

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) 251375-U

NO. 4-25-1375

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 25, 2026

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Mason County
PAUL A. HARRIS,	)	No. 23CF19
Defendant-Appellant.	)	
	)	Honorable
	)	Roger B. Thomson,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices DeArmond and Grischow concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court remanded the case to the trial court where defendant's trial counsel was ineffective in failing to file a certification for a waiver of assessments.

¶ 2 Defendant, Paul A. Harris, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2022)) and sentenced to 55 years in prison. On appeal, he argues that his trial counsel was ineffective for failing to file a certification for a waiver of court assessments. The State concedes that defendant's counsel was ineffective. We affirm the trial court's judgment but remand to the trial court for defense counsel to comply with Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) and file a certification for a waiver of assessments on defendant's behalf.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged on March 5, 2023, with two counts of first degree murder (720 ILCS 5/9-1(a)(1)-(2) (West 2022)) for striking his father, Paul D. Harris, with an axe multiple

times, thus causing his death. Defendant was represented throughout these proceedings by an attorney from the public defender's office. The jury found defendant guilty on both counts, and the trial court sentenced him to concurrent prison terms of 55 years. On defendant's first direct appeal, this court remanded for a retrospective fitness hearing and provided specific other instructions, including that defendant could not be sentenced on both counts of first degree murder. *People v. Harris*, 2025 IL App (4th) 241061-U, ¶ 74.

¶ 5 On remand, the trial court reappointed one of the attorneys from the public defender's office to represent defendant. At the retrospective fitness hearing held on November 6, 2025, the court found that defendant was fit at the time of trial. In accordance with our mandate, on December 18, 2025, the court resentenced defendant on one count of first degree murder to 55 years in prison and imposed a fine of \$75 and a statutory assessment of \$549. Defendant's trial counsel did not file a certification for a waiver of assessments.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues on appeal that his counsel was ineffective for failing to file a certification for a waiver of court assessments under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023). The State concedes that defense counsel was ineffective for failing to do so.

¶ 9 A criminal defendant has a constitutional right to effective assistance of counsel. U.S. Const. amend VI; *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant can demonstrate ineffective assistance of counsel by showing that "(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." *People v. Jackson*, 2020

IL 124112, ¶ 90.

¶ 10 Illinois Supreme Court Rule 404(a) allows criminal defendants to apply for a waiver of court assessments under Section 124A-20(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/124A-20(b) (West 2024)) no later than 30 days after sentencing. Ill. S. Ct. R. 404(a) (eff. Sept. 1, 2023). Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) additionally provides,

“In any case where a defendant is represented by a public defender, *** the attorney representing that defendant shall file a certification with the court, and that defendant shall be entitled to a waiver of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule.”

¶ 11 In this case, defendant was represented by a public defender and thus Rule 404(e) establishes that his attorney “*shall* file a certification with the court” and defendant “*shall* be entitled to a waiver of assessments.” (Emphases added.) Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). Defense counsel thus was required by Rule 404(e) to file a certification for a waiver of assessments. See *People v. Yarber*, 2026 IL App (4th) 250294-U, ¶ 69. However, counsel failed to do so, and the trial court imposed \$549 in assessments. Defense counsel performed deficiently by failing to file a certification for a waiver of criminal assessments for defendant, as required by Rule 404(e), and counsel’s failure prejudiced defendant because, had he done so, the assessments would have been waived. See *Yarber*, 2026 IL App (4th) 250294-U, ¶ 69; *People v. Fields*, 2026 IL App (4th) 250109-U, ¶ 99; *People v. Glas*, 2025 IL App (4th) 241199-U, ¶¶ 34-35; *People v. Chase*, 2025 IL App (4th) 230407-U, ¶ 90; *People v. Harris*, 2025 IL App (4th) 240705-U, ¶ 137; *People v. Richmond*, 2026 IL App (4th) 250858-U, ¶ 88. In similar cases, this court has remanded the case to the trial court for compliance with Rule 404(e). See *Yarber*, 2026 IL App (4th) 250294-U, ¶ 70; *Harris*, 2025 IL App (4th) 240705-U, ¶ 137; *Richmond*, 2026 IL App (4th) 250858-U,

¶ 90.

¶ 12 The State responds that defendant’s claim must be raised in the trial court under Illinois Supreme Court Rule 472(a)(1) (eff. Feb. 1, 2024), which requires claims of certain sentencing errors, including “[e]rrors in the imposition or calculation of fines, fees, assessments, or costs,” to be raised for the first time in the trial court. The parties thus agree that the case must be remanded to the trial court for defendant to have the opportunity to raise his claim for a waiver of assessments but disagree as to whether the proper procedural tool is Rule 404(e) or 472. Our supreme court granted leave to appeal in *People v. Nibbelin*, 2025 IL App (4th) 240446-U, *pet. for leave to appeal granted*, No. 131825 (Ill. Sept. 24, 2025), to address whether Rule 404(e) or 472 applies in this type of situation. Because under either rule, the result is that the case must be remanded to allow defendant to have the opportunity to pursue a waiver of assessments, we decline to hold this case in abeyance pending the supreme court’s decision in *Nibbelin*.

¶ 13 With that said, we determine that Rule 404(e) better fits the present situation. As in *Yarber*, defendant does not assert that the trial court committed any error regarding fines, fees, assessments, or costs—rather, he contends only that his counsel failed to do something he was required by a supreme court rule to do. “Because the alleged (and actual) error is an omission of counsel, and not an error by the court, Rule 472 does not apply.” *Yarber*, 2026 IL App (4th) 250294-U, ¶ 72; see *People v. Bogard*, 2026 IL App (4th) 250354-U, ¶¶ 71-78 (Doherty, J., concurring in part and dissenting in part). Thus, we remand the matter pursuant to Rule 404(e) with instructions for defense counsel to comply with Rule 404(e) and file a waiver of assessments on defendant’s behalf. See *Yarber*, 2026 IL App (4th) 250294-U, ¶ 73; *Glas*, 2025 IL App (4th) 241199-U, ¶ 35; *Chase*, 2025 IL App (4th) 230407-U, ¶ 90; *Harris*, 2025 IL App (4th) 240705-U, ¶ 137; *Richmond*, 2026 IL App (4th) 250858-U, ¶ 90.

¶ 14

III. CONCLUSION

¶ 15 For the reasons stated, we affirm the trial court's judgment and remand to provide defendant an opportunity to file an assessment waiver.

¶ 16 Affirmed and remanded with directions.