NOTICE
Decision filed 11/06/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250066-U

NO. 5-25-0066

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRANDON S. KEPPLER, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Christian County. No. 16-CF-184 Honorable Bradley T. Paisley, Judge, presiding.

JUSTICE BOIE delivered the judgment of the court.
Presiding Justice Cates and Justice Bollinger concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the judgment of the circuit court denying the defendant's petition for a certificate of innocence and remand where the circuit court applied the incorrect burden of proof.

¶ 2 On May 29, 2024, the defendant, Brandon S. Keppler, through counsel, filed a petition for a certificate of innocence pursuant to section 2-702 of the Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2022)). Following an evidentiary hearing, the circuit court found that the defendant failed to prove, by clear and convincing evidence, that he was entitled to a certificate of innocence. On January 13, 2025, by written order, the circuit court denied the defendant's petition for a certificate of innocence and the defendant appealed. For the following reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The defendant was charged by information on August 19, 2016, with one count of criminal sexual abuse (720 ILCS 5/11-1.50(a)(2) (West 2014)). Upon completion of a jury trial, he was convicted of the charge on September 13, 2017, and subsequently sentenced on November 2, 2017, to seven years' incarceration within the Illinois Department of Corrections. The defendant appealed, and on September 22, 2021, this court reversed the defendant's conviction and remanded the matter for a new trial. *People v. Keppler*, 2021 IL App (5th) 180017-U, ¶ 77. Upon remand, the State filed a motion to dismiss the criminal case with the consent of the alleged victim. The circuit court granted the State's motion and dismissed the matter with prejudice on September 19, 2023.

¶ 5 On May 29, 2024, the defendant, through counsel, filed a petition for a certificate of innocence. The petition alleged that the defendant was innocent of the charge and requested an evidentiary hearing. The circuit court conducted the evidentiary hearing on December 19, 2024. The only witness at the hearing was the defendant who testified that he was working out-of-state on the day of the alleged incident and was innocent of the charge. No other witnesses were called, and no other evidence was presented by either party. Upon motion by the defense, the circuit court agreed to take judicial notice of the defendant's trial transcripts. The parties gave closing arguments, and the circuit court took the matter under advisement.

¶ 6 The circuit court issued a written decision on January 13, 2025, denying the defendant's petition for a certificate of innocence. The written order stated that "[t]he burden of proof lies with the [defendant], who must demonstrate their innocence by clear and convincing evidence." It further stated that the circuit court found the defendant's testimony "not credible" and that the defendant failed to meet his burden of proof. The defendant timely appealed.

¶ 7 II. ANALYSIS

¶ 8 The defendant raises three issues on appeal. The first issue presented by the defendant is whether the appropriate standard of review to be applied to the denial of a petition for certificate of innocence is an abuse of discretion, manifest weight of the evidence, or *de novo*. The second issue is whether the circuit court erred in requiring the defendant to prove his innocence by clear and convincing evidence, and the third issue is whether the defendant proved his innocence by a preponderance of the evidence. We find the second issue regarding the burden of proof to be dispositive to this appeal. Therefore, we will forego the other issues and focus our analysis on the issue of the burden of proof to be applied in the determination of a certificate of innocence.

¶ 9 Whether the circuit court applied the correct burden of proof is a question of law that we review *de novo. Gataric v. Colak*, 2016 IL App (1st) 151281, ¶ 14. As such, we need not discuss the deferential standards that otherwise govern these appeals. To obtain a certificate of innocence, section 2-702(g) of the Code (735 ILCS 5/2-702(g) (West 2022)) lists four requirements that a defendant must prove "by a preponderance of evidence." Section 2-702 specifically sets out that the burden of proof to be applied is a preponderance of the evidence and contains no requirement for clear and convincing evidence. The circuit court's written order states that it applied the improper higher burden of proof of clear and convincing evidence.

¶ 10 The State acknowledges that the circuit court's written order contained the incorrect burden of proof, but argues that it was likely a drafting error rather than a substantive misapplication of law. The State notes that the circuit court stated at the hearing that "the [defendant] bears the burden of proof of innocence by a preponderance ***." The State argues that it is well settled that when the oral pronouncement of the court conflicts with the written order, the oral pronouncement of the circuit court controls, citing *People v. Willenborg*, 2023 IL App (5th) 230727, ¶ 18.

Although that is a correct statement of law, the flaw in the State's argument is that the circuit court's statement was not part of an oral pronouncement. The oral pronouncement is the judgment of the court, and the written order is merely evidence of the judgment of the court. *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993). The circuit court was not announcing its judgment at the time of the statement, but instead, was discussing the admission of certain evidence. Thus, there can be no conflict regarding the written order since no oral judgment was rendered at the hearing.

¶ 11 Where the improper burden of proof has been applied, this court will not cure the error by reweighing the evidence. *People v. Robinson*, 2021 IL App (1st) 171371, ¶ 58; *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The appropriate remedy is to reverse and remand for the circuit court to redetermine under the proper standard. *Robinson*, 2021 IL App (1st) 171371, ¶ 58; *In re D.T.*, 212 Ill. 2d at 367. Accordingly, remand is required in this matter where the circuit court made its determination under an incorrect burden of proof. Because we have determined that remand is required on this issue, we need not address the defendant's remaining issues on appeal.

¶ 12 Finally, we note that the defendant requests that this court direct the appointment of a different judge upon remand. The defendant, however, provides no argument nor does he cite any precedent or the record regarding the basis for this request. Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) states that an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Because the defendant has failed to clearly define a cohesive argument with pertinent citations, we find no reason to direct that a new judge be appointed.

¶ 13 III. CONCLUSION

¶ 14 Based on the foregoing, we reverse the judgment of the circuit court denying the defendant's petition for a certificate of innocence where the circuit court applied the incorrect

burden of proof and remand the cause to the circuit court of Christian County for redetermination under the proper standard.

¶ 15 Reversed and remanded.