

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF	)	Appeal from the
ILLINOIS,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 21 CR 0634901,
	)	21 CR 1372901
ALAXSTAIR REED,	)	
	)	
Defendant-Appellant.	)	Honorable
	)	Angela M. Petrone,
	)	Judge, Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that there was a substantial probability that defendant would be restored to fitness within the statutory period was not against the manifest weight of the evidence.
- ¶ 2 Defendant-Appellant Alaxstair Reed appeals from the trial court's November 2, 2023, finding that, although he was not presently fit to stand trial, there was a substantial probability that his fitness could be restored within a period of months. Reed contends that this finding was against

the manifest weight of the evidence, and he asks this court to vacate it and to remand for a discharge hearing under section 104-23 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-23 (West 2022)). For the reasons that follow, we affirm the trial court's judgment.

¶ 3

I. BACKGROUND

¶ 4 Reed was charged in two cases. In case No. 21 CR 0634901, the State alleged that, on March 28, 2021, Reed cut a victim about the body with a knife; the charges included attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2020)), attempted armed robbery (720 ILCS 5/8-4(a), 18-2(a)(1) (West 2020)), aggravated battery causing great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2020)), aggravated battery using a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2020)), aggravated battery in a public place (720 ILCS 5/12-3.05(c) (West 2020)), and aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2020)). In case No. 21 CR 1372901, the State charged Reed with aggravated battery to a correctional officer (720 ILCS 5/12-3.05(d)(4) (West 2020)) for allegedly spitting on her while she performed her official duties on October 21, 2021.

¶ 5 At a pretrial proceeding on May 28, 2021, Reed informed the trial court that he wanted to proceed *pro se*. He asserted that the public defender who appeared at his bond hearing had been ineffective, that he was mentally competent, and that he had prior experience representing himself. The court admonished Reed concerning the charged offenses and the penalties he faced. The court also explained the benefits of counsel and the risks of proceeding without an attorney. Reed stated that he understood the admonishments and continued to request permission to represent himself.

¶ 6 The court initially advised Reed that it would give him a short date to reconsider his decision, but Reed insisted that he did not need additional time. The court accepted his decision, directed the State to prepare discovery for him, and proceeded with his arraignment. Reed pled not

guilty. He then continued to challenge the validity of the arraignment and bond proceedings, asserted that his due process rights had been violated, and interrupted the court. Based on what the court characterized as Reed's "misperceptions of the court system," the court ordered that he be evaluated for fitness to stand trial.

¶ 7 Reed thereafter declined to participate in several scheduled fitness evaluations. On July 30, 2021, the court arranged for Dr. Fidel Echevarria (Dr. Echevarria), a psychiatrist with Forensic Clinical Services (FCS), to observe Reed during a court appearance. Reed spoke over the court, used profane language, accused the court and counsel of violating his rights, asserted that the court lacked jurisdiction over him, and demanded that the judge recuse herself. After Reed was removed from the courtroom, Dr. Echevarria stated that Reed's behavior was consistent with the Cermak Health Services (Cermak) records that he had reviewed.

¶ 8 In his written evaluation, Dr. Echevarria stated that he reviewed police reports, Cermak records, and other materials in Reed's FCS file. The records documented a reported prior diagnosis of paranoid schizophrenia and persecutory beliefs involving government entities, grandiose statements, aggressive behavior, and Reed's repeated refusal to take recommended psychotropic medication. Dr. Echevarria diagnosed Reed with an unspecified schizophrenia spectrum or other psychotic disorder. He opined that Reed's untreated psychosis and nonreality-based thinking compromised his ability to rationally assist counsel or represent himself.

¶ 9 Initial Fitness Hearing

¶ 10 At the August 9, 2021, fitness hearing, the parties stipulated that Dr. Echevarria was qualified to render an opinion in forensic psychiatry, and the court qualified him as an expert in psychiatry and forensic psychiatry. Dr. Echevarria testified that Reed had refused to participate in

a direct interview. He therefore based his opinion on Cermak records covering March 31 through May 25, 2021, and his brief observation of Reed while in court.

¶ 11 Following his courtroom observations, Dr. Echevarria described Reed as irritable, accusatory, emotionally labile, aggressive, and agitated during the July 30 proceeding. The records disclosed a prior diagnosis of paranoid schizophrenia in Oklahoma, repeated refusals of medication, and paranoid and persecutory conspiracy themes involving the FBI and Chicago governmental agencies. Dr. Echevarria did not make a definitive diagnosis based on his brief observation. However, he did diagnose Reed with a nonspecific psychotic illness consistent with the diagnoses documented by other clinicians.

¶ 12 Dr. Echevarria testified that Reed appeared intelligent and might possess some factual understanding of the proceedings. In his opinion, however, Reed's delusional, nonreality-based thinking compromised his ability to rationally work with counsel or act as his own attorney. Dr. Echevarria therefore opined, to a reasonable degree of medical and scientific certainty, that Reed was unfit to stand trial or proceed *pro se*. He further opined that Reed was likely to attain fitness within one year through inpatient treatment provided by the Illinois Department of Human Services (DHS) at Chester Mental Health Center (Chester), including antipsychotic medication.

¶ 13 Trial Court's Findings

¶ 14 The trial court considered Dr. Echevarria's testimony and its own observations of Reed. The court found that Reed's agitation, aggression, persecutory thinking, and insults toward counsel and the court demonstrated that he could not rationally cooperate with counsel. The court further found that Reed's ability to understand the proceedings and behave rationally was compromised by his delusional thinking. It found Reed unfit to stand trial, found a substantial probability that he would attain fitness within one year if he took medication and cooperated with treatment, and

remanded him to DHS at Chester for restoration treatment. Although DHS was required to take custody of Reed within 30 days, DHS did not do so; despite the court's repeated inquiries, Reed was not admitted to DHS custody until January 6, 2022.

¶ 15 First Restoration Hearing

¶ 16 On February 14, 2022, Dr. Aqeel Khan (Dr. Khan), a psychiatrist at Chester, prepared a report concluding that Reed had become fit to stand trial with medication. In May 2022, DHS transmitted that opinion to the court.

¶ 17 Prior to proceeding with a restoration hearing, the court ordered FCS to evaluate whether Reed had been restored to fitness. On June 24, 2022, Dr. Echevarria attempted to evaluate Reed, but Reed ended the interview after less than 10 minutes. Reed maintained that Dr. Echevarria's earlier evaluation had been unlawful and that the Chester report finding him fit was sufficient. Dr. Echevarria was therefore unable to offer an opinion concerning Reed's current fitness.

¶ 18 On September 29, 2022, the trial court conducted the first restoration hearing. The parties stipulated that, if called, Dr. Khan would testify that Reed reported anxiety and difficulty sleeping when he arrived at Chester. Reed was talkative and expressed paranoid beliefs that the federal government was harassing him and that God spoke to him. Chester provided Reed with medication, individual treatment, and group fitness restoration services.

¶ 19 The stipulation further addressed Reed's response to treatment. Dr. Khan would testify that Reed remained compliant with his prescribed Zyprexa and Remeron, signed a medication consent form, and expressed a desire to continue taking medication after leaving Chester. Reed also interacted appropriately with staff and peers, followed unit rules and staff directions without emotional dysregulation, and no longer exhibited signs of psychosis. His mood and anxiety improved, his thought process became linear, and his delusions and paranoia were controlled.

¶ 20 Reed also participated in fitness education and scored 100 percent on a fitness examination administered on February 7, 2022. He could identify his charges and the potential penalties, understood the basic court proceedings, and could cooperate with counsel and assist in his defense. Within a reasonable degree of scientific certainty, Dr. Khan diagnosed Reed with bipolar disorder, unspecified, and cannabis use disorder. Based on Reed's treatment progress and demonstrated knowledge, Dr. Khan opined that Reed was fit to stand trial with medication.

¶ 21 The court observed that Dr. Khan's report was more than 90 days old and asked whether the parties had current medical records showing that Reed remained compliant. The State responded that it did not. The State then requested that the court take judicial notice of Dr. Echevarria's testimony at the August 9, 2021, hearing. The defense presented no additional evidence and acknowledged that there was no updated evaluation because Reed had declined to participate. The court continued the matter to review the earlier transcript, the stipulated testimony, and the governing law before issuing a written ruling.

¶ 22 Trial Court's Ruling

¶ 23 On November 21, 2022, the court found the evidence insufficient to establish that Reed had been restored to fitness. In its written order, the court explained that no recent report or examination found Reed fit and that Dr. Khan's February report conditioned fitness on medication, without evidence that Reed remained compliant. The court also relied on its repeated observations of Reed's irrational and accusatory beliefs involving conspiracy and persecution and his nonreality-based thought process. The court found Reed unfit, and found a substantial probability that, with appropriate inpatient treatment, he could be restored within a year and remanded him to DHS at Chester. The court reserved its ruling on Reed's request to represent himself until his fitness was restored.

¶ 24

Interim Progress Reports

¶ 25 Reed returned to Chester in March 2023. In an April 12, 2023, progress report, Dr. Khan concluded that Reed remained unfit. Reed was taking gabapentin but had refused antipsychotic medication, fitness education, and a fitness test. Dr. Khan described Reed as irritable and labile, with racing thoughts, pressured speech, impaired concentration, and impaired insight and judgment. He concluded that Reed did not adequately understand the proceedings or charges and could not assist in his defense.

¶ 26 In a May 10, 2023, progress report, Dr. Khan changed his opinion and concluded that Reed was fit. Dr. Khan reported that Reed had participated in fitness education, passed the fitness test, and made progress in his behavior and restoration. Reed's thought process was linear and goal-directed, his paranoia was controlled, and his insight and judgment were fair. Dr. Khan concluded that Reed understood the proceedings and charges and could assist in his defense. At the time, Reed was prescribed 100 milligrams of gabapentin three times daily.

¶ 27 On May 12, 2023, the court received a report indicating Reed was fit to stand trial. On May 15, 2023, the court ordered that Reed be evaluated by FCS. On June 22, 2023, the court noted that it had received a report from Dr. Echevarria explaining the many reasons why FCS was unable to complete an evaluation of Reed.

¶ 28 On August 7, 2023, Dr. Sarah Anderson (Dr. Anderson), a staff forensic psychiatrist at FCS, attempted to evaluate Reed. She stated that he did not want to participate and that judges were "gaslighting" and "stonewalling" him. Reed then raised his voice, used profane language, faced the corner of the room, and urinated on the floor. Dr. Anderson made another attempt to obtain his cooperation but was unsuccessful. The interview ended after approximately two

minutes. Dr. Anderson submitted a report opining that Reed was not fit to stand trial and that he had a history of schizophrenia.

¶ 29 Having received conflicting reports from Drs. Khan and Anderson, the trial court set the matter for a hearing at which both physicians would testify.

¶ 30 Second Restoration Hearing

¶ 31 The trial court conducted the second restoration hearing on September 28, 2023. The State called Drs. Khan and Anderson, and the court qualified each physician as an expert in forensic psychiatry.

¶ 32 Dr. Aqeel Khan's Testimony

¶ 33 Dr. Khan testified that he had met with Reed monthly since his March 2023 admission to Chester, reviewed the police and treatment records, and consulted with nursing and social work staff. On August 30, 2023, Dr. Khan interviewed Reed at Chester for approximately 20 minutes in the presence of several treatment team members. Dr. Khan opined that, during the August 30 interview, Reed was alert and oriented to time, place, person, and situation. Reed was cooperative, engaged in conversation, and gave responsive answers. Dr. Khan observed no psychosis, paranoia, grandiosity, or hallucinations. Reed's speech was coherent, logical, and goal-directed; his mood and affect were stable; and his insight and judgment were fair.

¶ 34 Dr. Khan discussed basic court procedures and the roles of the judge and attorneys with Reed. According to Dr. Khan, Reed understood the seriousness of the charges, the possible penalties, the roles of courtroom personnel, the difference between a bench trial and a jury trial, and the difference between a plea and a trial. Reed acknowledged that he faced "a lot of time" if convicted.

¶ 35 Dr. Khan testified that Reed was taking gabapentin for anxiety and body pain at less than 10 percent of the medication's maximum dosage. The medication could also reduce irritability associated with Reed's personality disorder. Dr. Khan diagnosed Reed with malingering, an unspecified mood disorder, cannabis use disorder, and antisocial personality disorder. He did not identify schizophrenia or bipolar disorder as part of his final diagnosis at the hearing. Dr. Khan interpreted Reed's aggression, agitation, and purported psychotic symptoms as intentionally produced behaviors that Reed could control.

¶ 36 Dr. Khan opined that Reed was fit to stand trial. He relied on Reed's presentation, the treatment team's observations, Reed's participation in restoration groups, and his scores of 100 percent on two fitness tests administered in April and May 2023. Dr. Khan also considered statements Reed made to the Chester treatment team in August 2023, indicating that he did not want to return to Cook County jail. Specifically, when Reed was discussing the possibility of going back to Cook County jail, he stated, "I'm going to turn into asshole mode" and "you don't understand. It's dog eat dog in Cook County jail." Dr. Khan also viewed Reed's act of urinating on the floor during Dr. Anderson's attempted evaluation as further evidence of malingering.

¶ 37 On cross-examination, Dr. Khan acknowledged that his April 2023 report found Reed unfit and that an August 2023 report continued to list bipolar disorder as Reed's primary diagnosis. Dr. Khan explained that the treatment team changed its opinion after repeatedly interviewing Reed, observing his behavior, administering fitness tests, and concluding that he intentionally produced the reported symptoms. Dr. Khan further testified that Reed had asked him to diagnose him as having schizophrenia so that the court would consider Reed a mental health patient.

¶ 38 When the court asked about the fitness tests, Dr. Khan explained that they addressed court procedures, the roles of courtroom personnel, the charges and possible penalties, and Reed's ability

to assist in his defense. Dr. Khan did not have the tests or Reed's specific answers before him at the hearing.

¶ 39 Dr. Sarah Anderson's Testimony

¶ 40 Dr. Anderson testified that on August 7, 2023, she attempted to interview Reed but was unable to do so. As a result, she principally relied on Cermak and Chester records, Dr. Echevarria's evaluation, and other pertinent materials. The Cermak records beginning in March 2021 documented that Reed repeatedly expressed paranoid, persecutory, and grandiose beliefs involving the FBI, his charges, the court, and other government entities. The records also documented disorganized thinking, pressured speech, flight of ideas, a labile affect, and repeated refusals of psychotropic medication. After Reed's symptoms persisted for more than six months, a Cermak physician diagnosed schizophrenia and other psychotic or mood disorders in October 2021.

¶ 41 Dr. Anderson identified a relationship between Reed's symptoms and his use of the antipsychotic medication olanzapine. From approximately mid-December 2021 through early April 2022, Reed consistently took olanzapine and was described as asymptomatic, calm, cooperative, pleasant, and free of delusions. Within weeks after he stopped taking it, his delusions returned. When Reed returned to Chester in March 2023, the records again described manic, psychotic, and paranoid symptoms concerning his case and the court. Chester discontinued olanzapine after Reed refused to take it and prescribed a low dose of gabapentin. Dr. Anderson opined that gabapentin at that dosage did not treat Reed's psychotic condition.

¶ 42 Dr. Anderson acknowledged Dr. Khan's concerns that Reed was malingering and that he had scored 100 percent on two fitness tests. She also agreed that Reed likely possessed an adequate factual understanding of the charges and courtroom procedures. In her opinion, however, Reed's

attempts to manipulate the system were motivated by delusions. Dr. Anderson interpreted the treatment records as showing that Reed continued to harbor persecutory beliefs directly related to his charges, detention, and the court. In her opinion, those beliefs prevented him from rationally understanding the proceedings and rationally assisting counsel.

¶ 43 Dr. Anderson diagnosed Reed with schizophrenia and opined, to a reasonable degree of medical and psychiatric certainty, that he remained unfit. She recommended inpatient treatment with olanzapine or another antipsychotic medication and opined that there was a substantial probability that such treatment would restore Reed to fitness within one year. She testified that Reed had previously experienced a resolution of symptoms within two weeks to one month after taking olanzapine. Although that medication could adversely affect Reed's diabetes, she considered it a reasonable option with appropriate monitoring and identified other available antipsychotic medications.

¶ 44 Trial Court's Ruling

¶ 45 At the conclusion of the September 28, 2023, hearing, the court requested copies of the fitness tests on which Reed reportedly scored 100 percent. After receiving the tests, the court observed that Reed correctly answered questions concerning why he had been sent to DHS, the finding that he was unfit, the attempted murder charge, the general difference between felonies and misdemeanors, the roles of courtroom personnel, the difference between bench and jury trials, counsel's role, and the possibility of prison.

¶ 46 On October 12, 2023, the court stated that it was prepared to rule on fitness but deferred its ruling while Reed underwent separate evaluations concerning sanity at the time of the offenses and his ability to understand Miranda warnings.

¶ 47 On November 2, 2023, the court issued an oral and written ruling. The court reviewed the procedural history beginning with Reed's request to represent himself, Dr. Echevarria's initial opinion and the August 2021 unfitness finding, Dr. Khan's February 2022 report and the first restoration hearing, the competing testimony from the September 2023 hearing, Reed's fitness test responses, the treatment records, and its own observations.

¶ 48 The court recognized that Dr. Khan viewed Reed's behavior as malingering. It also considered Dr. Anderson's opinion that Reed's factual knowledge did not amount to a rational understanding because his untreated persecutory delusions continued to center on his charges and the court. Based on the entire record, the court found the evidence insufficient to establish that Reed had been restored to fitness. It further found a substantial probability that Reed could be restored to fitness with inpatient treatment and the recommended antipsychotic medication within a period of months. The court therefore continued Reed's placement in DHS custody for inpatient restoration treatment at Chester.

¶ 49 On February 29, 2024, this court allowed Reed to file a late notice of appeal from the November 2, 2023, order.

¶ 50 II. ANALYSIS

¶ 51 On appeal, Reed does not challenge the trial court's November 2, 2023, determination that he remained unfit to stand trial. Instead, he challenges the court's accompanying finding that there was a substantial probability that his fitness could be restored within a period of months. Reed contends that this finding was against the manifest weight of the evidence and asks this court to vacate that finding and remand for a discharge hearing under section 104-23 of the Code (725 ILCS 5/104-23 (West 2022)). As the availability of discharge is dependent on our disposition of Reed's challenge to the sufficiency of the evidence, we address that issue first and reserve for our

later discussion the propriety of Reed's application of the Code in support of his discharge argument.

¶ 52 Before proceeding with our analysis, we note that part and parcel of Reed's argument in support of reversal is the length of time that has elapsed from the time of his unfitness hearing to the September 2023 restoration hearing. More than three years have elapsed since that time. Thus, we deem it appropriate to detail the procedural history of this case subsequent to the court's November 2, 2023, ruling.

¶ 53 On February 29, 2024, Reed filed a motion and was granted leave to file a late notice of appeal. The Office of the State Appellate Defender was appointed on February 29, 2024; however, appellate counsel represented that the office did not receive notice of the appointment until April 11, 2024. Following appointment, the record was completed and filed in this court on July 23, 2024.

¶ 54 Reed's opening brief was originally due on August 27, 2024. This court granted him an initial 60-day extension, making the brief due on October 26, 2024. On October 24, 2024, Reed requested another extension through December 24, 2024. Counsel explained that the Office of the State Appellate Defender generally prepared briefs according to the dates of the final judgments and that counsel was required to complete older appeals first. Additional extensions followed, and Reed's briefing deadline was ultimately extended to May 23, 2025.

¶ 55 Reed did not file his brief by the May 2025 deadline. On May 29, 2025, he moved for leave to file it *instanter*, again explaining that counsel had been required to give priority to older appellate matters. Counsel emphasized that the delay was not Reed's fault. This court accepted Reed's opening brief on June 3, 2025.

¶ 56 The State thereafter filed several motions seeking extensions of time to file its brief, noting that it had a backlog of nearly 100 cases and was understaffed. The State filed its brief on December 30, 2025. Reed subsequently filed his reply brief on January 13, 2026. We now proceed to address the merits of Reed’s appeal.

¶ 57 A. Fitness to Stand Trial

¶ 58 A defendant is initially presumed to be fit to stand trial, to plead, or to be sentenced. 725 ILCS 5/104-10 (West 2022). A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. *Id.* “Fitness speaks only to a person’s ability to function within the context of a trial; a defendant may be fit to stand trial even though his mind is otherwise unsound.” *People v. Haynes*, 174 Ill. 2d 204, 226 (1996). If a *bona fide* doubt of the defendant’s fitness is raised, the trial court has a duty to resolve the issue before proceeding further. 725 ILCS 5/104-11(a) (West 2022).

¶ 59 The trial court, the State, or defense counsel may raise a *bona fide* doubt as to a defendant’s fitness. 725 ILCS 5/104-11(a) (West 2022). The court may direct an expert to examine the defendant (725 ILCS 5/104-11(b) (West 2022)), and the expert must then submit a report to the court. *Id.* § 104-15. The report must provide a diagnosis, explain the basis for that diagnosis, and state an opinion regarding the defendant’s fitness to stand trial. *Id.* § 104-15(a). If the report concludes that the defendant is unfit, it must also address the likelihood that the defendant will attain fitness. *Id.* § 104-15(b). If the person preparing the report cannot form such an opinion, the report must explain why. *Id.* When the court finds a *bona fide* doubt concerning the defendant’s fitness, it must conduct a fitness hearing. *Id.* §§ 104-11(c), 104-16. At that hearing, the State bears the burden of proving the defendant’s fitness by a preponderance of the evidence. *Id.* § 104-11(c). The court, however, may call its own witnesses and undertake its own inquiry. *Id.*

¶ 60 A reviewing court will not disturb a trial court’s fitness determination unless the finding is against the manifest weight of the evidence. *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 53. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary, or not based on the evidence presented. *People v. Corbett*, 2022 IL App (2d) 200025, ¶ 47. A determination of fitness is a question of evidence rather than an exercise of discretion, and this deferential standard governs review of the sufficiency of the evidence supporting the finding. *Finlaw*, 2023 IL App (4th) 220797, ¶¶ 54-55. We accordingly defer to the trial court, which is best positioned to observe the defendant and to weigh the credibility of the competing expert witnesses. *Id.* ¶ 58.

¶ 61 B. Whether Reed’s Refusals Precluded Restoration

¶ 62 Here on appeal, Reed relies largely on *Corbett*, 2022 IL App (2d) 200025, to support his contention that the trial court’s substantial probability finding was against the manifest weight of the evidence. He argues that (1) his persistent refusal to participate in fitness evaluations showed that he would not attain fitness within one year; (2) neither the record nor Dr. Anderson’s testimony established that additional treatment would enable him to cooperate with counsel, particularly because he refused antipsychotic medication and evaluations by DHS and FCS; and (3) the court’s finding rested on a conclusory expert opinion.

¶ 63 In *Corbett*, the defendant faced three separate misdemeanor prosecutions amid a serial pattern of findings that he was unfit, restored, and again found unfit. *Corbett*, 2022 IL App (2d) 200025, ¶¶ 4, 73. At an earlier fitness hearing, a jury found the defendant unfit but was “unable to determine” whether there was a substantial probability that he would attain fitness within one year if treated. *Id.* ¶ 12.

¶ 64 At the fourth fitness hearing, the court conducted a combined jury and bench proceeding: the jury was to determine the defendant's fitness, while the court was to determine whether there was a substantial probability that he would attain fitness within one year. *Id.* ¶ 19. At that hearing, the State's sole expert was unable to conduct a formal evaluation because the defendant refused to participate. Relying on reports from past restoration hearings, several limited interactions with the defendant, and her observations of him in court, the expert diagnosed the defendant with delusional disorder of the persecutory type and opined that his disorder prevented him from assisting in his defense. *Corbett*, 2022 IL App (2d) 200025, ¶¶ 19-25. The expert further opined that the defendant could attain fitness within one year through inpatient treatment, but she merely described the types of treatment typically used in restoration proceedings and did not explain why this particular defendant was likely to attain fitness or how long his restoration would take. *Id.* ¶¶ 25, 60.

¶ 65 At the close of the proceeding, defense counsel moved for a directed verdict of unfitness but did not meaningfully cross-examine the expert concerning restoration, offer an independent assessment of that issue, or address the defendant's history of unsuccessful restoration efforts. Instead, counsel stated that she would "defer to the court." *Corbett*, 2022 IL App (2d) 200025, ¶¶ 28-30. The trial court found the defendant unfit and, relying solely on the expert's testimony, found a substantial probability that he would attain fitness within one year. *Id.* ¶ 36.

¶ 66 The second district appellate court reversed. *Corbett*, 2022 IL App (2d) 200025, ¶ 73. In its ruling, the court held that defense counsel rendered ineffective assistance by failing to take the basic steps necessary to ensure a fair determination of the substantial-probability issue. *Id.* ¶¶ 46, 60-69. Counsel's conduct was not a strategic choice because she neither independently assessed the issue nor developed the relevant evidence, despite the defendant's repeated restoration failures, the cumulative time he had spent in custody, and the earlier jury's inability to determine whether

restoration was substantially probable. *Id.* ¶¶ 62-68. Counsel's deficient performance was prejudicial because the expert's opinion was ripe for challenge, and there was a reasonable probability that further examination and argument would have produced a different result. *Id.* ¶ 63.

¶ 67 The court also held that the trial court's finding was erroneous because the court merely accepted the expert's conclusion. *Corbett*, 2022 IL App (2d) 200025, ¶¶ 47, 70-73. The court found that the expert failed to explain why treatment was likely to restore this particular defendant, identify which treatment would address his persecutory delusions, state whether his symptoms were likely to improve with treatment, or estimate how long restoration would take. *Id.* ¶ 60. Her description of medication management, behavioral modification, and symptom reduction concerned what typically occurs during restoration treatment and was not connected to the defendant's condition, treatment history, or likelihood of improvement. *Id.* Thus, the trial court could not have evaluated the factual basis for the expert's opinion and instead merely accepted her conclusion. *Id.* ¶ 70. The court further found that, although the defendant previously had been restored to fitness, he had never remained fit long enough to stand trial during the more than five years the misdemeanor charges had been pending, and that history required meaningful scrutiny rather than summary reliance on prior restoration findings. *Id.* ¶ 73. Accordingly, the court reversed the substantial-probability finding and remanded for further proceedings, instructing that the State, defense counsel, and trial court must give the issue full and fair consideration. *Id.* ¶¶ 75-78.

¶ 68 Reed's first two arguments share a single premise: that his refusal to participate in evaluations and his refusal to take antipsychotic medication were the continuing obstacles to restoration, so that no substantial probability of restoration could exist and no further treatment

could remedy his condition. He emphasizes that by the time of the court's November 2023 order, he had remained judicially unfit for more than two years.

¶ 69 Reed correctly cites *Corbett* for the proposition that a defendant's perpetual refusal to cooperate "may be relevant" to whether there is a substantial probability that he will attain fitness within one year. *Corbett*, 2022 IL App (2d) 200025, ¶ 63. However, he fails to recognize that *Corbett* treated such refusal as one consideration bearing on the question of restoration, not as a fact that forecloses a finding of restorability. *Id.* In this instance, Reed's refusal to cooperate with a fitness evaluation is evidence to be weighed with the remaining circumstances. *People v. Stahl*, 2014 IL 115804, ¶ 39.

¶ 70 Also, the record here differs materially from that in *Corbett*. In *Corbett*, the defendant's noncooperation left the court with little individualized evidence because the sole expert could not complete a formal evaluation, relied on old restoration findings, and testified only about what typically occurs during restoration. *Corbett*, 2022 IL App (2d) 200025, ¶¶ 63, 70. Here, despite Reed's refusal to participate in certain evaluations, the trial court had extensive evidence specific to Reed. In August 2021, Dr. Echevarria evaluated Reed through courtroom observations and mental-health records and opined that, although Reed's delusional thinking rendered him unfit, appropriate treatment could restore him to fitness. DHS subsequently reported in February 2022 that Reed was fit with medication.

¶ 71 Reed's conduct after returning to DHS at Chester in March 2023 further showed that he was capable of cooperation. He attended restoration groups, met with Dr. Khan and his treatment team, and earned perfect scores on two fitness examinations. Additionally, Reed correctly answered questions about his charges, possible penalties, courtroom personnel, and the differences among a jury trial, a bench trial, and a guilty plea. Dr. Khan, who met with Reed monthly and

interviewed him for approximately 20 minutes, concluded that Reed was fit in May 2023. Reed also told Dr. Khan, *inter alia*, that he understood he was fit but did not want to return to Cook County jail. The trial court therefore could distinguish his unwillingness to cooperate with particular evaluators from an inability to participate in restoration. See *People v. Tuduj*, 2014 IL App (1st) 092536, ¶ 90 (unwillingness to cooperate with counsel is not equivalent to inability to do so); *People v. Kalwa*, 306 Ill. App. 3d 601, 612-13 (1999) (affirming a fitness determination despite the defendant's refusal of an additional examination where the court independently assessed the available evidence.)

¶ 72 The experts' differing explanations for Reed's conduct at the most recent hearing under review by this court support the same conclusion. Dr. Khan believed Reed was malingering and acting deliberately because he wanted to remain at Chester. Dr. Anderson likewise believed Reed was attempting to manipulate the proceedings, but she attributed his conduct at least partly to delusions concerning the court and his charges. Under Dr. Khan's explanation, Reed could control his conduct and participate rationally; under Dr. Anderson's, the delusions affecting his cooperation were amenable to treatment. Neither opinion established that Reed was permanently incapable of cooperating or attaining fitness.

¶ 73 Reed's second argument that his refusal of medication makes restoration unrealistic fails for the same reason. Dr. Anderson identified a documented, recurring relationship between Reed's psychosis and persecutory delusions and the antipsychotic medication olanzapine. For approximately four months in early 2022, Reed took olanzapine consistently and was asymptomatic, calm, and free of delusions, and within weeks of discontinuing it, his delusions returned. She explained that olanzapine was discontinued only because Reed refused it, not because it was ineffective. Dr. Anderson further opined that the substitute medication gabapentin

was inadequate to treat Reed's condition and that, when compliant, he had experienced resolution of symptoms within two weeks to one month. On that basis, she concluded that Reed's present unfitness was attributable to untreated psychosis rather than to a permanent incapacity, and that inpatient treatment with olanzapine or another antipsychotic would create a substantial probability of restoration within one year. Reed's refusal of treatment that has demonstrably reduced his symptoms is not equivalent to a condition that treatment cannot reach, and the trial court was entitled to distinguish an obstacle rooted in Reed's choices from one rooted in the untreatable nature of his illness. *People v. Cook*, 2014 IL App (2d) 130545, ¶ 15.

¶ 74 Finally, the length of time during which Reed has remained unfit does not compel a different result. *Corbett* observed that, at some point, a court must question, rather than summarily accept, the reliability of its prior findings of substantial probability and restoration. *Corbett*, 2022 IL App (2d) 200025, ¶ 73. However, that observation arose from a record in which the defendant had cycled through failed restorations for more than seven years on misdemeanor charges, with cumulative custody approaching the maximum sentences he faced coupled with expert testimony that relied on findings from past restoration hearings. *Id.* ¶¶ 62-63.

¶ 75 Reed's circumstances are different. He is charged with attempted first degree murder and related felony offenses. We find that the record does not reflect a series of failed restorations but a pattern in which Reed attained or approached fitness when medicated and regressed when he refused medication. Further, the experts who testified relied on findings made and observations recorded that took place months before the second restoration hearing. We find that this history is evidence of progress toward restoration rather than of its futility. Therefore, because the trial court weighed Reed's refusals to undergo certain examinations and, at times, to take medication together

with the recent evidence presented at the second restoration hearing rather than treating them as dispositive, its finding was not manifestly erroneous.

¶ 76 C. Whether the Trial Court's Findings Were Conclusory

¶ 77 Reed next argues that the trial court's substantial probability determination was conclusory. He maintains that the only supporting evidence was Dr. Anderson's ultimate opinion that appropriate medication could restore him, even though she did not complete a formal interview.

¶ 78 In fitness proceedings, the trial court may assume a more active role than in traditional adversarial proceedings and should actively undertake the fitness assessment required by law. *Corbett*, 2022 IL App (2d) 200025, ¶ 56. While expert testimony informs the inquiry, the ultimate determination belongs to the trial court. *Cook*, 2014 IL App (2d) 130545, ¶ 14. To satisfy due process, the court may not simply accept the parties' stipulation to the expert's ultimate conclusion. *Id.* ¶¶ 14, 17. The court must independently evaluate the bases for the experts' opinions and consider those opinions together with the other evidence and its own observations of the defendant. *Id.* ¶ 14. In some cases, the line between conducting an active, independent assessment and accepting a stipulation to the expert's ultimate conclusion may be difficult to discern. *Corbett*, 2022 IL App (2d) 200025, ¶ 56. A court generally satisfies due process when it indicates that it reviewed the stipulated reports or the record demonstrates that it had an opportunity to observe and question the defendant. *Id.* As noted, no single circumstance necessarily controls the determination of fitness; rather, the court must consider the totality of the circumstances. *Stahl*, 2014 IL 115804, ¶ 39.

¶ 79 The record before us does not support Reed's characterization that the trial court's ruling or Dr. Anderson's testimony was conclusory. We also find that the contrast with *Corbett* is again evident. In *Corbett*, the expert testified "only in conclusory terms" about a typical defendant, which

left the trial court unable to accurately evaluate the basis for the expert's opinion, resulting in the court simply accepting her ultimate conclusion. *Corbett*, 2022 IL App (2d) 200025, ¶ 70.

¶ 80 Here, Dr. Anderson's testimony was of a different order. As described above, at the September 2023 hearing, she explained the evidentiary foundation for her opinion, which included Reed's documented history of symptom remission on olanzapine, the return of his delusions within weeks of discontinuation, the inadequacy of the substitute medication gabapentin to treat his condition, and the specific medication, dosage, and timeframe for an expected response. Further, the fact that Dr. Anderson could not complete a formal interview did not render her opinion conclusory. An expert opinion on fitness is adequately supported where the expert identifies the diagnosis, the medication prescribed to stabilize the condition, and the defendant's response to that treatment. *People v. Taylor*, 409 Ill. App. 3d 881, 897-98 (2011). The credibility and weight to be given psychiatric testimony are for the trier of fact to determine. *People v. Haynes*, 174 Ill. 2d 204, 231 (1996). The trial court accordingly was entitled to credit the individualized bases Dr. Anderson articulated rather than treat her ultimate conclusion as dispositive.

¶ 81 Just as important, the trial court did not merely adopt a single expert's conclusion. It heard competing opinions, with Dr. Khan opining that Reed was already fit and Dr. Anderson opining that he remained unfit but could be restored with antipsychotic medication. The court questioned both experts, requested and reviewed the fitness tests Reed had passed, recited the procedural history, the competing diagnoses, the treatment records, and its own observations. Additionally, the court credited Dr. Anderson's opinion that Reed's factual understanding did not amount to a rational understanding because untreated persecutory delusions continued to relate to his charges and the court. That is the independent, active assessment that *Corbett* found lacking. *Corbett*, 2022 IL App (2d) 200025, ¶¶ 59, 70. Where a court receives conflicting reports, hears live testimony,

poses its own questions, and makes credibility determinations, its resolution of the substantial probability question is entitled to deference. *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 58.

¶ 82

D. Due Process Under Jackson

¶ 83 Reed invokes *Jackson v. Indiana*, 406 U.S. 715 (1972), for the principle that he may not be held indefinitely simply because he remains unfit. *Jackson* held that a defendant committed solely on account of his incapacity to stand trial “cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future,” and that, even where restoration is likely, “his continued commitment must be justified by progress toward that goal.” *Jackson*, 406 U.S. at 738. The Supreme Court found that because the record established that the defendant, who was deaf, unable to communicate, and intellectually disabled, was permanently incapable of ever attaining fitness, his commitment was “permanent in practical effect.” *Id.* at 727. Reed’s situation is not analogous. Here, the trial court found, based on individualized medical evidence, a substantial probability that antipsychotic treatment would restore Reed within a period of months. Additionally, Reed has never been found to have a disability that has made him incapable of ever attaining fitness. Instead, the record reflects that Reed has shown progress toward restoration multiple times and a willingness to cooperate when he was medicated. Therefore, the existence of permanent, untreatable incapacity that informed the decision in *Jackson* is absent here.

¶ 84 In sum, we find that the trial court’s finding that there was a substantial probability that Reed could attain fitness is not against the manifest weight of the evidence.

¶ 85

E. Whether Reed Was Entitled to a Discharge Hearing

¶ 86 As the remedy for our anticipated reversal of the trial court’s finding of a substantial probability that Reed would attain fitness, he requests that we vacate the court’s judgment and

remand this matter for a discharge hearing. However, as we do not find the court's judgment to have been against the manifest weight of the evidence, reversal is not required and we could conceivably end our discussion there. Nonetheless, we are mindful of Reed's subordinate argument in support of discharge, that being the State's failure to request a discharge hearing. Thus, in the interest of completeness, we proceed to address that issue.

¶ 87 In his opening brief, Reed cites sections 104-17 and 104-23(a) of the Code in support of his claimed entitlement to a discharge hearing. However, in his reply brief, he shifts the source of his entitlement from section 104-23(a) to section 104-23(b). There he argues that sections 104-23(b) and 104-17(e) contain a one-year time limitation for fitness restoration and that, if a defendant has been declared unfit and has not yet been restored within one year, the State shall request the court to either dismiss the charges, schedule a discharge hearing, or begin civil commitment proceedings.

¶ 88 We find it helpful to set out the relevant portions of the Code. However, before doing so, we find it necessary to comment on perceived improprieties in the reply brief. We first observe that Reed refers to a fitness hearing held on August 5, 2025, after this appeal commenced. Further, the transcript of that hearing, though not contained in the record on appeal, is attached as an appendix to Reed's reply brief.

¶ 89 A reviewing court will not supplement the record with documents attached to an appellate brief where the parties have not stipulated to supplement the record and no motion to supplement the record has been filed. *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n, Inc.*, 2011 IL App (1st) 103742, ¶ 16. Moreover, a party generally may not rely on matters outside the record to support its position on appeal, and materials not taken from the record may not be placed before this court merely by including them in an appendix. *Oruta v. B.E.W. and*

Continental, 2016 IL App (1st) 152735, ¶ 32. We therefore disregard the August 5, 2025, transcript and decline to consider it for any purpose in the disposition of this appeal.

¶ 90 Second, in his reply brief, Reed urged section 104-23(b) as the basis for his entitlement to a discharge hearing. No mention of that particular section is made in the opening brief. It is well settled that an issue not presented in the appellant’s opening brief may not be raised for the first time in the reply brief. *McGinley Partners, LLC v. Royalty Properties, LLC*, 2018 IL App (1st) 172976, ¶ 26. The reason for the rule is self-apparent. The appellee will have no opportunity to respond. Thus, we would be within our rights to disregard any argument which relies upon section 104-23(b) for support. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). However, given the link between sections 104-23(a) and 104-23(b), we will address the applicability of both provisions to Reed’s claimed entitlement to a discharge hearing.

¶ 91 Reed reads section 104-23(b), coupled with section 104-17(e), as mandating a discharge hearing if the defendant is not restored to fitness “within a period of time from the date of the finding of unfitness,” which, in this case, would be a period of one year from the August 2021 finding. Reed misreads the governing statutes. A proper reading of the statute reveals that because there was a substantial probability that Reed could attain fitness within a period of months from the trial court’s November 2023 finding of unfitness, a discharge hearing was not required.

¶ 92 The applicability of section 104-23 presents a question of statutory interpretation, which we review *de novo*. *People v. Sedlacek*, 2013 IL App (5th) 120106, ¶ 23. In construing a statute, our primary objective is to ascertain and give effect to the legislature’s intent. *People v. Wise*, 2021 IL 125392, ¶ 23. The best indicator of that intent is the statutory language itself, given its plain and ordinary meaning. *Id.* When the statutory language is clear and unambiguous, we must apply it as written without resorting to other aids of statutory construction. *Id.* Further, we may not depart

from the statute’s plain language by reading into it exceptions, limitations, or conditions that the legislature did not express. *Id.* Finally, because all provisions of a statute are viewed as a whole, we do not construe words and phrases in isolation; instead, they are interpreted in light of other relevant portions of the statute. *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 507-08 (2003).

¶ 93 The first mention of section 104-23 is in section 104-16, captioned “Fitness Hearing.” 725 ILCS 5/104-16 (West 2022). Section 104-16(d) first provides that when a defendant is found unfit, the court must determine whether there is a substantial probability that, if provided with a course of treatment, he will attain fitness within one year. *Id.* § 104-16(d) (West 2022). That sentence in the section dictates no consequence if, after a year, the court’s substantial probability of fitness finding has not been attained.

¶ 94 The following sentence in that section, however, provides that “[i]f the court or the jury finds that there is *not* a substantial probability [that the defendant will attain fitness], the court shall proceed as provided in Section 104-23.” (Emphasis added.) *Id.* § 104-16(d).

¶ 95 Section 104-23 provides, in relevant part:

“Cases involving an unfit defendant who demands a discharge hearing or *a defendant who cannot become fit to stand trial **** shall proceed in the following manner:

(a) Upon a determination that there is *not* a substantial probability that the defendant will attain fitness within the time period set in subsection (e) of Section 104-17 of this Code from the original finding of unfitness, the court shall hold a discharge hearing within 60 days, unless good cause is shown for the delay.

(b) If at any time the court determines that there is *not* a substantial probability that the defendant will become fit to stand trial or to plead within the time period set in subsection

(e) of Section 104-17 of this Code from the date of the original finding of unfitness ***, the State shall request the court:

(1) To set the matter for [a discharge hearing].” 725 ILCS 5/104-23(a), (b) (West 2022). (Emphasis added.)

¶ 96 Clear from a plain reading of section 104-16 is that section 104-23 is triggered when there is not a substantial probability that an unfit defendant can be restored to fitness. The provision does not pertain to individuals for whom, like Reed, there is a substantial probability that fitness can be attained. Pursuant to section 104-16(d), all that is required upon a finding of unfitness is a determination of whether the defendant, if provided with a course of treatment, will attain fitness within one year. 725 ILCS 5/104-16(d) (West 2022).

¶ 97 Section 104-17 addresses commitment for treatment, the treatment plan, and the treatment provider’s reporting responsibilities. 725 ILCS 5/104-17 (West 2022). The section requires that treatment providers give an “opinion” as to the probability that an unfit defendant will attain fitness “within a period of time from the date of the finding of unfitness,” which, for felons, is one year. *Id.* § 104-17(e). The only thing that section 104-17(e) mandates upon a finding of substantial probability that fitness can be attained within the allocated time is that the treatment provider file a treatment plan. *Id.* Significantly, section 104-17 makes no reference to section 104-23, the provision which governs discharge proceedings in cases where there is a substantial probability that the defendant will *not* attain fitness. It bears repeating that in this case, the court found that there was a substantial probability that Reed *will* attain fitness.

¶ 98 Here, at the September 2023 hearing, Dr. Anderson opined that Reed could possibly be restored to fitness with the use of medication. Based on Dr. Anderson’s and Dr. Khan’s testimony and the DHS reports from Chester, the court found the evidence insufficient to establish that Reed

had been restored to fitness at that time. It further found a substantial probability that Reed could be restored to fitness with inpatient treatment and the recommended antipsychotic medication within a period of months. The court therefore continued Reed's placement in DHS custody for inpatient restoration treatment at Chester.

¶ 99 The court's ruling was consistent with the dictates of section 104-16(d). Thus, Reed's reliance on section 104-23(b) as mandating a discharge hearing fails. See *Sedlacek*, 2013 IL App (5th) 120106, ¶ 34 ("as a matter of statutory construction, it is clear that article 104 envisions that once it is determined that it is unlikely that an unfit defendant will attain fitness within one year after initially being found unfit, the cause must proceed to a discharge hearing").

¶ 100 III. CONCLUSION

¶ 101 For the reasons stated, we affirm the trial court's finding that there was a substantial probability that Reed could be restored to fitness.

¶ 102 Affirmed.