

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).

2026 IL App (4th) 250113-U

NO. 4-25-0113

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 28, 2026

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Tazewell County
SHANE M. TRAVIS,	)	No. 24CF237
Defendant-Appellant.	)	
	)	Honorable
	)	Christopher R. Doscotch,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Lannerd and Grischow concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court remanded with directions, finding defendant was denied effective assistance of counsel where his attorney failed to file a certification of waiver of assessments.

¶ 2 Defendant, Shane M. Travis, pled guilty to possession of methamphetamine with intent to deliver (720 ILCS 646/55(a)(1) (West 2024)). He was sentenced to 12 years in the Illinois Department of Corrections (DOC) and ordered to pay a \$2,215 criminal assessment. He appeals, arguing that trial counsel was ineffective for failing to file a certificate pursuant to Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) to have this assessment waived.

¶ 3 We agree and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On April 18, 2024, defendant was indicted on the following counts: (1) unlawful possession with intent to deliver methamphetamine (720 ILCS 646/55(a) (West 2024)),

(2) unlawful possession of methamphetamine (*id.* § 60(a)), (3) unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2024)), and (4) unlawful possession of firearm ammunition by a felon (*id.*).

¶ 6 On August 19, 2024, defendant pled guilty to possession with intent to deliver methamphetamine in exchange for the dismissal of the remaining counts in the instant case, as well as the dismissal of a separate case in its entirety. The plea contained no agreement as to sentencing or fines.

¶ 7 On October 18, 2024, defendant was sentenced to 12 years in DOC. In addition, he was assessed \$2,445 in fines and fees, as follows: (1) a \$75 fine for the offense, (2) a \$2,215 criminal assessment pursuant to section 15-15 of the Criminal and Traffic Assessment Act (Act) (705 ILCS 135/15-15 (West 2024)), (3) a \$100 assessment for crime lab drug analysis, (4) a \$25 public defender assessment, and (5) a \$30 sheriff fee.

¶ 8 Defendant filed a motion to withdraw his guilty plea and, alternatively, a motion to reconsider his sentence. The trial court denied both motions.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Ineffective Assistance of Counsel

¶ 12 Defendant argues that he received ineffective assistance of counsel because his attorney, an assistant public defender, failed to file a certificate for waiver of assessments under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023). He asserts that he was prejudiced by this failure because if counsel had filed the certificate, the \$2,215 criminal assessment made pursuant to section 15-15 of the Act would have been waived.

¶ 13 “To demonstrate ineffective assistance of counsel, a defendant must show that

(1) the attorney’s performance fell below an objective standard of reasonableness and (2) the attorney’s deficient performance prejudiced the defendant in that, absent counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *People v. Hoskins*, 2025 IL App (4th) 240991, ¶ 32 (quoting *People v. Jackson*, 2020 IL 124112, ¶ 90). We review claims of ineffective assistance of counsel *de novo*. *Id.* ¶ 35.

¶ 14 Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) provides as follows: “In 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) without necessity of an application under this rule.” Section 124A-20 defines “assessment” as “any costs imposed on a criminal defendant under Article 15 of the [Act],” excluding certain violations of the Illinois Vehicle Code. 725 ILCS 5/124A-20(a) (West 2024).

¶ 15 Here, defendant was represented by a public defender, and the public defender was required by Rule 404(e) to file a certification for waiver of assessments. See Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). Doing so would have entitled defendant to a waiver of the \$2,215 criminal assessment that was imposed pursuant to section 15-15 of the Act. See *Hoskins*, 2025 IL App (4th) 240991, ¶ 81. However, counsel failed to do so. Even applying the appropriate amount of deference, we can find no way in which this decision could be viewed as reasonable trial strategy. Accordingly, because counsel failed to file this certificate, and because this failure prejudiced defendant in the amount of \$2,215, we find counsel provided ineffective assistance. See *id.* ¶ 84.

¶ 16 The State raises multiple arguments as to why counsel was not ineffective, all of which are unconvincing. It first asserts that counsel’s performance was not deficient because defendant entered into a partially negotiated plea under which he received a dismissal of certain

charges in exchange for retaining certain “obligations, including the fines, fees, and assessments.” The State therefore contends, “It can be argued that it is reasonable for a defense attorney not to file a waiver of assessments if that waiver might change the substance of plea negotiations.”

¶ 17 Contrary to the State’s characterization, defendant entered into an open plea under which there was no agreement as to sentencing or fines to be paid. He did not enter into a negotiated plea. See *People v. Gooch*, 2014 IL App (5th) 120161, ¶ 15 (defining an open plea, in contrast to a negotiated plea, as one in which the State and the defendant are free to argue for any sentence permitted by statute and the trial court has full discretion to decide a sentence). The State here made no sentencing concessions regarding defendant’s plea. It is therefore nonsensical to argue that the substance of the plea agreement might have changed had defendant’s counsel filed a certificate to waive certain sentencing assessments.

¶ 18 The State further argues that defendant’s \$2,215 assessment was not subject to waiver under Rule 404(e) and counsel cannot be deemed deficient for “failing to seek waiver of obligations the court had no authority to eliminate.” This is incorrect, as discussed above. Not only was the \$2,215 assessment subject to waiver under Rule 404(e), but the trial court would have been obligated to grant that waiver had a certificate been filed. See *Hoskins*, 2025 IL App (4th) 240991, ¶ 84.

¶ 19 The State also notes that “the record does not contain any indication of defendant claiming indigency.” However, even if this is true, it is irrelevant. Rule 404(e) does not require a showing of indigency. See Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). Rather, a certificate must be filed in any case in which a defendant is represented by a public defender. *Id.* Defendant met that requirement.

¶ 20 B. Public Defender Assessment

¶ 21 Defendant raises an additional argument for the first time in his reply brief. He argues that because the trial court failed to conduct a hearing on his financial resources to determine his ability to reimburse the public defender, we should also vacate his \$25 public defender assessment. Raising this argument for the first time in his reply brief would generally have forfeited the issue for review. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). However, our supreme court has held that where the trial court wholly ignores the statutory procedures mandated for reimbursement of a public defender fee, waiver should not be applied. *People v. Love*, 177 Ill. 2d 550, 564 (1997). We find that to be the case here.

¶ 22 Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2024)) states that when counsel is appointed to represent a defendant, the trial court may order the defendant to pay a reasonable sum in reimbursement for such representation. However, prior to ordering reimbursement, a trial court is required to conduct a hearing into the defendant's financial resources. *Love*, 177 Ill. 2d at 555. This hearing must be held no later than 90 days after the entry of a final order disposing of the case at the trial level. 725 ILCS 5/113-3.1(a) (West 2024). Prior to the required hearing, the defendant must be given notice that he will have an opportunity to present evidence concerning his ability to pay and any other relevant circumstances. *People v. Aguirre-Alarcon*, 2016 IL App (4th) 140455, ¶ 12. Where the trial court fails to hold a hearing within the 90-day period imposed by the statute, the reimbursement order must be vacated. *Id.* ¶ 17.

¶ 23 Here, via written order filed on October 18, 2024, the trial court ordered defendant to pay \$25 as reimbursement for the public defender's legal services. From our review of the record, it does not appear that any hearing was ever held in accordance with the requirements of section 113-3.1(a) of the Code to arrive at this amount, nor was any notice ever given to defendant.

It is unclear on what basis the court calculated the \$25 public defender fee. Accordingly, we vacate the October 18, 2024, reimbursement order. See *Aguirre-Alarcon*, 2016 IL App (4th) 140455, ¶ 17 (vacating the public defender fee imposed *sua sponte* by the trial court in a written order with no prior hearing or notice).

¶ 24 In sum, we find that defendant's counsel was ineffective for failing to file the certification for waiver of assessments as mandated by Rule 404(e). Accordingly, we must remand. See *People v. Durham*, 2025 IL App (4th) 241284-U, ¶ 15. Additionally, we vacate the trial court's imposition of a \$25 public defender fee based on its apparent failure to hold a hearing pursuant to section 113-3.1(a) of the Code.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we vacate the public defender fee and remand to allow defendant to file a certification of waiver of assessments under Rule 404(e).

¶ 27 Vacated in part and remanded with directions.