No. 130932

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. GREGORY A. JOHNON, JR., Defendant-Appellant.	) Appeal from the Appellate Court of) Illinois, Fifth District,) No. 5-22-0608)) There on Appeal from the Circuit) Court of the Fifth Judicial District,) Vermillion County, Illinois,) No. 17-CF-698)) The Honorable) Nancy S. Fahey,) Judge Presiding.

APPELLEE'S BRIEF AND REQUEST FOR CROSS-APPEAL RELIEF BY THE PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

In 2017, defendant was charged with first degree murder. Following a fitness evaluation in March 2018, defendant was found to be unfit, with the expectation that he would be restored to fitness after receiving treatment. In November 2018, the trial court found defendant was restored to fitness and in March 2019, he pleaded guilty to first degree murder. Defendant later moved to withdraw his plea, claiming that when he pleaded guilty, he was not taking medication he alleged was prescribed to him; the trial court denied defendant's motion. On appeal, defendant claimed for the first time that the trial court erred by finding he was restored to fitness in November 2018; the appellate court held that the trial court potentially committed certain procedural errors when it found defendant was restored to fitness and remanded for a retrospective fitness hearing. *People v. Johnson*, 2024 IL App (5th) 220608-U, ¶¶ 21-25. No issue is raised on the pleadings.

ISSUES PRESENTED

1. Whether this Court should vacate the appellate court's judgment that the trial court procedurally erred in November 2018 when it found defendant restored to fitness because the appellate court lacked jurisdiction to consider defendant's claim as he did not include it in his notice of appeal.

2. If the appellate court had jurisdiction, whether this Court should reverse the appellate court's judgment that the trial court erred when it found defendant restored to fitness because defendant waived his claim by

failing to raise it in his motion to withdraw his guilty plea, his claim is barred by the doctrine of invited error, and his claim is also meritless.

3. Alternatively, if defendant's claim was both properly before the appellate court and meritorious, whether defendant's argument that the appellate court erred by remanding for a retrospective fitness hearing is barred and meritless.

JURISDICTION

This Court has jurisdiction to review the appellate court's judgment under Supreme Court Rule 315(a). It allowed defendant's petition for leave to appeal on September 24, 2024.

STATEMENT OF FACTS

A. Defendant's Charges and Fitness Hearing

In 2017, defendant was arrested for breaking into a woman's home. R14-18.[1] While in custody for that offense, police questioned defendant about a missing person, Timothy Ellis, who was last seen with defendant. R19-22. Defendant confessed that he had killed Ellis, a confession that was later corroborated by, among other things, blood and DNA evidence. R22-25, 97-98. Defendant was charged with the first degree murder of Ellis. C8-9.

In December 2017, defense counsel moved for a fitness evaluation, and the trial court ordered Dr. David Coleman to evaluate defendant. C36-38. In

[1] Citations to "C_" and R_" refer to the common law record and report of proceedings. "Def. Br. _" refers to defendant's opening brief in this Court and "Def. App. Br. _" refers to defendant's brief in the appellate court.

March 2018, following Dr. Coleman's evaluation, the trial court held a fitness hearing, at which the parties stipulated to the contents of Dr. Coleman's report. R50-51. Although that report is not in the appellate record, it is undisputed that Dr. Coleman concluded that defendant was unfit but could be restored to fitness with treatment. Def. Br. 4; C53. The trial court thus found that defendant was unfit and ordered treatment. *See* Def. Br. 4; C52.

B. Defendant's Treatment and Return to Fitness

Where, as here, a defendant is unfit but is expected to be restored to fitness, the trial court must order the defendant to undergo treatment and reexamine his fitness every 90 days. 725 ILCS 5/104-20(a). Accordingly, defendant was admitted to Chester Mental Health Center in May 2018 and the Illinois Department of Human Services (IDHS) prepared a treatment plan that outlined steps to restore defendant to fitness. C52-61. According to the treatment plan, defendant initially was assessed as being schizophrenic and anti-social; he was prescribed medication for psychosis and anxiety. C53, 60. The staff believed defendant would be restored to fitness. C60. At a June 2018 status hearing following receipt of the treatment plan, defense counsel stated that it was his understanding that defendant was expected to be restored to fitness within "five months" (*i.e.*, by November 2018). R58-59.

In August 2018, IDHS submitted a progress report to the trial court. C180-82. The report noted that defendant was receiving treatment, his "thought flow was normal," his speech "was relevant and coherent," and his

"cognition and comprehension were intact." C181. The report concluded that while defendant remained unfit, there was "a substantial probability" that he would be restored to fitness. C182. The trial court continued the case. R62.

In October 2018, IDHS prepared another progress report, now concluding that defendant was fit to stand trial. C183-96.[2] According to the report, Dr. Nagaswararao Vallabhaneni, defendant's treating psychiatrist, determined that defendant was "fit to stand trial," and defendant "stated he was ready to go back to the courts." C184. The report noted that "the treatment team has ruled out Schizophrenia" and defendant "does not display any signs of psychosis at this time." C186. Instead, defendant's diagnosis was changed to "Adult Oppositional Defiant Disorder" and anti-social personality disorder. C185-86. He was taking olanzapine to treat his "aggression" and lorazepam to treat his "agitation." C185, 195. The report form includes a box to be checked if there is a difference of opinion regarding the patient's fitness; it was not checked. C195. Indeed, the report noted there were no barriers to defendant's discharge from treatment because "[defendant] was found fit and his fitness report was completed." *Id.* Based on his evaluation, Dr. Vallabhaneni concluded that defendant "is fit to stand trial and a report will be sent." *Id.*; *see also* 725 ILCS 5/104-18(a)(2) (requiring "treatment supervisor" to submit report to court when supervisor "believes that the defendant has attained fitness").

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[2] In a scrivener's error, a passage in the report said defendant was "unfit," C196, but the rest of the report repeatedly stated defendant was fit, C183-96.

On October 30, 2018, the trial court issued an order stating that it had "received a report from the supervisor of the defendant's treatment" that defendant was "**FIT TO STAND TRIAL**." C74 (emphasis in original). The court therefore ordered that defendant be transferred to the county jail. *Id*.

On November 5, 2018, Gregg Scott, the director of the mental health center, filed a "Notice of Change in Status" form, which stated that defendant was "recommended as fit to stand trial" and had been discharged from the treatment center. C75.

C. The November 2018 Fitness Restoration Hearing

On November 14, 2018, the trial court held a hearing on defendant's fitness. R72-74. The court noted that it had received the "Notice of Change in Status" form, R72, which stated that defendant was "recommended as fit to stand trial," C75. The parties asked the court whether it had a copy of defendant's October 2018 progress report and the court said "[t]here's not one" in the court file; the parties stipulated that if the doctor who wrote the report were called, he would testify "consistently with his report," which the court confirmed had reported that defendant was "restor[ed]" to "fitness." R72-73. During the hearing, neither defendant nor his counsel disputed that defendant had been restored to fitness or that the report stated otherwise. *See id*. The trial court ruled that defendant was restored to fitness. R73. Defense counsel requested that the case be set for trial, and the court granted that request and scheduled trial for February 2019. R73-74.

D. Defendant's March 2019 Guilty Plea

Before trial, the parties reached a plea agreement; the trial court held a change of plea hearing on March 11, 2019. R86-109. At the hearing, the parties informed the court that they had agreed that (1) defendant would plead guilty to the first degree murder of Timothy Ellis; (2) he would be sentenced to 45 years in prison; and (3) the prosecution would dismiss the remaining charges related to Ellis's death and the charges in the separate case related to breaking into the woman's home. R87-88.

During the admonishments, defendant stated that a jail nurse was refusing to give him his medication, but he told the court that he nevertheless was "thinking clearly," had spoken with his counsel, understood the terms of the plea agreement, and was making his decision to plead guilty "freely and voluntarily." R89-95. In allocution, defendant discussed in detail certain events leading up to Ellis's murder. R104-07. The trial court accepted the plea agreement as "knowingly and voluntarily made" and sentenced defendant to the agreed term of 45 years in prison. R99, 107.

E. Defendant's Motion to Withdraw His Plea

On April 15, 2019, the trial court received defendant's pro se motion to withdraw his March 11, 2019 guilty plea. C99. Defendant alleged:

> (1) inadequate representation by counsel; (2) I am a mental health patient and was under great mental & emotional stress & not being medicated properly for my severe anxiety when I took the plea I felt as if I had been threatened by Jacqueline M. Lacy state's attorney saying if I didn't take the 45 years she was gonna inhaens [*sic*] my sentence.

Id. The trial court denied the motion as untimely. C310. On appeal, the parties agreed that defendant's motion was timely pursuant to the mailbox rule because he had placed it in the prison mail system within 30 days of his guilty plea. Def. Br. A22. The appellate court agreed and remanded for consideration of the merits of defendant's motion. *Id*.

F. Defendant's Amended Motion to Withdraw His Plea

On remand, defendant was appointed new counsel, who filed an amended motion to withdraw defendant's plea. C173-76. Like defendant's initial motion, the amended motion did not allege that the trial court erred when it found defendant was restored to fitness in November 2018. *Id*. Instead, the motion alleged that (1) plea counsel provided ineffective assistance during the March 2019 plea hearing by failing to request a fitness hearing when defendant informed the court that he had not been taking his medication; and (2) the trial court erred by accepting defendant's guilty plea after defendant said he had not been taking his medication. C175.

During the August 3, 2022 hearing on defendant's motion, the defense focused on defendant's claim that plea counsel provided ineffective assistance during the March 2019 plea hearing. R162. Specifically, the defense argued that (1) defendant told the court during the plea hearing he was not taking medication, R163; and (2) plea counsel knew that defendant was supposed to be taking medication because the October 2018 progress report advised that he "continue his current medications while in custody to maintain his clinical stability," R165. Accordingly, defendant argued, plea counsel "should have

taken a moment, spoke to [defendant], and asked the Court for a fitness hearing." R168; *see also* R169 (alleging "ineffective assistance of counsel").

In response, the prosecution noted that the only question was whether, "at the time of the plea, the defendant was able to understand the nature and purpose of the proceeding against him and assist in his defense." R172; *see also id.* ("We're not interested in what he was days before the plea."). The prosecution noted that at the plea hearing, defendant was able to answer "each and every question appropriately," and understood "the charges against him," "the possible penalties," and the "rights he was giving up" by pleading guilty. R173. Therefore, there was no basis for defendant to claim that plea counsel was ineffective or otherwise withdraw his guilty plea. R173-76.

In rebuttal, defense counsel emphasized that defendant "was not asking the Court to go back and decide now what his mental state was," but rather was "claiming ineffective assistance of counsel" because plea counsel failed to ask for a fitness hearing during the plea hearing when defendant said he was not taking medication. C176. The defense had acknowledged that defendant's discharge papers from November 2018 stated that no medications were recommended for defendant, R168, 181, and the judge noted that defendant had, therefore, failed to prove that defendant was supposed to be on medication at the time of the plea hearing. R178.

The judge sought to clarify whether defendant was arguing that the court should "have assessed what was going on in late 2018 [*i.e.*, when the

restoration fitness hearing was held], before [the court] took the plea in March of 2019." *Id*. Defense counsel responded, "That's not what I am saying." *Id*. Rather, counsel again emphasized that defendant was alleging that plea counsel erred by not requesting a fitness hearing during the March 2019 plea hearing when defendant stated that he was not taking medication. *Id*. Defense counsel agreed that defendant "was restored" to fitness, but argued that maintaining his fitness required him to continue taking his medication, which he claimed defendant had stopped doing by the time of the plea hearing four months later. R180.

The trial court denied defendant's motion to withdraw his guilty plea. R181-83. The court explained that "the record before this Court, when the plea was taken, which is what the Court focuses on, is that it was a knowing and voluntary plea. There is nothing in the record at the time of the plea that indicates to the Court that the Defendant was not understanding what the Court was saying, he answered the questions appropriately." R181-82. The court further stated:

> I have done this for a number of years, and there have been many times when I've been taking a plea when something the Defendant did, or something the Defendant said caused the Court concern, and I would stop the proceedings immediately and either have counsel talk to the Defendant or decide [that] I'm not — was not going to take the plea because I had concerns about the Defendant's ability to understand what was going on, and the Defendant's demeanor. That was not the case with [defendant]. . .
>
> I saw no indications whatsoever that he did not understand what we were doing on that date.

R182-83.

Defendant filed a notice of appeal which specified that the "[d]ate and order of judgment" he was appealing was the court's "Aug. 3, 2022" judgment that denied his "Motion to withdraw guilty plea and vacate sentence." C291. The notice of appeal did not state that defendant intended to appeal the court's November 2018 order finding that he was restored to fitness.

G. Defendant's New Claim on Appeal

On appeal, defendant did not argue that his plea counsel provided ineffective assistance by failing to request a fitness hearing when defendant said during the March 2019 plea hearing that he was not taking medication. *See* Def. App. Br. 12-27. Instead, for the first time, defendant argued that the trial court had erred in November 2018 when it determined that he was restored to fitness. *Id*. at 12-22. Defendant also argued that the trial court erred by failing to address defendant's requests to represent himself during the post-plea proceedings. *Id*. at 22-27.

Defendant asked the appellate court either to vacate his plea and remand for new proceedings or to "order a retrospective fitness hearing." *Id*. at 28. Defendant further argued that if, on remand, he was "found fit after the retrospective fitness hearing," then he was nevertheless entitled to "new post-plea proceedings at which [he] is permitted to represent himself" because the trial court had erred by failing to address his requests to discharge his counsel. *Id*.

The appellate court found that the trial court potentially made certain procedural errors during the November 2018 fitness restoration hearing.

People v. Johnson, 2024 IL App (5th) 220608-U, ¶¶ 21-22. In particular, the appellate court stated it was "unclear" whether the trial court "ever saw the expert's report concluding that the defendant had been restored to fitness." *Id*. at ¶ 21. And the appellate court held that the trial court potentially erred because "it appear[ed]" that the trial court "merely relied on the stipulation of the parties that the defendant had been restored to fitness." *Id*. The appellate court thus remanded "for the limited purpose of conducting a retrospective fitness hearing," *i.e.*, a hearing to correct those errors and determine retrospectively whether defendant was restored to fitness in November 2018. *Id*. at ¶ 22. The appellate court ordered that if the trial court "concludes that the evidence regarding defendant's fitness at the time of the guilty plea is inconclusive or suggests that the defendant was not fit" then his conviction should be vacated. *Id*. at ¶ 23. The appellate court reserved ruling on defendant's claim that the trial court erred by failing to allow him to represent himself during the post-plea proceedings. *Id*. at ¶ 22.

Defendant then filed a petition for leave to appeal (PLA) challenging the remedy ordered by the appellate court. In his PLA, defendant argued that this Court should allow leave to appeal because by remanding for a retrospective fitness hearing, the appellate court imposed a remedy that "neither party had requested." *E.g.*, PLA at 1, 2, 3, 10, 15. According to defendant, he had "asked the appellate court to vacate his plea and remand

for new, as opposed to retrospective proceedings[.]" *Id*. at 10. This Court allowed defendant leave to appeal in September 2024.

STANDARDS OF REVIEW

Whether a reviewing court lacks jurisdiction, or a claim is otherwise procedurally barred, presents a legal question that this Court reviews de novo. *See, e.g., People v. Dyas*, 2025 IL 130082, ¶ 15. A trial court's ruling that a defendant is fit to stand trial is reviewed under the manifest weight of the evidence standard, *People v. Jamison*, 197 Ill. 2d 135, 153 (2001), under which a reviewing court upholds the trial court's findings unless "the opposite conclusion is clearly evident," *In re Z.L.*, 2021 IL 126931, ¶ 61.

ARGUMENT

In this appeal, defendant has abandoned the argument he raised in the trial court — that he was restored to fitness in November 2018 but nevertheless unfit at the time of his March 2019 guilty plea because he had stopped taking medication he needed to remain fit. Instead, defendant has raised a new, and contradictory, claim: that the trial court erred in November 2018 by finding he was restored to fitness. *E.g.*, Def. Br. 9, 32. And now, contrary to his arguments in the appellate court, in which he requested a retrospective fitness hearing as a possible remedy, defendant contends that the only permissible remedy for this new claim is to vacate his guilty plea, and not to remand for a retrospective fitness hearing.

Defendant's new claim, and his corresponding request that this Court vacate his guilty plea rather than remand for retrospective fitness

proceedings, fail for several independent reasons. To begin, the appellate court's judgment must be vacated because the appellate court lacked jurisdiction to consider defendant's claim that the trial court erred in November 2018 by deeming him restored to fitness because defendant did not raise that claim in his notice of appeal. *See infra* Section I. Jurisdictional defect aside, the appellate court's judgment must be reversed because defendant's claim is waived, barred by the doctrine of invited error, and meritless. *Id.* Alternatively, if this Court finds that defendant's claim was properly before the appellate court and meritorious, then the Court should hold that defendant's argument that the appellate court erred by remanding for a retrospective fitness hearing is barred (because defendant requested such relief) and meritless. *See infra* Section II.

I. The Appellate Court Lacked Jurisdiction to Consider Defendant's Claim, His Claim Is Waived Under Rule 604(d) and Principles of Invited Error, and His Claim Is Meritless (Cross-Appeal).

A. The appellate court lacked jurisdiction to consider defendant's challenge to the 2018 order.

The appellate court's judgment must be vacated because it lacked jurisdiction to consider defendant's claim that the trial court erred in November 2018 by finding him restored to fitness because defendant did not raise that claim in his notice of appeal.

In criminal cases, a notice of appeal "confers jurisdiction" on a reviewing court "to consider only the judgments or parts of judgments specified in the notice." *People v. Ratliff*, 2024 IL 129356, ¶ 17 (collecting

cases, internal quotations omitted). Here, it is undisputed that defendant's notice of appeal did not cite the trial court's November 2018 judgment that he was restored to fitness; instead, the notice of appeal stated that defendant was appealing the trial court's August 2022 judgment denying defendant's motion to withdraw his March 2019 guilty plea. *See* Def. Br. 3; C287, 291 (notice of appeal). The appellate court thus lacked jurisdiction to consider defendant's appeal of the trial court's November 2018 order that defendant was restored to fitness. *E.g.*, *Ratliff*, 2024 IL 129356, ¶¶ 17-18 (reviewing courts lacked jurisdiction to consider judgment not specified in notice of appeal).

Defendant's conclusory assertion that jurisdiction is proper because his "motion to withdraw the plea incorporated the fitness errors the trial court committed in the lead-up to [defendant's] plea and those errors are, therefore, wrapped up in the trial court's judgment denying [defendant's] motion" to withdraw his guilty plea, Def. Br. 3, is incorrect. Indeed, contrary to defendant's assertion, neither his initial nor amended motions to withdraw his guilty plea challenged the trial court's November 2018 judgment that defendant was restored to fitness. Rather, defendant's initial, pro se motion alleged "inadequate representation by counsel" and claimed that "when [defendant] took the plea" in March 2019 he was no longer "being medicated properly" for his "anxiety." C99. And in his amended motion to withdraw his plea (prepared by counsel), defendant alleged that (1) plea counsel provided

ineffective assistance during the March 2019 plea hearing by failing to request a fitness hearing when defendant informed the court during admonishments that he had not been taking medication; and (2) the court erred by accepting defendant's guilty plea when defendant said he was not taking medication. C175. Therefore, defendant's motion to withdraw his guilty plea was based on the theory that he was restored to fitness, but that retaining his fitness required him to continue taking medication, and he had stopped taking his medication by the time he pleaded guilty, so he was no longer fit.

Indeed, at the hearing on defendant's amended motion to withdraw his plea, defendant made clear he was *not* challenging the court's November 2018 judgment that defendant was restored to fitness. In particular, the trial judge sought to clarify whether defendant was contending that the court should "have assessed what was going on in late 2018, before [the court] took the plea in March of 2019," and defense counsel responded, "That's not what I am saying." R178.

Rather, defense counsel agreed that defendant "was restored" to fitness, but argued that his continued fitness was contingent on him taking medication the treatment center prescribed, which defendant allegedly had stopped doing by the time he pleaded guilty. R180; *see also* R168. The defense emphasized that defendant's motion to withdraw his guilty plea was based on counsel's failure to act on this disclosure at the plea hearing, *i.e.*,

that when defendant said during the plea hearing that he had stopped taking medication, plea counsel "should have taken a moment, spoke to [defendant], and asked the Court for a fitness hearing." R168; *see also* R180.

The record therefore is clear that defendant's motion to withdraw his guilty plea did not challenge the trial court's November 2018 judgment that defendant was restored to fitness. Accordingly, defendant is incorrect that his notice of appeal (which challenged only the August 2022 denial of defendant's motion to withdraw his plea) conferred appellate jurisdiction to consider a new claim challenging the November 2018 fitness restoration judgment. Def. Br. 3.

Lastly, this Court should reject defendant's request that this Court exercise its supervisory authority and consider his claim, despite the lack of jurisdiction, on the ground that "the appellate court is split on the proper remedy for fitness errors." *Id.* It is settled that use of this Court's supervisory authority is "disfavored." *E.g.*, *People v. Dyas*, 2025 IL 130082, ¶ 28 (collecting cases); *see also People v. Webster*, 2023 IL 128428, ¶ 33 (Court will exercise its supervisory authority only in "'exceptional circumstances'"). And even where a defendant argues that there is a split in the appellate court, this Court will not issue a supervisory order if the defendant "had an adequate avenue for relief but neglected to pursue it" by failing to file a proper notice of appeal. *Dyas*, 2025 IL 130082, ¶ 28 (where notice of appeal

was untimely, Court declined to use supervisory authority to resolve split in appellate court regarding guilty plea admonishments).

As in *Dyas*, this Court should not exercise its supervisory powers because defendant had an adequate avenue for relief: he could have filed a proper notice of appeal. Moreover, this Court's guidance is unnecessary because there is no split of authority in the appellate court regarding the proper remedy for fitness errors. *See infra* Section II.B. Appellate decisions consistently follow this Court's precedent, which holds that whether a retrospective fitness hearing is an appropriate remedy must be determined on a case-by-case basis. *Id.* Thus, this Court should not, and need not, exercise its supervisory authority to consider defendant's appeal notwithstanding the absence of appellate jurisdiction.

B. Defendant waived his claims pertaining to the 2018 order by failing to raise them in his motions to withdraw his guilty plea.

Appellate jurisdiction aside, defendant waived his claim that the trial court erred in November 2018 when it found he was restored to fitness — and, thus, his claim may not be reviewed even for plain error — because he did not raise that claim in his motions to withdraw his guilty plea. This Court has explained that "Rule 604(d) is unmistakably clear" that any issue not raised in a motion to withdraw a guilty plea "is 'waived' on appeal." *Ratliff*, 2024 IL 129356, ¶ 26; *see also* Ill. S. Ct. R. 604(d) ("Upon appeal any issue not raised" in a motion to withdraw defendant's guilty plea "shall be

deemed waived."). And a claim that a defendant waived in this manner may not be reviewed, even for plain error. *E.g., Ratliff*, 2024 IL 129356, ¶¶ 22-28.

Rule 604(d)'s "waiver rule" is a fundamental part of a just and efficient legal system. As this Court has explained, Rule 604(d) is intended to "avoid abuses by defendants," *id.* ¶ 27 (internal quotations omitted), and was "designed to meet a specific need," *People v. Tousignant*, 2014 IL 115329, ¶ 13. This Court enacted Rule 604(d) because

> [A] large number of appeals in criminal cases were being taken from pleas of guilty. A review of the appeals in those cases revealed that many of the errors complained of could and undoubtedly would be easily and readily corrected, if called to the attention of the trial court. The rule was designed to eliminate needless trips to the appellate court and to give the trial court an opportunity to consider the alleged errors and to make a record for the appellate court to consider on review in cases where defendant's claim is disallowed.

Id. (internal quotations omitted). This Court has consistently emphasized that compliance with Rule 604(d) is important because it ensures that the trial court has an opportunity to "immediately" address alleged errors before appeal, "when witnesses are still available and memories are fresh." *Ratliff*, 2024 IL 129356, ¶ 26 (internal quotations omitted); *see also People v. Walls*, 2022 IL 127965, ¶ 25 (same); *Tousignant*, 2014 IL 115329, ¶¶ 14, 16 (same).

Here, as discussed, defendant's motions to withdraw his March 2019 guilty plea did not contend that the trial court erred in November 2018 when it found defendant restored to fitness. *Supra* pp. 14-16. Accordingly, defendant's claim that the court erred in finding him restored to fitness in

November 2018 is waived, and may not be reviewed on appeal, even for plain error. *See, e.g.*, *Ratliff*, 2024 IL 129356, ¶ 28 (claim not raised in motion to withdraw guilty plea could not be reviewed on appeal).

To hold otherwise would allow defendant to benefit from precisely the type of abuse that Rule 604(d) was designed to eliminate. As discussed, not only did defendant's motion to withdraw his plea fail to challenge the November 2018 fitness restoration order, he also agreed that he had been "restored" to fitness. *Supra* pp. 14-16. On appeal, defendant changed his position and argued that the trial court erred in November 2018 by concluding he was restored to fitness because it was "unclear" whether the trial court had received and reviewed his October 2018 progress report and it "appear[ed]" that the trial court "merely relied on the stipulation of the parties." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21; *see also* Def. Br. 9.

Plainly, had defendant raised this claim in the trial court during the proceedings on his motion to withdraw his guilty plea, the trial court could and would have made a record of precisely what evidence it considered when it found defendant restored to fitness. But because defendant failed to do so — thereby denying the trial court the opportunity either to make a record or otherwise remedy the alleged error — the appellate court has now remanded for a retrospective fitness hearing seven years after defendant was found restored to fitness and more than six years after he pleaded guilty. *Johnson*, 2024 IL App (5th) 220608-U, ¶¶ 22, 25. This is precisely that type of

piecemeal litigation, unnecessary delay, and impediment to the finality of judgments that Rule 604(d) was designed to prevent. *Supra* p. 18; *Ratliff*, 2024 IL 129356, ¶¶ 23, 27 (rule was designed to protect "the finality of judgments" and prevent unnecessary, successive litigation); *Walls*, 2022 IL 127965, ¶ 25 (similar).

Even worse, defendant now argues that, due in part to "the passage of time," his fitness as of November 2018 "cannot accurately be determined" and "a retrospective fitness inquiry would not be feasible." Def. Br. 38. As defendant puts it, any disputes about his fitness as of November 2018 "are now impossible to resolve on a cold record nearly six-and-a-half years later." *Id*. at 40. Defendant therefore argues that this Court "should vacate [defendant's] plea" without a hearing on the merits of his claim that the treatment center did not restore him to fitness in November 2018. *Id*. at 46.

In other words, as a result of the delay defendant created by failing to comply with Rule 604(d) and raise his claim in the trial court, he asks this Court to vacate his guilty plea without this (or any other) Court finding that he was not restored to fitness. Again, this is precisely the type of litigation abuse that Rule 604(d) was designed to prevent. Accordingly, this Court should hold that defendant has waived his challenge to the trial court's November 2018 fitness restoration judgment.

C. Defendant's claim is also barred by the doctrine of invited error.

Defendant's claim is procedurally barred for still another reason: under the doctrine of invited error, he is estopped from challenging the trial court's judgment that he was restored to fitness. Specifically, the appellate court found that the trial court procedurally erred during the November 2018 restoration hearing because it was "unclear" whether the trial court reviewed the October 2018 progress report and "it appears" that the trial court "merely relied on the stipulation of the parties" when finding defendant restored to fitness. *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. However, the record shows that those alleged errors were caused or invited by defendant and, therefore, may not be reviewed even for plain error.

The doctrine of invited error provides that, on appeal, a defendant may not challenge a procedure or ruling "to which he agreed," even if that that agreement was "grudging." *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004) (internal citations omitted); *see also, e.g.*, *People v. Quezada*, 2024 IL 128805, ¶ 59 (similar); *People v. Matthews*, 2016 IL 118114, ¶¶ 13-14 (collecting cases). "The rationale behind this well-established rule is that it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings." *Swope*, 213 Ill. 2d at 217 (internal citations omitted).

Accordingly, the doctrine of "invited error or acquiescence does not raise a mere forfeiture to which the plain-error exception might apply; it

creates an estoppel that precludes plain-error analysis." *Quezada*, 2024 IL 128805, ¶ 59 (collecting cases; internal quotations omitted); *see also, e.g.*, *Swope*, 213 Ill. 2d at 217-18 (reviewing courts should not reach the merits of a defendant's claim that the trial court's actions violated his due process rights if he acquiesced to those actions).

Here, as noted, the appellate court faulted the process the trial court followed during the November 2018 restoration hearing because it was "unclear" whether the trial court reviewed the October 2018 progress report and "it appear[ed]" that the trial court "merely relied on the stipulation of the parties." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. But defendant plainly invited the trial court to proceed in exactly the fashion that it did.

Specifically, at the start of the fitness restoration hearing, defendant's counsel asked the court whether it had a copy of the October 2018 progress report and the court responded, "[t]here's not one in the Court file" the judge had in the courtroom, R72, which defendant now contends might mean that the trial court had never received the report. Obviously, if defendant believed the trial court had not received a copy of the progress report, and that it was necessary to review the report before ruling on defendant's restoration to fitness, defendant could have given the trial court a copy of the progress report and asked the court to review it before ruling on defendant's fitness. But instead of taking those simple steps, defendant told the court that the parties were stipulating that "if the doctor who wrote the report were to

testify, he would testify consistently with his report," *i.e.*, that the treatment center had "restor[ed] [defendant] to fitness." R72-73. The court then found defendant restored to fitness without any objection or disagreement by defendant. R73-74. Thus, the record is clear that defendant invited the trial court to (1) rely on the parties' stipulation; and (2) rule on his fitness regardless of whether the court had a copy of the October 2018 progress report. *Id*. Accordingly, he may not claim on appeal that the trial court erred by proceeding in that fashion.

Lastly, defendant demonstrated that he agreed not only with the process the trial court followed during the November 2018 restoration hearing, but also with the court's finding that he was restored to fitness. Indeed, defendant not only failed to dispute that he had been restored to fitness, but he immediately requested a trial date. R73-74. Moreover, when defendant later moved to withdraw his guilty plea, defendant's counsel told the court that defendant agreed that he had been "restored" to fitness. R178-80. In fact, it was not until defendant filed his appellate brief in his second appeal in 2023 — five years after the November 2018 hearing — that defendant alleged that the court erred by finding he was restored to fitness.

Simply put, defendant's conduct in this case is precisely the type of conduct that is foreclosed by the invited error doctrine. Therefore, defendant is estopped from arguing that the trial court erred during the November 2018 hearing, and his claim may not be reviewed even for plain error.

D. Defendant's claim is also meritless.

Even setting aside the foregoing procedural bars, defendant's claim fails for the additional reason that it is meritless.

1. Defendant cannot show that the trial court's judgment was against the manifest weight of the evidence.

A trial court's ruling that a defendant is fit to stand trial may not be reversed unless it is against the manifest weight of the evidence, *People v. Jamison*, 197 Ill. 2d 135, 153 (2001), which means a reviewing court defers to the trial court's findings unless "the opposite conclusion is clearly evident." *In re Z.L.*, 2021 IL 126931, ¶ 61. Here, defendant cannot prove it is "clearly evident" that he was unfit as of the November 2018 fitness restoration hearing.

A defendant is unfit only if "he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10. Where, as here, the defendant was initially found unfit and transferred for treatment, the defendant's "treatment supervisor" must "submit a written progress report" to the court whenever the supervisor "believes that the defendant has attained fitness." 725 ILCS 5/104-18(a)(2). When the trial court receives such a report, the court "shall immediately" order that defendant be returned to jail "and set the matter for trial." 725 ILCS 5/104-20(e). However, if the trial court disagrees with the treatment supervisor's conclusion that the defendant has been restored to fitness, the court "shall attach a copy of any written report that identifies the factors in

the finding that the defendant continues to be unfit, prepared by a licensed physician, clinical psychologist, or psychiatrist, to the court order remanding the person for further treatment." *Id.*

To recap the relevant facts, the trial court found defendant unfit in March 2018 and he was transferred to a treatment center. *Supra* p. 3. After receiving treatment for several months, defendant's October 22, 2018 progress report stated that Dr. Vallabhaneni had determined that defendant was "fit to stand trial," noted that defendant said "he was ready to go back to the courts," and stated that "a report will be sent." C184, 195.

Eight days later, on October 30, 2018, the trial court noted that it had "received a report from the supervisor of the defendant's treatment" that defendant is "**FIT TO STAND TRIAL**." C74 (emphasis in original). On November 5, 2018, Gregg Scott, the director of the mental health center, filed a "Notice of Change in Status" form, which stated that defendant had been discharged from the center and was "recommended as fit to stand trial." C75. And at the November 14, 2018 fitness restoration hearing, (1) the trial court noted that it had received the November 5, 2018 "Notice of Change in Status" form, which stated that defendant was fit to stand trial; and (2) the parties had stipulated that if the doctor who wrote the October 2018 progress report were called, "he would testify consistently with his report." R72-73. Moreover, during the hearing defense counsel did not dispute that defendant had been restored to fitness but instead gave every indication that he agreed

defendant was now fit, *supra* pp. 22-23; that is important because counsel clearly was sensitive to the issue of defendant's fitness, as it was counsel who had requested a fitness evaluation in March 2018, C36.

Simply put, on this record, defendant cannot carry his burden to show that the trial court's judgment that he was restored to fitness was against the manifest weight of the evidence, *i.e.*, he cannot show that it was "clearly evident" that he was still unfit as of November 2018. Rather, there was uncontroverted evidence — including documents from the treatment center and the stipulated testimony of doctor who wrote the progress report — proving that defendant had been restored to fitness. Accordingly, defendant's claim that the court erred in finding he was restored to fitness is meritless.

2. The trial court did not commit any procedural errors.

The appellate court did not hold that the trial court's judgment that defendant was restored to fitness in November 2018 was wrong on the merits — that is, the appellate court did not find that the trial court's judgment was against the manifest weight of the evidence. Instead, the appellate court found that the trial court potentially made *procedural* errors at the November 2018 restoration hearing because "it appear[ed]" that the trial court "merely relied on the stipulation of the parties that defendant had been restored to fitness" and it was "unclear" whether the trial court reviewed the October 2018 progress report. *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. The appellate court's judgment that the trial court potentially committed such procedural errors is rebutted by the record and settled law.

To begin, the trial court did not rely solely on the parties' stipulation, as the appellate court believed. Rather, as discussed, the evidence before the trial court also included a "report from the supervisor of the defendant's treatment" that defendant was fit to stand trial, C74, and the November 5, 2018, "Notice of Change in Status" form from the director of the mental health center, which stated that defendant was "recommended as fit to stand trial," C75; *see supra* pp. 25-26.

Nor did the trial court accept a stipulation "that defendant had been restored to fitness [*sic*]." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. To be sure, this Court has held that parties may not stipulate to the ultimate fact of fitness. *People v. Lewis*, 103 Ill. 2d 111, 116 (1984). However, trial courts may rely on a stipulation that medical professionals who examined the defendant "would testify that in their opinions the defendant was mentally fit to stand trial," even if that is the only evidence the court considers. *Id.*; *see also People v. Burton*, 184 Ill. 2d 1, 17 (1998) (parties "may stipulate to the opinion testimony of psychiatrists at a fitness hearing"). That is what occurred here: the parties stipulated that if the doctor who wrote the October 2018 progress report were called, he would testify "consistently with his report," which the trial court noted had reported that he was "restor[ed]" to "fitness." R72-73. Thus, the trial court properly relied on a stipulation that a witness would provide opinion testimony that defendant was fit. *E.g.*, *Lewis*,

103 Ill. 2d at 116 (not error for trial court to find defendant restored to fitness based solely on stipulation that doctor would testify defendant was fit).

Similarly, the appellate court erred when it held that defendant was entitled to a retrospective fitness hearing because it was "unclear" whether the trial court reviewed the October 2018 progress report. *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. True, the trial judge said during the November 2018 hearing that the report was not in the file that she had in the courtroom that day, R72-73, but that does not prove that the court did not review the report before the hearing. Indeed, Illinois law provides that reports related to a defendant's psychiatric treatment "shall not be placed in the defendant's court record but shall be maintained separately by the clerk of court[.]" 725 ILCS 5/104-19. Thus, it is reasonable to believe the court received and reviewed the report but did not keep it in the judge's courtroom file.

Indeed, even defendant describes the record as silent regarding whether the court received the report before the hearing and concedes that "the record's silence" could "require[ ] this Court to presume that the trial court received" the progress report. Def. Br. 40. Defendant is correct; the most he can argue is that the record is silent on this issue, so the appellate court was required to presume that the trial court received and reviewed the report. *See, e.g.*, *People v. Carter*, 2015 IL 117709, ¶¶ 19, 23 (defendant had "the burden to present a sufficiently complete record such that the court of review may determine whether" the alleged error occurred and absent such a

record "the court of review must presume the circuit court's order conforms with the law" and deny the defendant's claim) (collecting cases).

But there is more than just a legal presumption that the trial court reviewed the October 2018 progress report, there is evidence demonstrating that the trial court in fact did so. Specifically, the progress report (which was dated October 22, 2018) stated that Dr. Vallabhaneni had determined that defendant was "fit to stand trial" and "a report will be sent," C195; eight days later, on October 30, 2018, the trial court noted that it had "received a report from the supervisor of the defendant's treatment" that defendant was fit, C74. It is thus reasonable to infer that the "report" referred to in the court's order was the October 2018 progress report, and defendant has identified no other report to which the court could have been referring. And when the parties stipulated that the doctor who wrote the October 2018 progress report would testify "consistently with his report," the judge said, "which is restoring him to fitness," R72-73, suggesting familiarity with the report.

Lastly, even if, for the sake of argument, defendant had proved that the trial court did not receive the October 2018 progress report, that would at most be harmless error. *See People v. Strickland*, 154 Ill. 2d 489, 511-12 (1992) (alleged procedural error at fitness hearing was harmless); *People v. Esang*, 396 Ill. App. 3d 833, 840 (1st Dist. 2009) (procedural errors at fitness restoration hearings are subject to harmless error analysis). That is because, as discussed, the October 2018 progress report states that defendant was

restored to fitness; the parties stipulated that the author of the report would testify that defendant was restored to fitness; and the trial court received other documents from the treatment center stating that defendant was restored to fitness. *Supra* pp. 25-26. Therefore, even if the trial court never received the October 2018 progress report, that would at most be harmless error because defendant cannot reasonably argue that the report, which concluded he had been restored to fitness, would have caused the trial court to rule that he had not been restored to fitness.

Accordingly, the appellate court is incorrect that procedural errors committed during the November 2018 hearing require vacatur of the trial court's judgment that defendant was restored to fitness.

* * *

In sum, the appellate court lacked jurisdiction to consider defendant's claim that the trial court erred by finding he was restored to fitness and, moreover, defendant's claim is waived, barred, and meritless.

II. If Defendant's Claim Can Be Reviewed on Appeal, and Is Meritorious, then the Appellate Court Ordered the Correct Remedy.

If this Court finds that defendant's claim that the trial court erred during the November 2018 fitness hearing was properly before the appellate court and has merit, then this Court should reject defendant's argument that the appellate court ordered the wrong remedy. The appellate court remanded for "a retrospective fitness hearing" and stated that if the trial court "concludes that the evidence regarding defendant's fitness at the time of the

guilty plea is inconclusive or suggests that the defendant was not fit at the time of his plea hearing, then the defendant is entitled to a new trial." *Johnson*, 2024 IL App (5th) 220608-U, ¶¶ 22-23. This was not only the proper remedy, it was a remedy that defendant requested.

A. Defendant is estopped from challenging a remedy he requested.

In his appellate briefs, defendant asked the appellate court either to "reverse the denial of his motion to withdraw his plea, vacate his conviction, [and] remand for new fitness proceedings" *or* to "reverse the denial of [his] motion to withdraw his guilty plea and order a retrospective fitness hearing." Def. App. Br. 28. Defendant further argued that if, on remand, he was "found fit after the retrospective fitness hearing," then he was entitled to "new post-plea proceedings at which [he] is permitted to represent himself." *Id.*

Because defendant requested that the appellate court remand for a retrospective fitness hearing, at least as alternative relief, he is estopped from arguing that the appellate court erred by ordering such relief. *See, e.g.*, *Swope*, 213 Ill. 2d at 217 (defendant is estopped from challenging a procedure or ruling "to which he agreed," even if that agreement was "grudging"); *People v. McKenzie*, 2013 IL App (1st) 102925, ¶ 23 ("Once a defendant has asked one court for a particular remedy to correct a mistake and it grants his prayer for relief, he cannot then go to a different court and argue, in essence, that what he asked for previously was insufficient and now he wants more."). Accordingly, this Court should hold that defendant is estopped from arguing

that the appellate court erred by remanding for a retrospective fitness hearing because defendant requested that very relief.

B. Defendant's argument that the appellate court imposed the wrong remedy is also meritless.

Estoppel aside, defendant's argument that the appellate court erred by remanding for a retrospective fitness hearing is meritless.

1. Whether a retrospective fitness hearing is appropriate is determined on a case-by-case basis.

The parties agree that (1) whether a retrospective fitness hearing is an appropriate remedy must be determined on a case-by-case basis; and (2) a retrospective hearing is appropriate if the record makes it feasible to fairly and accurately determine a defendant's fitness at the prior, relevant point in time. *See* Def. Br. 14.

As defendant notes, more than 50 years ago, this Court acknowledged the possibility that a retrospective fitness hearing would be appropriate if the defendant's fitness at the relevant time period could be fairly and accurately determined. *Id*. at 17 (citing *People v. Thomas*, 43 Ill. 2d 328 (1969)). Briefly, in a series of cases between 1994 and 1996, the Court adopted a so-called "automatic reversal rule," which held that if there was a "a *bona fide* doubt of fitness and no fitness hearing [was] held, a new trial is the appropriate remedy." *People v. Nitz*, 173 Ill. 2d 151, 163 (1996); *see also* Def. Br. 20-21 (collecting cases).

However, as defendant correctly notes, this Court soon rejected that line of cases in 1997. *See* Def. Br. 21 (citing *People v. Burgess*, 176 Ill. 2d 289,

303 (1997)). Specifically, *Burgess* held that "a rule of automatic reversal is not always appropriate," and affirmed the defendant's convictions (even though he had not received the pre-trial fitness hearing to which he alleged he was entitled) because the trial court had held a retrospective fitness hearing after trial and correctly determined based on the available evidence that defendant was fit at the time of trial. 176 Ill. 2d at 303.

Later that same year, the Court re-emphasized that it had "abandoned [its] prior view that retrospective fitness determinations were always improper." *People v. Neal*, 179 Ill. 2d 541, 552 (1997). The Court explained that, in some cases,

> [T]he issue of defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact. In such cases, *Burgess* will apply, and a defendant will not automatically be entitled to have his original conviction and sentence automatically set aside for a new trial.

Id. at 554. *Neal* held that it was appropriate to hold a retrospective fitness hearing 13 years after the defendant was convicted because the record allowed the trial court to accurately determine the defendant's past fitness. *Id*. at 555.

And following *Neal*, this Court has continued to adhere to the case-by-case approach to determining whether a retrospective fitness hearing is appropriate. *See, e.g., People v. Cortes*, 181 Ill. 2d 249, 276-77 (1998) (affirming trial court's finding, following retrospective fitness hearing, that defendant was fit at trial, where the evidence permitted his fitness to be "fairly and accurately determined after the fact"). Accordingly, Illinois law is

clear that whether a retrospective fitness hearing is an appropriate remedy must be determined on a case-by-case basis and such a hearing is appropriate if the record makes it feasible to fairly and accurately determine a defendant's fitness as of a prior point in time.

Lastly, this Court should reject defendant's request to "overrule or cabin" *People v. Mitchell*, 189 Ill. 2d 312 (2000), on the ground that it misstates the law and has caused the appellate court to abandon the case-by-case approach and "reflexively" remand for retrospective fitness hearings without considering whether such a hearing is feasible. Def. Br. 14, 18-19, 29-30.[3] *Mitchell* addressed a postconviction claim that the petitioner should have received a pre-trial fitness hearing because he was taking medication for epilepsy; the Court held that the petitioner's counsel did not err by failing to request one. 189 Ill. 2d at 325-38. True, while discussing the history of Illinois law regarding fitness hearings, *Mitchell* stated that "it appear[ed]" that retrospective fitness hearings had become the "norm," but the opinion does not hold that retrospective fitness should be automatically ordered

[3] The appellate court did not cite *Mitchell* in its decision below; rather, the appellate court noted that a retrospective hearing is appropriate if a "defendant's fitness can be fairly and accurately determined on remand," which is the standard the parties agree applies. *Johnson*, 2024 IL App (5th) 220608-U, ¶ 22. Therefore, in asking this Court to overrule or cabin *Mitchell*, defendant improperly asks this Court to issue an advisory opinion to guide future litigation between other parties. *E.g., Peach v. McGovern*, 2019 IL 123156, ¶ 64 ("Courts of review will not decide moot or abstract questions, will not review cases merely to establish precedent, and will not render advisory opinions."). In any event, for the reasons discussed, it is unnecessary to overrule *Mitchell* because it does not misstate the law.

without considering whether such a hearing is feasible. *Id*. at 339. To the contrary, *Mitchell* correctly noted that the Court had recently adopted "the 'case-by-case' approach" to determining whether a retrospective fitness hearing is an appropriate remedy. *Id*. at 338. In context, then, *Mitchell* merely noted that retrospective fitness hearings had been entirely barred, but now were an available remedy in appropriate cases. *See id*. Thus, *Mitchell* does not misstate the law.

Nor is defendant correct that *Mitchell* has caused the appellate court to abandon the case-by-case approach and "reflexively" order retrospective fitness hearings without considering whether such a hearing is feasible. Def. 14, 18-20. To the contrary, the appellate court has consistently followed this Court's precedent and held that whether retrospective fitness hearings are an appropriate remedy must be determined on a case-by-case basis and are appropriate only if the particular circumstances of a case make it feasible to accurately determine a defendant's fitness retrospectively. *See, e.g.*, *People v. Doolin*, 2024 IL App (5th) 230053-U, ¶ 12 (retrospective hearings are appropriate if "defendant's fitness can be fairly and accurately determined" retrospectively). [4] An illustrative case is *People v. Cook*, which noted that retrospective hearings will often be "'inadequate'" and are appropriate only in "'exceptional cases'" where "'the issue of defendant's fitness or lack of fitness

[4] The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts' website, at https://www.illinoiscourts.gov/top-level-opinions/.

at the time of trial may be fairly and accurately determined'" retrospectively. 2014 IL App (2d) 130545, ¶ 22 (quoting *Neal*, 179 Ill. 2d at 554).

Indeed, even after *Mitchell*, the appellate court has vacated convictions, rather than remanding for retrospective hearings, when the appellate court believed that it was not possible to accurately reconstruct the defendant's prior fitness. *See, e.g., Esang*, 396 Ill. App. 3d at 840-41 (vacating conviction, rather than remanding for retrospective fitness hearing, because such a hearing was not feasible); *People v. Jones*, 349 Ill. App. 3d 255, 262 (3d Dist. 2004) (similar).

Defendant's cited cases do not support his conclusory assertion that, post-*Mitchell,* the appellate court has abandoned the case-by-case approach and now "reflexively" orders retrospective fitness hearings. Def. Br. 18-19. For example, in one case defendant cites, *People v. Zolph*, 2023 IL App (2d) 220123-U, ¶¶ 69-71, the appellate court noted that whether a retrospective fitness hearing is an appropriate remedy must be determined on a "case-by-case basis," and explained that a retrospective fitness hearing was feasible under the circumstances of that case where there was contemporaneous evidence of the defendant's fitness that the trial court could consider on remand. Similarly, in *People v. DeHaven*, the defendant "urge[d]" the appellate court that remand for a retrospective fitness restoration hearing was the "proper relief"; the appellate court carefully considered the request and agreed that a retrospective fitness restoration hearing was feasible due

to the availability of contemporaneous fitness evidence. 2023 IL App (4th) 220840-U, ¶¶ 35-36. And the remaining cases defendant lists in his string cite likewise fail to show that the appellate court "reflexively" ordered retrospective hearings or otherwise erred by determining that a retrospective hearing was feasible. Def. Br. 18-19 (collecting cases).[5] In short, there is no reason to overrule or cabin *Mitchell* because it does not misstate the law, nor has the appellate court "reflexively" ordered retrospective fitness hearings post-*Mitchell,* as defendant contends.

2. The appellate court is correct that a retrospective fitness hearing is an appropriate remedy in this case.

Here, the appellate court correctly applied Illinois law when it ordered a retrospective fitness hearing because there is reason to believe that "defendant's fitness can be fairly and accurately determined on remand." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 22. As discussed, the appellate court held that the trial court procedurally erred during the November 2018 fitness

[5] *See, e.g., People v. Payne*, 2018 IL App (3d) 160105, ¶¶ 5, 13-14 (noting that whether retrospective fitness hearings are an appropriate remedy must be decided on a "case-by-case approach" and retrospective hearing was proper where the evidence allowed the defendant's prior fitness to be accurately determined); *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 38 (retrospective hearing was appropriate where experts who had contemporaneously treated the defendant could testify on remand); *see also People v. Lewis*, 2024 IL App (2d) 230045, ¶ 43 (where trial court erred by conducting hearing in defendant's absence, retrospective hearing where defendant could attend was the proper remedy); *People v. Morris*, 2022 IL App (1st) 210949-U, ¶ 21 (remanding for a retrospective hearing to allow trial court to hear testimony from psychiatrist who had examined the defendant); *People v. Moore*, 408 Ill. App. 3d 706, 712 (1st Dist. 2011) (remanding for retrospective hearing where expert had evaluated the defendant before trial).

restoration hearing because (1) it was "unclear" whether the trial court reviewed the October 2018 progress report; and (2) it "appear[ed]" that the trial court merely relied on the parties' stipulation that the author of that report would testify that defendant was restored to fitness. *Id*. at ¶ 21. Plainly, those are the type of issues that can be accurately and fairly addressed at a retrospective fitness hearing: the trial court can review the contemporaneous October 2018 progress report and any other documents or evidence the parties contend are relevant, consider any arguments defendant wishes to make about the evidence, and then determine whether it changes the court's prior judgment that defendant was restored to fitness.

Indeed, courts have consistently concluded that retrospective fitness hearings are feasible where (as here) a contemporaneous record exists regarding the defendant's fitness. For example, in *Cook*, the appellate court found that the trial court erred at the original fitness hearing because the parties stipulated that an expert would testify consistently with a fitness report he had drafted, but the record showed that the trial court never read the report. 2014 IL App (2d) 130545, ¶ 19. *Cook* held that a retrospective fitness hearing was appropriate because "the trial court is perfectly capable of reviewing that evidence [in a retrospective hearing] and finding whether, in light of that evidence, defendant was fit when he pleaded guilty and was sentenced." *Id*. at ¶ 22. Similarly, *DeHaven* found that a retrospective fitness restoration hearing was appropriate where the trial court could

consider contemporaneous evidence that had been prepared before the defendant's trial. 2023 IL App (4th) 220840-U, ¶ 36.

The foreign authority defendant cites also holds that retrospective hearings are appropriate when contemporaneous evidence exists regarding the defendant's fitness at the relevant time, such as a fitness report that was prepared by medical professionals during pre-trial proceedings. *See, e.g.*, *Pitchford v. State*, 240 So. 3d 1061, 1070-71 (Miss. 2017) (retrospective fitness hearing was appropriate in part because records prepared before trial could be reviewed at retrospective hearing) (cited at Def. Br. 28); *State v. Ford*, 353 P.3d 1143, 1155-56 (Kan. 2015) (similar) (cited at Def. Br. 27). Accordingly, defendant's own authority supports the appellate court's determination that it was appropriate to remand for a retrospective fitness hearing in his case.

Defendant's argument that a retrospective hearing is not feasible in this case boils down to two speculative claims: (1) there are allegedly inconsistencies between the parties' stipulation and certain documents, including the October 2018 progress report, that defendant *speculates* may be impossible to resolve on remand; and (2) defendant *speculates* that the mere passage of time may make it "impossible" for the trial court to reconstruct defendant's fitness retrospectively. Def. Br. 38-46.

However, in speculating that the trial court may not be able to determine his fitness at a retrospective hearing, and arguing that this Court should hold that the appellate court erred by remanding for a retrospective

hearing, defendant ignores the appellate court's further stipulation that if, on remand, the trial court concludes that the evidence regarding defendant's fitness is "inconclusive," then "defendant is entitled to a new trial." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 23. Thus, in the unlikely event that defendant's speculation proves true and the trial court finds that the evidence regarding defendant's fitness as of 2018 is inconclusive due to the passage of time or unresolvable inconsistencies in the evidence, defendant will get the result he wants, *i.e.*, his guilty plea will be vacated and he will be entitled to a new trial.

In any event, defendant's speculation that the trial court may not be able to determine his fitness as of 2018 is baseless. Again, contemporaneous reports exist regarding defendant's fitness as of 2018 that the trial court can read (or, more accurately stated, re-read). And, if the trial court believes it is necessary to resolve any alleged inconsistencies among those reports, then the court may hear testimony from witnesses with contemporaneous knowledge of those issues, such as defense counsel, the prosecutors, and the medical professionals who treated defendant and prepared his fitness reports. *E.g., DeHaven*, 2023 IL App (4th) 220840-U, ¶ 36 (trial courts may hear witness testimony during retrospective fitness hearings). For example, it is reasonable to believe that one or more such witnesses would be able to confirm that a stray remark in the October 2018 progress report that

defendant was "unfit" was an inadvertent error, which would resolve the inconsistency that defendant alleges exists in the report.

Defendant's conclusory assertion that the passage of time makes it "impossible" to hold a retrospective fitness hearing is likewise incorrect. Def. Br. 40, 46. As this Court explained in *Neal*, the "passage of time[ ] . . . is not dispositive" because "circumstances may be such that the issue of defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact." 179 Ill. 2d at 553-54 (retrospective hearing 13 years after trial was appropriate); *cf. Pate v. Robinson*, 383 U.S. 375, 387 (1966) (where defendant did not receive a pre-trial fitness evaluation, and six years had elapsed since trial, retrospective hearing was not an appropriate remedy).

As defendant's authority correctly puts it, "'[t]he passage of time is not an insurmountable obstacle if sufficient contemporaneous information is available'" to determine a defendant's fitness retrospectively. *State v. Snyder*, 750 So. 2d 832, 855 (La. 1999) (cited at Def. Br. 27). Indeed, one case defendant cites held that it was feasible to hold a retrospective fitness hearing two decades after the defendant's trial because contemporaneous evidence existed (including a pre-trial fitness report) regarding his fitness before trial. *Ford*, 353 P.3d at 1155-57 (cited at Def. Br. 27).

Lastly, defendant is incorrect when he argues that an intermediate appellate decision from Florida, *Auerbach v. State*, 273 So. 3d 134 (Fla. Dist.

Ct. App. 2019) (cited at Def. Br. 43-45), compels the conclusion that a retrospective fitness hearing is not feasible in his case. In *Auerbach*, a retrospective hearing was not feasible because there was no "contemporaneous" evidence of the defendant's fitness where the fitness reports had been prepared "nearly three years" before trial and the fitness hearing had been held "thirty-two months" before trial. *Id.* at 139. Here by contrast, the parties dispute whether the trial court erred during the November 2018 fitness hearing, and, as discussed, contemporaneous evidence exists to resolve that dispute, because the treatment center prepared defendant's fitness reports and related documents in October 2018 and November 2018. *Supra* pp. 25-26. Thus, while defendant contends that "[a]side from the timing of the evaluations, every fact of [defendant's] case lines up with *Auerbach*," he ignores that the timing of the evaluations is the most important factor to *Auerbach's* determination that a retrospective fitness hearing was not feasible. *See* Def. Br. 45. Because there *is* contemporaneous evidence in defendant's case, the appropriate remedy is to remand for a retrospective fitness hearing so the trial court can address defendant's arguments that the court erred in finding him restored to fitness. Indeed, as defendant's own authority puts it, reviewing courts should be "reluctant to foreclose" the People an opportunity to prove at a retrospective hearing "however remote, some five years later," that a defendant was fit. *Commonwealth v. Simpson*, 704 N.E. 2d 1131, 1136 (Mass. 1999) (cited at

Def. Br. 26, 27). Accordingly, if this Court finds that defendant's claim was properly before the appellate court, and has merit, then it should affirm the appellate court's judgment remanding for a retrospective fitness hearing.

C. This Court should reject defendant's proposed new rule that a retrospective hearing can never remedy errors made at a fitness restoration hearing.

Defendant's argument that this Court should adopt a new rule that retrospective fitness hearings are never an appropriate remedy for errors made in fitness restoration hearings, and that due process requires reviewing courts in such cases to automatically vacate the defendant's conviction, is forfeited, logically flawed, and unsupported. Def. Br. 32-37.

To begin, defendant forfeited his argument that a retrospective fitness hearing violates due process and thus can never be a proper remedy for an error in a restoration hearing because he did not raise that argument in his appellate briefs. *E.g., People v. Cherry*, 2016 IL 118728, ¶ 30 ("It is well settled that arguments raised for the first time in this Court are forfeited."). Rather, as discussed, in his appellate briefs defendant acknowledged that a retrospective hearing can be an appropriate remedy if sufficient contemporaneous evidence exists. Def. App. Br. 18-19, 28.

Forfeiture aside, defendant's due process argument is logically flawed. Specifically, defendant's argument proceeds from his contention that he was "unfit at the time he pled guilty and his plea, therefore, violates due process." Def. Br. 32. According to defendant, by "vacating only the order finding [defendant] fit, without vacating the underlying plea," and remanding for a

retrospective fitness hearing, "the appellate court guaranteed that constitutional error would persist." *Id.* To be sure, (1) a defendant who is found to be unfit is presumed to remain unfit until a court finds he has been restored to fitness; and (2) if a defendant is unfit when he pleads guilty, then his plea violates due process. *See id.* (collecting cases). But defendant's argument proceeds from the flawed premise that he was unfit and ignores that the appellate court did not hold that he was unfit at the time of his plea.

Instead, the appellate court found that the trial court may have made two *procedural* errors at the November 2018 restoration hearing because (1) it was "unclear" whether trial court reviewed the October 2018 progress report; and (2) "it appear[ed]" that the trial court "merely relied on the stipulation of the parties that defendant had been restored to fitness." *Johnson*, 2024 IL App (5th) 220608-U, ¶ 21. The purpose of the appellate court's remand for a retrospective fitness hearing, therefore, is obvious: to allow the trial court to address those potential procedural errors and, having done so, re-answer the ultimate question of whether defendant was restored to fitness as of November 2018. That is why the appellate court further instructed that if the evidence at the retrospective hearing proved to be "inconclusive" or otherwise failed to show that defendant was fit, then defendant's guilty plea should be vacated, and he was entitled to a trial. *Id.* at ¶ 23. Thus, the appellate court's order protects defendant's due process right not to plead guilty while unfit; his guilty plea will not be upheld unless

the court finds that there is sufficient contemporaneous evidence showing that he was restored to fitness.

Given these flaws in defendant's argument, it is unsurprising that he identifies no case holding that a retrospective fitness restoration hearing automatically violates due process and is never an appropriate remedy for a procedural error made at a prior restoration hearing. *See* Def. Br. 32-37. Indeed, one of the two appellate decisions defendant relies on was decided 50 years ago, long before this Court expressly adopted the case-by-case approach to determining whether a retrospective hearing is appropriate, and neither case supports defendant's proposed new rule because neither case discusses retrospective hearings, let alone holds that such hearings automatically violate due process. *Id*. at 32-33 (citing *People v. Gillion*, 2016 IL App (4th) 140801; *People v. Johnson*, 15 Ill. App. 3d 680 (1st Dist. 1973)).

Moreover, contrary to defendant's argument, Illinois courts have consistently followed the case-by-case approach and held that procedural errors at fitness restoration hearings can sometimes be remedied by a retrospective hearing. *See, e.g., DeHaven*, 2023 IL App (4th) 220840-U, ¶¶ 36, 39 (remanding for retrospective fitness restoration hearing); *Payne*, 2018 IL App (3d) 160105, ¶¶ 13-16 (same); *Gipson*, 2015 IL App (1st) 122451, ¶ 38 (same). And those decisions make sense for the reasons discussed: retrospective fitness restoration hearings can resolve errors that were made at earlier hearings and answer the question of whether the defendant was

restored to fitness, thereby (1) protecting the defendant's due process right not to be convicted if he was unfit, while also (2) protecting society's interest in preserving the finality of convictions by not vacating guilty pleas or guilty verdicts unless there is a basis to do so.

Moreover, defendant's proposed new rule is not only contrary to Illinois precedent, it is also contrary to the foreign authority he urges this Court to follow. *See Auerbach*, 273 So. 3d at 137 (cited at Def. Br. 39, 43-45). According to defendant, *Auerbach* is a "useful example" for this Court to follow because it is "nearly identical" to this case, in that it addressed errors made at a fitness restoration hearing. Def. 44. But *Auerbach* did not hold that retrospective fitness restoration hearings violate due process and are never an appropriate remedy. Rather, *Auerbach* expressly stated that a retrospective fitness hearing "is appropriate" where there is sufficient contemporaneous evidence to determine a defendant's fitness retrospectively. 273 So. 3d at 137-40. Accordingly, even defendant's authority fails to announce an absolute rule that retrospective fitness restoration hearings automatically violate due process and are never an appropriate remedy.

Nor does defendant's discussion of the definition of "vacatur" support his argument that his guilty plea must be vacated. Def. Br. 34-36. Notably, none of the cases defendant cites regarding vacatur discuss retrospective fitness hearings, let alone hold that due process prohibits retrospective hearings and requires a reviewing court to automatically vacate a defendant's

guilty plea if the trial court made procedural errors at the earlier hearing. Instead, defendant's cases address wholly inapposite issues, such as whether it was harmless error for a prosecutor to mention a previously vacated criminal sentence during closing argument. *Id.* (collecting cases).[6]

Furthermore, defendant's observation that the vacatur of a trial court's ruling typically returns the parties to the status quo ante directly undermines his contention that the appellate court erred by remanding for a retrospective hearing. That is to say, while defendant contends that the appellate court's vacatur of the trial court's November 2018 ruling that he was restored to fitness should return him to the position he was in as of November 2018, Def. Br. 32, 34-35, he fails to consider that as of November 2018, the trial court had received reports from the treatment center stating that defendant was restored to fitness, *see* C74-75, which by law required the trial court to determine whether it agreed with the treatment center that defendant was restored to fitness, *see, generally,* 725 ILCS 5/104-20(e). Thus, by remanding for a retrospective hearing, the appellate court *is* returning defendant to the position he was in as of November 2018: the trial court

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[6] *People v. Smith*, 176 Ill. 2d 217, 239-41 (1997) (reference to vacated sentence in closing argument was harmless error); *People v. Brooks*, 158 Ill. 2d 260, 274 (1994) (dispute regarding sentence was moot where conviction was vacated); *People v. McCutcheon*, 68 Ill. 2d 101, 106 (1977) (where guilty plea is vacated, double jeopardy does not prevent trial on charges that had been dismissed as part of plea deal); *People v. Shinaul*, 2017 IL 120162, ¶ 14 (guilty plea vacated because "the offense to which [defendant] pled guilty was declared unconstitutional").

must consider the treatment center's recommendation that defendant was restored to fitness.

More generally, defendant fails to consider that it is neither impermissible nor particularly unusual for a reviewing court to remand for a new hearing to fix procedural or other errors a trial court may have made in a pre-conviction ruling, without also vacating the defendant's conviction. *See, e.g.*, *People v. Davis*, 231 Ill. 2d 349, 370 (2008) (vacating trial court's ruling that prosecution did not violate *Batson* and remanding for retrospective *Batson* hearing, without vacating the defendant's conviction, to determine whether black venireperson was improperly excluded); *Waller v. Georgia*, 467 U.S. 39, 50 (1984) (vacating trial court's denial of suppression motion, remanding for new suppression hearing, and declining to order new trial because the error committed at the original hearing could be addressed on remand); *Goldberg v. United States*, 425 U.S. 94, 111 (1976) (remanding for hearing to determine whether prosecutors should have produced certain documents to defendant, and stating, "we do not think that this Court should vacate [defendant's] conviction and order a new trial, since [his] rights can be fully protected by a remand to the trial court with direction to hold an inquiry consistent with this opinion").

Defendant's proposed rule that reviewing courts may never remand for a new hearing to address errors without also vacating the defendant's conviction would lead to bad results, as this case illustrates. Under

defendant's proposed rule, this Court would be required to vacate defendant's guilty plea merely because it is "unclear" whether the trial court reviewed the October 2018 progress report, an issue that is easily addressed at a retrospective hearing on remand.

At bottom, defendant ignores that this case and cases like it involve two important legal principles: (1) an unfit defendant may not be tried or plead guilty; and (2) reviewing courts should protect the finality of criminal convictions, and not allow defendants to withdraw guilty pleas unnecessarily. The remedy ordered by the appellate court in this case balances both principles because (1) there is sufficient contemporaneous evidence to conclude that it is possible that defendant's fitness can be accurately determined at a procedurally compliant retrospective fitness hearing, but (2) if the evidence on remand proves inconclusive, or fails to show that defendant was restored to fitness, then defendant's conviction must be vacated. Defendant cannot credibly fault this just and fair remedy.

CONCLUSION

This Court should either vacate the appellate court's judgment because the appellate court lacked jurisdiction to consider defendant's appeal of the trial court's November 2018 order that he was restored to fitness or reverse the appellate court's judgment because defendant's claim is waived, barred by the doctrine of invited error, and meritless. Alternatively, if this Court finds that defendant's claim was properly before the appellate court and is

meritorious, then this Court should affirm the appellate court's order remanding for a retrospective fitness hearing.

July 30, 2025

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 50 pages.

/s/ Michael L. Cebula
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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 30, 2025, the foregoing **Appellee's Brief and Request for Cross-Appeal Relief by the People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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