2026 IL App (4th) 250710

NO. 4-25-0710

FILED
October 8, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRETT M. RACHALL, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Logan County No. 21CF175 Honorable Jonathan C. Wright, Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court, with opinion.
Justices Doherty and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 In April 2024, defendant, Brett M. Rachall, pleaded guilty to one count of aggravated battery (720 ILCS 5/12-3.05(c) (West 2020)) and one count of violation of an order of protection (*id.* § 12-3.4(a)(1)(i)) pursuant to a plea agreement in which the State agreed to dismiss additional pending charges. On June 26, 2024, defendant failed to appear at his sentencing hearing, and the trial court sentenced him *in absentia* to five years' imprisonment and ordered him to pay $101,916.37 in restitution. On January 14, 2025, defendant filed a motion for a new trial or sentencing under section 115-4.1(e) of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/115-4.1(e) (West 2024)), which permits a defendant to seek a new trial or sentencing hearing after he has been convicted or sentenced *in absentia*. Following a hearing, the court denied defendant's motion. On appeal, defendant argues the restitution judgment against him must be vacated because his counsel provided ineffective assistance of counsel by failing to object

to the restitution award, which (1) included claims for tool theft and payroll fraud, which were inconsistent with section 5-5-6 of the United Code of Corrections (Code of Corrections) (730 ILCS 5/5-5-6 (West 2024)), (2) included claims for medical expenses and loss of income, which were unsupported by the evidence, and (3) was imposed without any consideration of his ability to pay and did not include a payment schedule. We vacate the restitution judgment and remand with directions for a new sentencing hearing solely on the issue of restitution.

¶ 2 I. BACKGROUND

¶ 3 On August 9, 2021, defendant was charged by information with two counts of aggravated battery (720 ILCS 5/12-3.05(c) (West 2020)) in Logan County case No. 21-CF-175. Both counts involved an August 2, 2021, incident in which defendant, while on a public way, caused bodily harm to Bradley J. Matthews. Count I alleged defendant struck Matthews about the head or body, and count II alleged he threw Matthews to the ground. On April 3, 2024, defendant pleaded guilty to count I and to one count of violation of an order of protection in Logan County case No. 22-CM-8. In exchange, the State agreed to dismiss the remaining counts in Logan County case Nos. 21-CF-175 and 22-CM-8 and all the counts in Logan County case Nos. 22-CF-173 (retail theft), 22-CM-10 (violation of an order of protection and violation of a bail bond), 22-CM-11 (violation of an order of protection and violation of a bail bond), and 22-CM-89 (violation of an order of protection). There was no agreement as to defendant's sentence.

¶ 4 The State provided the following factual basis for defendant's guilty plea in case No. 21-CF-175:

> "[D]efendant, *** made contact with the named victim, *** Matthews, on a public street ***. When the victim was approaching the vehicle that this defendant was in, the defendant struck the victim with the door. And as the *** victim was starting

> to get up off the ground, the defendant *** struck him multiple times about the body and head ***[;] *** [this resulted in] severe injuries to his face, including bleeding on his neck and right ear. He also had a bruise to his forehead as well as a swollen right cheek."

¶ 5 Pursuant to the parties' agreement, the trial court granted defendant pretrial release while awaiting his sentencing. At that time, the court gave the following admonishments to defendant:

> "I want to admonish you that you have a right and obligation to be present for all further proceedings scheduled in each of these cases. Failure to be present could be deemed a waiver or a giving up of your right to be present for trial resulting in trial, even sentencing occurring in your absence."

Defendant indicated he understood the court's admonishments. The court entered a written order directing the probation department to prepare a presentence investigation report (PSI) and setting defendant's sentencing hearing.

¶ 6 The PSI contained a section captioned "circumstances of the offense," which provided additional information about the circumstances surrounding the aggravated battery. This section included information about what Matthews told police about the incident. According to Matthews, defendant's father, Michael Hawk, was present and involved in the aggravated battery. Matthews was out on his motorcycle when he encountered defendant and Hawk, who were Matthews's former employees, in a vehicle at a stoplight. The three men spoke briefly while stopped at the stoplight, and as a result of this conversation, they pulled over nearby. When Matthews got off his motorcycle and approached defendant's vehicle, defendant slammed the door into Matthews, knocking him to the ground. Matthews attempted to get up, and defendant slammed

him into the ground again. Matthews did not remember any more of the incident.

¶ 7 On June 26, 2024, the trial court conducted defendant's sentencing hearing. Prior to that date, on June 10, 2024, defendant filed a *pro se* motion to continue the hearing because he was planning to leave for college, but defense counsel did not adopt it at the sentencing hearing. Consequently, the court held defendant's sentencing hearing *in absentia*. The parties offered no corrections to the PSI.

¶ 8 The State then provided the trial court with a written victim impact statement from Matthews. According to the statement, the circumstances that led to the aggravated battery were as follows:

> "My company periodically employs local residents to assist with carpentry and other construction projects. During early to mid summer in 2021 I hired [defendant] and *** Hawk, to work for my company. After hiring [defendant,] I noticed he had given me false time cards totaling $1860.00 (which he was paid) and several of my power and hand tools [were] missing. I suspected the defendant and his father were the tool thieves. Mr. Hawk also submitted similar false time cards for which he was paid $1,920.00. On the day of the incident *** I found some of the missing tools in defendant's possession and was immediately confronted by defendant and his father, who physically attacked, beat, and kicked me repeatedly, continuing that attack after I fell to the ground and was completely helpless. I was repeatedly kicked and struck on my head and body, suffering severe painful injuries that required medical hospitalization for treatment that lasted several days."

Matthews stated he had ongoing medical expenses resulting from the battery. In the aftermath of the incident, he had "suffered periods of vertigo and dizziness, sometimes extreme and requiring

on-going medical treatment, including various medications." He explained:

> "Although I have health insurance I have paid an annual deductible of $5,000.00 each year for 2021 through 2024, plus additional unreimbursed medical expenses of $10,000.00 per year, all of which I must pay. As of December 15, 2021 my total medical expenses due to defendant's actions were $24,918.34. I believe the total medical bills are/will be over $100,000.00."

Matthews also stated he had lost income as a result the battery:

> "Because of the injuries, medical and therapy appointments and continuing symptoms I have often been unable to work. From the date of this incident through completion of physical therapy I suffered at least $26,845.00 of lost income, and since completing therapy I have been unable to work several days because of vertigo and dizziness, which I believe cost me another $10,000.00, or more, of lost income, for a total of $36,845.00."

Matthews summarized his request for restitution as follows:

> "Deductible and other out of pocket medical expenses
>
> | | |
> |---|---|
> | (4 years at $15,000.00/year) | $60,000.00 |
> | Lost Income through May, 2024 | 36,845.00 |
> | Stolen tools value (not recovered) | 1,291.37 |
> | Wages Paid pursuant to fraudulent time cards (defendant) | 1,860.00 |
> | Subtotal | $99,996.37 |
> | Plus wages paid under Hawk fraudulent time card | $1,920.00 |
> | Total | $101,916.37" |

¶ 9 Defense counsel did not offer any evidence in mitigation.

¶ 10 The State requested the trial court order restitution in the amount set forth in Matthews's victim impact statement and impose the minimum fine to maximize the amount of money defendant could pay toward restitution. Defense counsel, when asked by the court about the State's request, stated:

> "Well, my client has left me in a bad position here, Judge, because as far as *** the restitution that's being requested I have nothing to dispute what Mr. Matthews is asking for. I don't personally know the value of these things. I know they have provided me documentation previously, but without being able to go through that with my client I don't have any reason to think that that is not truthful or accurate."

¶ 11 The trial court sentenced defendant to five years' imprisonment and ordered him to pay $101,916.37 in restitution to Matthews. Defendant did not file a postsentencing motion within 30 days after sentencing.

¶ 12 On August 8, 2024, defendant filed a notice of appeal. This court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. Thereafter, OSAD moved to dismiss the appeal for lack of jurisdiction, noting the notice of appeal was filed more than 30 days after sentencing and no motion attacking the judgment had been filed. We granted the motion and dismissed the appeal on December 19, 2024.

¶ 13 On January 14, 2025, defendant filed a *pro se* motion under section 115-4.1(e) of the Code of Criminal Procedure (725 ILCS 5/115-4.1(e) (West 2024)) to vacate the sentence. He argued he should be granted a new sentencing hearing at which he could be present. He maintained his failure to appear at the hearing was involuntary because he started college at the time. He further contended a sentence of probation would be more appropriate based on the circumstances

of the offense.

¶ 14 On July 9, 2025, the trial court conducted a hearing on defendant's motion. Defense counsel advised the court she had filed a certificate of compliance with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) and was adopting defendant's motion. The State argued against any changes to the judgment. The court denied the motion.

¶ 15 This appeal followed. Defendant's notice of appeal, as amended, provides the "Nature of Order Appealed" is "Conviction, Sentence, and Denial of Motion to Vacate Pursuant to 725 ILCS 5/115-4.1(e)." It states the "Date of Judgment or Order" was July 9, 2025. It fails to specify the relief requested.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues the restitution judgment against him must be vacated because his counsel provided ineffective assistance of counsel by failing to object to the award, which (1) included claims for tool theft and payroll fraud, which were inconsistent with section 5-5-6 of the Code of Corrections, (2) included claims for medical expenses and loss of income, which were unsupported by the evidence, and (3) was imposed without any consideration of his ability to pay and did not include a payment schedule.

¶ 18 At the outset, we note defendant's jurisdictional statement under Illinois Supreme Court 341(h)(4) (eff. Oct. 1, 2020) asserted this court has jurisdiction under Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) concerning appeals from judgments entered on a plea of guilty. However, in his brief, defendant initially argued we have jurisdiction to address a challenge to his sentence under section 115-4.1(g) of the Code of Criminal Procedure (725 ILCS 5/115-4.1(g) (West 2024)). Given this discrepancy and our duty to confirm our jurisdiction, we ordered supplemental briefing on the issues of (1) whether it is proper, under cases such as *Shared Imaging,*

LLC v. Hamer, 2017 IL App (1st) 152817, to dismiss an appeal when the appellant fails to meet his burden to establish our jurisdiction to address a claim and (2) "whether section 115-4.1(g) allows the appellate court to review a sentence or conviction independent of a direct appeal from those judgments."

¶ 19 A. Defendant's Jurisdictional Statement

¶ 20 In defendant's supplemental brief, he contends he did not fail to meet his obligation to demonstrate appellate jurisdiction. According to defendant, "Although not cited in the Jurisdictional statement, [his] opening brief establishes this Court's jurisdiction in the body of the argument." Based on this, defendant asserts dismissal of his appeal for "lack of technical compliance with Rule 341(h)" would not be an appropriate sanction. We agree.

¶ 21 We find, despite the apparent error in the jurisdictional statement, defendant's discussion of jurisdiction in the argument section of his brief was sufficient to meet his obligation to demonstrate appellate jurisdiction. In the argument section of his brief, defendant argued section 115-4.1(g) supports an appeal of the underlying judgment separate from a direct appeal of that judgment under Rule 606(b) (Ill. S. Ct. R. 606(b) (eff. Apr. 15, 2024)). Defendant's brief thus directly pointed to a plausible basis for appellate jurisdiction. Consequently, cases such as *Shared Imaging* are distinguishable because they do not involve an error in the jurisdictional statement corrected elsewhere in the brief. See, *e.g.*, *Shared Imaging*, 2017 IL App (1st) 152817 ¶¶ 18-22 (explaining its dismissal of the appeal the original Illinois Supreme Rule 341(h)(4)(ii) (eff. Jan. 1, 2016) jurisdictional statement was incorrect but addressing the case on the merits when the appellant corrected the error on petition for rehearing).

¶ 22 B. Appellate Jurisdiction Under Section 115-4.1(g)

¶ 23 Prior to the passage of the original version of section 115-4.1 (see Ill. Rev. Stat.

1971, ch. 38, ¶ 115-4.1 (effective September 2, 1971)), Illinois courts held that a defendant who voluntarily chooses to be absent from trial waived the right to be present but a felony trial conducted entirely *in absentia* was improper. *People v. Davis*, 39 Ill. 2d 325, 330 (1968). The original version of section 115-4.1 formalized this rule, providing, "In any criminal trial, where a defendant after his trial commences willfully absents himself from court for a period of 2 successive court days, the court shall proceed with the trial." Ill. Rev. Stat. 1971, ch. 38, ¶ 115-4.1. However, it further provided, "The court may, after hearing and notice to the States Attorney, vacate any judgment of conviction entered." *Id.* In 1979, the legislature replaced the single paragraph of the previous section 115-4.1 with a seven-section provision similar to the existing version. See Ill. Rev. Stat. 1979, ch. 38, ¶ 115-4.1.

¶ 24 The current version of section 115-4.1 balances the need for a prompt trial with the protection of a defendant's rights. It provides for trial *in absentia* in the following situation:

> "When a defendant after arrest and an initial court appearance for a non-capital felony or a misdemeanor, fails to appear for trial, at the request of the State and after the State has affirmatively proven through substantial evidence that the defendant is willfully avoiding trial, the court may commence trial in the absence of the defendant." 725 ILCS 5/115-4.1(a) (West 2024).

This protects the rights of defendants tried *in absentia* by providing they will be represented by appointed counsel, have a jury trial unless they waived that right prior to absenting themselves, and enjoy "[a]ll procedural rights guaranteed by the United States Constitution, Constitution of the State of Illinois, statutes of the State of Illinois, and rules of court shall apply to the proceedings the same as if [they] were present in court." *Id.* Similar to the original version, the current version allows the trial court to vacate *in absentia* judgments, but, unlike the original, it permits this *only*

if the defendant demonstrates their absence was involuntary. Section 115-4.1(e) provides:

> "When a defendant who in his absence has been either convicted or sentenced or both convicted and sentenced appears before the court, he must[, after notice to the State's Attorney and a hearing,] be granted a new trial or new sentencing hearing if the defendant can establish that his failure to appear in court was both without his fault and due to circumstances beyond his control." *Id.* § 115-4.1(e).

Further, as is critical here, the current version provides not only for an appeal of the denial a motion under section 115-4.1(e) to vacate the conviction or sentence but also for a review of the underlying judgment. Section 115-4.1(g) states: "A defendant whose motion under paragraph (e) for a new trial or new sentencing hearing has been denied may file a notice of appeal therefrom. Such notice may also include a request for review of the judgment and sentence not vacated by the trial court." *Id.* § 115-4.1(g).

¶ 25 1. *Interpretation of Sections 115-4.1(e) and 115-4.1(g)*

¶ 26 The enactment of sections 115-4.1(e) and 115-4.1(g) initially caused procedural uncertainty. One issue which arose after the 1979 enactment, the first recognizably modern version of section 115-4.1, was whether a defendant convicted or sentenced *in absentia* could file a direct appeal without first filing a motion under section 115-4.1(e). Compare *People v. Sayles*, 130 Ill. App. 3d 882, 887-88 (1985) (holding no motion was necessary), with *People v. Brown*, 121 Ill. App. 3d 776, 778 (1984) ("[A] conviction and sentence for one tried *in absentia* is not final and appealable until the defendant has returned and a ruling is made on any claim that the absence was not willful."). The supreme court case that resolved this question, *People v. Partee*, 125 Ill. 2d 24 (1988), clarified how sections 115-4.1(e) and 115-4.1(g) fit into the framework of direct appeals and collateral attacks.

¶ 27 In *Partee*, our supreme court held a section 115-4.1(e) motion is "akin to a collateral attack." *Id.* at 35. The State, in *Partee*, contended a defendant convicted *in absentia* could not appeal until the trial court ruled on a motion under section 115-4.1(e) to vacate the judgment. *Id.* at 30. The *Partee* court disagreed. *Id.* at 38. Addressing an attempt to reconcile the conflicting case law, our supreme court reasoned:

> "The first difficulty [with the proposition that a section 115-4.1(e) motion is a prerequisite to the appeal of a judgment *in absentia* arises from] *** the premise that a section 115-4.1(e) motion to vacate a judgment and the underlying judgment *in absentia* are part of the same 'case.' If [this were] so, then it would be truly difficult to divide jurisdiction between the circuit and appellate courts. However, *** a section 115-4.1(e) motion is actually more akin to a collateral attack upon a final judgment than it is to a procedural step in the direct appeal of that judgment. In other words, a section 115-4.1(e) motion is analogous to an action for post-judgment relief under section 2-1401 of the [Code of Civil Procedure] or an action for post-conviction relief under section 122-1 of the Code of Criminal Procedure [citation]. Since a collateral attack upon a judgment is a case separate and apart from the case in which the judgment has been attacked *** the pendency or availability of the collateral remedy will not affect the jurisdiction of the appellate court over a direct appeal [citations]." *Id.* 35-36.

¶ 28 2. *Scope of Appeal: Second Sentence of Section 115-4.1(g)*

¶ 29 At issue here is the nature and scope of appeals permitted under the second sentence of section 115-4.1(g) (hereinafter, the second sentence). Pursuant to section 115-4.1(g), "A defendant whose motion under paragraph (e) for a new trial or new sentencing hearing has been

denied may file a notice of appeal therefrom. *Such notice may also include a request for review of the judgment and sentence not vacated by the trial court*." (Emphasis added.) 725 ILCS 5/115-4.1(g) (West 2024). The challenge here is that the second sentence is potentially in tension with Illinois Supreme Court rules governing criminal appeals, such that interpretation of the second sentence raises constitutional separation of powers issues.

¶ 30 The argument for a limited, narrow reading of the second sentence of section 115-41.1(g) appears in a Fifth District decision, *People v. Stark*, 121 Ill. App. 3d 787 (1984), a pre-*Partee* case. The *Stark* court, in its analysis of whether it was necessary for a defendant to file a direct appeal from an *in absentia* conviction or sentence before filing a motion under section 115-4.1(e), concluded:

> "It is apparent that the statutory scheme [set out in sections 115-4.1(e) and 115-4.1(g)] merely provides [the] defendant with an additional means of securing a new trial. The [second] sentence in [section 115-4.1(g)] is a device to enable [the] defendant to consolidate into one appeal the denial of his motion [under section 115-4.1(e)] as well as the denial of any traditional post-trial motion. This statutory scheme was not designed to preempt Supreme Court Rule 606(b) [citation], which governs the manner in which criminal appeals from final judgments are perfected." *Id.* at 790.

We note *People v. Priest*, 345 Ill. App. 3d 660, 667-68 (2003), which we asked the parties to address in supplemental briefing, adopted the reasoning in *Stark*.

¶ 31 However, this court took a conflicting position in *People v. Williams*, 274 Ill. App. 3d 793, 796-99 (1995), holding, in including the second sentence of section 115-4.1(g), the legislature intended to create a mechanism that would allow a defendant subject to an *in absentia*

judgment to obtain general review of that judgment without needing to comply strictly with the terms of Illinois Supreme Court Rule 606(b) (eff. July 1, 1984). See *Williams*, 274 Ill. 3d at 796-99. Rule 606(b) requires a defendant to file a notice of appeal no more than the latter of 30 days after (1) the entry of conviction and sentence or (2) the trial court's ruling on a timely motion attacking the judgment).

¶ 32 In *Williams*, this court noted, because section 115-4.1(g) is a vehicle for a defendant tried *in absentia* to obtain a "general review" of the defendant's conviction and sentence later than Rule 606(b) would generally permit, an appeal under the second sentence of section 115-4.1(g) "does create some tension between the Supreme Court of Illinois and the Illinois General Assembly as to appellate procedure." *Williams*, 274 Ill. App. 3d at 798. However, we concluded, because section 115-4.1(g)'s "conflict with [the timing provision of] Rule 606(b) is only indirect," it was within the General Assembly's power to promulgate this procedural rule. *Id.* at 799. We further acknowledged the supreme court has recognized, although it has the primary power to promulgate procedural rules, in some circumstances, that power can exist concurrently in the supreme court and the General Assembly. *Id.* (citing *O'Connell v. Saint Francis Hospital*, 112 Ill. 2d 273 (1986)). In particular, the General Assembly can create procedural rules as part of a large statutory scheme. *Id.* (citing *Strukoff v. Strukoff*, 76 Ill. 2d 53 (1979)).

¶ 33 Before reaching our conclusion in *Williams*, we considered *Partee*, pointing out, "The *Partee* court noted the existence of 'a complex series of tradeoffs [in section 115-4.1] designed to balance the defendant's right to be present at trial, the State's interest in the expeditious administration of justice, and our traditional distrust of trials *in absentia*.' " *Id.* (quoting *Partee*, 125 Ill. 2d at 40). As the *Partee* court stated, "[s]ection 115-4.1 provides for trial *in absentia*. It does not create a kangaroo court." *Partee*, 125 Ill. 2d at 31. In *Williams*, we concluded:

> "Here, the provision of section 115-4.1(g) providing for review long after the conviction or sentence is a matter of procedure. However, the legislation makes the appeal on the merits a part of the appeal of the ruling on the collateral attack brought pursuant to section 115-4.1(e) of the Code [of Criminal Procedure]. The appeal must be brought within the time frame required by Rule 606(b) from the final order of that collateral proceeding. Thus conflict with Rule 606(b) is only indirect. Moreover, the provision of section 115-4.1(g) of the Code [of Criminal Procedure] permitting review of the conviction and sentence is part of a statutory scheme to afford due process to persons tried *in absentia*. We conclude that the separation of powers doctrine in regard to court procedures is not violated by section 115-4.1(g)." *Williams*, 274 Ill. App. 3d at 799.

¶ 34 The State, in its supplemental brief, asked us to reconsider our holding in *Williams* in light of the reasoning in *Priest*. We find the reasoning in *Stark* (and thus *Priest*) unpersuasive and therefore see no reason to reconsider our holding in *Williams*.

¶ 35 The second sentence of section 115-4.1(g) allows a defendant to "request *** review of the judgment and sentence not vacated by the trial court." 725 ILCS 5/115-4.1(g) (West 2024). *Stark*'s suggestion that "[t]he [second] sentence in [section 115-4.1(g)] is a device to enable [a] defendant to consolidate into one appeal the denial of his motion [under section 115-4.1(e)] as well as the denial of any traditional post-trial motion" (*Stark*, 121 Ill. App. 3d at 790) is at odds with the plain meaning of section 115-4.1. *Stark*'s interpretation of the second sentence of section 115-4.1(g) assumes the legislature used ambiguous language as a means to authorize the consolidation of direct and section 115-4.1(g) appeals. If the legislature intended to authorize such consolidations, it could have easily said so. It appears the *Stark* court developed its interpretation

in an attempt to avoid what it perceived as a conflict with Rule 606(b) and, in doing so, departed from the plain meaning of section 115-4.1(g). It is impermissible for a court, "under the guise of construction [of a statute, to] 'correct' a perceived error or oversight by the legislature." *People v. Grant*, 2022 IL 126824, ¶ 25.

¶ 36 Moreover, *Stark*'s reading of the second sentence of section 115-4.1(g) renders that sentence superfluous, as appellate courts routinely grant parties' motions to consolidate appeals without any need for authorization other than Illinois Supreme Court Rule 361 (eff. Apr. 15, 2024), which sets requirements for motions in reviewing courts. See, *e.g.*, *People v. Moore*, 2023 IL App (4th) 210245, ¶ 40 (noting this court granted the defendant's motion to consolidate appeals). One cannon of statutory construction is that "[n]o part of a statute" should be construed to render it "meaningless or superfluous." *In re Julie M.*, 2021 IL 125768, ¶ 27. By contrast, in *Williams*, we addressed the constitutionality of the second sentence of section 115-4.1(g) as a part of the legislative scheme created by the whole of section 115-4.1. *Williams*, 274 Ill. App. 3d at 799. We continue to deem that reasoning to be consistent with our supreme court's precedent concerning when the legislature may promulgate procedural rules.

¶ 37 3. *Applicability of Rule 604(d)*

¶ 38 Because defendant's case involved a partially negotiated guilty plea and thus would be governed by Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) rather than Rule 606(b), we must now address whether compliance with Rule 604(d) is a condition precedent to this appeal.

¶ 39 Illinois law recognizes the filing by a defendant of a motion compliant with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) as a condition precedent to the filing of "an appeal from a judgment on a plea of guilty." *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). Rule 604(d) provides, in relevant part:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.
>
> * * *
>
> *** The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant *** to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty *** and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.
>
> *** Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024).

However, our supreme court has held the requirement to file a Rule 604(d) motion before filing a direct appeal in a guilty plea case does not apply when a defendant appeals the dismissal or denial of a collateral attack on the judgments. See *Flowers*, 208 Ill. 2d at 302 (stating it was unnecessary for the defendant to have filed a Rule 604(d) motion to raise her claims in a postconviction petition).

¶ 40 As previously discussed (*supra* ¶¶ 31-33), in *Williams*, relying on *Partee*, we concluded appeals under the second sentence of section 114-4.1(g) are not *direct* appeals but instead are appeals from collateral attacks. Thus, a Rule 604(d) motion is not a condition precedent for appeal under the second sentence of section 115-4.1(g). This conclusion is consistent with the

Partee court's caution that, by providing for *in absentia* proceedings, section 115-4.1 did not create a "kangaroo court." *Partee,* 125 Ill. 2d. at 31. Given that plea agreements vastly predominate as the method of resolving criminal charges (see, *e.g.*, *The Truth About Trials,* The Marshall Project (updated Nov. 4, 2020), https://www.themarshallproject.org/2020/11/04/the-truth-about-trials [https://perma.cc/LD2Y-ZLUQ]), we suspect the typical *in absentia* defendant is one who fled between entering a plea and a sentencing hearing. But such defendants are unlikely to have consulted on the contents of a Rule 604(d) motion and may, like defendant here, have counsel who did not file any postsentencing motions on their behalf. Thus, if a Rule 604(d) motion is a condition precedent to an appeal under section 115-4.1(g), that section is a weak protection against an *in absentia* sentencing hearing becoming a "kangaroo court." See *Partee,* 125 Ill. 2d at 31.

¶ 41 Based on the foregoing, we conclude, in this case, Rule 604(d) is not a condition precedent to an appeal under section 115-4.1(g), and this court has jurisdiction pursuant to section 115-4.1(g) to address defendant's claims on appeal.

¶ 42 C. The Sufficiency of Defendant's Notice of Appeal

¶ 43 In addition to the jurisdictional issues we ordered the parties to address in their supplemental briefs, the State additionally argued defendant's amended notice of appeal did not specify the date of the underlying judgment of which he seeks review or the relief requested and, therefore, it was insufficient to confer jurisdiction on this court. We disagree.

¶ 44 1. *Requirements for a Notice of Appeal to Confer Jurisdiction*

¶ 45 Illinois Supreme Court Rule 303(b) (eff. Jul. 1, 2017) specifies the required contents of a notice of appeal. Specifically, Illinois Supreme Court Rule 303(b)(2) (eff. Jul. 1, 2017) provides the notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." No part of Rule 303(b) requires the

appellant to state the date of the judgments or orders appealed from. "Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Notices of appeal are construed liberally (*id.*), and " '[w]here the deficiency in notice is one of form, rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal' " (*id.* at 105 (quoting *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 230 (1991))). " '[T]he failure to include a prayer for relief in a notice of appeal is an error of form not substance and, absent prejudice to the appellee, does not deprive the appellate court of jurisdiction." *In re Marriage of Gabriel*, 2020 IL App (1st) 182710, ¶ 32 (quoting *Maywood-Proviso State Bank v. Village of Lisle*, 234 Ill. App. 3d 206, 215 (1992)).

¶ 46 2. *This Case*

¶ 47 Here, the amended notice of appeal was substantially complete, and the deficiency in form did not prejudice the State. Any deficiencies were not of the nature that would cause this court to lack jurisdiction over defendant's appeal. The restitution order was part of defendant's sentence, so identifying the sentence as a judgment defendant appealed from adequately alerted the State to the subject of the appeal. The State was not prejudiced because the body of defendant's brief made it clear the appeal was one under section 115-4.1(g) of the Code of Criminal Procedure.

¶ 48 D. Ineffective Assistance of Counsel: Failing to Object to the Restitution Judgment

¶ 49 Now, having determined this court has jurisdiction over defendant's appeal, we turn to the merits of defendant's arguments. Defendant argues the restitution judgment against him must be vacated because his counsel provided ineffective assistance by failing to object to the restitution award that (1) was inconsistent with section 5-5-6 of the Code of Corrections (730 ILCS 5/5-5-6 (West 2024)), (2) included claims which were unsupported by the evidence, and (3) was

imposed without any consideration of his ability to pay and did not include a payment schedule. Under the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), to establish the ineffectiveness of counsel, a defendant must show

> "(1) the attorney's performance fell below an objective standard of reasonableness and (2) the attorney's deficient performance prejudiced the defendant in that, absent counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Because the defendant must satisfy both prongs of this test, the failure to establish either is fatal to the claim." *People v. Jackson*, 2020 IL 124112, ¶ 90.

¶ 50 First, "[w]hen a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687-88. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight *** and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689. "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that ***, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Id.*

¶ 51 Second, to show prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

¶ 52 We review *de novo* a claim of ineffective assistance of counsel when a defendant raises it for the first time on appeal. *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 88.

¶ 53 1. *Presumption of Reasonableness*

¶ 54 At the outset, we note the State argues defense counsel's decision not to object was trial strategy and, thus, cannot form the basis for an ineffective assistance of counsel claim. See *People v. Manning*, 241 Ill. 2d 319, 327 (2011) (" 'Matters of trial strategy are generally immune from claims of ineffective assistance of counsel.' " (quoting *People v. Smith*, 195 Ill. 2d 179, 188 (2000))). We disagree.

¶ 55 Defense counsel acquiesced to the State's restitution request, explaining she had "nothing to dispute what Mr. Matthews is asking for" and could not evaluate documentation the State had provided "without being able to go through that with my client." However, defense counsel's statement was incorrect, as there were objections she could have raised based on legal standards, without receiving any additional information from defendant.

¶ 56 The State cites *People v. Atnip*, 82 Ill. App. 3d 758, 761 (1980) (quoting *People v. Hills*, 71 Ill. App. 3d 461, 467 (1979)), for the proposition, " 'The mere failure to make an objection is a matter of judgment and does not establish incompetency.' " This proposition does not conform to *Strickland*'s analytic framework. As *Strickland* later established, a strong presumption exists an act or omission is sound trial strategy, but a defendant may overcome the presumption. *Strickland*, 466 U.S. at 689. In this case, defense counsel's stated reason for not objecting was an incorrect statement, and thus, defendant has overcome the presumption of reasonableness.

¶ 57 2. *Restitution Award for Tools and Payroll Fraud*

¶ 58 Section 5-5-6, the restitution section in the Code of Corrections (730 ILCS 5/5-5-6 (West 2024)), provides in relevant part, when a trial court has determined cash restitution is appropriate (*id.* § 5-5-6(a)), it "shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge" (*id.* § 5-5-6(b)). This court has interpreted

this to mean a "the trial court may not order restitution of sums extraneous to the charges before it." (Internal quotation marks omitted). *People v. Clausell*, 385 Ill. App. 3d 1079, 1081 (2008). However, a trial court may properly order restitution for losses caused by an act that is directly tied to the commission of the offense. See *Id.* at 1082 ("[R]estitution may properly be ordered for all losses proximately caused by the same criminal acts of the defendant." (Internal quotation marks omitted.)).

¶ 59 We reasoned in *Clausell* that, when an act causing harm is effectively part of the offense of which the defendant was convicted, the act causing harm was not extraneous to the relevant charge. In *Clausell*, three men approached Justin Davis. *Id.* at 1079-80. Davis turned, and someone struck him from behind on the neck, knocking him unconscious. *Id.* at 1080. When he regained consciousness, one of the men was "standing on his face," a second was searching his pockets, and the third was searching his car. *Id.* The men took items from Davis's person and car. *Id.* The defendant was arrested as one of the three individuals who were involved and was charged with several offenses, including aggravated battery and robbery. *Id.* A jury convicted the defendant of robbery but acquitted him of aggravated battery. *Id.* at 1079. The trial court found, despite the aggravated battery acquittal, "the record afforded a sufficient basis to order restitution for Davis's medical bills based on the force used in the robbery." *Id.* at 1080. We affirmed, holding, even assuming Davis's injuries were caused solely by the blow to the neck, the blow to the neck was part of the robbery because it "reasonably could be seen to have been used to disable Davis and allow the robbery to commence." *Id.* at 1082. Thus, the blow to the neck was "proximately related to the robbery." *Id.*

¶ 60 By contrast, in *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 37, where the defendant was charged and convicted of theft of a driver's license, the Third District held the trial

court could not impose restitution for costs associated with other items the defendant took from the victim's vehicle. Similarly, in *People v. Exum*, 307 Ill. App. 3d 1000, 1003-04 (1999), this court held, where a defendant was charged with the forgery of a single check, restitution for the amounts that exceeded the amount of the check was improper.

¶ 61 In this case, according to the PSI, Matthews told the police he was out on his motorcycle when he encountered defendant and Hawk while they were in a vehicle at a stoplight. Matthews spoke to the two, the vehicles pulled over, Matthews approached defendant's vehicle, and someone struck him with the vehicle door. In his victim impact statement, Matthews stated he had suspected defendant and Hawk of tool thefts and payroll fraud. According to his statement, "On the day of the incident *** I found some of the missing tools in defendant's possession and was immediately confronted by defendant and his father, who physically attacked, beat, and kicked me repeatedly." In either version of these events, the theft and fraud committed were separated from the battery by several causal steps. First, Matthews suspected defendant and Hawk of the tool thefts and fraud. Next, he encountered them on the street and either decided to confront them or noticed the tools in defendant's possession in a way that drew defendant's violent reaction. In the interpretation of this evidence most favorable to the State, the direct cause of the aggravated battery was not the alleged fraud or tool thefts but Matthews's discovery of evidence of thefts. Although the tool thefts were part of the chain of events leading up to the aggravated battery, there exists a reasonable probability the trial court would not deem them to be "proximately related" to the aggravated battery. See *Clausell*, 385 Ill. App. 3d at 1082.

¶ 62 The State argues the tool thefts and payroll frauds were "intimately tied" to the assaults and thus a proper basis for restitution existed. However, the State fails to cite any authority in support of restitution for "intimately tied" offenses. Indeed, it appears likely no such standard

exists. As we explained, the rule is that restitution must not be extraneous to the *charged* offenses.

¶ 63 Based on the record before us, we are unable to discern whether any causal connection, proximate or otherwise, exists between Matthews's claims of payroll fraud and the aggravated battery. Additionally, we find there is a reasonable probability, had counsel objected to the claims of tool theft, the trial court may have found the tool thefts were not proximately related to the aggravated battery. Thus, we conclude defense counsel's decision not to object to the claims for payroll fraud and tool theft fell below an objective standard of reasonableness, and defendant was prejudiced by counsel's failure to object.

¶ 64 3. *Restitution Award for Medical Expenses and Loss of Income*

¶ 65 Defendant also contends the restitution award for Matthews's economic losses due to the aggravated battery was unsupported by the evidence and an objection on that basis would most likely have been successful. We agree.

¶ 66 Our supreme court has held "the trial court must evaluate the actual costs incurred by the victim and cannot rely on conjecture or speculation as to the amount to be awarded. [Citation.] To satisfy [this] requirement, *** the trial court must receive sufficient information to evaluate the accuracy of the victim's restitution claim." *People v. Birge*, 2021 IL 125644, ¶ 48. A victim impact statement is a proper source of such evidence. However, a guess about the amount of a loss is not sufficient. *People v. Adame*, 2018 IL App (2d) 150769, ¶ 14. Thus, for instance, when the loss was a 10-year-old credenza, evidence of the price of a dissimilar new credenza was insufficient to evaluate the loss. *Id.* ¶ 17. By contrast, in *People v. Hamilton*, 198 Ill. App. 3d 108, 115 (1990), a Second District panel found a victim impact statement was sufficient to establish the fair market value of a set of doors was $415.54 when the victim impact statement specified that (1) the victim's insurance policy would pay no more than replacement value and (2) the insurance

company agreed to pay $415.54 for the replacement doors.

¶ 67 Although the victim impact statement contained specific figures—such as that Matthews "suffered at least $26,845.00 of lost income" between the day defendant injured him and his completion of physical therapy—the statement did not provide any source for such assertions. Although Matthews must have calculated his losses, his statement did not offer any basis for the court to evaluate those calculations. Consequently, defense counsel's performance fell below an objective standard of reasonableness when she failed to object to the unsupported restitution amounts. Moreover, a reasonable probability exists the trial court would have awarded less restitution or no restitution if counsel had objected that the State had not provided "sufficient information to evaluate the accuracy of the victim's restitution claim." See *Birge*, 2021 IL 125644, ¶ 48.

¶ 68 We note the State relies, in part, on other cases in which reviewing courts' decisions to uphold awards were based wholly or partially on the defendants' acquiescence to the State's requests or on the defendants' failures to preserve the issue. These cases tend to support defendant's argument that he was prejudiced by defense counsel's failure to challenge the sufficiency of the evidence for the amount claimed in Matthews's victim impact statement. In *People v. Dickey*, 2011 IL App (3d) 100397, ¶ 26, a Third District panel held evidence for an award of $5,854.40 for medical expenses was adequately supported by bills totaling $5,854.40, which were contained in a PSI to which the defendant did not object. In *People v. Powell*, 199 Ill. App. 3d 291, 295 (1990), this court held a defendant "waived" her challenge to an award of $5,710 when the PSI listed the amount sought and the defendant did not object to the amount of the award in the trial court. In *People v. Smollett*, 2023 IL App (1st) 220322, ¶ 144, *rev'd on other grounds*, 2024 IL 130431, a First District panel found the City of Chicago's victim impact statement that

the Chicago Police Department spent 1,837 overtime hours investigating the defendant's false report of a crime was "not wholly unsupported by the evidence," in that the State "submitted an accounting of overtime expenses that the City incurred as a result of [the defendant's] false report." Moreover, the defendant forfeited any argument the evidence lacked specific details by failing to raise the issue in his posttrial motion. *Id.* ¶ 145.

¶ 69 The State argues this case is distinguishable from *Birge* and *Adame*. Those alleged distinctions are unpersuasive. First, the State contends *Birge* is distinguishable because the restitution in that case was unsupported by any "numerical evidence *** of the victim's losses." *Birge*, 2021 IL 125644, ¶ 49. This is indeed a factual distinction. However, it does not change the principle established in *Birge*: that the restitution statute's requirement the trial court must evaluate the "actual costs incurred by the victim" is not satisfied unless the court "receive[s] sufficient information to evaluate the accuracy of the victim's restitution claim." *Id.* ¶ 48. Next, it contends *Adame* is distinguishable because (1) one error in the award was that it was based on a charge of which the defendant was acquitted, theft of property worth more than $1,000, and (2) the evidence presented—the value of a noncomparable item—did not establish the value of the stolen property. Again, this is an unconvincing distinction. First, the *Adame* court held the award was improper because it both "ordered restitution in an amount that was unsupported by the evidence *and* *** effectively punished [the] defendant for the crime of felony theft that he was not convicted of." (Emphasis added.) *Adame*, 2018 IL App (2d) 150769, ¶ 17. Second, unlike the State here, the State in *Adame* did *try* to offer evidence to support the amount of the victim's loss; the problem was its evidence was the price of a noncomparable item.

¶ 70 Based on the record, we conclude defense counsel's failure to object to the claims for medical expenses and lost wages, which were unsupported by the evidence, fell below an

objective standard of reasonableness. Additionally, there is a reasonable probability the trial court would not have ordered the requested amounts had defense counsel objected. Accordingly, we conclude defense counsel provided ineffective assistance of counsel for failing to object to Matthews's claims for medical expenses and lost wages.

¶ 71 4. *Consideration of Defendant's Ability to Pay*

¶ 72 Defendant further contends counsel was ineffective for failing to object when the trial court approved a restitution order which did not include a schedule for payment of the award and because the court did not consider his ability to pay when it set the schedule. The State agrees a repayment schedule is required. However, it argues the court did not need to consider defendant's ability to pay *when setting the amount due*, which is not something defendant claimed was required. We conclude the award was *invalid* because it lacked a payment schedule (*Hibbler*, 2019 IL App (4th) 160897, ¶ 82), but we also further hold a trial court *is* required to consider a defendant's ability to pay when setting a payment schedule. Section 5-5-6(f) of the Code of Corrections states, "*Taking into consideration the ability of the defendant to pay*, *** the [trial] court *** shall fix a period of time *** within which payment of restitution is to be paid in full." (Emphasis added.) 730 ILCS 5/5-5-6(f) (West 2024).

¶ 73 Therefore, we conclude defense counsel's performance fell below an objective standard of reasonableness when she failed to object to the restitution award when the trial court did not set a payment schedule or consider defendant's ability to pay when ordering restitution. Moreover, there is a reasonable probability the court would have included a payment schedule, or considered defendant's ability to pay, had defense counsel objected. Consequently, we conclude defense counsel rendered ineffective assistance of counsel for failing to object.

¶ 74 III. CONCLUSION

¶ 75 For the reasons stated, we vacate the restitution award and remand the matter for a new hearing solely on the issue of restitution. If the court awards restitution, it shall consider defendant's ability to pay the restitution before it sets a schedule for the payment of the award.

¶ 76 Restitution award vacated; cause remanded with directions.

***People v. Rachall*, 2026 IL App (4th) 250710**

Decision Under Review:	Appeal from the Circuit Court of Logan County, No. 21-CF-175; the Hon. Jonathan C. Wright, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Catherine K. Hart, and Maria A. Harrigan, of State Appellate Defender's Office, of Springfield, for appellant.
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