

NOTICE
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2026 IL App (5th) 250495-U
NO. 5-25-0495
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,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 21-CF-610
	)	
MICHAEL T. WADLEY,	)	Honorable
	)	Michelle M. Schafer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BOLLINGER delivered the judgment of the court.
Justices Vaughan and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* Reversible error did not occur during the pendency of defendant’s case. Because no argument to the contrary would have arguable merit, appellate counsel is granted leave to withdraw, and the judgment of the circuit court of Williamson County is affirmed.

¶ 2 In this direct appeal, defendant, Michael T. Wadley, appeals his conviction and sentence for the offense of residential burglary, following a jury trial in the circuit court of Williamson County. The Office of the State Appellate Defender (OSAD) was appointed as defendant’s counsel in this appeal. OSAD has concluded this appeal lacks arguable merit, and, on that basis, has filed a motion for leave to withdraw as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967), along with a supporting memorandum of law. OSAD properly served defendant with notice. This court gave defendant the opportunity to file a response to OSAD’s motion. Defendant has not filed

a response. Having considered OSAD's *Anders* motion and memorandum, and the entire record on appeal, this court agrees with OSAD's assessment. We therefore grant OSAD's motion to withdraw, and we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 On December 6, 2021, defendant was charged by information with residential burglary, a Class 1 felony, in violation of section 19-3 of the Criminal Code of 2012 (720 ILCS 5/19-3 (West 2020)). The information alleged that on or about December 5, 2021, defendant "knowingly, and without authority, entered" a residence in Williamson County "with the intent to commit therein a theft." Defendant was taken into custody on December 5, 2021.

¶ 5 At a pretrial hearing held on March 4, 2022, defendant asked that his scheduled trial in the case be continued. The trial court advised defendant that he had the right to a speedy trial, and that if the trial was continued on defendant's motion, defendant would not have a trial within the applicable time period. Defendant stated that he understood. Over the State's objection, the trial was continued, with the delay attributed to defendant.

¶ 6 At a hearing held on September 13, 2024, the trial court stated defendant had asked to have the public defender removed as his counsel, because defendant was concerned about "the number of cases and the inability to meet as frequent[ly] as he would like in the jail." Defendant agreed with the trial court's statement, and agreed that he was then in custody on a speedy trial waiver. Defendant thereafter stated that he did not believe the public defender would defend him "to the best of their ability or in [his] best interest," and stated that if he could not have an attorney from outside of the public defender's office, he wished to represent himself. The trial court told defendant that self-representation was "not a good idea." The trial court stated that it believed

defendant was trying “to force” the trial court to either allow defendant to represent himself, or to have an attorney appointed from outside of the public defender’s office.

¶ 7 Defendant stated that he did not want to anger the trial court, but that he believed he was “getting no information,” and getting “no help from the public defender’s office.” Defendant added, “there is a conflict. It’s a minor conflict, but there is a conflict. And I have several open cases that have conflicts with other public defenders.” The trial court stated that in light of the issues defendant raised, it was going to appoint a private attorney to represent defendant. The trial court thereafter entered a written order appointing an attorney outside of the public defender’s office.

¶ 8 At a hearing held on December 4, 2024, the trial court stated that the private attorney appointed to represent defendant had been permitted to withdraw. Defendant explained that he and the attorney had “a conflict of interest or a breakdown in communication” because the attorney would not do some of the things defendant asked him to do. Defendant stated, “I would request to proceed *pro se* due to the fact that I would like to shed some light on that matter alone.” Defendant added that there were “several” pretrial motions that he wished to file that the previous attorney would not file.

¶ 9 Thereafter, defendant expressed reservations about representing himself, due to his lack of knowledge of the law, and lack of resources to do research and prepare motions. The trial court again admonished defendant that he was charged with residential burglary, which was the case the State had elected to try next, and admonished defendant as to the potential range of penalties he faced if convicted of the charge. The trial court asked defendant if he understood that he had the right to counsel, to which he responded, “Yes, ma’am.” The trial court stated that defendant had the right to represent himself, and the court could not prevent him from doing that. Defendant

thereafter asked, “[C]an you please appoint me another lawyer so I can get assistance or so I can get counsel because I’m not—I can’t do this myself from my position.”

¶ 10 Following further discussion with the parties, during which time the State withdrew “any and all pending offers on any of the cases,” the trial court asked defendant if he wished to represent himself. Defendant answered, “I don’t know how.” The trial court asked defendant what would happen if the court appointed another attorney to represent him. Defendant answered, “I got to follow his advice. I got to allow him to do his job.” The trial court stated that it would appoint another private attorney to represent defendant, but that thereafter, defendant would “not get another attorney appointed by this court.” Defendant stated that he understood.

¶ 11 On January 27, 2025, which was one day before defendant’s jury trial was scheduled to begin, defense counsel filed a motion to withdraw, in which he stated that defendant “wishe[d] to terminate [counsel’s] representation and instead seek other counsel or represent himself.” On January 28, 2025, at the outset of the trial and outside the presence of the potential jurors, the trial court asked defendant if he no longer wished for defense counsel to represent him. Defendant stated that defense counsel had declined to file “several motions”—regarding defendant’s “speedy trial rights, along with *** violations of [his] due process rights”—that defendant wanted him to file, in order to preserve defendant’s “right to appeal” the issues, which led “to a breakdown in communication.” The court asked defense counsel to respond. Defense counsel agreed there had been a breakdown in communication regarding the motions, then stated that he did not file the motions because after he investigated them, he determined “that it would not be in his best interest to file such a motion, or they would be futile.” He stated that he was willing and ready to represent defendant at trial.

¶ 12 The trial court noted that there were potential jurors “checking in right now given their obligation to report and engage in their civic duty.” The court further noted that the case had been pending for over three years, and went over the procedural history of the case, including entanglements with other cases against defendant, which contributed to delays, as well as defendant’s multiple acknowledgments, on the record, that he was waiving his speedy trial rights. Defendant stated that he did not remember waiving his speedy trial rights in this case in 2022. The court stated that nothing it had heard so far “equate[d] to [defense counsel] failing to adequately represent” defendant, and added that defense counsel was “thoroughly prepared and wishing to continue to represent” defendant. The court again informed defendant that he had the right to represent himself, and would be allowed to do so, but added that “[t]he jury is here,” and the case would “move forward today.”

¶ 13 Defendant stated that he understood, and that he “wish[ed] to get understanding and put on record [his] concerns about the issues that [he wished] to preserve for [his] right to appeal.” He stated that the trial court “pretty much just did” make a record for defendant of defendant “waiving [his] speedy trial [rights] and everything like that.” He reiterated that he wished to preserve the issue for appeal, so that he could raise it once he requested transcripts and conducted his “own investigation” of the issue.

¶ 14 Thereafter, the trial court asked defendant if he wanted defense counsel to withdraw. Defendant answered, “Not necessarily. If I have to proceed today, then I don’t think that *** it’d be in my best interest to proceed without an attorney.” He added, “I just ask for these issues [to] be brought up and made part of the record so I can address them at a later date.” When questioned again, he agreed that he no longer wanted counsel to withdraw. Counsel agreed to continue to represent defendant, and added that he did not file motions regarding defendant’s speedy trial

rights because he “examined the docket sheet,” which “clearly indicated that defendant had waived his right to a speedy trial.” The trial court stated that it believed there was “sufficient evidence in relation to waiver of speedy trial,” and that no violation had occurred.

¶ 15 During *voir dire*, after eight jurors had been selected and excused for the day, questioning of a set of four additional potential jurors began. Only two of these four potential jurors actually served on defendant’s jury. The four potential jurors were questioned individually, but in the presence of one another. The last of these four potential jurors to be questioned by the trial court was M.M. M.M. stated that he was employed by the Williamson County Sheriff’s Office as the head of security at the courthouse where the trial was taking place. He stated that he knew both of the attorneys involved in the case, and that he knew defendant through M.M.’s “professional capacity.” He also knew three of the potential witnesses, all of whom worked for the Williamson County Sheriff’s Office as well.

¶ 16 When given the opportunity to question the four potential jurors, defense counsel asked M.M. if he could state how many times M.M. had interacted with defendant. M.M. answered, “Not an amount. It’s been numerous.” He agreed it had been “more than 20 times” over the course of “18 years.” M.M. was asked if he had developed an opinion of defendant, “good, bad, or otherwise.” M.M. answered, “No.” He thereafter stated that he had no ill feelings toward defendant, and that defendant had never made him mad. He believed he could be fair toward defendant. M.M. was excused for cause and did not serve on defendant’s jury.

¶ 17 When the trial was reconvened the following morning, the State gave an opening statement. When offered the opportunity to also give an opening statement, defense counsel stated, “Your Honor, if it please the court, the defense is going to defer its opening statement to the beginning

of its case-in-chief.” The trial court answered, “Very well,” then gave the jury general instructions before testimony began.

¶ 18 Jerica Wilkins testified that she worked for the sheriff’s office as an evidence custodian. She testified as to the chain of custody of certain pieces of evidence in this case. Wilkins was shown what was marked as People’s Exhibit 1, which she testified was “a disc with camera footage of the residence where the event happened.” She was shown what was marked as People’s Exhibit 2, which she testified was “a ball cap, gloves, and a ski mask.” She testified that the exhibits were in the same condition as when she received them.

¶ 19 Brayden Bisaillon testified that he was currently attending the Illinois State Police Academy, but that previously he was employed by the Williamson County Sheriff’s Office. He testified that he was on duty on December 5, 2021, and was dispatched at 9:07 a.m. to a residence for a residential burglary in progress. He testified that when he arrived at the residence, he met Sandra Dutton, who was outside the residence, opened a garage door for him, and authorized him to enter the residence. Bisaillon testified that another officer, Deputy Bailey Schimpf, arrived “a very short time after” he did. He testified that when the officers entered the residence, they “found the defendant inside.”

¶ 20 Bisaillon testified that when he entered the residence, he announced himself and “asked if anyone was inside the residence, to make their presence known.” He testified that no one answered, and that he and Deputy Schimpf “made [their] way through the residence.” He testified that when they encountered defendant, in the hallway, they gave “him loud verbal commands to show [them] his hands, get on the ground,” but that defendant “became argumentative” and had to be subdued by the officers. He testified that defendant struggled when the officers handcuffed him.

¶ 21 Bisailon testified that the officers removed defendant from the residence and searched him, incidentally to defendant's arrest. He identified a photograph that was marked as People's Exhibit 4, and testified that he took the photograph and that it showed "a necklace, two earrings, *** a State of Illinois pin, and two wrist watches." Bisailon identified a photograph that was marked as People's Exhibit 5, and testified that he took the photograph and that it showed "[a] box of Critical Defense ammunition, a State of Illinois badge with the name Larry E. Rix on it, as well as some sort of identification card." He testified that the items shown in the two photographs were removed from defendant's pockets when defendant was arrested and searched.

¶ 22 Bisailon testified that Dutton identified all of the objects as belonging either to her or to Larry Rix. He testified that Dutton indicated that she did not know defendant, and had never seen him before. He testified that Rix arrived, and also indicated that he did not know defendant, and had never seen him before.

¶ 23 Bisailon testified that when he, Dutton, and Rix entered the residence, there were "multiple items that appeared to have been moved throughout the residence." He testified that he took additional photographs, identified what was marked as People's Exhibit 6 as one of those photographs, and testified that it showed a surveillance camera that had "been manipulated to not be facing the way it was." He testified that what was marked as People's Exhibit 7 was another photograph he had taken, and that it showed another surveillance camera, this time in the garage, that had been manipulated. Bisailon testified that what was marked as People's Exhibit 8 was a photograph he had taken that showed various items that belonged to Dutton or Rix that were found in a suitcase. He identified additional photographs and testified that they showed "an office with a bunch of computers on a desk," a "suitcase on a bed," and "a pair of boots and red gloves."

¶ 24 Bisailon testified that while he was at the residence, he viewed surveillance footage that Rix had obtained from his cameras, and that he took photographs of some of that footage as it was displayed on Rix's computer. He identified photographs that showed "defendant with his hand on the back door of the residence," then "defendant inside the greenroom of the residence," then "defendant looking at the camera in the greenroom." He thereafter identified additional photographs of "defendant inside the garage, looking at the camera in the garage," and of "defendant in the garage, reaching his hand by the safe."

¶ 25 The photographs were admitted into evidence, and Bisailon identified defendant as the person he "found in Larry Rix's residence on" December 5, 2021. He also identified People's Exhibit 1 as a disc containing surveillance footage provided by Rix, and that exhibit was admitted into evidence as well. He testified that "some days" after December 5, 2021, Rix contacted him to tell him that Rix had found a cap, gloves, and a ski mask in the residence. Bisailon testified that he returned to Rix's residence, collected those items from Rix, and that the items were now marked as People's Exhibit 2, which was then admitted into evidence. He testified that in the surveillance footage, defendant could be seen wearing the items. The video and photographic exhibits he identified were thereafter published to the jury.

¶ 26 Officer Bailey Schimpf testified that he was a police officer for the city of Carterville, but that on December 5, 2021, he was employed as a sheriff's deputy. He testified that he remembered assisting with "an arrest for a residential burglary *** at the residence of Larry Rix." He identified defendant as the person he assisted Bisailon in arresting that day. On cross-examination, he testified that after defendant was arrested, Bisailon searched defendant and removed items from defendant's pockets, which were placed on the driveway.

¶ 27 Sandra Dutton testified that she was Larry Rix’s “significant other,” and that she sometimes stayed at the residence in question. She testified that on the morning of December 5, 2021, she left the residence to go to church, and saw that a motorcycle was parked under the carport. She testified that the motorcycle was not usually parked there, and that she called Rix to tell him about it. Dutton testified that Rix told her not to go back to the house, because he had pulled up live surveillance footage and there was someone in the garage. She testified that she called the police, then waited at a distance from the residence until she saw a police car arrive. She testified that she then met Deputy Bisaillon in the driveway, and used her garage door opener to open the garage “so that he would have immediate access to the house.” Dutton testified that Deputy Bisaillon immediately entered the house, another deputy arrived shortly thereafter, and that the deputies eventually brought a handcuffed man out of the house. She identified defendant as the man who was removed from the house by the deputies. She testified that she did not know defendant, had never seen him before, and had not given him permission to be in the house.

¶ 28 Using some of the photographs that were previously admitted into evidence, Dutton identified items that, to her knowledge, were removed from defendant’s “person” that belonged to her or to Rix. She testified that defendant did not have permission to possess the items, or to remove them from the residence. She testified that when she, Rix, and Deputy Bisaillon entered the home together, she noticed that her laptop and docking station wires were no longer where she left them. She also noticed that her suitcase had been moved, some items had been dumped out of it, and other items had been placed into it. On cross-examination, Dutton testified that she did not see the deputies remove the items that belonged to her and Rix from defendant’s person, but that the deputies laid the items on the driveway for her to examine.

¶ 29 Larry Rix testified that he owned the residence where the burglary occurred, and that Dutton was his “significant other.” He testified that on December 5, 2021, he went to work at approximately 5:30 a.m., and that Dutton was still at the residence when he left for work. When asked about his home surveillance system, Rix testified that he had “a series of security cameras located in different places,” and that he could access footage from the cameras via his phone. He testified that at around 8:45 a.m. that morning, he received a call from Dutton that there was a motorcycle under their carport. He testified that when he viewed surveillance footage on his phone, he “saw someone enter the back door” to the residence. Rix testified that he called Dutton and told her not to go back into the home, because Rix had seen someone on the surveillance video.

¶ 30 Rix testified that he went to the residence, and that when he arrived, he learned that a man had been arrested inside. He testified that he saw the man—whom he identified as defendant—in one of the police cars parked at the residence. He testified that he did not know defendant, had never seen him before, and did not give him permission to be in the residence on December 5, 2021, or any other date. Using some of the photographs that were previously admitted into evidence, Rix identified items that belonged to him or Dutton that police had laid out on the ground for him to examine. He testified that he learned that the items had been removed from defendant’s person. He testified that he did not give defendant permission to possess any of the items.

¶ 31 Rix testified that when he, Dutton, and Deputy Bisailon entered the residence together, he noticed that two of his security cameras had been moved from the position they were in when he left the residence that morning. He testified consistently with Dutton as to other items in the house being moved from where they were earlier in the day. He testified that “[s]ome time afterward,” he found a hat, ski mask, and some gloves at the residence that did not belong to him. He testified that they matched items defendant was wearing in the surveillance footage.

¶ 32 Following Rix’s testimony, the State rested. A lunch recess followed, after which defense counsel stated that he had spoken with defendant during the lunch break, and that defendant did not wish to testify. The trial court asked defense counsel if he still intended to present the opening statement that he had deferred, to which defense counsel answered, “No. I will just do a closing.” The trial court then ensured defendant was making a knowing waiver of his right to testify. The defense rested without presenting any evidence.

¶ 33 In closing argument, defense counsel thanked the jurors for their service, then stated that he was there to remind them that the State’s burden was to prove defendant guilty beyond a reasonable doubt, which he stated was “the highest burden in the law.” He added, “I am confident that after you examine closely the evidence *** you will return a verdict of not guilty.” The jury was instructed, then retired to deliberate. The jury found the defendant guilty of residential burglary.

¶ 34 Defendant’s sentencing hearing was held on May 20, 2025. The parties stated they had reviewed defendant’s presentence investigation report, and agreed that no corrections to it were needed. In aggravation, the State presented the testimony of Rix and Dutton, each of whom testified that they were over the age of 73 on December 5, 2021, and that defendant was arrested at the residence in question with their “personal property on his person.” The State recommended “the maximum sentence” for defendant—which was 15 years of imprisonment—based in part on defendant’s extensive criminal history, which the State described in detail.

¶ 35 Defense counsel argued that defendant had “led a very difficult life” since childhood, including struggles with drug addiction, and had expressed remorse for the present crime. He recommended a sentence of seven years of imprisonment. Defendant offered a statement in allocution, in which he apologized to Rix and Dutton, and stated that he hoped the incident did not

have “everlasting effects” on them. He also discussed his need for drug treatment, and his remorse for the crime.

¶ 36 The trial court stated the aggravating factors it had considered, including defendant’s “troubling criminal history,” the risk of bodily harm based upon defendant’s resistance to being taken into custody, the potential financial gain to defendant from the offense, the need to deter others, and that the offense was committed against victims over the age of 60. The trial court noted defendant’s difficult childhood and lack of positive guidance, but ultimately did “not find any factors in mitigation.” The trial court sentenced defendant to 14 years of imprisonment, to be followed by 1 year of mandatory supervised release. The court stated that it would recommend substance abuse treatment for defendant during his term of incarceration, and admonished defendant of his appeal rights. The trial court entered judgment on the conviction, and ordered the State to prepare a mittimus.

¶ 37 The mittimus that was thereafter filed showed that defendant’s sentence was to be served at 50%. On June 13, 2025, defendant filed *pro se* a notice of appeal. On June 18, 2025, defense counsel also filed a notice of appeal. OSAD was appointed to represent defendant on appeal, and filed an amended notice of appeal on July 16, 2025.

¶ 38 II. ANALYSIS

¶ 39 As noted above, OSAD has filed an *Anders* motion to withdraw as counsel. In the legal memorandum that accompanies its motion, OSAD raises nine potential issues, which we discuss in detail below. However, OSAD concludes that none of these nine potential issues have arguable merit. For the reasons that follow, we agree. We therefore grant OSAD’s motion to withdraw, and we affirm the judgment of the circuit court of Williamson County.

¶ 40 We first note that none of the nine potential issues raised by OSAD were raised by defendant in a posttrial motion. In fact, no substantive posttrial motions were filed in this case at all. OSAD has not acknowledged this fact, and has not put forward any argument that the plain error doctrine should apply. Therefore, defendant has waived, in the trial court and on appeal, his right to raise any of the nine potential issues. See, *e.g.*, *People v. Reichert*, 2023 IL App (5th) 180537, ¶ 117. Nonetheless, to ensure OSAD’s motion to withdraw is proper, we will review the nine potential issues.

¶ 41 The first issue OSAD considered raising is whether defendant was denied his right to self-representation at the September 13, 2024, and December 4, 2024, hearings, or at the outset of his jury trial on January 28, 2025. As OSAD points out, the law related to this issue is clear. “A defendant has a constitutional right to represent himself,” but in order to exercise that right, “a defendant must knowingly and intelligently relinquish his right to counsel.” *People v. Baez*, 241 Ill. 2d 44, 115-16 (2011). Such a waiver “must be clear and unequivocal, not ambiguous.” *Id.* at 116. In addition, a defendant’s right to represent himself is waived unless the defendant demands, articulately and unmistakably, that he wishes to proceed *pro se*. *Id.* This requirement exists in part to prevent a “ ‘defendant from manipulating or abusing the system by going back and forth between his request for counsel and his wish to proceed *pro se*.’ ” *Id.* (quoting *People v. Mayo*, 198 Ill. 2d 530, 538 (2002)).

¶ 42 To determine whether a defendant’s request to waive counsel is clear and unequivocal, rather than ambiguous, a court must determine whether the defendant truly desires to represent himself and has definitively invoked the right of self-representation. *Id.* at 116. In so doing, a court is to indulge every reasonable presumption against a waiver of a defendant’s constitutional right

to counsel. *Id.* The court’s determination is dependent upon the facts and circumstances of the case, including the background, experience, and conduct of the accused. *Id.*

¶ 43 The facts related to each of the court appearances OSAD notes in this case are described in detail above. As OSAD correctly points out, at no time, during any of those appearances, did defendant definitively invoke his right to self-representation. At the September 13, 2024, hearing, defendant stated that he wished to represent himself *if* he could not have an attorney appointed from outside of the public defender’s office to represent him. He was appointed such an attorney, and did not thereafter state at that hearing that he wished to represent himself.

¶ 44 At the December 4, 2024, hearing, defendant initially stated that he wished to represent himself. Thereafter, he expressed reservations about representing himself, due to his lack of knowledge of the law, and lack of resources to do research and prepare motions. After the trial court again admonished defendant of the charge he faced, the potential range of penalties, his right to counsel, and his right to represent himself, defendant asked, “[C]an you please appoint me another lawyer so I can get assistance or so I can get counsel because I’m not—I can’t do this myself from my position.” Following further discussion with the parties, the trial court again asked defendant if he wished to represent himself, to which defendant answered, “I don’t know how.” The trial court appointed another private attorney to represent defendant, and defendant did not thereafter state at that hearing that he wished to represent himself.

¶ 45 At the outset of defendant’s jury trial—because defense counsel had filed a motion to withdraw the previous day—defendant was asked if he no longer wished for defense counsel to represent him. Defendant stated that defense counsel had declined to file “several motions” that defendant wanted him to file, which led “to a breakdown in communication.” The trial court noted that there were potential jurors “checking in right now given their obligation to report and engage

in their civic duty,” that the case had been pending for over three years, and that although defendant had the right to represent himself, and would be allowed to do so, “[t]he jury is here” and the case would “move forward today.” Thereafter, the trial court asked defendant if he wanted defense counsel to withdraw. Defendant answered, “Not necessarily. If I have to proceed today, then I don’t think that *** it’d be in my best interest to proceed without an attorney.” When questioned again, he agreed that he no longer wanted counsel to withdraw.

¶ 46 We reiterate that at no time, during any of the foregoing appearances, did defendant definitively invoke his right to self-representation. To the contrary, he engaged in exactly the sort of equivocating between requesting counsel and wishing to proceed *pro se* that has been held to be an improper attempt to manipulate and abuse the court system. See *Baez*, 241 Ill. 2d at 116. Based upon the foregoing facts, and the aforementioned case law, we conclude that OSAD is correct that any claim that defendant was denied his right to self-representation at any point in this case would be without arguable merit.

¶ 47 The second issue OSAD considered raising is whether defendant was proven guilty beyond a reasonable doubt of residential burglary. When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bush*, 2023 IL 128747, ¶ 33. Rather than retry the case, a reviewing court will defer to the trier of fact on findings of witness credibility, the weight to be afforded to the evidence, and the reasonable inferences to be drawn from the evidence. *People v. Steger*, 2018 IL App (2d) 151197, ¶ 22. Thus, the reviewing court will not substitute its judgment for that of the trier of fact on these matters, and we will not reverse a conviction simply because a defendant claims that a witness was not credible.

People v. Williams, 2020 IL App (4th) 180554, ¶¶ 46-47. Instead, a reviewing court will set aside a criminal conviction only where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Swenson*, 2020 IL 124688, ¶ 35. In considering whether a defendant was proven guilty beyond a reasonable doubt, we review the evidence in the light most favorable to the State and draw all reasonable inferences from the evidence in the State's favor. *People v. Cunningham*, 212 Ill. 2d 274, 278-80 (2004). "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

¶ 48 "To prove the offense of residential burglary, the State must prove that defendant knowingly and without authority entered or remained within the dwelling place of another with the intent to commit a felony or theft therein." *People v. Smith*, 2021 IL App (5th) 190066, ¶ 64. A jury "may infer the requisite intent to commit theft from proof of an unlawful breaking and entry into a building containing personal property that could be the subject of larceny." *People v. Ranstrom*, 304 Ill. App. 3d 664, 678 (1999). Reasonable inferences of intent include those based upon "the circumstantial evidence of the facts, including the time, place, and manner of entry into the premises, the defendant's activity within the premises, and any lack of alternative explanations for his presence." *Id.*

¶ 49 In this case, the State presented evidence that defendant was arrested inside Rix's home, that he did not have permission or authority to be there, or to possess or remove items from the home, and that he had in his possession at the time of his arrest items that belonged to Rix, and items that belonged to Dutton. The State also presented video evidence of defendant entering the home, and inside the home, before law enforcement officers arrived. Moreover, the State presented evidence of other items being moved from their original locations, which could lead a reasonable

jury to infer that defendant intended to remove some or all of those items from the residence as well. In light of the evidence presented at defendant's jury trial, and the aforementioned standard of review, we agree with OSAD that any claim that the State did not prove defendant guilty beyond a reasonable doubt of residential burglary would be without arguable merit.

¶ 50 The third issue OSAD considered raising is whether the trial court complied with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during *voir dire*. Rule 431(b) requires the trial court in a criminal case to question prospective jurors as to their understanding and acceptance of four principles of law, derived from *People v. Zehr*, 103 Ill. 2d 472 (1984) and its progeny, and commonly referred to as the *Zehr* principles. See *People v. Choate*, 2018 IL App (5th) 150087, ¶¶ 1, 37. The four principles are that (1) defendant is presumed to be innocent of the charge against him, (2) defendant is not required to offer any evidence on his behalf, (3) the State must prove defendant guilty beyond a reasonable doubt, and (4) jurors may not draw any negative inferences if defendant chooses not to testify. *Id.* ¶ 37. "Prospective jurors may be questioned individually or in a group," provided that "every juror must have the opportunity to respond to questions about whether they both understand and accept each of these four principles." *Id.* OSAD is correct that there exists in this case no factual basis for any claim that the trial court did not comply with Rule 431(b). As OSAD notes, the trial court's questioning of the potential jurors during *voir dire* "was proper and thorough," and the trial court's recitation of the applicable principles of law "was almost verbatim as prescribed in Rule 431(b)." Any claim of error would be without arguable merit.

¶ 51 The fourth issue OSAD considered raising is whether the trial court abused its discretion or relied on improper factors at sentencing. The imposition of a sentence is left to the sound discretion of the trial court, and a reviewing court will not alter the trial court's sentence unless the

trial court has abused its discretion. *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 15. “The abuse of discretion standard has been viewed as the most deferential standard of review available with the exception of no review at all.” *Id.* We give such great deference to the trial court because it “is in the best position to consider the defendant’s credibility, demeanor, general moral character, mentality, social environment, habits, and age.” *Id.* We will not find an abuse of discretion unless the trial court’s sentencing decision is arbitrary, fanciful, or unreasonable, or unless no reasonable person would take the view adopted by the trial court in its decision. *Id.* ¶ 26. Moreover, we may not overturn a sentence merely because we might have weighed the pertinent statutory factors differently. *Id.*

¶ 52 Sentences are presumed to be proper, and if a trial court’s sentence “falls within the statutorily prescribed range, it will not be found to be excessive or an abuse of discretion unless the sentence greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense.” *Id.* ¶ 28. We have held that the spirit and purpose of the law are promoted if the trial court’s sentence reflects the seriousness of the offense, while also giving sufficient consideration to the defendant’s rehabilitative potential. *Id.* Moreover, “if mitigating evidence is presented at the sentencing hearing, a reviewing court presumes the trial court took that evidence into consideration, absent some contrary evidence.” *Id.* ¶ 29. There is no requirement that the trial court recite or assign a value to each factor presented at the sentencing hearing, and the defendant bears the burden to affirmatively establish that a sentence was based on improper considerations. *Id.*

¶ 53 As OSAD notes, following his conviction for residential burglary in this case, defendant faced a sentence of up to 15 years of imprisonment, which was the sentence the State requested. The sentence imposed by the trial court—14 years—was within the statutory range. The trial court

did not consider any improper factors. In light of the aggravating factors the trial court properly considered—defendant’s “troubling criminal history,” the risk of bodily harm based upon defendant’s resistance to being taken into custody, the potential financial gain to defendant from the offense, the need to deter others, and the fact that the offense was committed against victims over the age of 60—the sentence was reasonable, and would not support a claim that it greatly varied from the spirit and purpose of the law, or was manifestly disproportionate to the nature of the offense. Accordingly, OSAD is correct that any claim regarding the propriety of defendant’s sentence would be without arguable merit.

¶ 54 The fifth issue OSAD considered raising is whether the trial court was required to hold a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), based on defendant’s *pro se* pretrial complaints about the effectiveness of his counsel. Pursuant to *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel, the trial court does not automatically appoint new counsel to represent the defendant. *People v. Shamhart*, 2016 IL App (5th) 130589, ¶ 32. Instead, the trial court holds a preliminary inquiry in which it examines the factual basis of the defendant’s claim. *Id.* If the trial court determines the defendant’s claim is without merit, or involves only matters of trial strategy, the trial court should deny the *pro se* motion without appointing new counsel. *Id.* If, on the other hand, the defendant’s allegations show possible neglect of the case, new counsel should be appointed to represent the defendant at a full hearing on the defendant’s claims. *Id.*

¶ 55 As OSAD correctly notes, as a general rule, a court has no obligation to apply *Krankel* prior to trial, because the outcome of the trial has not yet been determined and, therefore, it is impossible to determine if counsel’s alleged errors affected the outcome in a manner that would prejudice the defendant and constitute ineffective assistance. *People v. Washington*, 2012 IL App

(2d) 101287, ¶ 20. However, an exception to this general rule exists if the question of prejudice to the defendant by counsel's alleged errors is irrelevant, such as when the defendant's allegation is one of a complete deprivation of counsel, or of a conflict of interest. *Id.* To determine if the exception has been triggered, a trial court should assess the defendant's pretrial allegations. *Id.* ¶ 22. If the exception applies, the court should conduct a preliminary *Krankel* inquiry. *Id.*

¶ 56 In this case, as explained in detail above, defendant complained about counsel's performance on three occasions prior to trial: at the September 13, 2024, and December 4, 2024, hearings, and at the outset of his jury trial on January 28, 2025. Following the trial court's examination and assessment of defendant's complaints on the first two occasions, the trial court provided defendant with a new attorney to represent him at trial, obviously negating the need for any further inquiry into the pretrial conduct of his previous attorneys.

¶ 57 Following the trial court's examination and assessment of defendant's complaints at the outset of defendant's trial, defendant expressly stated that he did not want defense counsel to withdraw, and that he wished to raise his complaints about his speedy trial rights so that the issue could be preserved for appeal. He specifically stated, "I just ask for these issues [to] be brought up and made part of the record so I can address them at a later date." Aside from the failure to file motions pertaining to defendant's speedy trial rights, defendant did not raise any other issues with defense counsel's pretrial performance.

¶ 58 Below, we have considered, and rejected, the proposition that a meritorious argument could be raised that defendant's statutory right to a speedy trial was violated. Because we have thoroughly considered, and rejected, the issue that defendant complained defense counsel would not raise for him prior to trial, defendant can show no prejudice from defense counsel's pretrial actions. Accordingly, the trial court did not commit reversible error when it did not hold a formal

preliminary *Krankel* inquiry prior to defendant's trial. No argument to the contrary would have arguable merit.

¶ 59 The sixth issue OSAD considered raising is whether defendant's statutory right to a speedy trial was violated. Section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a) (West 2022)) contains the Illinois statutory speedy trial provisions. It states that a defendant who is in custody must be tried within 120 days of arrest, unless the delay is attributed to the defendant, or unless other exceptions that are not applicable to this case are present. *Id.* Section 103-5(a) further states that "[d]elay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record." *Id.* It specifies that "the 120-day term must be one continuous period of incarceration," that "[i]n computing the 120-day term, separate periods of incarceration may not be combined," and that "[i]f a defendant is taken into custody a second (or subsequent) time for the same offense, the term will begin again at day zero." *Id.*

¶ 60 If a defendant's statutory speedy trial rights are violated, the defendant must be discharged from custody, and the charges against the defendant must be dismissed. *People v. Mayfield*, 2023 IL 128092, ¶ 19. When this court evaluates issues related to statutory speedy trial rights, we employ two standards of review. *People v. Pettis*, 2017 IL App (4th) 151006, ¶ 17. We afford great deference to the trial court with regard to its determinations as to who is responsible for a delay of the trial, and sustain such determinations absent a clear showing that the trial court abused its discretion. *Id.* Thus, if the question on appeal involves whether a defendant agreed to, caused, or objected to a delay, we employ an abuse-of-discretion review. *Id.* However, the ultimate question of whether a defendant's statutory right to a speedy trial was violated is reviewed *de novo*. *Id.*

¶ 61 In this case, OSAD is correct that any claim asserting a violation of defendant's statutory speedy trial rights would be without arguable merit. As OSAD correctly notes, a review of the record in this case demonstrates that defendant was arrested and taken into custody on December 5, 2021, the day the incident occurred. On March 4, 2022, defendant asked that his scheduled jury trial in this case be continued. The trial court advised defendant that he had the right to a speedy trial, and that if the trial was continued on defendant's motion, defendant would not have a trial within the applicable time period. Defendant stated that he understood. Over the State's objection, the trial was continued, with the delay attributed to defendant. At that point, he had been in custody for 89 days, meaning that under the authority cited above, his speedy trial rights had not been violated. On March 14, 2022, he was released on a recognizance bond.

¶ 62 Defendant was thereafter taken back into custody, but in different cases, not this case. Immediately prior to defendant's trial, the trial court made findings on the record with regard to defendant's additional time spent in custody in this case. The trial court found that on March 15, 2024, defendant was again in custody in this case, after announcing ready for trial and receiving a trial date of June 4, 2024. Thus, pursuant to the trial court's findings, on March 15, 2024, defendant's statutory speedy trial clock began again at day zero. See 725 ILCS 5/103-5(a) (West 2022). However, on May 20, 2024, at the final pretrial hearing, defendant stated that he wanted to hire private counsel. The trial court found that on that date, defendant acknowledged that his speedy trial rights were being waived so that he could try to find private counsel to represent him. Additional continuances occurred, all of which the trial court found were either attributable to defendant, or agreed to by defendant.

¶ 63 Thus, as OSAD correctly notes, pursuant to the trial court's findings, there was a 319-day period between March 15, 2024—the date on which defendant was again in custody in this case,

and his speedy trial clock began again at zero—and January 28, 2025, the date defendant’s jury trial began. The trial court found that defendant was in custody in this case for the first 66 days of that time period: March 15, 2024, to May 20, 2024. The trial court found that for the remaining 253 days of that time period, defendant was in custody, but his speedy trial rights were tolled, with all delays either attributable to defendant, or agreed to by defendant.

¶ 64 As explained above, we afford great deference to the trial court with regard to its determinations as to who is responsible for a delay of the trial, and sustain such determinations absent a clear showing that the trial court abused its discretion. See *Pettis*, 2017 IL App (4th) 151006, ¶ 17. In this case, defendant stated just prior to his 2025 trial that he did not remember waiving his speedy trial rights in 2022. However, there is no clear showing in the record—which includes not only the trial court’s express, on-the-record findings in 2025, but also the docket sheet entries made by the trial court throughout the pendency of this case—that the trial court abused its discretion in its determination of responsibility for the various delays prior to defendant’s trial. Moreover, based upon the findings and calculations above, our *de novo* review of the ultimate question of whether defendant’s statutory right to a speedy trial was violated leads us to conclude that it was not violated. See *id.* Pursuant to the speedy trial statute, neither defendant’s 89-day term in custody in this case, nor his subsequent 66-day term in custody, constitutes a violation of defendant’s statutory speedy trial rights. See 725 ILCS 5/103-5(a) (West 2022).

¶ 65 The seventh issue OSAD considered raising is whether the *voir dire* statements made by prospective juror M.M. tainted the jury panel. OSAD is correct that “[t]he constitutional right to a jury trial encompasses the right to an impartial jury.” *People v. Rinehart*, 2012 IL 111719, ¶ 16. *Voir dire* questioning exists to ensure the selection of a jury free from bias or prejudice. *Id.* The trial court bears the primary responsibility for *voir dire*, to ensure that proper questioning of

potential jurors takes place. *Id.* “Because there is no precise test for determining which questions will filter out partial jurors, the manner and scope of the examination rests within the discretion of the trial court, and we review such decisions for an abuse of discretion.” *Id.* It is axiomatic that *voir dire* questioning, whether initiated by the trial court, or by the parties with the sanction of the trial court, must not be used to attempt to indoctrinate a jury, or to impanel a jury with a particular disposition. *Id.* ¶ 17. “Broad questions are generally permissible,” whereas “[s]pecific questions tailored to the facts of the case and intended to serve as ‘preliminary final argument’ are generally impermissible.” *Id.*

¶ 66 In this case, there was no attempt by either party to indoctrinate the jury, or to impanel a jury with a particular disposition. There was also no improper questioning of M.M., and he made no statements that reasonably could be considered prejudicial to defendant. When questioned generally by the trial court, M.M. stated that he was employed by the Williamson County Sheriff’s Office, as the head of security at the courthouse where the trial was taking place. He stated that he knew both of the attorneys involved in the case, and that he knew defendant through M.M.’s “professional capacity.” When given the opportunity to follow up, defense counsel asked M.M. if he could state how many times M.M. had interacted with defendant. M.M. answered, “Not an amount. It’s been numerous.” He agreed it had been “more than 20 times” over the course of “18 years.” M.M. was asked if he had developed an opinion of defendant, “good, bad, or otherwise.” M.M. answered, “No.” He thereafter stated that he had no ill feelings toward defendant, that defendant had never made him mad, and that he believed he could be fair toward defendant. M.M. was excused for cause and did not serve on defendant’s jury.

¶ 67 As OSAD correctly points out, M.M. did not express any negative opinions about defendant, and did not state or imply anything negative about his experiences with defendant at

the courthouse. He also did not state or imply that defendant was involved in prior criminal proceedings at the courthouse, as opposed to perhaps working at the courthouse, making deliveries to the courthouse, or visiting the courthouse for other reasons that had nothing to do with criminal proceedings. We note as well that 8 of the 12 jurors who served in defendant's case had already been sent home for the day, and did not hear M.M.'s statements, and that only two jurors who served in the case were present when the statements were made. There is nothing in the record to indicate that either of these two jurors was influenced by M.M.'s statements, drew negative conclusions from them, or was otherwise "tainted" in any way. Moreover, each juror who served on defendant's jury confirmed that they would be fair and impartial, and that they would follow the Rule 431(b) *Zehr* principles and all other applicable instructions and law. For all of these reasons, OSAD is correct that any claim that M.M.'s answers during *voir dire* deprived defendant of a fair and impartial jury would be without arguable merit.

¶ 68 The eighth issue OSAD considered raising is whether defense counsel provided ineffective assistance of counsel when he waived the opportunity to give an opening statement. However, as OSAD notes, this court has held that "[a] defense attorney's decision to make or waive an opening statement on behalf of a defendant is a question of judgment in strategy or tactics that will not in and of itself demonstrate the ineffective assistance of counsel." *People v. Penrod*, 316 Ill. App. 3d 713, 724 (2000). This is true because " '[o]nly the most egregious of tactical or strategic blunders may provide a basis for a violation of a defendant's right to effective assistance of counsel.' " *Id.* (quoting *People v. Davis*, 228 Ill. App. 3d 123, 127 (1992)). Moreover, strategic reasons for waiving an opening statement can exist, such as a desire not to be confined to "one particular theory" of the case, when more flexibility might be beneficial, as well as concern that the defendant

may testify in a manner inconsistent with counsel's opening statement, and that the jury may hold this fact against the defendant. *Id.* at 724-725.

¶ 69 We agree with OSAD that in this case, strategic reasons to waive an opening statement may have existed, including the above, notwithstanding the fact that ultimately defendant chose not to testify. Trial strategy may have informed defense counsel's decision, particularly in light of the fact that the evidence against defendant was overwhelming, and that there was very little defense counsel could tell the jury that would benefit defendant, other than reminding them—as counsel did in closing—that the State was required to prove defendant guilty beyond a reasonable doubt, which was “the highest burden in the law.” Accordingly, any claim of ineffective assistance of trial counsel on the basis of defense counsel's waiver of the opportunity to give an opening statement would be without arguable merit.

¶ 70 The ninth issue OSAD considered raising is whether the jury was properly instructed on the applicable law. Illinois Supreme Court Rule 451(a) (eff. Apr. 8, 2013) requires that, in a criminal case, the trial court instruct the jury pursuant to the pattern criminal instructions unless the trial court determines that a pattern instruction does not accurately state the law applicable to the case. We agree with OSAD that there was no jury instruction error in this case, because all of the instructions tendered by the State—and agreed to by defense counsel—were pattern jury instructions that accurately stated the law for the charge of residential burglary. As OSAD notes, the jury was properly instructed as to the definition and elements of residential burglary, and was provided with appropriate verdict forms that were consistent with the instructions. Any claim that the jury was not properly instructed would be without arguable merit.

¶ 71

III. CONCLUSION

¶ 72 For the foregoing reasons, the motion of appointed counsel to withdraw is granted, and the judgment of the circuit court is affirmed.

¶ 73 Motion granted; judgment affirmed.