitutes *dicta* and is not controlling over our disposition of the present appeal. We also note that the *Vanek* decision was issued by the First District Appellate Court, which we are not bound to follow. See, *e.g.*, *State Farm Fire & Casualty Co. v. Yapejian*, 152 Ill. 2d 533, 539 (1992) (a decision by an appellate court is not binding on the other appellate court districts). Further, we have found that the language of section 2-1401(c) is clear and unambiguous, and, as a result, we do not need to resort to case law, legislative history, or rules of statutory construction to aid in our interpretation of the statute. See *Krohe*, 204 Ill. 2d at 395; *Barrall v. Board of Trustees of John A. Logan Community College*, 2019 IL App (5th) 180284, ¶ 10.

¶ 21 Based on the foregoing, we find the plain language of section 2-1401 indicates that petitioners may only seek relief under subsection (b-5) two years after judgment of conviction and sentence is entered. As the defendant filed her petition for relief from judgment over two years after the underlying judgment was entered, the trial court did not err in dismissing the defendant's petition as untimely.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Jefferson County is hereby affirmed.

¶ 24 Affirmed.

No. 127169

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-18-0344.
Respondent-Appellant,	)	There on appeal from the Circuit Court of the Tenth Judicial Circuit,
-vs-	)	Peoria County, Illinois, No. 01 CF 344.
ANGELA J. WELLS,	)	Honorable Paul Gilfillan,
Petitioner-Appellee.	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Ms. Jodi Hoos, Peoria County State's Attorney, 111 Courthouse, 324 Main St., Peoria, IL 61602-1366, sao@peoriacounty.org;

Ms. Angela J. Wells, A/K/A Angela Wells, Register No. R36962, Logan Correctional Center, R.R. 3, P.O. Box 1000, Lincoln, IL 62656

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 July 6, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellee 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 Brief and Argument to the Clerk of the above Court.

/s/Carol M. Chatman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

No. 127169

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 3-18-0344.
Respondent-Appellant,	)	There on appeal from the Circuit Court of the Tenth Judicial Circuit,
-vs-	)	Peoria County, Illinois, No. 01 CF 344.
ANGELA J. WELLS,	)	Honorable Paul Gilfillan,
Petitioner-Appellee.	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Ms. Jodi Hoos, Peoria County State's Attorney, 111 Courthouse, 324 Main St., Peoria, IL 61602-1366, sao@peoriacounty.org;

Ms. Angela J. Wells, A/K/A Angela Wells, Register No. R36962, Logan Correctional Center, R.R. 3, P.O. Box 1000, Lincoln, IL 62656

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 July 6, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellee 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 Brief and Argument to the Clerk of the above Court.

/s/Carol M. Chatman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us