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No. 130082

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. ROBERT D. DYAS, Defendant-Appellee.	))))))))))	On Appeal from the Appellate Court of Illinois, Third District, No. 3-22-0112 There on Appeal from the Circuit Court of Thirteenth Judicial Circuit, Bureau County, Illinois, No. 17 CF 61 The Honorable James Andreoni, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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ARGUMENT

The appellate court lacked jurisdiction over defendant's appeal. When a defendant pleads guilty, the notice of appeal must be filed within 30 days of the denial the defendant's Rule 604(d) post-judgment motion. *People v. Walls*, 2022 IL 127965, ¶ 19; *see also* Ill. S. Ct. Rs. 604(d) & 606(b). Defendant's November 2018 notice of appeal was timely, but he voluntarily dismissed that appeal. Defendant's argument that his motion to reconsider the denial of his Rule 604(d) post-judgment motion tolled the time to file the second notice of appeal is foreclosed by *Walls*, 2022 IL 127965, ¶ 26. Thus, defendant's March 2022 notice of appeal that followed the denial of his motion to reconsider was untimely.

This Court could vacate the appellate court's judgment because it lacked jurisdiction. However, the Court should exercise its supervisory authority to address the conflict in the appellate court and hold that Rule 401(a) does not apply in post-judgment proceedings. Rule 401(a) requires only that its admonitions be given to "a person accused of an offense punishable by imprisonment." Ill. S. Ct. R. 401(a). After sentence is imposed, and thus the final judgment entered, a defendant is not accused of an offense but *convicted* of one. By its plain language, Rule 401(a) does not apply to post-judgment proceedings. Defendant's argument that a defendant remains "accused of an offense" perpetually unless the charge has been "retracted" conflicts with the settled definition of the word "accused." And

the argument disregards that the Court has separately promulgated specific rules for the post-judgment context, which include admonitions that a court must give a defendant after judgment.

Because Rule 401(a) does not apply, the only question is whether defendant's waiver of counsel was knowing and intelligent. It was. Defendant was repeatedly warned about his right to counsel and the dangers of self-representation, he understood these dangers, and he decided that he would rather represent himself than accept his court-appointed counsel. Thus, the Court should reverse the appellate court's judgment.

I. The Appellate Court Lacked Jurisdiction Because Defendant Filed the Notice of Appeal Years After the Denial of his Rule 604(d) Motion.

The appellate court lacked jurisdiction because defendant failed to file the operative notice of appeal within 30 days of the denial of his Rule 604(d) motion to withdraw his plea. *See* Peo. Br. 22-24. Before filing a notice of appeal, Rule 604(d) requires a defendant who entered a plea of guilty to file a motion to reconsider sentence or withdraw his plea "within 30 days of the date on which sentence is imposed." Ill. S. Ct. R. 604(d). "If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, *measured from the date of entry of the order denying the motion*." *Id.* (emphasis added). And Rule 606 provides a 30-day window to appeal. Ill. S. Ct. R. 606(b). These "rules plainly required defendant to file his notice of appeal within 30 days after entry of the trial

court's order disposing of his motion directed against the final judgment," which this Court "has consistently and repeatedly held . . . is the sentence." *Walls*, 2022 IL 127965, ¶ 19 (internal quotation marks omitted). Thus, the Court's "rules require filing a notice of appeal within 30 days after the denial of a Rule 604(d) postjudgment motion . . . to withdraw a guilty plea." *Id.* ¶ 26.

Here, the trial court denied defendant's Rule 604(d) post-judgment motion to withdraw his guilty plea on October 18, 2018. C182. Defendant filed a timely notice of appeal by mailing it (with the appropriate certificate of service) to the circuit clerk on November 14, 2018, C188; *see also People v. Shunick*, 2024 IL 129244, ¶¶ 52, 60; Ill. S. Ct. Rs. 12(b)(6) & 373(b), thereby conferring the appellate court with jurisdiction over defendant's first appeal, C191, 196.[1] However, the appellate court's jurisdiction ended on April 6, 2020, when it granted defendant's motion to dismiss the appeal and remanded for proceedings on his motion to reconsider the denial of his post-judgment motion. C235.

Defendant does not dispute that the notice of appeal filed in March 2022 was not filed within 30 days of the October 2018 denial of his Rule

[1] Defendant's argument distinguishing *Shunick*, *see* Def. Br. 33, is inapposite, as the People cited that case merely for the proposition that defendant's November 14, 2018 notice of appeal had a certificate of service that complied with Rules 12(b)(6) and 373(b), *see* Peo. Br. 23.

604(d) motion. *See* Def. Br. 10, 31. Thus, the appellate court lacked jurisdiction. *Walls*, 2022 IL 127965, ¶¶ 19, 26.

Defendant's attempt to avoid *Walls* fails. He argues that he "did not file a successive post-judgment motion, but instead filed a motion to reconsider the denial of his motion to vacate." Def. Br. 34. But *Walls* made clear that defendant's motion to reconsider is, in fact, a successive post-judgment motion: "The only postsentencing motions contemplated by Rules 604(d) and 606(b) in this context are a motion to reconsider the sentence and a motion to withdraw the guilty plea" and "Rule 606(b) provides a 30-day time period for filing an appeal following the denial of one of those Rule 604(d) motions." 2022 IL 127965, ¶ 24. Thus, a "successive postjudgment motion to reconsider the denial of a Rule 604(d) motion does not toll the time for filing an appeal." *Id.* ¶ 26; *see also People v. Ratliff*, 2024 IL 129356, ¶ 27 (Rule 604(d) "'promote[s] the finality of judgments by preventing repeated or successive postjudgment motions that only prolong the proceedings'").

Contrary to defendant's contention, that there was no "initial timely-filed notice of appeal" in *Walls* does not change the analysis or the result. Def. Br. 33. The appellate court's jurisdiction over the November 2018 appeal ended when it granted defendant's motion to dismiss in April 2020, C235, and did not transfer to the separate March 2022 appeal. The appeals were initiated upon different notices of appeal, filed years apart, and were distinct

proceedings with different case numbers, No. 3-18-0684 and No. 3-22-0112.[2] Nor did the appellate court retain jurisdiction over the November 2018 appeal, such that the 2022 appeal could be considered a continuation of the earlier appeal. *See People v. Garrett*, 139 Ill. 2d 189, 194-95 (1990) (Rule 615(b)(2) authorizes appellate court to remand "for hearing on particular matter while retaining jurisdiction"). To the contrary, the appellate court's April 2020 order declared the 2018 "APPEAL DISMISSED." A23.

Defendant's reliance on *People v. Lindsay*, 239 Ill. 2d 522 (2011), *see* Def. Br. 35-36, is misplaced. In Lindsay's initial appeal from the denial of his Rule 604(d) motion, the reviewing court reversed the trial court's denial of the Rule 604(d) motion and remanded for new proceedings on that motion. *Lindsay*, 239 Ill. 2d at 524, 531. "The trial court then considered the [Rule 604(d)] motion a second time, and once again denied it." *Id.* at 531. And Lindsay then appealed again. *See id.* at 524. Here, by contrast, the appellate court did not grant defendant relief in his November 2018 appeal; rather, the appeal was *dismissed*, and his March 2022 appeal was years late.

Similarly unavailing is defendant's argument that *Walls* did not involve a "time period extended by" various filings in the trial and appellate court between the denial of the Rule 604(d) motion and the filing of a notice

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[2] Defendant states that the appeal from the dismissal of his postconviction petition was also docketed as No. 3-18-0684, Def. Br. 8, but that appeal, which was dismissed pursuant to a separate motion filed by defendant, was docketed as No. 3-19-0720, *see* C231.

of appeal. Def. Br. 33. In fact, *Walls* did involve a series of filings in the trial court following the denial of the Rule 604(d) motion. 2022 IL 127965, ¶¶ 5-8. Moreover, the filings between the denial of the Rule 604(d) motion and the notice of appeal are irrelevant because they do not toll the time to file the latter, as *Walls* held. *Id.* ¶ 26.

Defendant also complains that the People did not contest jurisdiction below. Def. Br. 33-36. But a "reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Moreover, "parties cannot confer . . . jurisdiction by consent or acquiescence." *Droste v. Kerner*, 34 Ill. 2d 495, 498 (1966); *see also Segers v. Indus. Comm'n*, 191 Ill. 2d 421, 427 (2000) ("It is axiomatic that the parties cannot waive an issue of subject matter jurisdiction."); *People v. Arriaga*, 2023 IL App (5th) 220076, ¶¶ 12-13 ("For criminal proceedings, subject matter jurisdiction means the power to hear and determine a given case," and "subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties.") (internal quotation marks and brackets omitted). And "[u]nless there is a properly filed notice of appeal, a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it." *Smith*, 228 Ill. 2d at 104.

Finally, defendant is mistaken that application of *Walls* would be unjust because he relied on an appellate court decision that *Walls* overruled when dismissing his November 2018 appeal. Def. Br. 34 (citing *People v.*

Feldman, 409 Ill. App. 3d 1124, 1127 (2011), *overruled by Walls*, 2022 IL 127965). The lack of jurisdiction deprives a court of the power to hear a case regardless of equitable considerations. *See supra* p. 6. Moreover, *Walls*, which itself enforced the jurisdictional bar when it overruled *Feldman*, explained that the plain language of the rules in effect at the time of defendant's November 2018 appeal made clear that a motion to reconsider the denial of a Rule 604(d) motion did not toll the time to file the notice of appeal. 2022 IL 127965, ¶ 19. And after *Walls* overruled *Feldman*, defendant could have filed a postconviction petition alleging ineffective assistance of counsel or sought supervisory relief from this Court.

Indeed, this Court can exercise its supervisory authority now "if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice." *People v. Salem*, 2016 IL 118693, ¶ 21. Thus, as the People explained in their opening brief, *see* Peo. Br. 24-25, the Court should reaffirm *Walls* and hold that the appellate court lacked jurisdiction because defendant's March 2022 notice of appeal was late, but also exercise its supervisory authority to resolve the conflict in the appellate court as to the scope of Rule 401(a).

II. The Appellate Court Erred in Vacating the Denial of Defendant's Post-Judgment Motion Because Rule 401(a) Does Not Apply After Judgment and Defendant's Waiver of Counsel Was Constitutionally Valid.

A. Rule 401(a) does not apply after entry of judgment.

The trial court did not need to admonish defendant under Rule 401(a) prior to his waiver of counsel for Rule 604(d) proceedings because Rule 401(a)'s plain language establishes that it does not apply to post-judgment proceedings. Rule 401(a) states that the trial "court shall not permit a waiver of counsel by a person *accused* of an offense punishable by imprisonment without first" providing certain admonitions. Ill. S. Ct. R. 401(a) (emphasis added). A person is "accused" of an offense when the person is "arrested and brought before a magistrate," "formally charged with a crime (as by indictment or information)," or has had legal proceedings initiated against him. Black's Law Dictionary (12th ed. 2024); *see also* Merriam-Webster Dictionary ("Accused: one charged with an offense."), https://www.merriam-webster.com/dictionary/accused (last visited January 22, 2025). But after judgment has been entered, the defendant stands convicted and is no longer merely "accused of an offense." *See Betterman v. Montana*, 578 U.S. 437, 442-43 (2016) (explaining that "accused" is "distinct from 'convicted'" and "describe[s] a status preceding 'convicted'"). Thus, by its plain language, Rule 401(a) does not apply to a defendant who files a Rule 604(d) motion after conviction. *See People v. Young*, 341 Ill. App. 3d 379, 387 (4th Dist. 2003).[3]

Defendant is incorrect that, following sentencing, a defendant remains a "person accused of an offense" because "the accusation . . . [has] not been retracted." Def. Br. 19.[4] Consistent with the dictionary definitions, Illinois law describes a person as "accused" before, not after, final judgment. For instance, Article 103 of the Code of Criminal Procedure, 725 ILCS 5/103 *et seq.*, is entitled "Rights of Accused" and sets forth provisions that govern the rights of persons who are in the pre-judgment stage of a criminal case. Similarly, the Vehicle Code requires officers issuing citations to give notice to the "accused" regarding how to avoid multiple court appearances. 625 ILCS 5/16-106. Moreover, defendant's interpretation leads to absurd results: under his interpretation, a person remains "accused" so long as the

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[3] Defendant fails to address the appellate court decisions holding that where a defendant files a Rule 604(d) post-judgment motion and waives counsel, the trial court must confirm that the waiver is knowing and intelligent but need not provide Rule 401(a) admonitions. *See People v. Owens*, 2021 IL App (2d) 190153, ¶ 20 ("trial judge is obligated to appoint counsel in postplea proceedings, . . . unless he finds that the defendant knowingly waives the right to appointed counsel") (internal quotation marks omitted); *People v. Baker*, 2020 IL App (3d) 180348, ¶ 15 ("court must either appoint counsel to represent an indigent defendant for postplea proceedings or find that the defendant knowingly waived the right to appointed counsel"); *People v. Smith*, 365 Ill. App. 3d 356, 359 (1st Dist. 2006) (same); *People v. Allison*, 356 Ill. App. 3d 248, 250-51 (4th Dist. 2005) (same); *People v. Ledbetter*, 174 Ill. App. 3d 234, 236-37 (4th Dist. 1988) (same).

[4] Defendant does not define "retracted," but the dictionary definition of the word suggests that a defendant would remain "accused" until the prosecution withdraws the charge, possibly even following an acquittal. *See* Black's Law Dictionary (12th ed. 2024) (retraction is the "act of taking or drawing back" or "recanting").

accusation is not "retracted," so Rule 401(a) admonitions are necessary in any proceeding, including on appeal and in postconviction proceedings. But Rule 401(a) admonitions are not required on appeal, *see* Peo. Br. 32, and this Court has found a knowing waiver of counsel in postconviction proceedings without considering whether Rule 401(a) admonitions were provided, *see People v. Lesley*, 2018 IL 122100, ¶ 60.

Similarly unavailing is defendant's argument that he is an "accused" because he would face the potential of a greater sentence if he prevailed on his post-judgment motion and went to trial on the charges. Def. Br. 19. But the same is true of a defendant who seeks to withdraw his guilty plea and vacate his judgment on direct appeal or in a collateral attack, where Rule 401(a) admonitions are not required. *See* Peo. Br. 32, 39. Indeed, defendant's argument rests on the false premise that "[u]nlike on appeal, there is no final judgment" until the trial court resolves the post-judgment motion. Def. Br. 22. On the contrary, this Court "has consistently and repeatedly held that the final judgement in a criminal case is the sentence," *Walls*, 2022 IL 127965, ¶ 19 (internal quotation marks and brackets omitted), even though a defendant cannot appeal a guilty plea judgment before filing a Rule 604(d) motion in the trial court, *see* Def. Br. 22.

Defendant is also incorrect that limiting Rule 401(a) to prejudgment waivers of counsel in criminal matters is inconsistent with appellate court precedent holding that 401 admonitions are necessary during sentencing or a

post-trial, pre-sentencing motion to reconsider. Def. Br. 20 (citing *People v. Cleveland*, 393 Ill. App. 3d 700 (1st Dist. 2009), *overruled on other grounds by People v. Jackson*, 2011 IL 110615); *People v. Langley*, 226 Ill. App. 3d 742 (4th Dist. 1992)). Even assuming, without conceding, that Rule 401(a) applies at the post-trial motion stage before sentencing and/or at the sentencing hearing itself, *see* Def. Br. at 20, these are still prejudgment stages because the defendant has not been sentenced and imposition of sentence is the final judgment, *see Walls*, 2022 IL 127965, ¶ 19.

Defendant is similarly mistaken when he argues that "Rule 401 admonitions are also required during probation revocation proceedings even though the defendant has been found guilty." Def. Br. 20 (citing *People v. Barker*, 62 Ill. 2d 57, 58-59 (1975)). *Barker* did not hold that Rule 401(a) applies in probation revocation proceedings. On the contrary, as *People v. Khan*, 2021 IL App (1st) 190051 (cited Def. Br. 22), observed: "[The Illinois] [S]upreme [C]ourt has never expressly found Rule 401(a) to apply to probation-revocation proceedings." *Id.* ¶ 45; *see Barker*, 62 Ill. 2d at 59 ("the precise question presented in this appeal is not whether the failure to comply with Rule 401(a) of itself renders the waiver ineffective, but whether, considering the entire record, the defendant was shown to have knowingly and understandingly waived his right to counsel"). Instead, *Barker* prescribed parallel but different admonitions that are specific to the nature of probation revocation proceedings. *Barker*, 62 Ill. 2d at 59; *accord People v.*

Baker, 94 Ill. 2d 129, 133-34 (1983) (same); *see also People v. Beard*, 59 Ill. 2d 220, 226 (1974) (Rule 402 does not apply to probation revocation proceedings and "there is a qualitative difference between a criminal conviction and the revocation of probation"); Ill. S. Ct. R. 402A (specifying admonitions that must be given in probation revocation proceedings).

Defendant's position thus overlooks that this Court has decided which admonitions must be given after judgment and did not include among them Rule 401(a) admonitions. Requiring different admonitions pre- and post-judgment reflects that the Sixth Amendment does not require specific admonitions before a court may secure a knowing and voluntary waiver of counsel and instead anticipates that distinct stages of the criminal process warrant different admonitions. *See Iowa v. Tovar*, 541 U.S. 77, 88 (2004) (refusing to "prescribe[ ] any formula or script to be read to a defendant who states that he elects to proceed without counsel"). Relevant here, Rule 605 sets forth the admonitions the trial court must give to defendants after judgment, which differ depending on whether the defendant was convicted after a trial, an open plea, or a negotiated plea. Ill. S. Ct. R. 605. And where, as here, the sentence is imposed pursuant to a negotiated plea, the trial court must advise the defendant that (1) he must file a motion to withdraw his plea before filing an appeal; (2) if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made and, if the People elect, any

charges that were dismissed as a part of the plea agreement; and (3) "if the defendant is indigent, . . . counsel will be appointed to assist the defendant with the preparation of the motion[ ]." Ill. S. Ct. R. 605(c)(2)-(5). Rule 604(d) similarly explains that if the defendant files a pro se post-judgment motion following a guilty plea, the "trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel." Ill. S. Ct. R. 604(d). Thus, Rules 604 and 605 together require the trial court to appoint post-judgment counsel at the request of indigent defendants and provide the admonitions that must be given at the post-judgment stage but do not incorporate Rule 401(a)'s admonitions.

Moreover, this Court's decision not to apply Rule 401(a) at the post-judgment stage makes sense. Because defendants must be admonished pursuant to Rule 402(a) at their guilty plea hearing, a guilty plea defendant "already kn[o]w[s] everything a Rule 401(a) admonishment would have told him." *Young*, 341 Ill. App. 3d at 387. In other words, there is no need to again ensure that guilty plea defendants understand "the nature of the charge" — Rule 401(a)'s first admonition — because Rule 402(a) requires that such defendants be informed of "the nature of the charge" at the guilty plea hearing. Ill. S. Ct. R. 402(a)(1). Likewise, there is no need to admonish guilty plea defendants regarding "the minimum and maximum sentence prescribed by law" — Rule 402(a)'s second admonition — because Rule 402(a)

requires that such defendants receive this same admonition. Ill. S. Ct. R. 402(a)(2). Finally, and as explained, Rule 401(a)'s third admonition — that the defendant be informed that he "has a right to counsel," Ill. S. Ct. R. 401(a)(3) — is covered by Rules 604(d) and 605(c)(5). *See supra* pp. 12-13.

Accordingly, the Court should hold that Rule 401(a) does not apply after judgment.

B. The trial court properly exercised its discretion when it accepted defendant's knowing and intelligent waiver of his right to counsel.

As the People's opening brief established, the trial court properly accepted defendant's waiver of his right to counsel because defendant knowingly and intelligently waived that right. Peo. Br. 34-39.

Defendant is correct this Court reviews relevant legal questions de novo, but incorrect that de novo review applies to the factual determinations the trial court makes in determining whether a defendant's waiver is knowing and intelligent. *See* Def. Br. 12. The People's opening brief cited *People v. Baez*, 241 Ill. 2d 44, 116 (2011), which held that "a determination of whether there has been an intelligent waiver is reviewed for abuse of discretion." *See* Peo. Br. 20. But, as defendant observes, Def. Br. 12, *Lesley* "review[ed] the legal question of whether defendant was deprived of his right to counsel *de novo*," 2018 IL 122100, ¶ 30 (citing *People v. Hale*, 2013 IL 113140, ¶¶ 15-16), because generally "the standard of review for determining if an individual's constitutional rights have been violated is *de novo*," *Hale*,

2013 IL 113140, ¶ 15. *Lesley* recognized, however, that the "determination of whether there has been an intelligent waiver of the right to counsel must depend upon the particular facts and circumstances of each case, including the background, experience, and conduct of the accused," 2018 IL 122100, ¶ 51, which was the reason *Baez* reviewed the waiver for an abuse of discretion, 241 Ill. 2d at 116. And *Lesley* cited *Baez* repeatedly without overruling it. *Lesley*, 2018 IL 122100, ¶¶ 34, 50, 61.

Reviewing legal questions de novo and factual or credibility determinations for an abuse of discretion accounts for the underlying determinations a trial court makes regarding the particular facts and circumstances before accepting a defendant's waiver of counsel, while also ensuring that the ultimate constitutional question is reviewed de novo. *See United States v. Vizcarra-Millan*, 15 F.4th 473, 494 (7th Cir. 2021) (reviewing whether waiver of counsel was invalid "de novo, though defer[ring] to the credibility determinations of the district court"); *United States v. Hamett*, 961 F.3d 1249, 1255 (10th Cir. 2020) (reviewing "validity of a waiver of the right to counsel de novo and the underlying factual findings for clear error"). This standard is also consistent with the applicable standard when reviewing a defendant's waiver of the right to a jury trial, another Sixth Amendment right that is personal to the defendant and must be made on the record. *See*

People v. Bracey, 213 Ill. 2d 265, 270 (2004) (where facts undisputed, review of jury waiver is de novo).

Here, the undisputed facts show that defendant knowingly and intelligently waived his right to post-judgment counsel. A knowing and intelligent waiver requires "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Lesley*, 2018 IL 122100, ¶ 51 (citing *Patterson v. Illinois*, 487 U.S. 285, 292 (1988)); *see Tovar*, 541 U.S. at 88 ("a waiver of counsel is intelligent when the defendant knows what he is doing and his choice is made with eyes open") (internal quotation marks omitted). The parties agree on the salient facts: defendant was admonished repeatedly about his right to counsel, although not at the post-judgment hearing where counsel was discharged; defendant wanted an appointed lawyer other than Cappellini; the trial court informed defendant that Cappellini did not have a conflict of interest and thus defendant's options were to proceed with Cappellini, proceed pro se, or hire a lawyer; defendant stated that he did not want to proceed with Cappellini; and the trial court then discharged Cappellini. *See* Def. Br. 16, 27, 29. On these facts, defendant's waiver was knowing and intelligent.

Indeed, defendant was repeatedly admonished about his right to appointed counsel and the dangers of self-representation. The trial court first provided these admonitions, and defendant said he understood them, after the court denied his suppression motion. R424-25. The trial court again

advised defendant of his right to counsel before accepting defendant's initial pre-plea waiver, R473-76; as the trial date approached, R546-47; and when defendant decided to plead guilty (at which point defendant accepted Henneberry's representation for the plea proceedings), R555-59. After accepting his plea, the trial court admonished defendant pursuant to Rule 605(c) that counsel would be appointed to help him prepare any post-judgment motion. R591. At the next hearing, after defendant filed his motion to withdraw his guilty plea, the prosecutor noted, and the court agreed, that counsel needed to be appointed for the post-judgment motion, R601-02, and the court explained to defendant that it was appointing the LaSalle County Public Defender (Cappellini), R602-03. Then, after defendant moved for substitution of judge, Judge Bernabei reminded defendant that he had the right to the reappointment of counsel but could not choose his appointed attorney. R684. The record thus demonstrates that defendant understood that he had the right to appointed counsel when he chose to represent himself at the post-judgment proceedings.

Moreover, that defendant had completed high school, was 36 years old, had no mental health issues, and had served three prison sentences (including for prior convictions for drug possession), R466-70, further confirms that his waiver was knowing and intelligent, *see People v. Hall*, 114 Ill. 2d 376, 412 (1986) (familiarity with justice system supports finding that waiver was knowing and intelligent). Indeed, defendant repeatedly told the

court that he understood how the criminal justice system worked, insisting that he would do a better job than an appointed attorney because he would give his case more attention. R107, 469-70, 483-84.

Defendant concedes that he was admonished about his right to appointed counsel and the dangers of self-representation in "numerous proceedings that occurred prior to" the Rule 604(d) proceedings, and that he had education and familiarity with the justice system. Def. Br. 28. He argues merely that the People "cite to no case in which substantial compliance with Rule 401 had been found under these facts." *Id.* This misconstrues the People's argument, which is not that the trial court substantially complied with Rule 401, but that those admonitions were not required at all. *See supra* Section II.A; Peo. Br. 26-33. And because Rule 401 admonitions were not required, the question here is whether defendant's waiver of counsel was knowing and intelligent, which it was.

Defendant is also incorrect that the trial court's refusal to appoint him counsel other than Cappellini amounts to a denial of his right to counsel. *See e.g.*, Def. Br. 29 ("Dyas wanted counsel, that he believed his current counsel had a conflict of interest, and that he wanted other counsel appointed"*).* The "right to counsel of choice does not extend to defendants who require counsel to be appointed for them." *Baez*, 241 Ill. 2d at 106 n.5; *accord United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006) (same); *see also People v. West*, 137 Ill. 2d 558, 588 (1990) ("A defendant has the right to be represented by

retained counsel of his own choosing, . . . however, he does not have the right to choose *appointed* counsel") (emphases in original). And while defendant states "that he firmly believed his attorney had a conflict," he does not explain why the trial court's determination that "there was no conflict," Def. Br. 26, is incorrect. The trial court was not required to appoint defendant new counsel based on his unsupported view that Cappellini had a conflict.

Because defendant had no right to choose his appointed counsel, his assertion that there "was no reason that the court could not have appointed Assistant Public Defender Gatza" in lieu of Cappellini, Def. Br. 27, is beside the point. In any event, Gatza was not employed by the Bureau County Public Defender's Office at the time of defendant's Rule 604(d) proceedings. R601-03.[5] And because defendant sought new counsel, his reliance on *People v. Hughes*, 315 Ill. App. 3d 86 (1st Dist. 2000) (discussed at Def. Br. 24-25), is misplaced. There, the "defendant did not request a new counsel or ask to proceed *pro se* for posttrial hearings. Rather, it was counsel that asked leave to withdraw." *Hughes*, 315 Ill. App. 3d at 93.

Finally, the People explained that, under *Lesley*, a defendant who, like defendant here, refuses to cooperate with his attorney and "was warned of

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[5] While defendant states that he "did not complain about [Gatza's] representation," Def. Br. 27, in fact, he wrote a letter to the trial court stating that he was unhappy with Gatza's amended motion to reconsider, C316; *see also* C318 (defendant attaching his letter to Gatza stating that he "would like it on the record . . . how extremely I am dissatisfied with the motion that you are trying to file").

the consequences that his failure to cooperate would have, . . . has knowingly and intelligently waived his right to appointed counsel." *Lesley*, 2018 IL 122100, ¶ 53; *see also id.* (collecting federal cases reaching same result); *see also* Peo. Br. 38-39. Defendant's attempt to distinguish *Lesley* fails. To start, defendant's suggestion that the trial court failed to ask him "whether he wished to have counsel continue representing him or whether he was unequivocally asking to proceed pro se," Def. Br. 26; *see also* Def. Br. 30 (discussing *Lesley*), is belied by the record. The trial court did precisely that when it stated: "If you're telling me that you don't want Mr. Cappellini to represent you, then I'm going to discharge the public defender's office and you can represent yourself. What would you like to do?" R724. After defendant said, "I don't want him," the trial court discharged Cappellini, told defendant that he could represent himself, and reminded him that he was "free to hire [his] own lawyer at any time," to which defendant responded, "Okay." R725. Thus, as in *Lesley*, the trial court clearly informed defendant that he could accept appointed counsel or proceed pro se, unless he could retain private counsel, and defendant knowingly and intelligently waived his right to appointed counsel.

Moreover, contrary to defendant's assertion, Def. Br. 30, that *Lesley* involved the postconviction statutory right to counsel rather than the constitutional right to counsel does not undermine its application here. *Lesley* relied on decisions that involve the constitutional right and explained

that "the requirement that a waiver be knowing and voluntary applies to both constitutional and statutory rights." 2018 IL 122100, ¶ 50; *see also id.* ("in postconviction proceedings, a defendant must knowingly and intelligently relinquish his right to counsel"). Thus, *Lesley* did not turn on any difference between the statutory and constitutional rights. Instead, it made clear that a defendant who refuses to cooperate with his appointed attorney after being warned of the consequences "has knowingly and intelligently waived his right to appointed counsel." *Id.* ¶ 53. In sum, defendant knowingly and intelligently waived his right to appointed counsel when he chose not to be represented by Cappellini after being informed that his other choices were to proceed pro se or hire an attorney.

CONCLUSION

This Court should reverse the judgment of the appellate court.

January 22, 2025

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5282 words.

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CERTIFICATE OF FILING AND SERVICE

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 January 22, 2025, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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