

NOTICE
This Order was filed under
Supreme Court Rule 23 and is
not precedent except in the
limited circumstances allowed
under Rule 23(e)(1).

2026 IL App (4th) 250697-U

NO. 4-25-0697

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 16, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Ogle County
DUANE UPCHURCH,	)	No. 19CF172
Defendant-Appellant.	)	
	)	Honorable
	)	John Benjamin Roe IV,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Lannerd and Vancil concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed because (1) defendant’s jury waiver was knowingly and understandingly made and (2) trial counsel did not render ineffective assistance of counsel.
- ¶ 2 In August 2019, the State filed a six-count indictment charging defendant, Duane Upchurch, with four counts of predatory criminal sexual assault of a child (counts I, II, III, and V) (720 ILCS 5/12-14.1(a)(1) (West 2004)), and two counts of aggravated criminal sexual abuse (counts IV and VI) (*id.* § 12-16(c)(1)(i)). The charges pertained to two minors, L.K. and K.L., who were both under the age of 13 at the time of the offenses. Counts I through IV alleged, generally, that between September 2004 and September 2008, defendant committed acts of sexual penetration and an act of sexual conduct against L.K., while counts V and VI alleged, generally, that between July 2005 and July 2008, defendant committed an act of sexual penetration and an act of sexual conduct against K.L.

¶ 3 In July 2020, defendant waived his right to a jury trial.

¶ 4 In April 2022, the trial court conducted a bench trial, at the conclusion of which the court found defendant guilty of two counts of predatory criminal assault of L.K., one count of aggravated criminal sexual abuse of L.K., and one count of aggravated criminal sexual abuse of K.L.

¶ 5 In January 2023, defendant filed a posttrial motion, which the trial court denied in June 2024.

¶ 6 In April 2025, the trial court sentenced defendant to a total of 25 years in the Illinois Department of Corrections.

¶ 7 Defendant appeals, arguing (1) the trial court failed to properly admonish him prior to accepting his jury waiver and (2) defendant's trial counsel rendered ineffective assistance by failing to (a) present expert testimony and (b) bring to the court's attention a pending petition for leave to appeal (PLA) in *People v. Kidd*, 2022 IL 127904.

¶ 8 We disagree and affirm.

¶ 9 I. BACKGROUND

¶ 10 A. The Charges

¶ 11 In August 2019, the State filed a six-count indictment charging defendant with four counts of predatory criminal sexual assault of a child (counts I, II, III, and V) (720 ILCS 5/12-14.1(a)(1) (West 2004)), and two counts of aggravated criminal sexual abuse (counts IV and VI) (*id.* § 12-16(c)(1)(i)).

¶ 12 Counts I through IV pertained to L.K. Counts I through III alleged that defendant committed predatory criminal assault, and count IV alleged he committed aggravated criminal sexual abuse. Specifically, counts I, II, and III alleged that, between September 2004 and

September 2008, when L.K. was under the age of 13, defendant “committed an act of sexual penetration with L.K. *** in that [he]” (1) “put his penis in the mouth of L.K.” (count I), (2) “put his finger in the vagina of L.K.” (count II), and (3) “put an object in the vagina of L.K.” (count III). Count IV alleged that, during the same time period, defendant committed an act of sexual conduct in that he “put the hand of L.K.’s hand on his penis for the purpose of his own sexual arousal or gratification.”

¶ 13 Counts V and VI pertained to K.L. Count V alleged defendant committed predatory criminal sexual assault in that, between July 2005 and July 2008, when K.L. was under the age of 13, he “committed an act of sexual penetration *** in that [he] touched the vagina of K.L. with his finger.” Count VI alleged defendant committed aggravated criminal sexual abuse in that, during the same time period, defendant “committed an act of sexual conduct *** in that he put his hand on the vagina of K.L. for the purpose of his own sexual arousal or gratification.”

¶ 14 B. The Jury Waiver

¶ 15 In July 2020, defendant appeared in court with counsel and waived his right to a jury trial. At this hearing, the following colloquy occurred:

“[DEFENDANT’S ATTORNEY]: *** At this time[, defendant] is executing a written waiver of his right to a jury trial. He’d persist in his plea of not guilty, ask that the matter be set for a bench trial. ***

THE COURT: Okay, thank you. Just briefly, [defendant], do you understand what a jury trial is?

[DEFENDANT]: Yes.

THE COURT: You understand that you have that right to a jury trial?

[DEFENDANT]: Yes.

THE COURT: In order to waive that right, that has to be in a written form.
Has that already taken place?

[DEFENDANT’S ATTORNEY]: It has been executed. May I approach,
[Y]our Honor?

THE COURT: Yes.

([Defendant’s attorney] approaches the bench.)

THE COURT: Thank you. Any threats or promises been made to you,
[defendant], to waive this right other than what’s been stated here in court?

[DEFENDANT]: No.

THE COURT: Is this your signature doing so?

[DEFENDANT]: Yes.

THE COURT: Okay. I’ll accept that waiver of jury trial as knowing and
voluntary; set the matter then for a bench trial and a pretrial date.”

¶ 16 The written jury waiver stated, “I, the undersigned defendant, having been
advised of my right to a jury trial, do hereby waive my right to a jury trial and enter a plea of not
guilty to the offense(s) charged.” The document bore defendant’s signature.

¶ 17 C. Pretrial Motions

¶ 18 In January 2021, the State filed a motion to admit other crimes evidence pursuant
to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West
2020)). Specifically, the State sought to admit evidence that defendant also committed acts of
sexual conduct against E.J. in 2002 when E.J. was under the age of 18. That same day, defendant
filed a motion *in limine* seeking to bar the same evidence.

¶ 19 In February 2021, the trial court conducted a hearing on the motions. The State proffered the anticipated evidence regarding defendant’s sexual abuse of E.J. by summarizing four police reports and a bystander’s report. Generally, in 2002, when E.J. was five years old, he lived with his mother and defendant, who were dating. In December 2002, E.J. told his father that defendant had been touching his “privates.” During a subsequent police investigation, E.J. disclosed that defendant touched his “pee pee” nearly “every day” while his mother was at work. A few months later, E.J. disclosed that defendant had done more than just touch his penis during these incidents; defendant also sucked on E.J.’s penis and made E.J. suck on his penis.

¶ 20 In March 2021, the trial court entered a written order granting the State’s motion to admit the evidence. However, in April 2021, defendant filed a motion to reconsider the ruling, and in January 2022, following a hearing, the court reversed its decision and denied the State’s motion to admit the other crimes evidence. (We note that the record on appeal does not include a transcript of this hearing; accordingly, we do not know the basis for the trial court’s reversal.)

¶ 21 D. The Bench Trial

¶ 22 In April 2022, the trial court conducted a bench trial, at which the following evidence was adduced.

¶ 23 1. *The State’s Evidence*

¶ 24 a. L.K.

¶ 25 L.K. testified that she was born in 2000 and was 21 years old at the time of trial. She stated that she began living with defendant when she was approximately four years old after her mother, Dawn D., began dating him. She and her mother moved into defendant’s home, where they lived for about four and a half years along with defendant’s son, Dillon Upchurch.

¶ 26 L.K. testified that at first, her relationship with defendant was pleasant and

friendly, but shortly after moving in, the relationship began to change when she noticed him holding her tighter against his body when hugging her. She testified that the tight hugging made her uncomfortable because she could feel a bulge in his groin area. She stated that, at four years old, she did not know what the bulge was, but recalling it now, she knew it to be an erection.

¶ 27 L.K. testified that approximately two months after moving into the home, defendant entered her bedroom while she was asleep, positioned her body so that her head hung off the bed, and placed his penis near her mouth. She clarified that her eyes were closed, but she knew it was defendant because the only other male in the house was Dillon, and she knew it was not him because he was young and the person who turned her over was large. She stated that she pretended to roll over, and defendant then left the room. She recalled that when he left, she noticed a “salty taste” around her mouth. She felt skin on her mouth and described it as “[s]limy.” She did not tell anyone about the incident at the time.

¶ 28 L.K. further described a subsequent incident in the basement’s laundry room that occurred shortly after the first incident. Defendant had her lie on a pile of clothes, covered her face with clothing, slid her pants down, began touching her vagina, then inserted what she assumed was his finger. She said, “It felt like a smaller object, it was painful, but it wasn’t absolute painful.” L.K. testified that the same thing happened a second time in the laundry room, but she did not know exactly how much time passed between the incidents.

¶ 29 L.K. also testified that sometime after the second laundry room incident, she and defendant were in between the kitchen and living room when he pulled her pants down, pushed her head downward so her buttocks were upward, and “inserted something into [her] vagina.” She did not know at the time but now knew that it was his penis. She said he was making grunting noises while “inserting something into [her] vagina while holding [her] head to the

ground.”

¶ 30 L.K. described a fourth and fifth incident occurring in the laundry room, during which defendant again pulled her pants down and inserted his finger into her vagina. L.K. also described an incident occurring in defendant’s car when she and defendant were picking up defendant’s son from school. While waiting in the parking lot, defendant “unzipped his pants and pulled out his penis, grabbed [her] hand and then started making [her] hold [his penis] and rub it.” She said she was seven or eight years old when she and her mother moved out of the house and had no further contact with defendant.

¶ 31 L.K. never told anyone about the incidents when she was young because she feared defendant and he threatened to hurt her. She eventually told her mother what had happened in March 2019, when she was 18 years old. Her mother was laughing at a video of defendant getting caught cheating. L.K. said that seeing him in the video made him more human and she did not feel that she needed to be afraid of him anymore.

¶ 32 On cross-examination, defense counsel challenged L.K.’s recollection of certain details, such as the configuration of her bedroom, where she went to kindergarten, whether other people stayed overnight at the house, and what pediatrician she saw between 2004 and 2008. L.K. acknowledged difficulty recalling those and other details peripheral to the charged offenses due to the passage of time. She also did not recall meeting defendant or spending time with him before she and her mother moved into his house, and she did not recall seeing him after they moved out in 2008.

¶ 33 Defense counsel also asked L.K. about differences between her trial testimony and statements she had written in a notebook in 2019. For example, regarding the first incident in the bedroom, L.K. had written in her notebook that a lava lamp allowed her to see defendant

standing in the doorway wearing boxer shorts. When confronted with the difference between her statement in the notebook and trial testimony that she had her eyes closed and did not see defendant, she stated, “Today I do not recall seeing him; this day I must have recalled seeing him.”

¶ 34 Defense counsel further asked L.K. about her testimony that in the living room, defendant put his penis in her vagina. L.K. acknowledged that she did not state either in her notebook or when interviewed by the police that defendant put his penis in her vagina. Counsel asked L.K., “The first time you said that to anyone that’s in this courtroom was today, correct?” L.K. answered that she had previously mentioned only the finger incidents, but she corrected the omission while testifying.

¶ 35 b. Dawn

¶ 36 Dawn testified that she was L.K.’s mother. Dawn said that she and L.K. lived with defendant from approximately 2004 until 2008, when she and defendant broke up.

¶ 37 Dawn further testified that in 2019, she viewed a video posted online by a former girlfriend of defendant. Dawn showed the video to L.K., and about 15 minutes later, L.K. told her that defendant had sexually abused her on “many different occasions” when they lived with him. Dawn contacted the police.

¶ 38 c. K.L.

¶ 39 K.L. testified that she was born in 1997 and grew up with L.K. Because their mothers were close friends, K.L. considered L.K. to be her cousin. Between 2005 and 2008, K.L. was 8 to 11 years old. During that time period, she frequently stayed overnight at the home L.K. lived in with defendant and Dawn. She visited “[a]t least every couple of weeks,” and she sometimes stayed for longer than a single night during the summer.

¶ 40 K.L. testified regarding an incident that occurred at defendant's home when she was about eight years old. She and L.K. were lying on the floor in the living room watching television. L.K. was asleep, and K.L. pretended she was asleep when she heard someone come out of defendant's bedroom. Defendant laid down beside her and began rubbing her back. She knew it was defendant because of the height difference, explaining that his "head was over my head and his feet were past my feet." She explained that, although her brother and Dillon were also at the house, neither of them was that tall.

¶ 41 K.L. stated that defendant rolled her over and rubbed her stomach, cupped her breasts, then put his finger in her pants and touched her vagina. She pretended to be asleep but acted "restless" and attempted to roll over and tuck the blanket around her, but he kept pulling the blanket and rubbing her. After he went back to his room, she woke L.K., and the girls went to L.K.'s room, where K.L. locked the door.

¶ 42 After Dawn broke up with defendant, when K.L. was about 12 years old, K.L. told Dawn what happened, but she did not tell her that he touched her breasts and vagina. When asked why, K.L. stated she was embarrassed and afraid of Dawn's reaction because the incident made K.L. feel "disgusting." K.L. did not talk about the allegations again until Dawn asked her to come over after she learned of L.K.'s allegations. At that time, K.L. wrote down what had occurred to her back in 2008.

¶ 43 On cross-examination, defense counsel questioned K.L. about differences between her trial testimony and her earlier written statement. He pointed out that in her statement, she wrote that defendant touched her over her pajamas. K.L. responded by explaining that defendant began by rubbing her over her pajamas, but he then went "underneath [her] shirt." Counsel also pointed out that K.L. wrote that defendant "only rubbed all the way up to under

[her] chest,” not that he cupped her breast. K.L. said rubbing “under her chest” meant cupping her breast, but she acknowledged that she wrote “under [her] chest” instead of “cupped [her] breast.” Counsel also pointed out that she wrote that defendant touched “the top of [her] vagina.” K.L. answered, “Yes, that would be touching my vagina, yes.”

¶ 44

2. Defendant’s Evidence

¶ 45

a. Sydney Hull

¶ 46

Sydney Hull testified that she was born in 1996. She lived down the street from defendant’s house from 2000 to 2010 and was a friend of defendant’s son. Between 2004 and 2008, she visited defendant’s house often, stating that she went there after school “at least a couple days out of the week, if not more.” During the summertime, she was over there “a lot.” She testified that she had spent the night at the house but did not state how often. Hull testified about the layout of the house and the details of L.K.’s bedroom. Hull said that when she was at the house, she never saw anything sexually inappropriate happen between defendant and L.K.

¶ 47

b. Richard Bishop

¶ 48

Richard Bishop testified that he and defendant’s son, Dillon, became friends in fourth grade, which was in 2004 or 2005. Bishop spent every other weekend at defendant’s house. He stated that he never saw defendant act sexually inappropriately with L.K. He did not recall there being locks on the bedroom doors.

¶ 49

c. Dillon

¶ 50

Dillon testified that he was born in 1996 and was defendant’s son. Between 2004 and 2008, he resided at defendant’s home with defendant, Dawn, and L.K. His father did most of the chores around the house. It was rare for Dillon and L.K. to be home alone with defendant. Dawn worked weekends at Lowe’s during “the back half” of the 2004 to 2008 time period when

they all lived together. Dillon never saw defendant do any of the things that L.K. and K.L. alleged.

¶ 51 On cross-examination, Dillon stated that he and defendant had talked often about the charges against defendant and went through the police reports together.

¶ 52 d. Defendant

¶ 53 Defendant testified that he was 57 years old and had lived in the same home in Byron, Illinois, since 1998. Between 2004 and 2008, he lived there with Dillon, L.K., and Dawn. He dated Dawn for approximately a year before she and L.K. moved in. During that year, he spent time with Dawn and L.K., including going to movies and dinner and taking the children to the zoo. He ended the relationship because he could no longer get along with Dawn.

¶ 54 Defendant testified that after Dawn and L.K. moved out in 2008, he saw them again approximately a year later. He explained that Dawn called him, learned he was at his farm, and stopped by; they took pictures of the children together with the dog. Sometime after that, he saw L.K. at a gas station while he was delivering fuel, and he spoke with her.

¶ 55 Defendant testified that he had owned his own trucking company since 1994. Between 2004 and 2008, he worked six to seven days a week for a minimum of 80 hours each week. Because his work hauling fuel was local, he was home each night.

¶ 56 Defendant testified that Dillon attended school in Byron, and he drove him to school through first grade. However, Dillon began riding the bus in second grade, and defendant no longer picked him up.

¶ 57 Defendant also testified about the physical layout of the house, which had two floors and a garage. The only interior door with a lock was the bathroom; L.K.'s bedroom door could not be locked. Defendant also stated that he wore only briefs and not boxer shorts. He also

testified that there was no lava lamp in L.K.’s bedroom, nor did she have a canopy over her bed as she had testified.

¶ 58 Defendant denied doing any of the things that L.K. and K.L. alleged. He denied any other sexual contact with either of them. He acknowledged that he and Dillon had gone through the police reports together at his counsel’s office and that he had spoken briefly with some of the witnesses who testified for the defense. He denied telling those witnesses what to say.

¶ 59 *3. The Trial Court’s Ruling*

¶ 60 In May 2022, the trial court issued an oral ruling finding defendant guilty of counts I (predatory criminal sexual assault—“put his penis on the mouth of L.K.”), II (predatory criminal sexual assault—“put his finger in the vagina of L.K.”), IV (aggravated criminal sexual abuse—“put the hand of L.K. on his penis”), and VI (aggravated criminal sexual abuse—“put his hand on the vagina of K.L.”).

¶ 61 Counts III and V had earlier been dismissed following defendant’s motion for a directed finding at the close of the State’s case. The trial court dismissed count III, which alleged an act of sexual penetration against L.K. in that defendant “put an object in [her] vagina,” because the State did not present evidence of any “object” being placed in her vagina, only body parts, and the word “object” in the statutory definition of “sexual penetration” does not include parts of the body. See *People v. Maggette*, 195 Ill. 2d 336, 350 (2001). The court dismissed count V, which alleged an act of sexual penetration in that defendant “touched the vagina of K.L. with his finger,” because K.L.’s testimony that defendant rubbed her vaginal area lacked specificity to prove penetration. The court’s comprehensive ruling comprised approximately 34 pages of the written transcript.

¶ 62

E. Defendant's Posttrial Motion

¶ 63

In May 2022, during a status hearing regarding posttrial motions, defendant's trial counsel, Russell Crull, advised the trial court that defendant had retained new counsel, who would be filing posttrial motions. In June 2022, attorney Stephen Komie filed his appearance on defendant's behalf.

¶ 64

1. *The Motion and the Exhibits*

¶ 65

In January 2023, following three motions for extension of time, defendant, through his new counsel, filed a posttrial motion arguing, relevant to this appeal, that (1) the trial court failed to make sufficient inquiries to ensure defendant's jury waiver was knowing and voluntary, (2) trial counsel was ineffective for failing to retain a medical expert to testify that the sexual assaults described by L.K. were medically impossible at the age of four or five years old, and (3) trial counsel was ineffective for failing to argue that the predatory criminal sexual assault charging documents were defective because they failed to allege that defendant acted for the purpose of his sexual gratification. In support of his third argument, defendant relied on *Kidd*, in which, according to defendant, the Illinois Supreme Court reversed the defendant's predatory criminal assault convictions because the charging information "failed to include" the essential elements of " 'for the purposes of sexual gratification' " of the defendant or the victim.

¶ 66

Defendant attached four exhibits in support of his claim regarding the failure to obtain an expert witness to assist the defense, which we now describe.

¶ 67

a. Dr. Demetra Soter's "Forensic Examination" of the Trial Transcript

¶ 68

The first exhibit was a "Forensic Examination of the trial evidence and testimony" in defendant's case by Dr. Demetra Soter. Soter stated that she was "retained as a Forensic Pediatrician, Medical Doctor, to examine the testimony of witnesses testifying at a bench trial

claiming to be victims of childhood sexual assault at approximately the ages of four and eight years of age.” Soter stated that she had “read and analyzed the trial transcripts to determine whether or not the allegations were ‘true allegations’ of childhood sexual assault or in the alternative are ‘*false allegations of childhood sexual assault.*’ ” (Emphasis in original.)

¶ 69 Soter concluded that, based upon her review of the trial transcript, “[t]o a reasonable degree of medical certainty,” L.K. and K.L. were not sexually assaulted by defendant. Regarding L.K., Soter based her conclusion on the following seven factors: (1) “the absence of medical evidence of either digital or penile penetration,” (2) “late reporting to the authorities,” (3) “poor historical recollection of [L.K.],” (4) “changing historical recall such as suddenly remembering penetration by an adult male erect penis,” (5) “inaccurate historical recall such as the lava lamp, the canopy bed, the timing and the underwear,” (6) “the absence of reporting of injuries by the school teach[er] or staff,” and (7) “contamination of memory by Dawn.”

¶ 70 Regarding K.L., Soter based her conclusion on the following seven factors: (1) “the absence of medical evidence,” (2) “the poor historical memory and recollection [of K.L.],” (3) “the changing historical recall such as whether it occurred over or under pajamas, whether on side or tummy,” (4) “inaccurate historical recall such as the nonexistent lock on bedroom door,” (5) “the absence of reporting to the pediatrician or police of K.L.’s statement to Dawn,” (6) “the lack of confirmation in Dawn’s testimony, that she was informed by [K.L.] at age 12,” and (7) “the contamination of memory by Dawn.”

¶ 71 b. The Affidavits

¶ 72 Defendant also attached three affidavits relating to his claim of counsel’s failure to obtain a medical expert.

¶ 73 The first affidavit was from Dillon. He stated that he attended a meeting with his

court conducted a hearing at which it denied defendant's posttrial motion and entered a written order that day explaining its ruling. (A transcript of that hearing is not included as part of the record on appeal.)

¶ 78 First, the trial court found that defendant knowingly and voluntarily waived his right to a jury trial. The court noted that, in addition to its colloquy with defendant (*supra* ¶ 15), (1) defendant had previously waived his right to a jury trial in Ogle County case No. 22-CM-244 and accordingly had "prior experience with the justice system in which he entered a jury trial waiver" and (2) the contents of defendant's bond form filed in August 2019 showed that "he had the intellectual capacity to understand the jury trial waiver and aforementioned admonishments given by the Court."

¶ 79 Defendant's bond form indicated that he graduated from high school and completed one year of diesel mechanic school at a community college. It further stated that he had been "self employed at Dewey Upchurch and Son Trucking for the past thirty-two years" and earned "between \$700,000 and \$800,000 annually." Defendant denied any physical or emotional health concerns or substance abuse problems.

¶ 80 Second, the trial court found that the elements of the offense of predatory criminal sexual assault "were properly reflected in the indictments based on the statute in effect in 2004 and 2008." Moreover, defendant's reliance on *Kidd* in support of his argument that the charging documents were deficient was misplaced because "[t]he statute referenced in *Kidd* was not the applicable statute in 2004 and 2008."

¶ 81 Third, the trial court found that defense counsel was not ineffective by failing to present expert evidence "serving to undermine the veracity of [L.K.'s] testimony." The court cited *People v. Miller*, 2022 IL App (2d) 210601, in support of its decision, noting that in, in that

case, “trial counsel could not be deemed constitutionally deficient for failing to obtain a Forensic Child Psychologist to testify regarding the reliability of the child victim[’]s statement at defendant’s trial for predatory criminal sexual assault and aggravated criminal sexual abuse.”

The court further explained its ruling as follows:

“Defendant’s post-trial motion references many discussions between the Defendant, Defendant’s family and defense counsel regarding the use of an expert in this case. The record also reflects that defense counsel was considering the use of an expert. Most importantly, if Defense counsel had utilized expert testimony at trial, he may have opened the door for the State to present testimony of [E.J.] in rebuttal. The Court had barred testimony of [E.J.] in a pretrial decision. However, that ruling could have been revisited if expert testimony was presented. Under *Strickland*[*v. Washington*, 466 U.S. 668 (1984)], it is well supported law that the calling of certain witnesses are a matter of trial strategy at the discretion of defense counsel. Defense counsel was not deficient in his decision to not call an expert in this case.”

¶ 82 F. The Sentencing Hearing

¶ 83 In April 2025, the trial court conducted a sentencing hearing. Relevant to this appeal, the court considered a presentence investigation report (PSI) that revealed that in Ogle County case No. 02-CM-244, defendant was sentenced to probation for the offense of battery causing bodily harm. The PSI also stated that defendant had been employed continuously since 1985 as a truck driver or fuel hauler and owned his own trucking company from 1994 until 2019. A former employer reported defendant to be an exceptional and dependable employee.

¶ 84 The PSI also noted that defendant graduated from high school in 1983. During his

schooling, he never experienced any problems and was not in special education. He attended “Agricultural Mechanics” courses at a community college in 1983. Defendant reported that he was in good health, had never used drugs, and had used alcohol only once in his twenties.

¶ 85 The trial court sentenced defendant to a total of 25 years in prison, comprised of (1) consecutive terms of 12 years and 6 months for counts I and II (predatory criminal sexual assault of a child) and (2) concurrent terms of 5 years for counts IV and VI (aggravated criminal sexual abuse).

¶ 86 This appeal followed.

¶ 87 II. ANALYSIS

¶ 88 Defendant appeals, arguing (1) the trial court failed to properly admonish him prior to accepting his jury waiver and (2) his trial counsel rendered ineffective assistance by failing to (a) present expert testimony and (b) bring to the court’s attention a pending PLA in *Kidd*.

¶ 89 We disagree and affirm.

¶ 90 A. Defendant’s Jury Waiver

¶ 91 Defendant first argues that he “did not and could not intelligently, knowingly and voluntarily waive his right to a jury trial when the trial court failed to explain the dynamics and benefits of a jury trial.” Defendant specifically complains that the court failed to explain that (1) a jury would decide defendant’s guilt or innocence, (2) defendant and his attorney could participate in jury selection and strike impartial jurors, and (3) all prospective jurors would have to understand and accept the *Zehr* principles (see *People v. Zehr*, 103 Ill. 2d 472, 477 (1984); Ill. S. Ct. Rule 431(b) (eff. July 1, 2012) (“(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove

the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify, it cannot be held against him or her.”)).

¶ 92

1. *The Applicable Law*

¶ 93 The right to a trial by jury is guaranteed by both the United States and Illinois Constitutions. See U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. “A defendant may waive his right to a jury trial, but for a valid jury waiver, the trial court must ensure that the waiver was knowing and understanding.” *People v. Hutt*, 2023 IL 128170, ¶ 30 (citing *People v. Bracey*, 213 Ill. 2d 265, 269 (2004)); 725 ILCS 5/103-6 (West 2016) (“Every person *** shall have the right to a trial by jury unless (i) understandingly waived by defendant in open court.”). “Whether a waiver is knowing and understanding depends on the particular facts and circumstances of each case.” *Id.* “For a waiver to be effective, the court need not impart to [the] defendant any set admonition or advice.” *Bracey*, 213 Ill. 2d at 270.

¶ 94 “ ‘[A] defendant who challenges a jury waiver bears the burden of establishing that the waiver was invalid.’ ” *People v. Parker*, 2016 IL App (1st) 141597, ¶ 47.

¶ 95 “Generally, a jury waiver is valid if it is made by defense counsel in defendant’s presence in open court, without an objection by defendant.” *Bracey*, 213 Ill. 2d at 270; see *People v. Frey*, 103 Ill. 2d 327, 332 (1984) (“Recognizing that the accused typically speaks and acts through his attorney, we have given effect to jury waivers made by defense counsel in [a] defendant’s presence where [the] defendant gave no indication of any objection to the court hearing the case.”). “In determining whether a waiver was knowingly made, the reviewing court may consider the defendant’s silence when his or her attorney requested a bench trial, as well as the defendant’s prior interactions with the justice system.” *People v. Rogers*, 2022 IL App (1st)

200860-U, ¶ 19.

¶ 96 “A written waiver *** is one means by which a defendant’s intent may be established” but “is not always dispositive of a valid waiver.” *Bracey*, 213 Ill. 2d at 269-70.

However, “[t]he existence of a signed written waiver weighs in favor of finding the waiver to be knowing, intelligent, and voluntary.” *Rogers*, 2022 IL App (1st) 200860-U, ¶ 19.

¶ 97 “If the facts are not in question, the issue of whether [a] defendant knowingly waived his right to a jury trial is a question of law that we review *de novo*.” *Hutt*, 2023 IL 128170, ¶ 30.

¶ 98 *2. This Case*

¶ 99 As earlier noted, defendant’s primary argument is that his jury waiver was invalid because, due to the trial court’s not explaining to him the dynamics of a jury trial, he did not fully know or understand the right he was giving up.

¶ 100 Defendant cites no authority holding that for a jury waiver to be valid, a trial court must explain to a defendant that (1) a jury would decide the defendant’s guilt or innocence, (2) the defendant and his attorney could participate in jury selection and strike impartial jurors, and (3) all prospective jurors would have to understand and accept the *Zehr* principles. On the contrary, the supreme court has clearly instructed that no set admonition or advice is required. *Bracey*, 213 Ill. 2d at 270 (citing *People v. Smith*, 106 Ill. 2d 327, 334 (1985)). Importantly, by way of comparison, the supreme court has pointed out what admonitions are required for a waiver of the right to counsel (Ill. S. Ct. R. 401(a) (eff. July 1, 1984)), guilty pleas (Ill. S. Ct. R. 402(a) (eff. July 1, 2012)), and admissions or stipulations in proceedings to revoke probation, conditional discharge, or supervision (Ill. S. Ct. R. 402A (eff. Nov. 1, 2003)), yet the supreme court has not done the same for waiver of the right to a jury trial. Although a trial court would be

following best practices to admonish a defendant in the manner defendant suggests, and doing so would avoid appeals such as the present one, detailed admonitions about the dynamics of a jury trial are not required.

¶ 101 However, the trial court is required to create a record showing that a defendant’s waiver was knowing and understanding, which depends on the facts of each case. *Hutt*, 2023 IL 128170, ¶ 30.

¶ 102 To assist us in making that determination in the present case, we look at cases with similar facts. One such case is *Parker*, 2016 IL App (1st) 141597, ¶ 44, in which the record reflected that “the [trial] court asked Mr. Parker if it was his signature on the jury waiver, told him ‘[b]y signing that you give up the right to have a trial by Jury,’ and asked him whether he knew what a jury trial was, to which Mr. Parker responded ‘Yes.’ ” The defendant challenged the validity of his jury waiver on the same basis that defendant raises in this case—namely, that the trial court failed to “ ‘explain a jury or bench trial, address whether [M]r. Parker understood that he had a constitutional right to a jury trial, or explain the implications of waiving that right.’ ” *Id.* The appellate court concluded that the defendant’s waiver was valid, reasoning that the record in that case “demonstrates that Mr. Parker was made aware of his right to a jury trial. His signed jury waiver and affirmation in open court show that he knowingly and voluntarily waived that right.” *Id.* ¶ 53.

¶ 103 Similarly, in *Rogers*, 2022 IL App (1st) 200860-U, ¶ 6, the defendant executed a written jury waiver, and the trial court admonished the defendant as follows in open court:

“ ‘THE COURT: *** [D]id you realize that when you were signing this document you were indicating to the Court that you wanted to waive or in other words give up your right to a jury trial?

[DEFENDANT]: Yes, sir.

THE COURT: Do you know what a jury trial is?

[DEFENDANT]: Yes, sir.

THE COURT: Did anybody force or threaten you in any way to get you to waive the jury trial?

[DEFENDANT]: No, sir.

THE COURT: Did anybody promise you anything to get you to waive it?

[DEFENDANT]: No, sir.

THE COURT: Did you do it of your own free will?

[DEFENDANT]: Yes, sir.’ ”

The defendant argued on appeal that his jury waiver was not valid because the trial court failed to do the following:

“(1) explain the differences between a bench and jury trial to confirm that he understood those differences; (2) advise him that, in the event of a jury trial, a jury of twelve people would have to reach a unanimous decision about whether the prosecution proved beyond a reasonable doubt that he committed the charged offense; and (3) ascertain that he understood that his waiver of the right to a jury trial was irrevocable.” *Id.* ¶ 14.

¶ 104 The appellate court affirmed, concluding that the waiver was knowing and voluntary because (1) the defendant was present in open court when his attorney requested a bench trial and defendant made no objection, (2) the defendant had signed a prewritten jury trial waiver form on the date of the bench trial, and (3) the defendant, who “had attended high school through junior year and received good grades,” responded to the trial court’s admonitions “in a

manner that confirmed he understood what a jury trial was and that he had not been coerced into waiving that right.” *Id.* ¶¶ 20-21.

¶ 105 The present case is factually similar to *Parker* and *Rogers*. Defendant (1) was represented by counsel and made no objection when his counsel requested a bench trial in open court, (2) signed a written jury waiver, and (3) stated in response to the trial court’s question that he understood what a jury trial was. Moreover, the court’s docket sheet demonstrates that defendant was present in court with his counsel on 11 different occasions between the date of his jury waiver and the date of his bench trial; at all times, the case remained on course for a bench trial without any objection by defendant.

¶ 106 Defendant bears the burden of demonstrating that his jury waiver was not knowing or understanding; however, he has failed at this task. He has pointed to nothing in the record to show why the trial court should not have taken him at his word when he told the court that he understood what a jury trial was. Moreover, the record shows that defendant was an intelligent and capable person who graduated high school, attended some community college, ran his own trucking business from 1994 to 2019, and was reported to be an exemplary and reliable employee.

¶ 107 Defendant additionally contends that the trial court erred by concluding, when ruling on his posttrial motion, that his jury waiver was valid, in part, because he had previously waived his right to a jury trial as part of a misdemeanor guilty plea. We need not address that argument because our review is *de novo*, and even absent consideration of defendant’s prior court experience, for the reasons stated, the record demonstrates that defendant’s jury waiver was knowing and understanding.

¶ 108 B. Ineffective Assistance of Counsel

¶ 109

1. *The Applicable Law*

¶ 110 A criminal defendant has a constitutional right to the effective assistance of counsel under both the United States and Illinois Constitutions. See U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8.

¶ 111 To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test set forth in *Strickland*. *People v. Haynes*, 2024 IL 129795, ¶ 23. Under that test, the defendant “must first show that, despite the strong presumption that the challenged action was the product of sound trial strategy, counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, such that he or she was not functioning as the counsel guaranteed by the sixth amendment.” *Id.* “Second, the defendant must establish prejudice by showing a reasonable probability that the proceeding would have resulted differently absent counsel’s errors.” *Id.* “A defendant’s failure to establish either prong of the *Strickland* test precludes a finding of ineffectiveness.” *Id.*

¶ 112 “Under the [deficient performance] prong, counsel is afforded wide latitude when making tactical decisions.” *People v. Brose*, 2025 IL App (4th) 241407-U, ¶ 58 (citing *Strickland*, 466 U.S. at 688-89). “[I]n order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of strong trial strategy.” *People v. Smith*, 195 Ill. 2d 179, 188 (2001).

¶ 113 “It is well established that decisions concerning which witnesses to call at trial and what evidence to present on [a] defendant’s behalf ultimately rest with trial counsel.” *People v. Madej*, 177 Ill. 2d 116, 148 (1997). “Such decisions have long been viewed as matters of trial strategy, which are generally immune from claims of ineffective assistance of counsel.” *Id.* “This general rule is predicated upon our recognition that the right to effective assistance of counsel

refers to ‘competent, not perfect representation.’” (Internal quotation marks omitted.) *Id.* at 149 (quoting *People v. Stewart*, 104 Ill. 2d 463, 492 (1984)). “Hence, mistakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent.” (Internal quotation marks omitted.) *Id.* “The only exception to this rule is when counsel’s chosen trial strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing.” (Internal quotation marks omitted.) *Id.*

¶ 114 Reviewing courts should be “highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel’s performance from his perspective at the time, rather than through the lens of hindsight.” *People v. Perry*, 224 Ill. 2d 312, 344 (2007).

¶ 115 *2. This Case*

¶ 116 a. Failure To Present Expert Testimony

¶ 117 Defendant argues that trial counsel was ineffective for failing to present expert testimony from a medical doctor or child abuse memory specialist regarding the impossibility of the described acts of penetration and the unreliability of L.K.’s and K.L.’s delayed disclosures. In support, defendant relies primarily on a letter from Soter—a medical doctor with experience in treating child victims of sexual abuse—stating that she reviewed the trial testimony and concluded, to a reasonable degree of scientific certainty, that neither K.L. nor L.K. were sexually abused as they claimed. Soter based her conclusion on seven factors: (1) the absence of medical evidence of penetration, (2) late reporting, (3) poor historical recollection, (4) changing historical recall, (5) inaccurate historical details, (6) the absence of contemporaneous reports of injury, and (7) contamination of memory by Dawn.

¶ 118 In the present case, defendant has not established that his trial counsel performed
deficiently. The record demonstrates that counsel considered the use of experts and ultimately

decided against it based upon his evaluation of the strength (or weakness) of the State's evidence. Indeed, counsel's closing argument demonstrates his strategic decision to emphasize the inconsistencies between L.K.'s and K.L.'s earlier statements and their trial testimony, as well as their inability to recall details about that time period. He employed that strategy throughout his questioning of the witnesses as well, and that strategy was not unreasonable given the facts of this case. Simply put, counsel accomplished through closing argument the same thing that defendant's proposed expert sought to do.

¶ 119 Moreover, the trial court found that presenting such testimony risked opening the door to the previously barred other crimes evidence involving E.J. Counsel made a reasonable strategic decision to prevent this from happening. Because counsel's strategic decisions were reasonable when viewed from the lens of the information he had at the time, and not from hindsight, defendant has not met his burden of showing that counsel performed deficiently.

¶ 120 Even setting strategy aside, the proposed testimony of Soter would have been inadmissible as improper direct commentary on the credibility of other witnesses. In *People v. Becker*, 239 Ill. 2d 215, 220-24 (2010), during proceedings pursuant to section 115-10 of the Code (725 ILCS 6/115-10 (West 2006)) in which the State sought to admit hearsay statements of the child victim at trial, the defense called Dr. Kathleen Okla, a child psychologist and forensic examiner, to testify about the reliability of the victim's hearsay statements. Okla testified that she had not interviewed the victim but instead reviewed "interview notes, transcripts, and videos." *Becker*, 239 Ill. 2d at 223. Based on her review of those videos, Okla concluded that the victim "could not give a 'reliable' statement in person or on the stand" due to suggestive questioning, postevent information, and possible influence by her mother. *Id.* at 223-24.

¶ 121 The trial court entered an order admitting the victim's hearsay statements and

excluded Okla from testifying at trial. *Id.* at 224. The supreme court affirmed, concluding that the trial court properly excluded Okla’s testimony because it “would constitute direct, adverse comment on the ‘credibility’ of [the victim].” *Id.* at 236. The supreme court explained, “Under Illinois law, it is generally improper to ask one witness to comment directly on the credibility of another witness [citations] as [q]uestions of credibility are to be resolved by the trier of fact.” (Internal quotation marks omitted.) *Id.* The court also noted that the psychologist’s proposed testimony would, “for all practical purposes, advise the jury to disregard not only [the victim’s] hearsay statements, but her trial testimony as well.” *Id.* at 235. The court further stated that the observation that children may be subject to suggestion was not a matter beyond the ken of the average juror. *Id.* at 236-37.

¶ 122 The present case is similar to *Becker*. Soter never interviewed L.K. or K.L., reviewed only the trial transcripts, and offered an ultimate opinion that their testimony was false. Moreover, just like Okla’s proposed testimony in *Becker*, Soter’s observations that late reporting, inaccurate, changing, or poor historical recall, and the absence of contemporaneous reports of injury might render an allegation unreliable are not beyond the ken of the average juror and do not require expert testimony.

¶ 123 This court has similarly strongly criticized permitting a witness in a criminal case to express an opinion as to another witness’s credibility, writing as follows:

“This court has described it as a ‘*fundamental rule* that one witness should not be allowed to express his opinion as to another witness’s credibility.’ (Emphasis added.) *People v. Henderson*, 394 Ill. App. 3d 747, 754 *** (2009). ‘Questions of credibility are to be resolved by the trier of fact.’ *People v. Kokoraleis*, 132 Ill. 2d 235, 264 *** (1989). Accordingly, ‘ “it is generally improper to ask one witness

to comment directly on the credibility of another witness.” ’ *People v. Boling*, 2014 IL App (4th) 120634, ¶ 121 *** (quoting [*Becker*, 239 Ill. 2d at 236]).”

People v. Brothers, 2015 IL App (4th) 130644, ¶ 125.

¶ 124 In both *Brothers* and *Boling*, we criticized the admission of such evidence, even though the State’s witnesses in those cases had volunteered that testimony from the witness stand, noting that “ ‘the State was responsible for adequately preparing its witnesses to ensure that [the witnesses] did not *volunteer* improper and prejudicial testimony.’ ” (Emphasis in original.) *Id.* ¶ 126 (quoting *Boling*, 2014 IL App (4th) 120634, ¶ 122).

¶ 125 Regarding the medical component of Soter’s proposed testimony, we look to *People v. Nuckles*, 2019 IL App (2d) 150761-U. We briefly note that, although *Nuckles* is an unpublished order filed pursuant to Illinois Supreme Court Rule 23 (eff. June 3, 2025), we choose to discuss its analysis and reasoning. See *People v. Parentice*, 2026 IL App (4th) 250222, ¶¶ 92-93 (“Although an unpublished order is not binding authority, we as a court of review, are entitled to consider it for any persuasive weight we might give it[.]”).

¶ 126 In *Nuckles*, the appellate court rejected the defendant’s claim of ineffective assistance for failure to call a medical expert who would have testified that, had the offenses of predatory criminal sexual assault occurred, physical evidence of sexual assault would have been present. *Id.* ¶ 47. The court noted that only one of the three counts alleged vaginal penetration, and the alleged intrusion was by the defendant’s finger; the second count alleged contact between the defendant’s sex organ and the victim’s mouth; and the third count alleged penetration in the form of “ ‘contact between [the defendant’s] sex organ and the sex organ of [the victim].’ ” *Id.*

¶ 127 The appellate court noted that the statutory definition of “sexual penetration” encompassed two broad categories of conduct, including “ ‘*contact* between the sex organ *** of one person by *** the sex organ *** of another person’ and ‘*intrusion* of any part of the body of one person *** into the sex organ *** of another person.’ ” (Emphases in original.) *Id.* The court further observed that “where a defendant is charged with intrusion as such, it is sufficient that the State prove ‘any intrusion, *however slight* *** into the sex organ or anus of another person.’ ” (Emphasis in original.) *Id.* (quoting 720 ILCS 5/11-0.1 (West 2010)). The court continued, “Given this definition of ‘penetration,’ we do not accept defendant’s position that it is obvious that, if the charged offenses occurred, medical evidence of them would exist.” *Id.* As a result, the court concluded that counsel’s decision not to seek medical expert testimony “was reasonable because such testimony would have been extremely unlikely to help defendant.” *Id.*

¶ 128 In the present case, we reach the same conclusion for the same reasons. Defendant was found guilty of two counts of predatory criminal sexual assault against L.K. Those counts, counts I and II, alleged that defendant committed acts of sexual penetration with L.K. by (1) putting his penis on her mouth (count I) and (2) putting his finger in her vagina (count II). In 2004, like in 2010, the statutory definition of “sexual penetration” meant “any contact, however slight, between the sex organ *** of one person by *** the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person *** into the sex organ *** of another person.” 720 ILCS 5/12-12(f) (West 2004). Moreover, “female ‘sex organs’ include all the external genitalia, including the labia major and minor.” *Nuckles*, 2019 IL App (2d) 150761-U, ¶ 47 (citing *People v. Ikpoh*, 242 Ill. App. 3d 365, 381-82 (1993)).

¶ 129 Because the same statutory definition of sexual penetration applies to the predatory criminal sexual assault convictions in this case, Soter’s anatomical opinions would not

have established that the acts of sexual penetration were medically impossible. For example, regarding count I, L.K. testified that defendant “put his penis just around my mouth,” and “when he had left I had noticed *** a salty taste around my mouth.” Counsel asked, “[Y]ou felt a penis on your mouth?” L.K. answered, “Yes.” This evidence was sufficient to establish “any contact, however slight,” between the sex organ” of defendant and the mouth of L.K. This evidence, which meets the broad statutory definition of “sexual penetration,” would be commonly understood to *not* leave medical evidence of having occurred.

¶ 130 Similarly, regarding count II, L.K. testified that defendant “slid my pants down and started touching my vagina and then inserted what I can assume [to be] a finger.” She said, “It felt like a smaller object, it was painful, but it wasn’t absolute[ly] painful.” She also said that he “[slid] his hand around on top of *** [her] vagina and then in.” Soter’s proposed testimony that “[a]n adult male finger, averaging one inch in diameter, would have been five times larger than the vaginal opening of a 4-year-old child” and would have caused “significant pain and bleeding” upon insertion, presumes both (1) L.K.’s precise age at the time of the assault and (2) the depth of insertion, neither of which L.K. testified to with precision. The State needed to establish only intrusion, *however slight*, by his finger into her vagina, which included the labia, in order to prove sexual penetration. The fact that L.K. stated she felt only some pain, but not serious pain, indicates the “intrusion” was not as significant as Soter’s proposed testimony assumes.

¶ 131 For the reasons stated, we reject defendant’s claim that his trial counsel was ineffective for not obtaining the testimony of Soter at trial because defendant’s argument that Soter’s testimony would have been admissible is completely without merit. Accordingly, because defendant has failed to (1) overcome the strong presumption that his counsel’s decision

not to present expert testimony was a strategic decision, (2) demonstrate that his counsel performed deficiently by failing to present inadmissible evidence, or (3) demonstrate that he was prejudiced by his counsel’s failure to present unhelpful evidence, defendant has failed to establish that his trial counsel rendered ineffective assistance.

¶ 132 b. Failure To Alert the Trial Court to a Pending PLA in *Kidd*

¶ 133 Last, defendant argues that trial counsel was ineffective for failing to research pending supreme court litigation in *Kidd*, which defendant describes as involving “exactly the same charges,” and by failing to challenge the predatory criminal sexual assault counts before or during trial on the basis that the charging documents omitted the essential element that defendant acted for the purpose of sexual gratification. This argument—again—is completely without merit.

¶ 134 First, defendant points to no authority holding that an attorney performs deficiently by failing to research or bring to the trial court’s attention that a PLA has been allowed by the Illinois Supreme Court. We are not aware of any such authority, and we will not be the first. The granting of a PLA by the supreme court signals only that the court has agreed to review an issue; the granting of a PLA is not a statement on the merits of the issue raised therein, one way or the other.

¶ 135 Moreover, the PLA in *Kidd* had nothing to do with the present case, as we now explain.

¶ 136 In October 2021, this court issued its opinion in *People v. Kidd*, 2021 IL App (4th) 190345, ¶ 78, affirming the defendant’s convictions for two counts of predatory criminal sexual assault of a child. On appeal, the defendant had asserted, among other things, that the two counts of predatory criminal sexual assault of a child failed to “set forth the element *** that the

alleged contact was for the purpose of sexual gratification or arousal of [the defendant or the victim].” *Id.* ¶ 54. Notably, and distinct from the present case, the charges in *Kidd* alleged that the defendant “ ‘committed an act of sexual *contact*, however slight, with [the victim]’ *** ‘in that [the defendant] placed his penis in contact with the mouth of [the victim].’ ” (Emphasis added.) *Id.* ¶ 5.

¶ 137 This court rejected the defendant’s argument, reasoning that, because the State had alleged “ ‘an act of sexual contact,’ ” and the Oxford English Dictionary Online defined “sexual” as “ ‘relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals,’ ” the language of the indictment “did not meaningfully depart from the language of the statute defining the offense of predatory criminal sexual assault of a child.” *Id.* ¶ 57.

¶ 138 In January 2022, the supreme court allowed the defendant’s PLA. *People v. Kidd*, No. 127904 (Ill. Jan. 26, 2022).

¶ 139 In November 2022, after defendant’s trial in this case, the supreme court reversed. *Kidd*, 2022 IL 127904, ¶ 31. The court explained that section 11-1.40(a)(1) of the Code (720 ILCS 5/11-1.40(a)(1) (West 2016)) permits a conviction in either of two ways: (1) an act of “contact, however slight between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused” or (2) “an act of sexual penetration.” *Id.* ¶¶ 19-20. When an indictment alleges contact, it must also allege that the contact was for the purpose of sexual gratification or arousal. *Id.* ¶ 20.

“But, when [an] indictment alleges an act of penetration by a perpetrator 17 years of age or older with a victim 13 years of age or younger, the indictment

sufficiently pleads a count of predatory criminal sexual assault of a child, without any allegation about the purpose of the penetration.” *Id.*

Because the indictment in *Kidd* charged “ ‘sexual contact’ ” and omitted the sexual gratification element, it did not set forth all the elements of the offense. *Id.* ¶ 31.

¶ 140 Defendant’s evaluation of the impact of *Kidd* on his own case entirely misses the mark. *Kidd* involved predatory criminal sexual assault based on allegations of sexual contact, which also required allegations of sexual gratification. Predatory criminal sexual assault allegations based on sexual penetration do not. *Id.* ¶ 20.

¶ 141 In the present case, defendant was charged under the statute in effect when the offenses were alleged to have occurred—between 2004 and 2008. The statute in effect over that time period provided that a person commits predatory criminal sexual assault if he “commits an act of sexual penetration with a victim who was under 13 years of age.” 720 ILCS 5/12-14.1(a)(1) (West 2004). It did not contain the later “contact *** for the purpose of sexual gratification” alternative that the supreme court construed in *Kidd*. 720 ILCS 5/11-1.40(a)(1) (West 2016).

¶ 142 Moreover, even if it had, the result would be the same. Each of the predatory criminal sexual assault counts in this case alleged sexual penetration. Those counts did not require an allegation that defendant acted for the purpose of sexual gratification. See *Kidd*, 2022 IL 127904, ¶ 20. The remaining counts alleged aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2004)) and alleged acts of sexual conduct. Those counts included the allegation that the conduct was for the purpose of sexual gratification.

¶ 143 For the foregoing reasons, *Kidd* had no application to defendant’s case. Because *Kidd* had no application to defendant’s case, counsel could not have performed deficiently by

failing to bring it to the trial court’s attention or attempting to challenge the indictments in this case. Because counsel cannot be ineffective for failing to raise a meritless claim (*People v. Rogers*, 2021 IL 126163, ¶ 32), defendant’s claim of ineffective assistance fails.

¶ 144 Although we have discussed at length why *Kidd* had no relevance to the present case, we wish to emphasize that, even if an issue in a PLA *did* bear some relevance to a case pending in the trial court, trial counsel does not perform deficiently by failing to bring to a trial court’s attention the filing or granting of a PLA. That is because, as we have stated, a pending PLA offers no insight into the supreme court’s ultimate decision about the merits, or lack thereof, of the legal issue raised in the PLA. *Supra* ¶ 134.

¶ 145 For these same reasons, defendant’s related argument that the case must be remanded for the trial court to conduct a *Krankel* inquiry into his claim of ineffective assistance also fails.

¶ 146 Additionally, we note that this court has held that no *Krankel* inquiry is necessary when a defendant has hired new counsel “who (1) has investigated the defendant’s claims of ineffective assistance of trial counsel and (2) determined that it was appropriate to file a motion for a new trial based upon a claim that defendant’s trial counsel was ineffective” (*People v. Harkey*, 2025 IL App (4th) 230523, ¶ 74), which occurred in this case.

¶ 147 III. CONCLUSION

¶ 148 For the reasons stated, we affirm the judgment of the trial court.

¶ 149 Affirmed.