No. 129402

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- EMANUEL WELLS, Petitioner-Appellant.	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-22-0552. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 20-CF-1103. Honorable J. Casey Costigan, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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ARGUMENT

Emanuel Wells is entitled by statute to an additional 208 days of presentence custody credit covering the time he spent in home detention. As Wells's plea agreement is silent as to his time in home detention, the trial court erred when it denied his *pro se* motion seeking that credit, and this Court should award him the 208 days of credit rather than add a waiver of the credit to Wells's full negotiated guilty plea.

While felony drug charges were pending against him, Emanuel Wells spent 54 days in jail. His family then posted bond, and Wells spent the next 208 days subject to electronic monitoring while under a curfew. A few months after the electronic monitoring and curfew ended, he pleaded guilty. His written plea agreement—and plea colloquy in court—mentioned the 54-day jail stay, but both were entirely silent as to the time he spent in home detention. In this appeal, Wells seeks sentencing credit for that 208-day period.

In his opening brief, Wells explained why he should receive that credit: (1) he was entitled by statute to the credit; (2) his request for the credit was made in an appropriate manner and made of a court with jurisdiction to grant the request; and (3) he did not agree to forego the credit as part of his plea agreement. (Opening brief,[1] pp. 8–13, 13–16, 16–25). The State disputes all three propositions in whole or in part. (See generally State's brief). In this reply brief, Wells will maintain the structure of his opening brief for the sake of clarity.

Put simply, Emanuel Wells asks this Court to honor his statutory right to receive credit for the time he spent in home detention. If Wells prevails, *every* term of his plea agreement will remain in full effect: the State will still have secured a conviction and six-year prison sentence without the need for a trial, and he will still have secured the dismissal of two other

[1] Citations to the parties' briefs before this Court are in the forms "(Opening brief)," "(State's brief)," and their abbreviated equivalents. When this reply brief refers to the parties' briefs before the Fourth District Appellate Court, citations will be in the form "(Appellate opening brief)," "(Appellate State's brief)," "(Appellate reply brief)," and their abbreviated equivalents.

charges and avoided a harsher prison sentence. This Court need not disturb Wells's plea or sentence in order to provide him with the relief he seeks.

The State, in contrast, asks this Court to find that Wells waived his statutory right to home-detention credit—and that he waived it implicitly. If the State wanted Wells to waive this right, the State could have made Wells's explicit waiver of the credit a term of the sentencing agreement, as the State has done in other cases. See, *e.g.*, *People v. Williams*, 384 Ill. App. 3d 415, 416–17 (4th Dist. 2008) (noting how, at sentencing after a stipulated bench trial, the State, the defense, and the court all noted that the defendant's sentence would be "with no credit."). But the State failed to secure Wells's waiver of his statutory right when it negotiated his plea agreement in November of 2021. (C. 115; R. 56–60). Now, two years later and two courts higher, the State seeks to change the terms of its agreement with Emanuel Wells. This Court should reject the State's arguments. This Court can—and should—hold both parties to the enumerated terms of their agreement *and* honor Wells's unwaived statutory right to the 208 days of credit.

A. Emanuel Wells is entitled by statute to an additional 208 days of presentence credit, as he spent this time in home detention under GPS monitoring.

The first question in this appeal concerns whether the statute giving defendants sentencing credit for time spent on home confinement applies to Emanuel Wells. When he was released from jail, Wells was placed under electronic monitoring and initially allowed to leave his home only for certain enumerated reasons. (R. 23). The conditions of Wells's home confinement were gradually relaxed, and eventually, they were eliminated entirely. (See Op. br., pp. 4–5; St. br., pp. 2–3). Wells contends that he is entitled by statute to credit for the entire period he was under electronic monitoring and a curfew. (Op. br., pp. 8–13).

The State makes no argument that Wells was never entitled to credit in the first place, thereby conceding that this Court's decisions in *People v. Ramos* and *People v. Beachem* are inapplicable to the current credit statute and to this appeal. (See Op. br., pp. 12–13 (distinguishing *Ramos*, 138 Ill. 2d 152, 153–54 (1990); *Beachem*, 229 Ill. 2d 237, 250–53 (2008))). The State also expressly concedes that Wells is statutorily entitled to 127 days of sentencing credit, spanning from the day the electronic monitor and curfew were imposed to the day Wells's curfew became an 11-hour restriction on his movement. (St. br., p. 9 n.3). But the State speculates without further analysis that Wells may not be entitled to credit for the remaining 81 days of his time in home detention. (St. br., p. 9 n.3 (arguing that it is "far from clear" whether Wells was still earning sentence credit once his curfew was relaxed to only 11 hours per day)).

As Wells explained in his opening brief, the State is incorrect. (Op. br., pp. 10–13). The relevant statute provides that home detention "includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel of movement." 730 ILCS 5/4.5-100(b) (2021). The use of the words "includes" and "such as" indicate that the legislature meant a 12-hour curfews to be just one example of home detention, not a condition precedent whose absence rendered someone ineligible for home-detention credit. 730 ILCS 5/4.5-100(b); (Op. br., p. 10). After all, while Wells was able to be able to be away from his home from 7:00 a.m. to 8:00 p.m., he was still subjected to 24-hour GPS monitoring and substantial restrictions on his movement. (C. 98, 102). Especially in light of the legislature's repeated passage of amendments expanding the scope of the home-detention statute, this Court can be sure that Wells earned 208 days of credit, not 127. (See, *e.g.*, Op. br., p. 12); Compare 730 ILCS 5/5-8-7(b) (1990) (providing for credit only for time spent "in custody"); 730 ILCS 5/5-8-7(b) (2004) (stating that a trial court "may give credit . . . for time spent in home detention); 730 ILCS 5/5-8-7(b) (2021) (stating that a trial

court "shall give credit" for that time and clarifying that "home detention" includes restrictions on liberty such as curfews and electronic monitoring).

Contrary to the State's assertions, the record is sufficient to determine that Wells remained in "home detention" for purposes of credit until his curfew and GPS monitor were removing entirely. And the relevant statute provides that this credit is mandatory, not subject to a court's discretion: a defendant "shall be given credit" for time spent in home detention. (Op. br., p. 13); see, *e.g.*, *People v. Woodard*, 175 Ill. 2d 435, 445 (1997) (finding that sentence-credit provisions which use the word "shall" render that credit mandatory). Should this Court determine that Wells is entitled to home-detention credit notwithstanding his plea, this Court should provide Wells with 208 days of credit, without need for remand. (Op. br., p. 13 (citing *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 29)).

B. Wells's request for the credit to which he is entitled was correctly characterized by the trial and appellate courts as a Rule 472 motion, and the trial court had jurisdiction to award him the credit.

Should this Court agree that Wells was entitled to credit for his time in home detention, the next question before this Court is whether Wells asked for that credit in the appropriate manner and of an appropriate court. (Op. br., pp. 13–16). The parties agree that Wells requested the credit by handwriting some details onto a pre-printed form captioned as a "Motion for Order *Nunc Pro Tunc*," then filing that motion in the trial court several months after he was sentenced. (C. 10–11. 112, 115, 133–34). To Wells, the substance of this "inartfully drawn" *pro se* filing demonstrates that it operated as a motion under this Court's Rule 472(a)(3). (Op. br., pp. 13–16). To the State, the motion must be treated as a motion for order *nunc pro tunc*, largely because Wells forfeited the "argument" that the motion was cognizable under Rule 472 by failing to make this "argument" in his appellate opening brief and petition for leave to appeal. (St. br., pp. 11–13).

The State is incorrect. No argument has been forfeited here, and even should this Court find forfeiture, this Court should excuse the forfeiture. See, *e.g.*, *People v. Lighthart*, 2023 IL 128398, ¶ 72 n.7 (citing *Walworth Investments-LG, LLC v. Mu Sigma, Inc.*, 2022 IL 127177, ¶ 94 ("[W]aiver and forfeiture are limitations on the parties and not on the court, and a court may overlook forfeiture where necessary to reach a just result or maintain a sound body of precedent.")). After all, the State has not been denied an opportunity to respond to Wells's central argument—that is, that the trial court erred when it denied his motion for sentencing credit and declined to award him 208 days of sentencing credit. The State had the opportunity to argue, in a petition for rehearing before the appellate court, that Wells's *pro se* motion was to be strictly construed and that the trial and appellate courts lacked jurisdiction. It did not do so. Nor could it, given the longstanding rule that the nature of a pleading is determined by its substance, not its caption. See, *e.g.*, *People v. Patrick*, 2011 IL 111666, ¶ 34 ("Generally, the character of a motion is determined by its content or substance, not by the label placed on it by the movant.") (citing *People v. Shellstrom*, 216 Ill. 2d 45, 51 (2005)). A court "must examine the relief sought to determine a motion's character." *Id.*

In his *pro se* motion, Wells asked the trial court for credit for the time he spent on electronic monitoring—and while he asked for 166 days of credit rather than 208, the parties agree that this appears to be a mere miscalculation. (St. br., p. 5 & n.2; Op. br., pp. 14–15). The trial court denied Wells's motion on its merits, stating that Wells "was given the correct pretrial detention credit on this case" rather than strike the motion for lack of jurisdiction. (C. 11).

Then, on appeal, Wells argued that he was "entitled to the credit he sought" and "the trial court erred in denying his motion." (Appellate opening brief, p. 6). Wells's opening brief made no mention of the *nunc pro tunc*/Rule 472 distinction, it is true. (*Cf.* App. op. br, p. 24 (referencing a trial court's pre-Rule 472 "continuing jurisdiction to correct nonsubstantial matters" such as sentence credit)); *People v. White*, 357 Ill. App. 3d 1070, 1073 (3d Dist. 2005) (noting

that a trial court retains this jurisdiction even faced with a defendant's noncompliance with Rule 604(d)). But Wells was clear in that brief: he did not seek to withdraw his guilty plea. (See generally App. op. br. (making no reference to Rule 604)). He sought to rectify an error in the calculation of his presentence custody credit. These errors may be addressed by a trial court that otherwise lacks jurisdiction *only* if they are the types of errors contemplated by Rule 472. See Ill. Sup. Ct. R. 472(a) (eff. May 17, 2019).

In response, the State argued that the trial court lacked jurisdiction to rule on a motion for order *nunc pro tunc* asking for additional sentencing credit. (Appellate State's brief, pp. 2–3). So, faced with the State's argument that the trial court lacked jurisdiction to grant him relief, Wells replied that Rule 472 vested the trial court with jurisdiction. (Appellate reply brief, pp. 1–2). This was not a new argument. It was an explanation of why Wells's original argument had merit, made in response to a jurisdictional claim raised by the State.

The State also contends that Wells forfeited his Rule 472 "argument" by failing to discuss the applicability of the Rule in his petition for leave to appeal. (St. br., pp. 12–13 (citing *People v. McKown*, 236 Ill. 2d 278, 310 (2010)). But again, Rule 472 is merely the mechanism which—by its plain text—empowers the trial court to reach the merits of Wells's claim, not the basis of an entirely separate argument. See Ill. Sup. Ct. R. 472(a)(3) (eff. May 17, 2019) ("In criminal cases, the circuit court retains jurisdiction to correct . . . errors in the calculation of presentence custody credit."). In the *McKown* Court's words: "When an issue is not specifically mentioned in a party's petition for leave to appeal, but it is 'inextricably intertwined' with other matters properly before the court, review is appropriate." 236 Ill. 2d at 310 (quoting *In re Rolandis G.*, 232 Ill. 2d 13 (2008)). Here, the question of whether the trial court had jurisdiction to grant Wells's request for credit is inextricably intertwined with the question of whether the trial court erred by denying the request. Whether it does so by declining to find forfeiture or by excusing that forfeiture, this Court should reach the merits of Wells's claim.

In summary, Wells's underlying claim is that he has been erroneously refused 208 days' worth of sentence credit—credit that the legislature has commanded he "shall" receive. 730 ILCS 5/5-8-7(b) (2021). The State argues that the denial of the credit was proper. This Court should decline to hold Wells to any forfeiture and instead reach the merits of an issue that the parties have hotly contested for 18 months.

On the merits, the State also argues that Rule 472 is intended only to remedy "routine sentencing errors ," or even mere "clerical errors," rather than errors involving sentence credit. (St. br., pp. 13, 20). This argument is contradicted by the plain text of the Rule itself, which unambiguously states to the contrary:

> "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. Sup. Ct. R. 472(a) (eff. May 17, 2019). The Rule, in no uncertain terms, states that "[e]rrors in the calculation of presentence custody credit" are within its scope and may be corrected by the trial court at any time. Ill. Sup. Ct. R. 472(a)(3) (eff. May 17, 2019). *Errors*, not *clerical errors*.

The State attempts to circumvent the plain and ordinary meaning of the Rule's text by citing canons of construction dealing with the drafters' intent. (St. br., p. 21 (discussing *People v. Tousignant*, 2014 IL 115329; *People v. Rinehart*, 2012 IL 111719)). Yet as this Court has long recognized, these canons are only to be employed when a text is ambiguous on its

face. "The statutory language must be given its plain and ordinary meaning, and, where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184–85 (1999). To the extent that the drafters' intent is relevant, "[t]he language used by the [drafters] is the best indicator of [their] intent," and here, the language's plain and ordinary meaning is clear. *People v. Savory*, 197 Ill. 2d 203, 212–13 (2001).

The federal Supreme Court similarly rejects the use of canons of construction to interpret unambiguous language:

> "In any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–54 (1992) (collecting cases).

So too here. Rule 472 says that the trial court retained jurisdiction to correct "[e]rrors in the calculation of presentence custody credit." Ill. Sup. Ct. R. 472(a) (eff. May 17, 2019). Emanuel Wells seeks to correct an error in the calculation of his presentence custody credit. The trial court could have granted him relief, and it erred by refusing to do so.

Seeking to avoid the plain text of Rule 472, the State argues that Wells's "remedy lies in a postconviction petition alleging ineffective assistance of plea counsel." (St. br., pp. 24–25). The State makes this argument because it believes that requests for sentencing credit must be made within the 30-day period set forth in Rule 604(d). (St. br., pp. 24–25). Yet this is contradicted by the plain text of both Rule 472 *and* Rule 604(d). See Ill. Sup. Ct. R. 472(a)(3) (eff. May 17, 2019); R. 604(d) (eff. July 1, 2017). Rule 472, as discussed *supra*, states that the trial court retains the power to correct "[e]rrors in the calculation of presentence custody credit" at any time. Ill. Sup. Ct. R. 472(a)(3) (eff. May 17, 2019). And Rule 604(d) provides

requirements for *appeals challenging a plea or the ensuing sentence*. Here, Emanuel Wells does not seek to withdraw his plea, nor does he challenge his sentence as excessive. Rule 472, not Rule 604(d), applies.

A rule setting out appellate courts' jurisdiction does not abrogate the trial court's power to act within *its own* jurisdiction. The appellate court's jurisdiction to address the trial court's decision to deny Wells sentencing credit is controlled not by Rule 604(d), but Rule 472(b). Ill. Sup. Ct. R. 472(b) (eff. May 17, 2019) ("Where a circuit court's judgment pursuant to this Rule is entered more than 30 days after the final judgment, the judgment constitutes a final judgment on a justiciable matter and is subject to appeal in accordance with Supreme Court Rule 303."). The requirement that Wells make his claim in a certain way or risk forfeiture is similarly controlled not by Rule 604(d), but Rule 472(c). Ill. Sup. Ct. R. 472(b) (eff. May 17, 2019) ("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. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited.").

Given what actually occurred in this case, the State's argument that Wells is ignoring "that the purpose of Rule 472 was to situate such requests in the circuit courts in the first instance" is curious. (St. br., p. 25). Wells *did* make his request in the circuit court in the first instance. (C. 10–11; 133–34). The circuit court, vested with the power to grant the request, denied it. (C. 11). Wells, as he was empowered to do by Rule 472(b), appealed this denial within 30 days. (C. 11). The appellate court affirmed, and Wells, as he was empowered to do by Rule 315, timely petitioned this Court for leave to appeal. *People v. Wells*, 2023 IL App (4th) 220552-U, ¶2, pet. for leave to appeal granted, No. 129402 (May 24, 2023); Ill. Sup. Ct. R. 315 (eff. Oct. 1, 2021). Should this Court grant Wells the credit he requests, it would be in perfect compliance with its own Rules.

C. Wells's plea agreement did not waive his right to the credit, and this Court should hold that a waiver of statutorily mandated credit cannot be presumed from a silent record. Accordingly, this Court should award Wells with 208 additional days of credit.

So, given that Emanuel Wells was statutorily entitled to 208 additional days of sentence credit, and given that Rules 472(a)(3), 472(b), 303, and 315 have placed his request for that credit properly before this Court, only one question remains. That question is, admittedly, the central question of this appeal: Did Wells, by entering into a negotiated plea agreement that made no mention whatsoever of his time on home detention, waive his right to that credit? See, *e.g.*, *Wells*, 2023 IL App (4th) 220552-U, ¶¶ 10–32 (affirming the trial court's judgment solely based on the "threshold issue" of whether Wells waived the credit through his plea); *id.* (No. 129402), petition for leave to appeal, pp. 2–3 (characterizing this issue as the sole compelling reason for this Court to grant review). It is over this question, after all, that a split has developed within the Appellate Court. (See Op. br., pp. 16–25; St. br., p. 23).

In his opening brief, Wells explained that the split within the Appellate Court may be resolved through the implementation of a rule that is both "logically coherent and simple for circuit and appellate courts to follow." (Op. br., p. 21). Under such a rule, if credit is mandated by statute, it should be awarded unless the transcript of the defendant's plea hearing and the written terms of his plea agreement affirmatively show that he waived the credit. (Op. br., pp. 21–25 (citing *Williams*, 384 Ill. App. 3d at 417, as an example of a case in which waiver clearly occurred)); *Williams*, 384 Ill. App. 3d at 417 ("A defendant has the right to first request sentencing credit at any time unless . . . he agreed to forego it as part of a plea or other sentencing agreement."). Applying that rule to his own case, Wells explained, led to the conclusion that he should be given the credit—or, at a minimum, that a limited remand be ordered to determine if some waiver occurred outside the record. (Op. br., pp. 21–25).

The State disagrees. (St. br., pp. 13–24). To the State, because Wells entered into a negotiated guilty plea, he implicitly but affirmatively waived all sentence credit that was not included in his plea agreement. (St. br., pp. 13–24). The State characterizes Wells as attempting to hold the State to its end of the bargain while "unilaterally seek[ing] to reduce his negotiated sentence," but this is not what Wells seeks here. (St. br., p. 14). After all, Wells's six-year sentence is already the minimum available for a Class X felony. 720 ILCS 550/5(g) (2020); 730 ILCS 5/5-4.5-25(a) (2020); (C. 50, 112). If Wells was seeking a reduction of his negotiated sentence, it is not plea-bargaining principles but the statutory minimum that would foreclose the possibility of relief. Wells, rather than seeking to change the terms of his plea agreement, simply asks for sentencing credit that the legislature has mandated should be awarded to him. 730 ILCS 5/5-8-7(b) (2021).

The State also argues that Wells's implicit waiver of the home-detention credit may be seen from the fact that his plea agreement mentioned that he would receive 54 days' credit for the time he spent in jail. (See, *e.g.*, St. br., p. 16 ("[D]efendant's guilty plea waived any and all such credit save for the 54 days included in his agreement.")). In effect, the State asks this Court to insert the word "only" before every usage of the words "54 days." But this request is squarely contradicted by the trial court's statement to Wells that he had credit for "54 days *at this point in time.*" (R. 56 (emphasis added)). Someone who is given a jail sentence "with no credit," as the defendant was in *Williams*, can be certain that their amount of credit will remain fixed at zero. 384 Ill. App. 3d at 416 (expressly providing that the defendant's jail sentence would be "with no credit."). Someone who is given a prison term and informed that he has a certain amount of credit "at this point in time" has not implicitly waived all of the rights he possesses by statute, even the rights concerning presentence credit. (R. 56).

To be sure, Wells *could have* affirmatively waived this credit as part of his plea agreement, just as the defendant did in *Williams*. *Williams*, 384 Ill. App. 3d at 416–17 (detailing how the prosecutor, Williams's counsel, and the court all explicitly stated that Williams would receive no credit for the two days he spent in jail). But the record shows that Wells did not. This Court should not read this waiver into *all* negotiated plea agreements, and that is precisely what the State asks this Court to do. (St. br., pp. 13–14).

People v. Evans, in which this Court held that the defendant could not challenge the length of his sentence after he negotiated with the State in order to receive that sentence, is distinguishable. (St. br., pp. 14–15 (discussing *Evans*, 174 Ill. 2d 320)). In *Evans*, the defendant pleaded guilty to armed violence and aggravated restraint in return for the dismissal of another charge and for a recommended total sentence of 11 years, which the court then imposed. 174 Ill. 2d at 323. The length of Evans's sentence was not only a material element of his bargain with the State, but the *central component* of that bargain, from his perspective. The State received the certainty of a conviction and 11-year sentence without the hazards and expense of a trial; Evans received a lighter sentence (and fewer convictions) than he risked receiving without a plea. *Id.* at 323–28. Evans then sought to change the plea agreement's central term via a motion to reduce his sentence, which the court correctly denied. *Id.* at 323–32.

Here, in contrast, Emanuel Wells's home-detention credit was not the central component of his plea bargain—indeed, it was not an element of that bargain at all. To find otherwise would be to find that a central component of the parties' agreement was somehow omitted from every description of the agreement's terms. (See R. 55–56 (explaining to Wells the terms of the agreement which he had reached without mention of his time in home detention); C. 115 (setting out the terms of the agreement without mention of Wells's time in home detention)).

Even the 54 days of jail-based credit was not characterized as a material element of the plea agreement. As detailed above, the trial court's actual words when recounting the terms of the agreement, were: "You have credit for 54 days at this point in time." (R. 56).

This was not a statement of a term of the agreement at the level of Wells's guilty plea or his six-year sentence. It was an update on how much credit the court believed he had accrued, and when Wells learned that the court's belief was incorrect, Rule 472 empowered Wells to bring that error to the court's attention. The written plea agreement's phrasing—"CREDIT 10/11/2020 TO 12/03/2020 (54 DAYS)"—is similarly understood better as an accounting of the time Wells had spent in jail, rather than a negotiated commitment to receive *only* credit for that time. (C. 115).

The State expresses concerns that the plea bargaining process would be "undermine[d]" if defendants are allowed to receive all of their statutorily mandated sentence credit, but these concerns are unfounded. (St. br., pp. 20–21). The State's argument that it would be "dissuade[d] from entering into plea bargains in the first place" unless implicit waivers of sentence credit are read into every plea bargain seems to rest on an assumption that if Wells prevails in this appeal, *the State* will be forced to provide Wells with additional credit.

Yet sentence credit is not within the prosecutor's discretion to provide or withhold. 730 ILCS 5/5-4.5-100(b) (2021) (providing that an offender "*shall* be given credit" for time served in custody or in home detention). It is the defendant's statutory right, unless and until that right is waived. *Id.* If a defendant's waiver of sentence credit is vital to the State's decision to enter into a plea bargain, the State may secure that waiver, just as it did in *Williams*, by making sure it is enumerated as an express term of the bargain at the plea hearing. 384 Ill. App. 3d at 416–17. But in the vast majority of cases, no such waiver occurs, and no waiver occurred here. (See Op. br., 16–25); accord *Pantle v. Indus. Commis'n*, 61 Ill. 2d 365, 372 (requiring evidence of both knowledge of the existence of a right and intention to relinquish it before waiver may be found).

As a final matter, the State argues that *People v. Ford* and *People v. Malone* were wrongly decided. (St. br., p. 23); *Ford*, 2020 IL App (2d) 200525, ¶¶ 15, 28; *Malone*, 2023 IL App (3d) 210612, ¶ 19. In each of these cases—as Wells explained in his opening brief—the appellate

court followed the plain text of Rule 472 and allowed a defendant to request additional sentencing credit despite a negotiated guilty plea. (Op. br., pp. 16–25).

Wells believes that it is safe to presume that the State would say the same of *People v. Knight*, a decision that the Third District Appellate Court issued after Wells filed his opening brief but before the State filed its brief. 2023 IL App (3d) 220198. In *Knight*, just as Wells did here, the defendant pleaded guilty, declined to file an appeal, and filed a *pro se* motion styled as a "Motion for Order *Nunc Pro Tunc*" requesting sentence credit for programming he had completed while in the Du Page County jail. *Id.* ¶¶ 6–8. The trial court denied the motion, Knight appealed, and the appellate court found both that Knight's claim was cognizable under Rule 472(a)(3) and that the court erred by denying him any credit. *Id.* ¶¶ 15–16. While Knight's plea was not a negotiated plea, it cannot be denied that Knight made no effort to comply with Rule 604(d). *Id.* ¶¶ 6–8. Making no reference whatsoever to the plea or to Rule 604, the appellate court nonetheless granted him relief. *Id.* ¶¶ 11–17.

The State's argument that *Ford*, *Malone*, and (presumably) *Knight* should be overruled relies, at its heart, on a statement that the holdings of these cases conflict with contract principles as well as "the plain language of Rules 604(d) and 472." (St. br., pp. 23–24). For the reasons expressed *supra*, no such conflict exists: this is not an appeal under Rule 604(d), and this Court may grant Wells the credit while giving effect to *every term of Wells's plea agreement*. (C. 115; R. 56).

But the State's claim that the plain language of Rule 472 forecloses Wells's claim deserves particular attention. Rule 472, by its plain language, vests a trial court with jurisdiction to correct "[e]rrors in the calculation of presentence custody credit" at any time. Ill. Sup. Ct. R. 472(a)(3) (eff. May 17, 2019). The Rule then declares that when a circuit court's judgment is entered more than 30 days after final judgment, the judgment "is subject to appeal in accordance with Supreme Court Rule 303."). Ill. Sup. Ct. R. 472(b) (eff. May 17, 2019). The State claims

that defendants like Wells *must* make their requests for sentence credit within 30 days of final judgment. (St. br., pp. 23–24). Rule 472(b), in no uncertain terms, states otherwise. Ill. Sup. Ct. R. 472(b) (eff. May 17, 2019).

CONCLUSION

In summary, Emanuel Wells filed a motion asking for sentence credit to which he is entitled by statute. Even though the incarcerated, *pro se* Wells did not cite Rule 472 in his motion, his motion is included within the scope of Rule 472(a)(3). His ability to appeal the circuit court's denial of the motion was provided by Rule 472(b), not Rule 604(d). And *nothing* in Wells's plea agreement—other than the fact that there was a plea agreement in the first place—suggests that Wells was aware of his right to receive home-detention credit and then intended to relinquish this credit. This Court should not read an implicit waiver of mandatory credit into every plea deal, nor should it hold that Rule 472(a)(3) means anything other than what it says. This Court should provide Emanuel Wells with 208 additional days of sentence credit.

CONCLUSION

For the foregoing reasons and for all the reasons expressed in his opening brief, Emanuel Wells, defendant-appellant, respectfully requests that this Court award him an additional 208 days of presentence credit for the time he spent in home detention. Should this Court find that the record is unclear as to whether Wells agreed to forego the credit to which he is entitled, Wells requests in the alternative that this Court remand the case to the trial court, with instructions to determine whether Wells's plea negotiations included a waiver of credit for the time he spent in home detention.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is sixteen pages.

/s/Gregory G. Peterson
GREGORY G. PETERSON
Assistant Appellate Defender

No. 129402

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- EMANUEL WELLS, Petitioner-Appellant.	)	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-22-0552. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 20-CF-1103. Honorable J. Casey Costigan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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

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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 30, 2023, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in 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 Reply Brief to the Clerk of the above Court.

/s/Rachel A. Davis
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