No. 131825

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- CARTHELL EUGENE NIBBELIN, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 4-24-0446, 4-24-0447 & 4-24-0450 (Consolidated). There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 17-CF-402, 20-CF-434 & 21-CF-850. Honorable Amy McFarland, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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E-FILED
11/24/2025 12:00 PM
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NATURE OF THE CASE

Defendant-Appellant Carthell Eugene Nibbelin, was convicted of four counts of possessing child pornography in McLean County case No. 17-CF-402, one count of violating the Sex Offender Registration Act (SORA) in McLean County case No. 20-CF-434, and one count of violating SORA in McLean County case No. 21-CF-850. The trial court sentenced him to four consecutive terms of four years' imprisonment for the possession of child pornography convictions in case No. 17-CF-402 and to concurrent three-year terms of imprisonment in the other cases.

No issue is raised challenging the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether defense counsel's failure to file an Illinois Supreme Court Rule 404 Certification for Waiver of Court Assessments is analyzed pursuant to the rubric of ineffective assistance of counsel, or whether the remedy lies in Illinois Supreme Court Rule 472.

RULES INVOLVED

Rule 404. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a criminal action pursuant to 725 ILCS 5/124A-20 shall be in writing and signed under penalty of perjury by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts; The Application should be submitted no later than 30 days after sentencing.

* * *

(e) Cases involving representation by public defenders, criminal legal services providers, or attorneys in court-sponsored pro bono program. In any case where a defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored pro bono program, the attorney representing that defendant shall file a certification with the court, and that defendant shall be entitled to a waiver of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule. The certification shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article IV Forms Appendix. "Criminal legal services provider" means a not-for-profit corporation that (I) employs one or more attorneys who are licensed to practice law in the State of Illinois and who directly provide free criminal legal services or (ii) is established for the purpose of providing free criminal legal services by an organized panel of pro bono

attorneys. "Court-sponsored pro bono program" means a pro bono program established by or in partnership with a court in this State for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys.

Ill. S. Ct. R. 404 (eff. Sept. 1, 2023).

Rule 472. Correction of Certain Errors in Sentencing

(a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:

(1) Errors in the imposition or calculation of fines, fees, assessments, or costs;

(2) Errors in the application of per diem credit against fines;

(3) Errors in the calculation of presentence custody credit; and

(4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

Ill. S. Ct. R. 472 (eff. Feb. 1, 2024).

STATEMENT OF FACTS

This case is a consolidated appeal from McLean County case No. 17-CF-402, wherein Defendant Carthell Nibbelin was convicted of four counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (2016)); McLean County case No. 20-CF-434, one count of violating the Sex Offender Registration Act (SORA) (730 ILCS 150/3(a) (2020)); and McLean County case No. 21-CF-850, a second SORA violation. *People v. Nibbelin*, 2025 IL App (4th) 240446-U, ¶¶ 2 -3, 17 , appeal allowed, No. 131825, 2025 WL 2718230 (Sept. 24, 2025).[1] After probation revocations in case numbers 17-CF-402 and 20-CF-434, and a guilty plea in 21-CF-850, the trial court sentenced Mr. Nibbelin to four consecutive terms of four years' imprisonment for the possession of child pornography convictions, and to concurrent three-year terms of imprisonment in the other cases, as well as costs, fines, and assessments. *Id*., at ¶ 3.

Mr. Nibbelin appealed the judgments. *Id*., at ¶ 4. Below, he argued that the trial court's admonishments were not in substantial compliance with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), and (2) trial counsel was ineffective because he failed to file a certificate for waiver of court assessments in each of his three cases, as required by Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023). *Id*. The Fourth District affirmed the judgments, but remanded the matter to allow Mr. Nibbelin to file a motion pursuant to Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024) in order to challenge his assessments. *Id*.

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[1]This matter was originally three separate appeals, which were consolidated through the appellate court's order of August 30, 2024. Mr. Nibbelin will cite to the record filed in appeal number 4-24-0446, McLean County Cause No. 17-CF-402, unless specifically noted otherwise.

By way of background, Mr. Nibbelin was charged with multiple counts of possessing child pornography in case No. 17-CF-402. *Nibbelin,* at ¶ 6. Mr. Nibbelin struggles with his mental health, including an in-patient hospitalization a year before he was charged in case No. 17-CF-402, and at one point the trial court found him unfit to proceed. *Id*. (ES106-110; CS37-68) He was treated and restored to fitness, but again became unfit. *Id*. (R20, 38-39, C113, 129-130; ES123-140) After a second restoration to fitness he entered guilty pleas to four counts of four counts of possessing child pornography, and was probation with conditions, including payment of fines, fees, and costs. *Id*.

Mr. Nibbelin also struggled on probation. *Nibbelin*, at ¶ 7. He engaged in sex offender treatment while on probation but had difficulty because his substance abuse and chronic mental health issues created a significant barrier for him. (CS62) The state filed three petitions to revoke probation, the first two for alcohol consumption and the third for alcohol consumption, failing to get an ordered assessment, and failing to register. *Id*., at ¶ 7-8. The state filed a fourth petition to revoke probation, alleging that Mr. Nibbelin possessed pornography and also a device with internet access without first getting that device approved. *Id*. Mr. Nibbelin admitted to some of the allegations, others were dismissed, and he received a new probationary term. *Id*.

A fifth and sixth petition to revoke probation followed, along with being charged in case No. 20-CF-434 with two counts of violating SORA (730 ILCS 150/3(a) (2020)) and one count of obstructing justice (720 ILCS 5/31-4(a)(1) (2020)). *Nibbelin*, at ¶ 9. The state filed a seventh petition to revoke probation in case No. 17-CF-402, alleging alcohol consumption, viewing pornography, and using a device with internet capability without prior approval. *Id*.

Mr. Nibbelin pleaded guilty to one count of violating SORA in case No. 20-CF-434 and admitted the violations contained in the sixth petition to revoke his probation in case No. 17-CF-402. *Nibbelin*, at ¶ 10. The remaining charges and petitions were dismissed and the matter was set for sentencing. *Id.*

Mr. Nibbelin was charged with another violation of SORA in case No. 21-CF-850. *Nibbelin*, at ¶ 11. At a status hearing on that case defense counsel requested a fitness evaluation, which the trial court ordered. *Id*. Mr. Nibbelin was found fit. *Id*.

The trial court then conducted a sentencing hearing on the other pending matters, case Nos. 17-CF-402 and 20-CF-434. *Nibbelin*, at ¶ 12. The trial court stated it had "struggled with this case" but concluded it was "willing to give [Mr. Nibbelin] one more chance." *Id*. The court sentenced Mr. Nibbelin to a new term of 24 months' probation in each case, with the original fines and costs imposed on each. *Id*.

The eighth and ninth petitions to revoke probation in case No. 17-CF-402, and the first petition to revoke probation in case No. 20-CF-434 followed. *Nibbelin*, at ¶ 13. The parties agreed to a disposition of the pending matters in all three cases. *Id.* In exchange for Mr. Nibbelin's admissions to the ninth petition to revoke in case No. 17-CF-402 and the first petition in case No. 20-CF-434, as well as a guilty plea to the charged offense in case No. 21-CF-850, the state would dismiss the eighth petition, with no agreement as to sentence. *Id*.

At sentencing, the trial court noted Mr. Nibbelin's "long history of mental health and substance abuse issues" and that community-based resources had been exhausted. *Nibbelin*, at ¶ 16. The court sentenced Mr. Nibbelin to consecutive terms of four years' imprisonment for each of the four counts in case No. 17-CF-402,

a concurrent term of three years' imprisonment in case No. 20-CF-434, and another concurrent term of three years' imprisonment in case No. 21-CF-850. *Id.* Court costs, fines, and assessments were also imposed in each case. *Id.*

Mr. Nibbelin appealed. *Nibbelin*, at ¶ 18. He argued before the Fourth District that (1) the trial court failed to substantially comply with Rule 402A before accepting his admissions to the probation violations in case Nos. 17-CF-402 and 20-CF-434, and (2) his trial counsel provided ineffective assistance by failing to file a certificate for waiver of court assessments in each of his cases. *Nibbelin*, at ¶ 20. The Fourth District found substantial compliance. *Nibbelin*, at ¶ 22-32.

For the second issue on appeal, Mr. Nibbelin argued that appointed counsel provided ineffective assistance because counsel failed to file a certificate for waiver of court assessments. *Nibbelin*, at ¶ 34. His position, as stated by the appellate court, was that he was "entitled to a waiver of assessments in the amount of $5,890" but counsel failed to file the required certificate pursuant to Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) to facilitate that waiver. *Id.* Mr. Nibbelin asked for a remand for the filing of the certificate and further proceedings on the assessment waiver. *Id.*

The state's position was that Illinois Supreme Court Rule 472 applied because the claim was in reference to the "imposition" of assessments, and contended the matter should be remanded for the filing of a motion pursuant to Rule 472. *Nibbelin*, at ¶ 35.

The Fourth District found that Rule 472(a)(1) controlled because it found the error to be one sounding in an "error in the imposition" of assessments, and that Rule 472 "[b]y its plain terms ... is not limited to specific errors but applies

to any claim of error in the imposition of assessments." *Nibbelin*, at ¶ 37. The Fourth District remanded so that Mr. Nibbelin could file a motion pursuant to Rule 472. *Id.*, at ¶ 38-41.

This Court granted leave to appeal on September 24, 2025. *Nibbelin*, *Id.*, appeal allowed, No. 131825, 2025 WL 2718230 (Sept. 24, 2025).

ARGUMENT

Defense counsel was ineffective for failing to file a Illinois Supreme Court Rule 404 Certification for Waiver of Court Assessments, and Illinois Supreme Court Rule 472 is not the proper remedy for that error.

Neither what happened nor the existence of an error is in dispute. The solution to the problem is the issue.

Upon revocation of probation in case Nos. 17-CF-402 and 20-CF-434, and the guilty plea in 21-CF-850, the trial court ordered Carthell Nibbelin to pay a total of $5,420 in 17-CF-402, $91 in 20-CF-434, and $599 in 21-CF-850. (C338-339; 4-24-0447, C83-84; 4-24-0450, C43-44)

Mr. Nibbelin was sentenced on September 29, 2023. (C10, 108) The version of Illinois Supreme Court Rule 404(e) in effect on that date stated that "[i]n any case where a defendant is represented by a *public defender*, criminal legal services provider, or an attorney in a court-sponsored pro bono program, the attorney representing that defendant *shall* file a certification with the court, and that defendant *shall* be entitled to a waiver of assessments as defined in 725 ILCS 5/124A-20(a)[2022] without necessity of an Application under this rule." Ill. S. Ct. R. 404(e), (eff. Sept. 1, 2023) (emphasis supplied).

Mr. Nibbelin received appointment of counsel and defense counsel was an assistant public defender. (C10-35; 4-24-0447, C5-14; 4-24-0450, C5-12) Despite this, defense counsel did not file the certification required by Rule 404(e) in order for Mr. Nibbelin to be spared the burden of a large bill due and owing the moment he is released from prison.

Mr. Nibbelin argued before the appellate court that his attorney was ineffective for failing to abide by Rule 404(e), which states that if defense counsel

is a public defender, that attorney "shall" file a certification entitling Mr. Nibbelin to a waiver of assessments as defined in Section 124A-20. *People v. Nibbelin*, 2025 IL App (4th) 2404460-U, ¶ 4, 34-38.

General Principles

Claims of ineffective assistance of counsel are subjected to a bifurcated standard of review, in which the reviewing court defers to the trial court's findings of fact unless they are against the manifest weight of the evidence, but reviews *de novo* "the ultimate legal issue of whether counsel's actions support an ineffective assistance claim." *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (1st Dist. 2008). Where, as here, the trial court made no findings of fact on the claim of ineffective assistance of counsel to which deference could be due, the question of whether counsel's representation was ineffective is reviewed *de novo*. *People v. Berrier*, 362 Ill. App. 3d 1153, 1166-1167 (2d Dist. 2006).

A defendant in a criminal case has the right to the effective assistance of counsel. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §8; *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). To succeed on a claim of ineffective assistance of counsel at sentencing, a defendant must show that "counsel's performance fell below minimal professional standards and that a reasonable probability exists that the sentence was affected by the poor performance." *People v. Steidl*, 177 Ill. 2d 239, 257 (1997).

This Court reviews *de novo* questions of interpretation of language of a statute and a supreme court rule. *People v. Mayfield*, 2023 IL 128092, ¶ 25, reh'g denied (May 22, 2023).

The same principles that govern the interpretation of statutes govern the interpretation of rules of the Court. *People v. Tousignant*, 2014 IL 115329, ¶ 8;

People v. Campbell, 224 Ill.2d 80, 84 (2006). The goal is to "ascertain and give effect to the intention of the drafters of the rule." *Tousignant*, at ¶ 8. The starting point is the language of the rule, and words given their plain and ordinary meaning. *Id*. The Court also looks to the purpose and goals behind the rule. *Id.*

A court will apply clear and unambiguous language of a statute or rule as it is written, without resorting to any further tools of construction. *Campbell*, 224 Ill.2d at 84. In doing this, however, this Court looks to the rule as a whole, and does not cherry-pick words and phrases.

> "A court construes statutory language in light of its surrounding terms. Thus, *in construing a statute, a court must not focus exclusively on a single sentence or phrase*, but must view the statute as a whole. The court may consider the reason for the law, the problems sought to be remedied, and the purposes to be achieved. Each word, clause and sentence of a statute must be given reasonable meaning, if possible, and should not be rendered superfluous." *Standard Mut. Ins. Co. v. Lay*, 2013 IL 114617, ¶ 26 (internal citations omitted, emphasis added).

In construing a statute or a rule, this Court also considers the reason and necessity for the law and the evil intended to be remedied. *People v. Steppan*, 105 Ill.2d 310, 316 (1985).

The Purpose of the Law and the Rule, and the Issue to Be Remedied

Court assessments had historically been problematic. With each new assessment, it became progressively more complicated for every actor in the court system to correctly render a judgment. *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 28. It became a quagmire, to the point that the appellate court devised a chart for practitioners and courts to use.

> We do recognize this issue is very complex as the various fines and fees are contained throughout several different codes. Thus, we have attached a reference sheet as an appendix (Appendix A) to this opinion to assist the circuit courts, State's Attorneys, public defenders, and their assistants in ensuring the statutory fines and fees in criminal cases are properly imposed.

People v. Williams, 2013 IL App (4th) 120313, ¶ 25.

The Legislature addressed the issue with the enactment of Public Act 100-987. Pub. Act 100-987 (eff. July 1, 2019) (adding 705 ILCS 135-15, *et seq*. and 725 ILCS 5/124A-20(b, c)).

> The Bill fundamentally does three things. One, it makes all of our fines...or all of our fees, not fines...all of our fees consolidated...it consolidates all of our fees into unified schedules. So that now, at present, the clerks of the 102 counties currently collect the fees in 102 different ways. They're dispirit [*sic*]. They're out of control. This will make it transparent and uniform. Number two, it will realign them so we comply with Supreme Court's [*sic*] requirement to make this constitutional. And number three, and in my opinion probably most importantly, it will provide for waivers for low income individuals and the working poor, and the working poor. [*sic*] 100th Ill. Gen. Assem., House Proceedings, April 27, 2018, at 7 (statements of Representative Andersson).

The Illinois Supreme Court recognized the problem, recommending adoption of House Bill 4594. Representative Andersson explained:

> The Judicial Branch does not typically weigh in on pending legislation. They made an exception this time and uniformly recommended adoption of House Bill 4594 because of the important and need for it. And it comes with a little bit of an implicit threat. Which is that if we don't do this they will find a way to fix it but the way they fix it will not be how we fix it, they will declare the fees unconstitutional. 100th Ill. Gen. Assem., House Proceedings, April 27, 2018, at 8 (statements of Representative Andersson).

The purpose of the statute is clearly twofold: to make the assessments streamlined and simpler to impose, and to allow people of limited means the opportunity to obtain a waiver of those assessments. Under 725 ILCS 5/124A-20 (2023), an indigent defendant can request of waiver of court-imposed costs. Section 124A-20 provides in pertinent part:

> Sec. 124A-20. Assessment waiver.
>
> (a) As used in this Section:
>
> *'Assessments' means any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act, but does not include violation of the Illinois Vehicle Code assessments.*
>
> 'Indigent person' means any person who meets one or more of the following criteria:

> (1) He or she is receiving assistance under one or more of the following means-based governmental public benefits programs: Supplemental Security Income; Aid to the Aged, Blind and Disabled; Temporary Assistance for Needy Families; Supplemental Nutrition Assistance Program; General Assistance; Transitional Assistance; or State Children and Family Assistance.
>
> (2) His or her available personal income is 200% or less of the current poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of the Code of Civil Procedure are of a nature and value that the court determines that the applicant is able to pay the assessments.
>
> (3) He or she is, in the discretion of the court, unable to proceed in an action with payment of assessments and whose payment of those assessments would result in substantial hardship to the person or his or her family.
>
> 'Poverty level' means the current poverty level as established by the United States Department of Health and Human Services.
>
> (b) Upon the application of any defendant, after the commencement of an action, but no later than 30 days after sentencing:
>
> (1) If the court finds that the applicant is an indigent person, the court shall grant the applicant a full assessment waiver exempting him or her from the payment of any assessments.

725 ILCS 5/124A-20 (emphasis supplied).

Then, pursuant to 725 ILCS 5/124A-20(c)(2023), to administer Section 124A-20 this Court promulgated Illinois Supreme Court Rule 404. *People v. Hoskins*, 2025 IL App (4th) 240991, ¶ 79-80; Cf. *Klesath v. Barber*, 4 Ill. App. 3d 86, 88 (3d Dist. 1972) (Illinois Supreme Court Rule implemented summary judgment provisions of the Civil Practice Act). The Illinois Supreme Court retains primary constitutional authority over court procedure. *Mayfield*, 2023 IL 128092, ¶ 31. In creating a procedure by which the practitioners and trial courts can process applications pursuant to Section 124A-20, this Court fashioned a streamlined procedure for litigants in certain categories:

> (d) Cases involving representation by criminal legal services providers or attorneys in court-sponsored pro bono program. In any case where a party is represented by a criminal legal services provider or an attorney in a court-sponsored pro bono program, the attorney representing that party shall file a certification with the court, and that party shall be allowed to proceed without payment of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule.

Ill. S.Ct. R. 404(d) (eff. July 1, 2019). This Court, realizing an omission, added public defenders to the list of attorneys who were required to file a certification rather than the application. Ill. S.Ct. R. 404(e) (eff. Sept. 1, 2023). The clear purpose of this Court's Rule 404(e) is to require public defenders to file a certification with the Court and avoid assessments in the first place, obviating any further consideration of the matter.

Rule 472 Is Inapplicable
to a Claim of Ineffective Assistance of Counsel
for Failing to File a Rule 404(e) Certification.

After the inclusion of public defenders into the certificate provision of Rule 404(e), claims of error in failing to file the certificate have been raised in the appellate court, the allegation being that counsel was ineffective for failing to file the certificate as commanded by this Court's 2023 amendment to Rule 404(e). Some panels of the Fourth District, including the panel that decided Mr. Nibbelin's case, concluded that an error of defense counsel's making has its remedy in Illinois Supreme Court Rule 472. *Nibbelin*, at ¶¶ 36-38 (Justices Lannerd, Harris, and DeArmond); *People v. Lawson,* 2025 IL App (4th) 240718-U, ¶ 55-56 (Justices DeArmond, Lannerd, and Grischow)(citing *Nibbelin*, at ¶ 38).

Other panels in the Fourth District of the Illinois Appellate Court have reached the ineffectiveness claim on direct appeal. *People v. Haskins*, 4-24-0923 (2025) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (finding counsel ineffective for failing to "file a Rule 404(e) certificate as the rule mandates counsel to file the required certificate."); *People v. Harris*, 2025 IL App (4th) 240705-U, ¶ 2, 133-137 (Justices Zenoff, Harris, and Lannerd); *People v. Durham*, 2025 IL App (4th) 241284-U, ¶ 15 (Justices Grischow, Harris, and DeArmond); *Hoskins*, at ¶ 84 (Justices Steigmann, Harris, and Doherty); *People v. Glas*, 2025 IL App (4th) 241199-U, ¶¶ 30, 32, 34-35 (Justices Vancil, DeArmond,

and Cavanaugh) (the defendant alleged ineffective assistance because counsel's certificate was tardy, the state conceded deficient performance, and the matter was remanded to allow the certification for a waiver of assessments and the opportunity to file an assessment waiver); *People v. DeHart*, 2025 IL App (4th) 231554-U, ¶ 3, 132 (Justices Steigmann, Zenoff, and Vancil) (accepting the state's concession that the defendant received ineffective assistance of counsel for failing to file the Rule 404 certificate).

Other Fourth District cases have analyzed questions concerning the assessment waiver using the ineffective assistance approach.

In *People v. Baker*, 2022 IL App (4th) 210713, ¶ 81 (Justices Harris, DeArmond, and Steigmann), the defendant alleged ineffective assistance of counsel for failing to file a waiver. *Id*. The appellate court found that the defendant there failed to establish the prejudice prong of an assistance of counsel analysis because there was no evidence the defendant was eligible for the waiver. *Id*., at ¶ 84.

In *People v. Cadengo*, 2025 IL App (4th) 240568, ¶ 74-79 (Justices Vancil, Knecht, and Cavanagh), the defendant alleged her attorney was ineffective for failing to apply for the assessment waiver pursuant to Section 124A-20. The Fourth District in *Cadengo* reviewed the matter for ineffective assistance of counsel, noting that the record did not support a conclusion that the defendant would have been eligible for a waiver under Section 124A-20. *Id*. The Court did not cite Rule 472.*Id*.

In *People v. Chase*, 2025 IL App (4th) 230407-U, ¶ 88-90 (Justices Steigmann, Zenoff, and Doherty), a case that predated the amendment to Rule 404 including public defenders, defense counsel inquired after sentencing about whether the court was accepting applications for waivers of assessments. *Id*., at ¶ 88. Counsel never filed the application, leaving it to the defendant to file his own. *Id*. It was denied as being filed late. *Id*. The appellate court found that defense counsel was ineffective for failing to pursue the assessment waiver and remanded the matter for that purpose. *Id*., at ¶ 89-90.

The Third District has approached the issue as one of ineffective assistance of counsel. See *People v. Harrison*, 2022 IL App (3d) 210425-U ¶ 21-25 (finding counsel ineffective for failing to file an assessment waiver); *People v. Bradford*, 2024 IL App (3d) 220513-U ¶ 1, 12-17 (same); and *People v. Davis*, 2025 IL App (3d) 230569-U ¶ 1, 33-36 (same). The First District also considered an ineffective assistance of counsel argument made in conjunction with assessments imposed prior to the effective date of Section 124A-20. *People v. Miles*, 2019 IL App (1st) 170013-U, ¶ 16-17.

Analysis of a Rule 404(e) violation is appropriately done pursuant to the *Strickland* prongs of ineffective assistance of counsel claims. This is because Rule 472 does not address the problem. The purpose of Rule 472 is separate from the problem to be remedied by Section 124A-20 and Rule 404. Rule 472 is the primary vehicle to address four distinct errors. It states in pertinent part:

Rule 472. Correction of Certain Errors in Sentencing

> (a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:
>
> > (1) Errors in the imposition or calculation of fines, fees, assessments, or costs;
> >
> > (2) Errors in the application of per diem credit against fines;
> >
> > (3) Errors in the calculation of presentence custody credit; and
> >
> > (4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

Ill. S.Ct. R. 472(a) (eff. Mar. 1, 2019) (emphasis supplied)

Notably, those are all court-based errors. Nowhere in Rule 472 is jurisdiction over claims of ineffective assistance of counsel retained, or an option to litigate

counsel's failure to abide by Rule 404. Mr. Nibbelin is not alleging that the assessments were imposed in violation of the law. And, Mr. Nibbelin is not asking this Court to grant him the waiver; therefore, he is not asking for "relief as to the imposition of fines, fees, assessments, or costs against him" from this Court. Instead, what he is asking is for a remand so that counsel can file the certification and he can therefore obtain a waiver of those assessments in the trial court, where that is supposed to occur. He is not litigating the "imposition" or "calculation" of the assessments, which is what Rule 472 addresses.

In finding that Rule 472 applies, the Fourth District below cited to *People v. Eason*, 2020 IL App (3d) 180296, ¶ 11, in support: "Rule 472 is intended to limit, among other things, appeals raising monetary sentencing issues by providing trial courts with jurisdiction to address those issues for the first time after sentencing." *Nibbelin*, at ¶ 36. That general proposition is so; however, *Eason* is not on point because the error in *Eason* was squarely controlled by Rule 472(a)(1).

In *Eason,* the defendant argued for the first time on appeal that the state, "and in turn, the court" used the wrong method of calculating a street value fine. *Eason*, at ¶ 6. The state argued that the appellate court did not have jurisdiction to decide that question, as the remedy was addressed by Rule 472. *Id*. The Court found that "there is no dispute that the calculation and imposition of the street value fine is the kind of issue contemplated by Rule 472." *Id.*, at ¶ 8. Rule 472(a)(1) specifically addresses errors in the "imposition" or "calculation" of fines.

In determining that Rule 472 applied in this case, the Fourth District in this case cited only to *People v. Hinton*, 2019 IL App (2d) 170348. *Nibbelin*, at ¶ 37.The Fourth District noted that *Hinton* found the language of Rule 472 to be "broad and unqualified." *Nibbelin*, at ¶ 37, citing *Hinton*, at ¶ 7.

Hinton is inapposite. The issue raised in *Hinton* was a direct request to "reduce the sentencing order assessing fines, fees, and costs by the total amount of the improperly imposed fines." *Hinton*, at ¶ 1. The state in that case posited that the defendant was not arguing that the fines were improper, but rather that he did not receive the benefit of his bargain on the negotiated plea. *Id*., at ¶ 6. The Second District disagreed, holding that Rule 472 applied where the claim was that the trial court erred in imposing fines because he did not agree to them. *Id*., at ¶ 7. The Court noted the "broad, unspecified language" of Rule 472 and refused to read into that language an exception to the jurisdictional limit of Rule 471 when the claim was an error in imposing a fine that was not agreed as part of a plea bargain. *Id*.

In Mr. Nibbelin's case, by contrast, the claim is not that there was an error in imposing the assessments. The claim is that defense counsel was ineffective in failing to file the required certification pursuant to Rule 404(e), entitling him to a waiver of those assessments via a different statutory vehicle. That is not an error in the "broad, unspecified language" of Rule 472. It is a claim directed towards failure to abide by the plain language of Rule 404(e), which is not an error included in the claims cognizable under Rule 472.

Another panel of the Fourth District was presented with the choice of applying Rule 404(e) or Rule 472 to this question. In *Durham*, 2025 IL App (4th) 241284-U, ¶¶ 11-18, the defendant argued that counsel was ineffective for failing to file the Rule 404(e) certificate. The state argued that Rule 472 applied. *Durham*, at ¶ 12. The Fourth District analyzed the problem as one of ineffective assistance of counsel, finding the failure to file the certificate deficient performance, and prejudice because with the certificate the trial court may have granted the assessment waiver. *Id*., at ¶ 14-15.

Rule 472 is not the proper mechanism for the error that occurred, or the relief requested. Rule 472 indicates that the trial court retains jurisdiction to correct "[e]rrors in the imposition or calculation of fines, fees, assessments, or costs." Ill. Sup. Ct. R. 472(a)(1). The problem is not in the imposition of the financial matters. The problem is in defense counsel's failure to file a certificate entitling Mr. Nibbelin to a waiver of those assessments. The trial court cannot now grant a waiver of the assessments because defense counsel never filed the certification that allowed the waiver. *See* 725 ILCS 5/124A-20(b)(1) (2023) (mandating that the court grant a full waiver of an assessment, if the defendant otherwise qualifies for one, *"upon the application of any defendant*") (emphasis supplied); *Glas*, 2025 IL App (4th) 241199-U, ¶¶ 30, 32, 34-35 (counsel was ineffective for filing a late certificate).

And, it is now too late for Mr. Nibbelin to apply for the waiver under Section 120A-20 because the application must be filed no later than 30 days after sentencing. 725 ILCS 5/124A-20(b) (2023); *Chase*, 2025 IL App (4th) 230407-U, ¶ 82-90 (defendant's late application was denied for late filing). The trial court does not retain jurisdiction to address the error made, as it is not an error in an "assessment" as defined by subsection 124A-20. The only way to address this particular error, which is one of defense counsel's making, is to conclude that defense counsel was ineffective and then remand the matter for the filing of the appropriate certificate and/or application, and then resolve the issue of whether the assessments are waived.

In addition, to apply Rule 472 to claims of ineffective assistance of counsel would be in conflict with the waiver rules. A claim of ineffective assistance of counsel is generally waived where it is not raised on direct appeal. *People v. McNeal*, 194 Ill. 2d 135, 148 (2000); *People v. Pearson*, 188 Ill. App. 3d 518, 523 (1st Dist. 1989).

Waiver is relaxed, however, if the facts pertaining to the claim do not appear on the face of the trial record. *People v. Taylor*, 237 Ill. 2d 356, 372 (2010). Raising a claim of ineffective assistance of counsel is a proper mechanism to avoid forfeiture and waiver. *People v. Barwicki*, 2024 IL App (2d) 230285-U, ¶ 16.

Where, as here, all of the facts necessary to determine the claim are contained in the four corners of the record, Mr. Nibbelin would have faced waiver if it had not been raised on appeal. Neither Rule 404 nor Rule 472 contain provisions that relax the waiver rule in this circumstance. Applying Rule 472 in this situation places Mr. Nibbelin, and others similarly situated, in a conflicting position of knowing of the need to raise a claim of ineffective assistance of counsel on appeal if the facts to support it are in the record, or risk waiver.

Finally, an appellate court has a duty to consider its jurisdiction even if the parties raise no dispute concerning jurisdiction. *People v. Smith*, 228 Ill.2d 95, 104 (2008). Yet appellate courts have not found a lack of jurisdiction to reach the issue Mr. Nibbelin raises, reviewing for whether counsel was ineffective for failing to pursue either the certification or the application for waiver. *See, e.g.*, *Baker,* at ¶ 81*; Bradford,* at ¶ 12-17*; Chase*, at ¶ 82-90; *Cadengo*, at ¶ 74-79; *Davis*, at ¶ 33-36; *DeHart*, at ¶ 132; *Durham*, at ¶ 15; *Glas*, at ¶ 32, 34-35; *Harris*, at ¶ 133-137; *Hoskins*, at ¶ 84.

The First and Third Districts, as well as the panels in *Hoskins*, *Harris, Cadengo*, *Durham, Glas*, and *DeHart*, properly found jurisdiction to review a claim of ineffective assistance of counsel in failing to properly execute Section 124A-20 and Rule 404.

Mr. Nibbelin Was Entitled to the Assessment Waiver, and Counsel's Failure to File the Rule 404(e) Certificate Prejudiced Him.

Rule 404(e) states that "[i]n any case where a defendant is represented by a public defender ... the attorney representing that defendant *shall* file a certification with the court, and that defendant *shall* be entitled to a waiver of assessments

as defined in 725 ILCS 5/124A-20(a)." Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023) (emphasis supplied). The word "shall" in a supreme court rule "imposes a mandatory obligation." *People v. Garstecki*, 234 Ill. 2d 430, 443 (2009).

Mr. Nibbelin's legal representation had been through the McLean County Public Defender below. (C10-35; 4-24-0447, C5-14; 4-24-0450, C5-12) Therefore, this Court imposed a mandatory command for his attorney to file the Rule 404(e) certification so that Mr. Nibbelin would be entitled to the waiver. This is deficient performance. See *Durham*, at ¶ 15.

"'Assessments'" includes "any costs imposed on a criminal defendant under Article 15 of the Criminal and Traffic Assessment Act [(705 ILCS 135/1-1 et seq. (2023))]." 725 ILCS 5/124A-20(a) (2023). In this case, the trial court imposed a total of $5,890 in financial assessments. (C338-339; 4-24-0447, C83-84; 4-24-0450, C43-44) Mr. Nibbelin has a long history of mental illness, and received social security disability benefits. (CS102) He also received Link assistance. (CS102) At the time the PSI was prepared on April 12, 2023, Mr. Nibbelin owed $12,174.64 to McLean County, including the assessments imposed in the three cases at issue here. (CS69, 102) The record demonstrates indigency. Cf. *Baker*, 2022 IL (4th) 210713, ¶ 83 (defendant was not prejudiced by counsel's failure to file the waiver of assessments because the record failed to demonstrate indigence).

Mr. Nibbelin has therefore established prejudice under the second *Strickland* prong, because he is eligible for a waiver of assessments that he is now obligated to pay but for counsel's failure to file the Rule 404(e) certificate. Cf. *Durham*, at ¶ 15 (defendant established prejudice because he may have received a waiver had counsel filed the Rule 404(e) certificate).

Conclusion

By the terms of Rule 404(e) in effect at the time of Mr. Nibbelin's sentencing, counsel acting as a public defender was required to file the certification and, once filed, Mr. Nibbelin would have been entitled to an assessment waiver. Mr. Nibbelin was prejudiced by counsel's deficient performance because, had counsel filed the certificate required by Rule 404, there is more than a reasonable probability that he would not have been burdened by the assessments. *See People v. Siedlinski*, 279 Ill. App. 3d 1003, 1005-1006 (2d Dist. 1996) (counsel ineffective for failing to request monetary credit the defendant was entitled by statute to receive). This issue is reviewable as ineffective assistance of counsel, as it is not an error in imposing an assessment. The Fourth District was in error in concluding that it was and that Rule 472 apples.

This Court should find the matter reviewable on appeal as a question of the effective assistance of counsel, find counsel ineffective for failing to file an assessment certification in keeping with Rule 404(e) in this case, and remand this matter for the filing of an assessment certification and for further proceedings on the waiver.

CONCLUSION

For the foregoing reasons, Carthell Eugene Nibbelin, defendant-appellant, respectfully requests that this Court reverse the judgment of the Fourth District and remand the matter to the circuit court for the filing of a Rule 404(e) certificate, and proceedings upon a waiver of assessments.

Respectfully submitted,

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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 twenty-three pages.

/s/ Nancy L. Vincent
NANCY L. VINCENT
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Carthell Eugene Nibbelin No. 131825

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FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
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Plaintiff/Petitioner

v.

CARTHELL EUGENE NIBBELIN
Defendant/Respondent

Reviewing Court No: 4-24-0446
Circuit Court/Agency No: 2017CF000402
Trial Judge/Hearing Officer: AMY MCFARLAND

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Defendant/Respondent

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Plaintiff/Petitioner

v.

CARTHELL EUGENE NIBBELIN
Defendant/Respondent

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Plaintiff/Petitioner

v.

CARTHELL EUGENE NIBBELIN
Defendant/Respondent

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Defendant/Respondent

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NOS. 4-24-0446, 4-24-0447, 4-24-0450 cons.

FILED
April 11, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CARTHELL EUGENE NIBBELIN, Defendant-Appellant.	)	Appeal from the Circuit Court of McLean County Nos. 17CF402 20CF434 21CF850 Honorable Amy L. McFarland, Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Presiding Justice Harris and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court substantially complied with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) before accepting defendant's admissions to probation violations and (2) defendant's sentencing claim must be raised initially in the trial court under Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024).

¶ 2 Defendant, Carthell Eugene Nibbelin, was convicted of four counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2016)) in McLean County case No. 17-CF-402 and one count of violating the Sex Offender Registration Act (SORA) (730 ILCS 150/3(a) (West 2020)) in McLean County case No. 20-CF-434. He was sentenced to probation for those offenses.

¶ 3 Defendant subsequently pled guilty to an additional count of violating SORA (730 ILCS 150/6 (West 2020)) in McLean County case No. 21-CF-850. He also admitted to violating

his probation in case Nos. 17-CF-402 and 20-CF-434. The trial court sentenced defendant to four consecutive terms of four years' imprisonment for the possession of child pornography convictions in case No. 17-CF-402 and to concurrent three-year terms of imprisonment in the other cases. The court also ordered defendant to pay costs, fines, and assessments.

¶ 4 Defendant filed a notice of appeal in each case, and this court entered an order consolidating the appeals. In this appeal, defendant contends (1) the trial court failed to admonish him in substantial compliance with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) before accepting his admissions to the probation violations in case Nos. 17-CF-402 and 20-CF-434 and (2) his trial counsel provided ineffective assistance by failing to file a certificate for waiver of court assessments in each of his three cases. We affirm the court's judgment and remand for defendant to file his claim challenging his court assessments in the trial court under Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024).

¶ 5 I. BACKGROUND

¶ 6 In April 2017, defendant was charged with 10 counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2016)) in case No. 17-CF-402. During the pendency of the case, the trial court found defendant unfit to stand trial and ordered him to undergo treatment. Defendant was restored to fitness but was subsequently found unfit again and remanded for treatment. In June 2018, after the court again found him fit to stand trial, defendant pled guilty to four counts of possessing child pornography, and the remaining six counts were nol-prossed. The court sentenced defendant to 36 months' probation with conditions, including payment of fines, fees, and costs; registration as a sex offender; and abstinence from the consumption of alcohol.

¶ 7 In October 2018, the State filed its first petition to revoke defendant's probation, asserting he violated his probation by consuming alcohol. The State filed a second petition to revoke defendant's probation in November 2018, again alleging he violated his probation by consuming alcohol. At a hearing in December 2018, defendant admitted the allegations of the first petition, and the State dismissed the second petition. The trial court admonished defendant in accordance with Rule 402A prior to accepting his admission. The court then sentenced defendant to a new 36-month term of probation.

¶ 8 In April 2019, the State filed a third petition to revoke defendant's probation, alleging he had been charged with failure to register as a sex offender, consumed alcohol, and failed to obtain a required alcohol and substance abuse assessment. In May 2019, the State filed a fourth petition to revoke defendant's probation, alleging defendant had violated his probation by possessing pornography and possessing a device with Internet capability without prior approval. In October 2019, defendant admitted to the allegations in the third petition concerning his alcohol use and the new charge for failure to register as a sex offender, and the fourth petition was dismissed. The trial court again admonished defendant in accordance with Rule 402A before accepting his admission. After accepting his admission, the court sentenced defendant to a new 30-month term of probation and ordered him to serve 130 days in jail.

¶ 9 In March 2020, the State filed a fifth petition to revoke defendant's probation, alleging he consumed alcohol again in violation of the terms of his probation. In May 2020, defendant was charged in case No. 20-CF-434 with two counts of violating SORA (730 ILCS 150/3(a) (West 2020)) and one count of obstructing justice (720 ILCS 5/31-4(a)(1) (West 2020)). On the same day, the State filed a sixth petition to revoke defendant's probation in case No. 17-CF-402, alleging he violated his probation by committing the offenses charged in case No. 20-CF-

434 and by accessing or using a device with Internet capability without prior approval. In May 2021, the State filed a seventh petition to revoke defendant's probation in case No. 17-CF-402, alleging he consumed alcohol, viewed pornography, and accessed a device with Internet capability without prior approval.

¶ 10 In August 2021, defendant agreed to plead guilty to one count of violating SORA in case No. 20-CF-434 and admit the violations contained in the State's sixth petition to revoke his probation in case No. 17-CF-402. The State agreed to dismiss the remaining charges and petitions to revoke defendant's probation in those cases. The parties had no agreement as to the sentence. Before accepting his admission to the probation violation in case No. 17-CF-402, the trial court again admonished defendant in accordance with Rule 402A. The court then continued the matter for sentencing.

¶ 11 In August 2021, the State charged defendant with another violation of SORA (730 ILCS 150/6 (West 2020)) in case No. 21-CF-850. During a status hearing, defendant's counsel asked the trial court to appoint a doctor to perform a fitness examination. The court ordered a fitness examination, which indicated defendant was fit to stand trial. Following a fitness hearing in November 2021, the court found defendant fit to stand trial.

¶ 12 In January 2022, a sentencing hearing was held in case Nos. 17-CF-402 and 20-CF-434. After considering the presentence investigation report, the arguments, and defendant's testimony at the hearing, the trial court stated it had "struggled with this case" but concluded it was "willing to give [defendant] one more chance." The court sentenced defendant to a new term of 24 months' probation in each case, with the original fines and costs imposed on each.

¶ 13 In September 2022, the State filed an eighth petition to revoke defendant's probation in case No. 17-CF-402 and a first petition to revoke his probation in case No. 20-CF-434.

The petitions alleged defendant violated his probation on each case by committing the offense of battery or disorderly conduct.

¶ 14 In March 2023, the State filed a ninth petition to revoke defendant's probation in case No. 17-CF-402, alleging he violated his probation by committing the offense of violating SORA (730 ILCS 150/6 (West 2020)), as charged in case No. 21-CF-850. During a hearing the same day, the parties submitted an agreement disposing of the pending matters in each of the three cases. The State agreed to dismiss the eighth petition to revoke in case No. 17-CF-402 in exchange for defendant's admission to the ninth petition to revoke in that case; his admission to the first petition to revoke in case No. 20-CF-434, as amended to allege a violation based on the charge contained in case No. 21-CF-850; and his guilty plea to the offense charged in case No. 21-CF-850. The parties did not have an agreement as to the sentence. The trial court admonished defendant as follows:

> "THE COURT: All right. Sir, by entering this guilty plea you give up certain rights. You have a right to persist in your guilty plea. You understand that?
>
> THE DEFENDANT: (Nods affirmatively.) Yes, ma'am.
>
> THE COURT: You also have a right to have a trial. That could either be by a jury trial—oh, no. Well, hold on. On a [petition to revoke], you would have a right to a hearing in this matter. And you could persist in your denial related to the [petition to revoke] as it relates to 21-8—well, let me go back. The 850 is the new charge; right?
>
> [DEFENSE COUNSEL]: It is. That is still pending and he has never waived jury on that.
>
> THE COURT: Okay. So I was on the right path. All right. You would have

a right to a trial in that, a jury trial. You would also have a right to have a trial in front of a judge where the State would be required to meet a burden in order for you to be found guilty. You could require the State to prove you guilty beyond a reasonable doubt.

During that trial, you would have a right to have an attorney. If you couldn't afford one, one would be appointed for you. At trial you would have an opportunity to present evidence, cross examine the State's witnesses, and bring witnesses of your own. You have a right to remain silent. That remains with you throughout the entirety of the trial. But you could also choose to testify on your own behalf if this matter went to trial. But that decision would be yours and yours alone.

By entering into this plea here today, well, in addition on the [petitions to revoke], the State would have to prove you guilty by a preponderance of the evidence in this case. But by pleading guilty here today, there wouldn't be a trial of any kind, and the State won't have to prove anything. Is that what you wish to do?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. So, and have you—do you understand that you have an attorney throughout these proceedings? And have you had an opportunity to speak with him regarding this guilty plea?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you satisfied with his representation?

THE DEFENDANT: Yes."

¶ 15 After the State recited a factual basis, the trial court accepted defendant's guilty plea in case No. 21-CF-850 and his admissions to the probation violations in case Nos. 17-CF-402

and 20-CF-434.

¶ 16 At the sentencing hearing in September 2023, the trial court noted defendant had a long history of mental health and substance abuse issues. The court found community-based correction resources had been exhausted, as evidenced by the nine petitions to revoke defendant's probation in case No. 17-CF-402. The court, therefore, sentenced defendant to consecutive terms of four years' imprisonment for each of the four counts of possession of child pornography in case No. 17-CF-402, a concurrent term of three years' imprisonment for violation of SORA in case No. 20-CF-434, and a concurrent term of three years' imprisonment for violation of SORA in case No. 21-CF-850. Court costs, fines, and assessments were also imposed in each case.

¶ 17 Defendant filed a separate notice of appeal in each case. This court subsequently issued an order consolidating the appeals for review.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant contends (1) the trial court failed to admonish him in substantial compliance with Rule 402A before accepting his admissions to the probation violations in case Nos. 17-CF-402 and 20-CF-434 and (2) his trial counsel provided ineffective assistance by failing to file a certificate for waiver of court assessments in each of his cases. We address defendant's arguments in turn.

¶ 21 A. Rule 402A

¶ 22 Defendant argues the trial court's admonishments prior to his admissions to the probation violations in case Nos. 17-CF-402 and 20-CF-434 were confusing and comingled with the admonishments for his guilty plea in case No. 21-CF-850. Defendant maintains he was not informed of his right to a hearing on the petitions to revoke his probation; his right to appointed

counsel; his right to cross-examine witnesses and present his own evidence; or that he would waive those rights by admitting the violations, as required by Rule 402A. Defendant acknowledges he received complete admonishments when he admitted his previous probation violations in 2018, 2019, and 2021, but he contends those prior admonishments were not sufficient to show substantial compliance in this case, particularly given his serious mental health and alcohol abuse issues, which affected his memory. Defendant concludes this court should vacate the trial court's orders revoking his probation and remand for new Rule 402A admonishments and further proceedings on the petitions to revoke his probation.

¶ 23 The State argues the trial court's admonishments substantially complied with Rule 402A. Under the established standard, the record must show an ordinary person in the defendant's position would have understood the rights he was waiving and the potential consequences of the admission. According to the State, the applicable standard was met by the court's admonishments in this case and also by the admonishments on the three previous occasions when defendant admitted to probation violations. The State further contends, even if this court finds the admonishments did not substantially comply with Rule 402A, reversal of the trial court's judgment is not required because defendant was not prejudiced by any deficiency in the admonishments.

¶ 24 Rule 402A sets forth the admonishments a trial court must give before accepting a defendant's admission to a probation violation. Under Rule 402A, the court must inform the defendant and determine the defendant understands:

> "(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision." Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003).

¶ 25 A defendant in a probation revocation proceeding is entitled to fewer procedural rights than a defendant still awaiting trial. *People v. Hall*, 198 Ill. 2d 173, 177 (2001). The goal of Rule 402A "is to ensure [the] defendant understood his admission, the rights he was waiving, and the potential consequences of his admission." *People v. Dennis*, 354 Ill. App. 3d 491, 496 (2004). Rule 402A requires "substantial compliance." Ill. S. Ct. R. 402A (eff. Nov. 1, 2003). Substantial compliance may be found when, although the trial court did not admonish the defendant on an

item listed in the rule, "the record nevertheless affirmatively and specifically shows that the defendant in fact understood that item." *Dennis*, 354 Ill. App. 3d at 495.

¶ 26 A reviewing court may consider the entire record, including the record of prior proceedings, in determining whether the defendant understood the rights listed in Rule 402A. *Dennis*, 354 Ill. App. 3d at 496. The inquiry is objective, requiring a determination of "whether, realistically, an ordinary person in [the] defendant's position would have understood, from the earlier proceedings," the rights explained in Rule 402A. *Dennis*, 354 Ill. App. 3d at 496. Whether the trial court has substantially complied with Rule 402A is a legal question, which we review *de novo*. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046 (2007).

¶ 27 Defendant contends the trial court failed to inform him of his right to a hearing, his right to appointed counsel, his right to confront the witnesses against him and to present his own evidence, and that an admission would result in waiver of those rights. In this case, the court's admonishments as to defendant's guilty plea and his probation violations overlapped and were intermingled. The court admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012), before accepting his guilty plea to violating SORA in case No. 21-CF-850, while at the same time admonishing defendant under Rule 402A on his probation revocation petitions. While the Rule 402 admonishments applied to the guilty plea, they were similar to the ones required by Rule 402A given before the court accepted defendant's admission to the probation violations. See *In re Westley A.F.*, 399 Ill. App. 3d 791, 796-97 (2010) (considering similar admonishments upon the defendant's guilty plea in determining whether the trial court substantially complied with Rule 402A in a probation revocation proceeding).

¶ 28 In its admonishments, the trial court specifically informed defendant he had a right to a hearing on the petitions to revoke his probation. In the context of the guilty plea

admonishments, the court informed defendant he had the right to have an appointed attorney, cross-examine the State's witnesses, and present his own evidence and witnesses. The court also advised defendant the State "would have to prove [him] guilty by a preponderance of the evidence" on the petitions to revoke his probation, but "by pleading guilty here today, there wouldn't be a trial of any kind, and the State won't have to prove anything." The court's admonishments were sufficient to inform defendant of his right to a hearing and that he would waive his right to a hearing if he admitted the probation violations. We believe the court's other admonishments under Rule 402 also contributed to defendant's understanding of his right to have appointed counsel, confront the witnesses against him, and present evidence, as required by Rule 402A.

¶ 29 We further note defendant was facing his ninth petition to revoke his probation in this case. Prior to this hearing, defendant had been admonished at three separate hearings in accordance with Rule 402A. Defendant does not claim those prior admonishments were incomplete or failed to comply with Rule 402A in any way. He only contends they were too remote in time to show he understood his rights. He asserts the most recent prior admonishments were given one year and seven months before this hearing, and he also contends he was less likely to remember the admonishments given his significant mental health and alcohol abuse issues. However, the applicable standard is objective. It requires a determination of "whether, realistically, an ordinary person in [the] defendant's position would have understood, from the earlier proceedings," the rights explained in Rule 402A. *Dennis*, 354 Ill. App. 3d at 496. Although the prior admonishments were not given recently, they were repeated many times. Based on these facts, we believe an ordinary person in defendant's position would have understood he was entitled to a hearing, an appointed attorney, the right to confront witnesses and present evidence, and that he would waive those rights by admitting to the probation violations.

¶ 30 We emphasize "[l]iteral compliance is preferable *** because it leaves no room for doubt or dispute." *Dennis*, 354 Ill. App. 3d at 496. In this case, it would have been preferable to have complete admonishments in accordance with Rule 402A immediately before defendant's admission to the probation violations, separate and apart from the Rule 402 admonishments given prior to defendant's guilty plea in case No. 21-CF-850. Nonetheless, each Rule 402A case is fact-specific and "must be determined on its own peculiar circumstances." (Internal quotation marks omitted.) *Dennis*, 354 Ill. App. 3d at 496. Given these specific circumstances, we conclude the Rule 402A and similar Rule 402 admonishments given by the trial court at the hearing, taken together with the Rule 402A admonishments given on three prior occasions, were sufficient to establish substantial compliance in this case.

¶ 31 Finally, and importantly, defendant would not be entitled to reversal and remand for further proceedings even if the trial court failed to substantially comply with Rule 402A. "The failure to properly admonish a defendant, alone, does not automatically establish grounds for reversing the judgment or vacating the plea." *People v. Davis*, 145 Ill. 2d 240, 250 (1991). "Whether reversal is required for an imperfect admonishment depends on whether real justice has been denied or whether [the] defendant has been prejudiced by the inadequate admonishment." *People v. Torres*, 228 Ill. 2d 382, 399 (2008) (citing *Davis*, 145 Ill. 2d at 250).

¶ 32 Defendant does not explain how he was denied real justice or prejudiced by any deficiency in the Rule 402A admonishments. In response to the trial court's questioning, defendant confirmed he had an opportunity to speak with his attorney and he was satisfied with his attorney's representation. Defendant was on probation for possessing child pornography. One of the conditions of his probation was registration as a sex offender. The new charge in case No. 21-CF-850, alleging defendant violated SORA (730 ILCS 150/6 (West 2020)), was the basis for

the probation revocation petitions. Defendant pled guilty to violating SORA at the same time he admitted to his probation violations based on that offense. Defendant does not contend his guilty plea was involuntary or the admonishments given prior to his guilty plea were inadequate in any way. Given these circumstances, defendant cannot show he had any defense to the petitions to revoke his probation or that he was prejudiced or denied real justice by any insufficiency in the Rule 402A admonishments. Accordingly, his claim necessarily fails.

¶ 33 B. Imposition of Assessments

¶ 34 Defendant also contends his appointed trial counsel provided ineffective assistance by failing to file a certificate for waiver of court assessments. Defendant maintains he was entitled to a waiver of assessments in the amount of $5,890, but his counsel failed to file the certificate required under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) to obtain the waiver. Defendant concludes this court should remand this matter for the filing of an assessment waiver certificate and further proceedings on the waiver.

¶ 35 The State responds defendant's claim must be raised in the trial court. Under Rule 472, sentencing claims, including those involving the imposition of assessments, cannot be considered on appeal unless they were first raised in the trial court. See Ill. S. Ct. R. 472 (eff. Feb. 1, 2024). The State contends this court should decline to address this issue and, instead, remand to the trial court to allow defendant to file a motion raising this claim under Rule 472.

¶ 36 Rule 472(a)(1) allows trial courts to retain jurisdiction in criminal cases to correct certain sentencing errors, including "[e]rrors in the imposition or calculation of fines, fees, assessments, or costs," at any time following judgment. Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024). The rule further provides, "No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised

in the circuit court." Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024). If a party attempts to raise a sentencing error covered by the rule for the first time on appeal, "the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. Feb. 1, 2024). Rule 472 is intended to limit, among other things, appeals raising monetary sentencing issues by providing trial courts with jurisdiction to address those issues for the first time after sentencing. *People v. Eason*, 2020 IL App (3d) 180296, ¶ 11.

¶ 37 Defendant contends his counsel's failure to file a certificate entitling him to a waiver of assessments is not covered by Rule 472(a)(1). However, the plain language of the rule states it applies to "[e]rrors in the imposition" of assessments. Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024). This language is "broad" and "unqualified." *People v. Hinton*, 2019 IL App (2d) 170348, ¶ 7. By its plain terms, the rule is not limited to specific errors but applies to any claim of error in the imposition of assessments. *Hinton*, 2019 IL App (2d) 170348, ¶ 7. Defendant raises a claim of error in the imposition of assessments, and it falls within the broad scope of Rule 472(a).

¶ 38 Consistent with the plain language of the rule, defendant's claim must be raised by filing a motion under Rule 472 in the trial court, which has continuing jurisdiction to consider it. Ill. S. Ct. R. 472(a) (eff. Feb. 1, 2024). Therefore, we remand this matter to the trial court to allow defendant to file a motion under Rule 472. See Ill. S. Ct. R. 472(e) (eff. Feb. 1, 2024) (stating when a party attempts to raise a sentencing error covered by the rule for the first time on appeal, "the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule").

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment and remand for defendant to file a motion raising his sentencing claim under Rule 472(a).

¶ 41 Affirmed; cause remanded with directions.

E-FILED
Transaction ID: 4-24-0446
File Date: 3/12/2024 10:34 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT McLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS
VS.
CARTHELL EUGENE NIBBELIN

CASE NO: 2017 CF 402
JUDGE: AMY MCFARLAND

NOTICE OF APPEAL

Joining Prior Appeal / Separate Appeal / Cross Appeal
(circle one)

An Appeal is taken from the order or judgment described below:

1. Court to which Appeal is taken:
ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
201 W. MONROE ST
SPRINGFIELD, IL 62704

Email:

2. Name of Appellant and address to which Notices shall be sent:
DIXON CORRECTIONAL CENTER
CARTHELL EUGENE NIBBELIN Y60373
2600 N. BRINTON AVE
DIXON, IL 61021

N/A

3. Name and address of appellant's attorney on appeal:

ILLINOIS APPELLATE DEFENDER
JAMES E. CHADD
400 WEST MONROE, SUITE 303
SPRINGFIELD, IL 62705-5240

Email:
4thDistrict@osad.state.il.us

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

4. Date of order of judgment: **03/11/2024**

5. Offense of which convicted: **CT1-4: CHILD PORN**

6. Sentence: **CT1-4: 4YRS IN IDOC EACH COUNT**

7. If appeal is not from a conviction, nature of order appealed from: **CONVICTION, SENTENCE, AND DENIAL OF MOTION TO REDUCE SENTENCE**

8. If the appeal is from a judgment of a circuit court holding unconstitutional a statue of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

Don R. Everhart jr.
Don R. Everhart, Jr., Circuit Clerk
Gabriela Cavillo
Deputy

No. 131825

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 4-24-0446, 4-24-0447 & 4-24-0450 (Consolidated).
Plaintiff-Appellee,	)	
-vs-	)	There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 17-CF-402, 20-CF-434 & 21-CF-850.
CARTHELL EUGENE NIBBELIN,	)	
Defendant-Appellant.	)	Honorable Amy McFarland, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 24, 2025, 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 defendant-appellant in an envelope deposited in a U.S. mail box in Springfield, 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/Kaitlyn K-M. Wolke
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