No. 128461

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JORGE REYES, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-19-0474 There on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 11 CF 2428 The Honorable Jeffrey S. MacKay, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ALASDAIR WHITNEY
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7070
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
3/16/2023 3:22 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant pleaded guilty to driving under the influence of alcohol (DUI), which was aggravated because it was defendant's fifth DUI offense and was sentenced to pay various assessments under the Counties Code, the Clerks of Courts Act, and the Vehicle Code and to serve a three-year term of imprisonment. C53-54; R32-50.[1] On May 6, 2019, while serving a prison term for a sixth and subsequent DUI conviction, defendant requested that the circuit court revoke or modify those assessments under 730 ILCS 5/5-9-2. C84-85. On May 21, 2019, the circuit court sua sponte denied defendant's request on the ground that he failed to allege "good cause" as required under section 5-9-2. R59; C88; *see* 730 ILCS 5/5-9-2. The appellate court affirmed on the alternate ground that section 5-9-2 does not apply to the assessments from which defendant sought relief, and defendant appeals from that judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court acted within its discretion by denying defendant's request for relief under section 5-9-2 because defendant's assessments imposed under the Counties Code, the Clerks of Courts Act, and the Vehicle Code are not subject to revocation or modification under section 5-9-2.

---

[1] The common law record is cited as "C__," the second supplement to the common law record as "Sup2 C__," the report of proceedings as "R__," and defendant's opening brief as "Def. Br.__."

2. In the alternative, whether the circuit court acted within its discretion by denying defendant's request for relief under section 5-9-2 because defendant failed to allege "good cause" to modify or revoke the outstanding balance of his assessments.

3. Whether the circuit court acted within its discretion by sua sponte denying defendant's request for relief under section 5-9-2 upon determining that the request was meritless.

4. Alternatively, whether any procedural error in sua sponte denying defendant's request for relief under section 5-9-2 was harmless.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court allowed leave to appeal on September 28, 2022.

STATUTORY PROVISION INVOLVED

Section 5-9-2 of the Code of Corrections, entitled "Revocation of a Fine," provides: "Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code [625 ILCS 5/15-101 *et seq.*], the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2.

STATEMENT OF FACTS

In October 2011, the People indicted defendant on one Class 1 felony charge of aggravated DUI for driving under the influence of alcohol with four prior DUI convictions. C14; *see* 625 ILCS 5/11-501 (2011). In May 2012,

defendant accepted a negotiated plea offer, under which he would plead guilty to a Class 2 count of aggravated DUI in exchange for the prosecution's recommendation that he receive a three-year term of imprisonment in the Illinois Department of Corrections (IDOC) and "zero fines, court costs only, DNA indexing and fee." R33-34. The circuit court admonished defendant of the immigration consequences he might face as a non-U.S. citizen, C36-37, and that he faced a sentence of between three and seven years in prison and a fine of up to $25,000, C41; *see* 730 ILCS 5/5-4.5-50(b) (maximum fine for felony is $25,000). After confirming that defendant's plea was knowing, voluntary, and supported by a sufficient factual basis, C47, the court accepted defendant's guilty plea and sentenced him to three years in prison, "zero fine, court costs only, $1,000 [DUI] tech fee, $100 second offender fee, [and] $200 indexing fee by statute," R47; *see* 625 ILCS 5/11-501.01(f) (2011) (authorizing DUI Tech assessment). Among the "costs" that the court imposed were a $15 State Police fee, 705 ILCS 105/27.3a(1.5) (2011); a $10 Drug Court/Mental Health Court fee, 55 ILCS 5/5-1101(d-5) (2011); a $30 Court fee, 55 ILCS 5/5-1101(a) (2011); a $35 Serious Traffic Violation fee, 625 ILCS 5/16-104d (2011); and a $30 Child Advocacy Center fee, 55 ILCS 5/5-1101(f-5) (2011). C53-54. Defendant neither moved to withdraw his plea nor appealed the judgment.

The court further ordered that defendant receive credit for 200 days spent in presentencing custody, R47, which entitled to him to $1,000 credit

against the fines imposed as part of his sentence, *see* 725 ILCS 5/110-14(a) (2011) (providing credit of $5 per day of incarceration on bailable offense where bail was not supplied). However, although the written sentencing order accurately reflected the court's order that defendant was to receive 200 days' credit and provided that he was "entitled to receive credit for time actually served in custody since 10/23/2011" through the May 9, 2012 sentencing, the order only applied $65 of that credit against the eligible assessments imposed as part of the sentence. C53-54.

After defendant completed his prison term and the subsequent two years of mandatory supervised release, he was convicted of a sixth aggravated DUI in January 2017, and he was sentenced to eight years in prison. *See* C62, 65. In July 2018, defendant wrote a letter to the circuit clerk from prison asking about the outstanding balance that he owed pursuant to his various convictions. C61. The clerk informed defendant he had an outstanding balance of $2,086.50 on the 2012 conviction,[2] as well as balances of $3,009.50 on the 2017 conviction and $494.64 on a 2008 conviction. C62.

In August 2018, defendant filed a "petition"[3] for revocation of fines pursuant to section 5-9-2. C65-66. On the pre-printed pleading, defendant

---

[2] The clerk did not specify how this amount was calculated, *see* C62; the appellate court presumed that the amount included interest, *People v. Reyes*, 2022 IL App (2d) 190474, ¶ 6.

[3] Courts have described the pleading in which an offender seeks relief under section 5-9-2 in various ways, *see, e.g.*, *People v. Rivera*, 2020 IL App (2d) 171002, ¶¶ 4, 10 (referring to offender's "motion" for relief under section 5-9-

had written the case numbers for his 2008, 2012, and 2017 convictions and circled the 2012 conviction. C65. Defendant alleged that he had 22 months remaining on his eight-year prison term (for his 2017 conviction), owed unspecified "traffic fine(s)," was indigent and received $10 per month from IDOC, and "would like to have a fresh start on life upon his release from [IDOC]." C65. Defendant further alleged that "the revocation of fine(s) against him would provide him an opportunity to do just that." C66. In the accompanying application to proceed as a poor person, defendant stated that he received unspecified "state pay" and had no assets. C67-68.

The day after defendant filed his request for relief under section 5-9-2, the circuit court considered the request, asked the People if they had anything they wished to add (they did not), and denied the request. R53; C70. Defendant neither moved to reconsider nor appealed the order.

In February 2019, defendant filed a second pre-printed request for relief under section 5-9-2, C75-76, along with another application to proceed as a poor person, C77-78. Defendant alleged that he now had 17 months remaining on his eight-year prison term, still owed unspecified "traffic fine(s)," and would like a "fresh start." C75-76. In his notice of filing, defendant wrote that "incarceration ha[d] left [him] indigent," he "w[ould] be

---

2); *People v. Mingo*, 403 Ill. App. 968, 970-71 (2d Dist. 2010) (referring to offender's "petition" for relief under section 5-9-2). Because section 5-9-2 does not itself label the pleading in which an offender raises a request for relief, the People refer to such pleadings simply as requests for relief under section 5-9-2.

homeless on [his] release date," and "[t]he fine will be more hardship on [him]." C73. Where the pre-printed request for relief quoted section 5-9-2 as providing that, "[u]pon good cause shown, the court may revoke the fine or unpaid portion or may modify the method of payment," defendant circled "modify the method of payment" and wrote "cause indigent." C75. In the accompanying application to proceed as a poor person, he swore that he received $10 per month in "state pay" (yet claimed that his total income for preceding year was only $70), and had $183 in a prison trust account, C77; that is, defendant had saved $183 since he sought relief six months earlier, *see* C67.

The circuit court denied the request sua sponte because defendant failed to show good cause for relief under section 5-9-2. C79; R56. Defendant did not file a motion to reconsider or appeal this order.

On May 6, 2019, defendant filed the third pre-printed request for relief under section 5-9-2 that is the subject of this appeal, along with an application to proceed as a poor person. C81-87. The request alleged that defendant had four months remaining on his eight-year prison term, received $15 a month from the State but "ha[d] no money," and would be "homeless living in a shelter with no financial assistance except shelter" when released. C84-85. On the portion of the pre-printed form quoting section 5-9-2's provision that the court "may revoke the fine or unpaid portion or may modify the method of payment," defendant underlined "modify" and asked

the court to "at least modify." C84. In the accompanying application to proceed as a poor person, defendant averred that his monthly pay from IDOC had increased from $10 to $15 per month and that he had $200 in his prison trust account, C86, meaning he had saved $17 since he sought relief three months earlier, *see* C77.

On May 21, 2019, the court sua sponte denied defendant's request for relief under section 5-9-2 because he failed to show good cause. R59; C88. Defendant filed a timely notice of appeal from the order denying relief. C91, 93.

On appeal, defendant argued that the circuit court (1) committed a procedural error by sua sponte denying his request for relief under section 5-9-2 within 30 days of filing and (2) committed a substantive error by denying the request because defendant had shown good cause. *Reyes*, 2022 IL App (2d) 190474, ¶ 14. While the appeal was pending, the appellate court remanded the case on its own motion for the limited purpose of allowing defendant to file a Rule 472 motion challenging the assessments imposed as part of the sentence for his 2012 conviction. *Id.* ¶ 11. After those proceedings, defendant was left with $135 in assessments.[4]

---

[4] The circuit court granted the parties' agreed motion that defendant was entitled to $960 in presentencing custody credits against the $15 State Police fee, $10 Mental Health Court fee, $30 Court fee, $35 Serious Traffic Violation fee, $30 Children's Advocacy Center fee, and $1,000 DUI Technology fine. Sup2 C4-6, 10. After the $960 in credits were applied to the $1,120 in eligible assessments, against which defendant had already received credit of $25, defendant was left with $135 in assessments.

Following resolution of defendant's Rule 472 motion, the appellate court affirmed. *Id.* ¶¶ 58-59. The appellate court held that the circuit court properly denied defendant's request for relief under section 5-9-2 because that statute applied only to "penal fines" authorized by 730 ILCS 5/5-9-1, and therefore was inapplicable to the assessments from which defendant sought relief. *Id.* ¶ 43. The appellate court also rejected defendant's argument that the circuit court lacked authority to sua sponte deny a meritless request for relief under section 5-9-2 within 30 days of filing as it would with a meritless petition for relief from judgment under 735 ILCS 5/2-1401. *Id.* ¶ 14, 24-34.

STANDARDS OF REVIEW

This Court reviews the circuit court's denial of defendant's request for relief under section 5-9-2 for abuse of discretion. *People v. Barajas*, 2018 IL App (3d) 160433, ¶ 11.

The interpretation of section 5-9-2 presents a question of law that this Court reviews de novo. *People v. Ward*, 215 Ill. 2d 317, 324 (2005).

Claims of non-constitutional error are harmless if the result of the proceeding would have been the same absent the error. *People v. Thurow*, 203 Ill. 2d 352, 363 (2006).

ARGUMENT

I. The Circuit Court Acted Within Its Discretion by Denying Defendant's Request for Relief Under Section 5-9-2.

Section 5-9-2 provides that "[e]xcept as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good

cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2. The question presented by this appeal is whether "the fine" from which relief is available under section 5-9-2 is the fine authorized under section 5-9-1 of the Code of Corrections to punish an offender for the commission of an offense — that is, the "penal fine," *People v. Bennett*, 144 Ill. App. 3d 184, 186 (4th Dist. 1986) — or whether it also includes assessments imposed at sentencing for non-penal purposes. The plain language of section 5-9-2, construed in the context of the statutory scheme governing the imposition, adjustment, and collection of fines under Article 9 of Chapter V of the Code of Corrections, shows that "the fine" subject to relief under section 5-9-2 is limited to the penal fine imposed for an offense pursuant to section 5-9-1 of the Code of Corrections. Because none of the assessments from which defendant sought relief is a penal fine imposed under section 5-9-1 of the Code of Corrections, none of those assessments is subject to modification or revocation under section 5-9-2. *See Bennett*, 144 Ill. App. 3d at 186 (holding that section 5-9-2 applies only to penal fines imposed under the Code of Corrections). Therefore, the circuit court did not abuse its discretion when it denied defendant's request for relief from those assessments under section 5-9-2.

A. Resolution of this appeal requires the Court to construe section 5-9-2 in the context of the entire statutory scheme.

To determine the scope of the relief available under section 5-9-2, this Court must construe that statute. The Court's "primary objective in

construing a statute is to ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning," which the Court construes in light of "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.* In doing so, this Court "must view and give effect to the entire statutory scheme," which means that "words and phrases must be construed in relation to other relevant statutory provisions and not in isolation." *Bd. of Educ. v. Moore*, 2021 IL 125785, ¶ 20. "When a statute is silent on a particular point," the Court "focus[es] on the legislature's intent, and . . . will not interpret statutory silence in a way that defeats the purpose of that provision." *People v. Fiveash*, 2015 IL 117669, ¶ 34. This Court reviews questions of statutory construction de novo. *Ward*, 215 Ill. 2d at 324

The plain language of section 5-9-2, construed in the context of the statutory scheme of Article 9 of Chapter V of the Code of Corrections, shows that the General Assembly intended that "the fine" subject to relief under that statute is the penal fine imposed under the Code of Corrections to punish an offender for committing an offense. *See Bennett*, 144 Ill. App. 3d at 186.

1. Section 5-9-2 applies only to penal fines authorized under section 5-9-1 of the Code of Corrections.

Section 5-9-2 is part of the unified statutory scheme that governs the imposition, revocation, and collection of penal fines. Article 9 — entitled "Fines" — begins by identifying the fines that a sentencing court may impose under the Code of Corrections. *See* 730 ILCS 5/5-9-1(a). Section 5-9-1 ("Authorized Fines") provides that "[a]n offender may be sentenced to pay a fine as provided in Article 4.5 of Chapter V [of the Code of Corrections]." *Id.* Article 4.5 of the Code of Corrections, which "governs sentencing for all offenses, except as specifically provided elsewhere," 730 ILCS 5/5-4.5-5, in turn provides that an offender who commits any felony, misdemeanor, petty offense, or business offense may be sentenced to pay "a fine" for "each offense," 730 ILCS 5/5-4.5-50(b); 730 ILCS 5/5-4.5-55(e); 730 ILCS 5/5-4.5-60(e); 730 ILCS 5/5-4.5-65(e); 730 ILCS 5/5-4.5-75(a); 730 ILCS 5/5-4.5-80(a). Thus, section 5-9-1, by reference to Article 4.5, authorizes the imposition of a single fine for each offense committed: the penal fine.

The amount of the penal fine for a particular offense, like the length of the prison term, lies within the sentencing court's discretion, as bounded by the applicable range under the Code of Corrections. Thus, the maximum penal fine for a felony, misdemeanor, or petty offense is the maximum amount provided under the Code of Corrections for the class of offense committed or "the amount specified in the offense, whichever is greater," 730 ILCS 5/5-4.5-50(b) (setting maximum fine for felonies); 730 ILCS 5/5-4.5-55(e)

(same for Class A misdemeanors); 730 ILCS 5/5-4.5-60(e) (same for Class B misdemeanors); 730 ILCS 5/5-4.5-65(e) (same for Class C misdemeanors); 730 ILCS 5/5-4.5-75(a) (same for petty offenses). And the maximum penal fine for a business offense is "the amount specified in the statute defining the offense." 730 ILCS 5/5-4.5-80(a). The permissible amount of a penal fine, just like the permissible length of a prison term, increases with the seriousness of the class of offense (or of the offense within its class), and thus reflects the legislative intent that the penal fine serve a purely punitive purpose, with greater penalties for offenders who commit crimes reflecting greater moral culpability or presenting a greater danger to the community. *See In re Samantha V.*, 234 Ill. 2d 359, 379 (2009) ("[C]ommon sense dictates that the legislature would prescribe greater punishment for the offense it deems the more serious.").

The sentencing court's exercise of discretion in imposing a penal fine within the applicable range, as well as in matters of payment of that fine, is also governed by Article 9 of Chapter V of the Code of Corrections. *See* 730 ILCS 5/5-4.5-50(b) (referring sentencing court to "Article 9 of Chapter V . . . for imposition of additional amounts and determination of amounts and payment" of felony fines); 730 ILCS 5/5-4.5-55(e) (same for Class A misdemeanor fines); 730 ILCS 5/5-4.5-60(e) (same for Class B misdemeanor fines); 730 ILCS 5/5-4.5-65(e) (same for Class C misdemeanor fines); 730 ILCS 5/5-4.5-75(a) (same for petty offense fines); 730 ILCS 5/5-4.5-80(a)

(same for business offense fines). Section 5-9-1 governs the imposition of penal fines, providing that, in addition to the usual sentencing factors, *see* 730 ILCS 5/5-4-1(a), a sentencing court exercising its discretion as to the amount of the penal fine must consider the offender's ability to pay the fine, as well as whether payment of the fine will prevent the offender from paying restitution or reparation to the victim, 730 ILCS 5/5-9-1(d).

Section 5-9-2 then governs the court's discretion to provide relief from a penal fine after sentencing, providing that the court may revoke some or all of "the fine" or modify the method of its payment "upon good cause shown." 730 ILCS 5/5-9-2. Thus, "the fine" that a court has discretion to revoke or modify under section 5-9-2 is the same fine that the court has discretion to impose under section 5-9-1: the penal fine provided for the purpose of punishing an offender for committing a particular offense. *See Bennett*, 144 Ill. App. 3d at 186.

Defendant misreads section 5-9-2 in arguing that the General Assembly's use of the word "fines" in that section shows an intent "for the remedy therein to apply to all fines, mandatory or discretionary, throughout the breadth of Illinois Compiled Statutes imposed as part of a criminal sentence." Def. Br. 20. Section 5-9-2 does not authorize a court to revoke "fines"; it authorizes a court to revoke "the fine," 730 ILCS 5/5-9-2 — that is, the penal fine authorized under section 5-9-1. All other fines, penalties, fees, and assessments, whether mandatory or discretionary, fall outside the scope

of section 5-9-2. *See Bennett*, 144 Ill. App. 3d at 186. Accordingly, when the General Assembly wished to provide relief from non-penal fines or other assessments, it has provided other mechanisms to do so. *See, e.g.*, 720 ILCS 570/411.2(e) (2012) ("A defendant who has been ordered to pay a [mandatory substance abuse] assessment may petition the court to convert all or part of the assessment into court-approved public or community service."); 720 ILCS 570/411.2(f) (2012) (court "may suspend the collection of the [mandatory substance abuse] assessment imposed under this Section" if defendant "agrees to enter a substance abuse intervention or treatment program approved by the court" and "to pay for all or some portions of the costs associated with [such] program"); 725 ILCS 175/5.1(e)(1), (2) (court may grant defendant's "petition" to extend time to pay fine imposed pursuant to Narcotics Profit Forfeiture Act or modify method of paying such fine if defendant "has paid part but not all of such fine" and court finds existing time or method of payment no longer warranted or "otherwise unjust").

Indeed, when the General Assembly later eliminated the very assessments from which defendant seeks relief and consolidated them into a single assessment in July 2019, it provided a new mechanism for relief, confirming that section 5-9-2 does not apply to those assessments. Specifically, when the General Assembly enacted the Criminal and Traffic Assessment Act, 705 ILCS 135/1-1 *et seq.*, it eliminated all the separate

assessments from which defendant seeks relief[5] and consolidated those assessments, along with various other assessments, into a series of scheduled assessments, so that a single assessment would be imposed in each criminal case. *See* 705 ILCS 135/5-10. For example, where previously the sentencing court would impose separate assessments for the State Police fee, Drug Court/Mental Health Court fee, Court fee, Serious Traffic Violation fee, Child Advocacy Center fee, and DUI Tech fine in a DUI case like defendant's, *see Reyes*, 2022 IL App (2d) 190474, ¶ 11, now the court would impose a single assessment under Schedule 2, and the clerk would then deposit the designated portions of that assessment into the various accounts previously funded by separate assessments, *see* 705 ILCS 135/15-10. And because section 5-9-2 did not provide a mechanism to seek relief from the new scheduled assessments, the new system included a mechanism by which a court could provide such relief, providing that an offender "may petition the court to convert all or part of the assessment into court-approved public or community service." 705 ILCS 135/5-20.

The General Assembly's intent that section 5-9-2 apply only to penal fines imposed pursuant to section 5-9-1 is further evident from its responses

---

[5] *See* Public Act 100-987 §§ 905-43 (repealing 55 ILCS 5/5-1101, which authorized the Court, Drug Court/Mental Health Court, and Child Advocacy Center fees), 905-45 (amending 625 ILCS 5/11-501.01(f), which authorized the DUI Tech fine, to eliminate that fine), 905-47 (repealing 625 ILCS 5/16-104d, which authorized the Serious Traffic Violation fee), 905-57 (repealing 705 ILCS 105/27.7, which authorized the State Police fee) (eff. July 1, 2019).

to the appellate court's decisions construing sections 5-9-1 and 5-9-2. For example, in 1986, *People v. Bennett* held that section 5-9-2 did not apply to mandatory assessments imposed under the Violent Crime Victims Assistance Act (Victims Act) because "the 'fine' referred to in [section 5-9-2] clearly refers to the penalties authorized in section 5-9-1," not fines such as those under the Victims Act. 144 Ill. App. 3d at 186 (quoting Ill. Rev. Stat. 1983, ch. 38, par. 1005-9-1). The General Assembly acquiesced to *Bennett*'s construction of section 5-9-2 as applying only to penal fines authorized under section 5-9-1 by declining to amend the statute to compel a broader application. *See Moore*, 2021 IL 125785, ¶ 30 ("[W]here the legislature chooses not to amend terms of a statute after judicial construction, it will be presumed that it has acquiesced in the court's statement of legislative intent."); *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (legislative acquiescence to interpretation adopted in appellate court decisions demonstrated by inaction through subsequent amendments). Similarly, when in 1991 the appellate court held that section 5-9-2 does not apply to fines imposed for violations of municipal ordinances, *Island Lake v. Parkway Bank & Trust Co.*, 212 Ill. App. 3d 115, 121 (2d Dist. 1991), the General Assembly signaled its agreement by declining to amend the statute to expand its application beyond penal fines authorized under section 5-9-1. *See Pam v. Holocker,* 2018 IL 123152, ¶ 31 (legislative acquiescence to interpretation adopted in two appellate court decisions demonstrated by inaction through subsequent amendments).

In contrast, when the appellate court construed section 5-9-1 as applying to fines other than penal fines, the General Assembly promptly amended both section 5-9-1 *and* section 5-9-2 to foreclose that unintended application. In 1989, the appellate court held in *People v. Ullrich* that section 5-9-1(d), which at the time provided that a sentencing court must consider the offender's ability to pay "[i]n determining the amount of a fine," Ill. Rev. Stat. 1985, ch. 38, par. 1005-9-1(d), applied to fines imposed under Chapter 15 of the Vehicle Code. *People v. Ullrich*, 178 Ill. App. 3d 1097, 1099 (3d Dist. 1989), *overruled by People v. Ullrich*, 135 Ill. 2d 477 (1990). The General Assembly quickly responded to reject the appellate court's overly broad interpretation of the fines governed by section 5-9-1 by amending section 5-9-1(d) before the year was out to exclude "fines established for violations of Chapter 15 of the Illinois Vehicle Code." Public Act 86-1005 (eff. Dec. 28, 1989) (amending requirement that sentencing courts consider offenders' ability to pay when imposing "a fine" to require that sentencing courts consider such ability when imposing "a fine, except for those fines established for violations of Chapter 15 of the Illinois Vehicle Code"). Shortly after, the General Assembly amended section 5-9-2 to similarly exclude "fines established for violations of Chapter 15 of the Illinois Vehicle Code," Public Act 87-396 (eff. Sept. 10, 1991), emphasizing that sections 5-9-1 and 5-9-2 are part of a unified statutory scheme that applies only to penal fines.

This historical context defeats defendant's argument that the legislature amended section 5-9-2 to exclude fines under Chapter 15 of the Vehicle Code with the intent to counteract or "contradict[ ]" *Bennett*'s holding that section 5-9-2 applies only to penal fines. Def. Br. 16-18, 21. Defendant's argument overlooks the context in which the General Assembly amended sections 5-9-1 and 5-9-2: the General Assembly amended those sections in direct response to the appellate court's holding in *Ullrich* that section 5-9-1 applies to fines under Chapter 15 of the Vehicle Code. The rapidity of the General Assembly's response to the appellate court's unintended application of section 5-9-1 (and related risk of a similarly unintended application of section 5-9-2) not only makes clear that the amendments were intended to narrow, not broaden, the application of those statutes, but demonstrates that the General Assembly was alert to the appellate court's treatment of those statutes. Had the General Assembly disagreed with *Bennett's* holding that section 5-9-2 applies only to penal fines authorized under section 5-9-1, presumably it would have responded with similar speed and clarity. Instead, the General Assembly did not amend the statute for five years, and then did so in direct response to the appellate court's attempt to apply section 5-9-1 (and, by implication, section 5-9-2) beyond penal fines. Defendant's acontextual interpretation of the amendment to sections 5-9-1 and 5-9-2 is precisely contrary to the General Assembly's intended meaning.

In addition to being contrary to the plain language of section 5-9-2, as construed within its schematic and historical context, allowing relief from assessments other than penal fines under section 5-9-2 would defeat the distinct purposes of those other assessments. Section 5-9-2 provides relief from penal fines because these fines serve to punish an offense and therefore are tied to the seriousness of the offense, while non-penal fines serve purposes *in addition* to punishment. For example, as *Bennett* explained, the mandatory fine under the Victims Act is imposed "in addition to" the discretionary penal fine, and, unlike the penal fine, is intended to "compensate victims of violent crimes," not merely to punish the offender. 144 Ill. App. 3d at 186. Because this additional legislative purpose "would be thwarted by applying section 5-9-2 to excuse" mandatory Victims Act fines, the General Assembly excluded such non-penal fines from the relief available under section 5-9-2. *Id.* Similarly, when this Court overruled the appellate court's decision in *Ullrich* extending section 5-9-1(d) to mandatory Vehicle Code fines for overweight vehicles, it recognized that section 5-9-1(d) and the statute mandating the Vehicle Code fine were "designed to serve two separate purposes." *Ullrich*, 135 Ill. 2d at 487. Unlike the purely punitive penal fines authorized by section 5-9-1, the Vehicle Code fines were intended to serve the additional purpose of "recovering the cost of damage done to the State's highways by overweight vehicles." *Id.* Thus, "the sentencing principles of section 5-9-1(d) of the Corrections Code" — consideration of an

offender's ability to pay — "were not intended to apply to mandatory fines" such as the overweight vehicle fines, regarding which "the legislature did not intend to afford the trial court any discretion." *Id.* at 485.

The assessments from which defendant seeks relief in this case illustrate the variety of non-punitive purposes that the General Assembly intends to promote through the imposition of assessments other than penal fines. The parties agreed that defendant was entitled to credit against the following assessments under 725 ILCS 5/110-14(a): the State Police "fee," 705 ILCS 105/27.3a(1.5) (2011); the Drug Court/Mental Health Court "fee," 55 ILCS 5/5-1101(d-5) (2011); the Court "fee," 55 ILCS 5/5-1101(a) (2011); the Serious Traffic Violation "fee," 625 ILCS 5/16-104d (2011); the Child Advocacy Center "fee," 55 ILCS 5/5-1101(f-5) (2011); and the DUI Tech "fine," 625 ILCS 5/11-501.01(f) (2011). *Reyes*, 2022 IL App (2d) 190474, ¶ 11 (explaining parties' agreement). Defendant was entitled to credit against these assessments because, although the General Assembly identified many of them as "fees" in the statutes authorizing their imposition, they were nonetheless "fines" in the sense that they do not compensate the State for a cost incurred by prosecuting the individual offender against whom they are assessed. *See People v. Jones*, 223 Ill. 2d 569, 581, 600 (2006). However, these assessments were not strictly punitive like penal fines, but were instead intended to fulfill different, non-punitive purposes.

In fact, the statutes authorizing some of these assessments explicitly required that the proceeds be used to fund particular non-punitive governmental purposes. For example, the statute authorizing the "[a]dditional administrative sanction[ ]" of the DUI Tech fine mandated that "[i]n addition to any other penalties for liabilities, a person who is found guilty of . . . violating Section 11-501 . . . shall be assessed" a fine that "shall be used to purchase law enforcement equipment that will assist in the prevention of alcohol related criminal violence throughout the State." 625 ILCS 5/11-501.01(f) (2011). Similarly, the Court fee was to be "used to finance the court system in the county," 55 ILCS 5/5-1101(a), and the Drug Court/Mental Health Court fee was to be "used to finance the county mental health court, the count drug court, the Veterans and Servicemembers Court, or any or all of the above." 55 ILCS 5/5-1101(d-5) (2011).

Other assessments' non-punitive purposes were evident from statutory requirements that they be deposited in specific funds. For example, the Serious Traffic Violation fee was to be deposited into the Fire Prevention Fund, the Fire Truck Revolving Loan Fund, and the Circuit Court Clerk Operation and Administrative Fund, 625 ILCS 5/16-104d (2011); the Children's Advocacy Center fee was to be deposited into "an account specifically for the operation and administration of the Children's Advocacy Center," 55 ILCS 5/5-1101(f-5) (2011); and the mandatory State Police fee was to deposited into the State Police Operations Assistance Fund, 705 ILCS

105/27.3a(1.5) (2011).[6] Allowing an offender to obtain relief from these kinds of assessments under section 5-9-2 would thwart the legislative intent to fund important non-punitive governmental priorities, many of which rely on the proceeds from these assessments to function. *See Bennett*, 144 Ill. App. 3d at 185; *see also Ullrich*, 135 Ill. 2d at 487.

In support of his argument that section 5-9-2 applies to fines beyond the penal fines authorized by section 5-9-1, defendant relies on two appellate court cases that discussed whether section 5-9-2 may be invoked to obtain relief from a street-value fine imposed under section 5-9-1.1. Def. Br. 22-24 (citing *People v. Ruff*, 115 Ill. App. 3d 691, 694-95 (4th Dist. 1983), and *Rivera*, 2020 IL App (2d) 171002, ¶¶ 9-10); *see* 730 ILCS 5/5-9.1.1 (2017) (providing for street-value fines and various assessments for drug related offenses). However, neither *Ruff* nor *Rivera* provides a basis for this Court to accept defendant's reading of section 5-9-2. *Ruff* did not hold that section 5-9-2 applies to the street value fine; it simply mentioned that section 5-9-2 was among several provisions that may be used to obtain relief from fines without holding that it was actually applicable to the street value fine imposed under section 5-9-1.1. 115 Ill. App. 3d at 695. If anything, defendant's reliance on *Ruff* undermines his argument because that case expressly held that section 5-9-1(d) is not applicable to section 5-9-1.1. *Id.* So, if sections 5-9-1 and 5-9-2

---

[6] The statute mandating the State Police fee further specified that the Director of State Police could "direct the use of these funds [deposited into the State Police Operations Assistance Fund] for homeland security purposes." 705 ILCS 105/27.3a(6) (2012).

apply to the same fines, as the General Assembly's parallel amendments of the two sections strongly suggests, *see supra* at 17, then section 5-9-2 also would not apply to section 5-9-1.1. And although *Rivera* concluded that section 5-9-2 did apply to the street-value fine, it did so in reliance on an earlier decision, *People v. Garza*, which in turn reached that conclusion without any analysis or even mentioning *Bennett*, and its holding was dicta: because the fine in *Garza* was completely offset by presentence custody credits, the court recognized that the issue was moot. *Rivera*, 2020 IL App (2d) 171002, ¶ 12 (citing *Garza*, 2018 IL App (3d) 160684, ¶ 10). Further undercutting its value is the fact that *Rivera* provides no independent analysis explaining its reliance on *Garza*. *See id.* In any event, to the extent these cases can be construed to broaden section 5-9-2 to apply to fines beyond the penal fine imposed by section 5-9-1, they were incorrectly decided and are inapplicable because defendant was not assessed a street value fine.

Moreover, the General Assembly has provided a different avenue for relief from *all* fines in circumstances where the offender is in default. Section 5-9-3 permits a court to issue a summons or an arrest warrant and grant relief upon the offender's showing that the default was not due to the intentional refusal to pay or failure to make a good faith effort to pay. 730 ILCS 5/5-9-3(a), (c). If the offender makes that showing, the court may grant additional time for repayment, or it may reduce or revoke the amount owed. *Id.* Indeed, it is evident that the General Assembly intended section 5-9-3 to

apply more broadly than sections 5-9-1 and 5-9-2 because the statute expressly concerns the payment of more than just fines, including, "fee[s]," "cost[s]," and "order[s] of restitution" among other money judgments. 730 ILCS 5/5-9-3(e). This contrasts with section 5-9-2's reference to "the fine" only. 730 ILCS 5/5-9-2. And the General Assembly did not amend section 5-9-3 as it did sections 5-9-1 and 5-9-2 in the wake of *Ullrich*, suggesting section 5-9-3's purpose is to provide relief from all fines, not just penal fines. Thus, while it is true that both sections 5-9-2 and 5-9-3 are "safeguards" for offenders "who in good faith are unable to pay a fine," each statute provides different relief under different circumstances. *Ruff*, 115 Ill. App. 3d at 695.

Relatedly, defendant argues that the appellate court erred by holding that section 5-9-2 "allows only the revocation of fines that the judge has discretion to impose and not those whose imposition is mandatory." Def. Br. 19. Not so; the appellate court held, as it did in *Bennett*, 144 Ill. App. 3d at 186, that section 5-9-2 provides relief only from the discretionary *penal* fines authorized under section 5-9-1, *Reyes*, 2022 IL App (2d) ¶ 55 ("[U]nder section 5-9-2 of the Corrections Code, revocation of fines is allowed only for the discretionary penal fines imposed under the Corrections Code."). Whether a non-penal fine is mandatory or discretionary is irrelevant, for *all* non-penal fines are excluded from section 5-9-2. That said, construing section 5-9-2 as allowing offenders to obtain relief from mandatory assessments would effectively render such mandatory assessments discretionary, for although

the circuit court would have no discretion to consider the offender's ability to pay when imposing the assessments at sentencing, immediately after sentencing it would gain the discretion to modify or revoke those mandatory assessments based on the very factor that it had been barred from considering earlier. That cannot be the purpose of the statute.

2. The circuit court properly denied relief under section 5-9-2 because none of the assessments from which defendant sought relief were penal fines.

The circuit court thus properly denied defendant's request for relief under section 5-9-2 because none of the assessments from which he sought relief were subject to relief under that statute. The State Police fee, Drug Court/Mental Health Court fee, Court fee, Serious Traffic Violation fee, Child Advocacy Center fee, and DUI Tech fine were all imposed to promote non-punitive legislative initiatives under the Counties Code, the Clerks of Courts Act, and the Vehicle Code. *See* 55 ILCS 5/5-1101(a), (d-5), (f-5) (2011) (authorizing Court, Drug Court/Mental Health Court, and Child Advocacy Center fees); 705 ILCS 105/27.3a(1.5) (2011) (authorizing State Police fee); 625 ILCS 5/11-501.01(f) (2011) (authorizing DUI Tech fine); 625 ILCS 5/16-104d (authorizing Serious Traffic Violation fee); *see also* C53 (sentencing order identifying statutory authority relied upon for each assessment imposed). Therefore, defendant could not obtain relief from those assessments under section 5-9-2, and his request for relief under that statute was meritless as a matter of law.

B. In the alternative, the circuit court acted within its discretion by denying defendant's request for relief under section 5-9-2 because he failed to allege good cause.

Even if his assessments were eligible for revocation or modification under section 5-9-2, the circuit court did not err by denying defendant's request for relief because defendant failed to show good cause. Defendant's request and accompanying materials showed that he had the money to pay his outstanding assessments, and he supported his allegation that doing so would be a hardship only with his speculation that he would be indigent and homeless after his release from prison. Accordingly, the circuit court's denial of defendant's request was not an abuse of discretion. *See Barajas*, 2018 IL App (3d) 160433, ¶ 11.

Section 5-9-2 provides that relief is contingent on a showing of "good cause," a phrase which reflects the application of an equitable inquiry encompassing not only the offender's present ability to pay, but also his future ability to pay and his good faith efforts to pay in the past. The term "good cause" is not statutorily defined, but "[t]he council commentary to section 5-9-2 states '[t]he section is designed to mitigate a fine on a showing of inability to pay or hardship.'" *Id.* ¶ 10 (quoting 730 ILCS Ann. 5/5-9-2, Council Comments, at 303 (Smith-Hurd 2007)); *see People v. Ross*, 168 Ill. 2d 347, 352 (1995) (council commentary is persuasive authority). Thus, the considerations relevant to revocation or modification of a fine under section 5-9-2 are financial, rather than punitive. Yet the *Barajas* court erred in

construing the council commentary to mean that the only consideration permitted in determining "good cause" is the offender's *present* ability to pay, *Barajas*, 2018 IL App (3d) 160433, ¶¶ 10-11, for that narrow focus is inconsistent with the equitable considerations that govern the imposition and payment of fines under Article 9 of Section 5 of the Code of Corrections generally and with the purpose of section 5-9-2 specifically.

An offender's "ability to pay" cannot be determined solely on his present ability to pay; otherwise, the fact of the sentence itself could excuse an offender from paying the fines included in that sentence. For example, the fact that an offender is serving a prison term and is therefore unable to obtain a job outside of the prison might alone excuse him from paying his fines. Accordingly, courts have recognized that good cause must be shown based on "factors, external to the original proceedings, [that] would warrant revocation of fines." *Mingo*, 403 Ill. App. 3d at 972. A narrow focus on an offender's present ability to pay would also allow offenders to evade their payment obligations. For example, an imprisoned offender could intentionally spend down his trust account to evade his payment obligation. Similarly, once released, a gainfully employed offender could manufacture a present inability to pay his fines simply by filing his request for relief at the end of a pay period, after having chosen to spend his money on other purchases, and truthfully claim that he currently lacks the money to pay his fines, even though he will shortly receive a paycheck that will provide the

necessary funds. Accordingly, section 5-9-1(d), which focuses on the offender's ability to pay in the context of imposing penal fines, directs the sentencing court to consider the offender's "financial resources and future ability to pay," not merely his present ability to pay. 730 ILCS 5/5-9-1(d).

Similarly, an offender's history of payment or nonpayment, including the circumstances surrounding past nonpayment, is relevant to determining his ability to pay. An offender's history of nonpayment after his release from prison "supports two explanations" — an inability to pay or an unwillingness to pay — and only "[t]he former explanation is good cause." *Barajas*, 2018 IL App (3d) 160433, ¶ 19 (Wright, J., dissenting). Thus, section 5-9-3, which governs the consequences of an offender's default in the payment of a fine and provides the same kinds of relief available under section 5-9-2 — "revo[cation] of the fine or the unpaid portion" or modification of the time or manner of payment, 730 ILCS 5/5-9-3(c) — permits that relief only if the "default was not due to [the offender's] intentional refusal to pay" or "to a failure on his part to make a good faith effort to pay," 730 ILCS 5/5-9-3(b), (c). The same is true under section 5-9-2, for the good cause standard was not intended to reward an offender for bad faith, financial recklessness, or irresponsibility resulting in a failure to pay what is lawfully owed. *See Block v. Dardanes*, 83 Ill. App. 3d 819, 827 (1st Dist. 1980) ("It is a fundamental rule that one seeking equitable relief cannot take advantage of his own wrong

or, as otherwise stated, he who comes into equity must come with clean hands." (internal quotation marks and alteration omitted)).

But this distinction is ultimately irrelevant here, because defendant failed to show good cause even under *Barajas*'s narrow interpretation of the term, which focused solely on present ability to pay and hardship, because he failed to show that he currently lacked the ability to pay the outstanding balance of the assessments or that paying that balance would impose any hardship on him. To the contrary, defendant's request for relief and accompanying application to proceed as a poor person showed that he had the present ability to pay the remaining $135 in fines, for he had $200 in his prison trust account. C84-86; *see* Def. Br. 25 (conceding that he had sufficient savings to pay his outstanding balance in full, with savings left over). And defendant offered the circuit court no reason to believe that reducing his savings from $200 to $65 by paying the $135 that he owed would constitute a hardship sufficient to excuse him from paying the assessments imposed as part of his sentence.

Instead, defendant argues that he is "not the type of person from whom the State should be seeking money." Def. Br. 25. But, again, defendant does not explain why reducing his trust fund account from $200 to $65 would amount to a hardship. For example, he did not allege that his remaining savings after he paid his fines would be insufficient to meet his needs in prison, nor could he. As an incarcerated person, the State provided for all of

defendant's basic needs. *People ex rel. Dir. of Corrs. v. Ruckman*, 363 Ill. App. 3d 708, 711 (5th Dist. 2005). And his history of filings demonstrates that his income was sufficient to meet his additional needs in prison, for his savings increased with each filing, *see* C67 (August 2018 application to proceed as poor person showing no savings), C77 (February 2019 application showing $183 in savings), C86 (May 2019 application showing $200 in savings). To the extent that defendant argues that it is poor policy to require him to pay his fines, that argument cannot overcome the statutory requirements that he show an inability to pay or hardship from payment. *See Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, ¶ 47 (court may not overcome legislative intent underlying statute based on policy disagreement.).

Nor does the fact that defendant was serving a prison term on a new aggravated DUI conviction constitute good cause not to pay his fines imposed with his prior conviction where he had the ability to do so. *See* Def. Br. 25 (arguing that Court should consider that defendant "was imprisoned for another case when he filed his petition"). After five previous convictions for DUI, defendant chose to again drive while under the influence of alcohol, endangering both himself and others. For a court to make a finding of good cause based on defendant's commission of a new criminal offense would provide a windfall that the General Assembly did not intend to provide by making equitable relief available under section 5-9-2. *See, e.g.*, *Miller v.*

Gupta, 275 Ill. App. 3d 539, 544 (5th Dist. 1995), *rev'd in part on other grounds* 174 Ill. 2d 120 ("[E]quity and fairness will not allow a party to profit from his own wrongdoing.").

Finally, the Court should reject defendant's request to "take into consideration that he was not supposed to receive any fines in the first place per his negotiated plea agreement." Def. Br. 25. First, as the appellate court held, defendant forfeited any contention that his remaining fines were improperly assessed because he failed to raise this argument in the Rule 472 motion, *see Reyes*, 2022 IL App (2d) 190474, ¶¶ 16-19, and, in any event, section 5-9-2 does not allow defendant to challenge the imposition of specific fines as part of his sentence; it only allows a defendant to seek relief from fines previously imposed by the sentencing court, *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 6, 8. And second, defendant was not denied the benefit of his bargain. It is clear from the record that the parties agreed that the fine the court would not impose was the discretionary penal fine of up to $25,000 (about which defendant was admonished), and not the Court fee, the Child Advocacy Center fee, and the other mandatory assessments imposed as part of his sentence. *See* R33-34 (prosecutor stating that agreement was to "zero fines, court costs only"), 41 (court's admonishment that defendant faced possible fine of up to $25,000), 47 (court's acceptance of plea agreement and imposition of "zero fine"). Consistent with the parties' agreement, no penal fine was imposed.

In sum, defendant failed to show good cause for relief under section 5-9-2. His filings showed that he had the present ability to pay his outstanding balance of $135, and he failed to show that doing so would impose any hardship. Moreover, if in fact defendant is now indigent after his release from prison and unable to pay his outstanding balance without hardship, he may raise those new circumstances in a new request for relief under section 5-9-2. But he did not show good cause in the request for relief at issue here, and therefore the circuit court did not abuse its discretion when it denied that request.

II. The Circuit Court Did Not Commit Reversible Error by Sua Sponte Denying Defendant's Request for Relief Under Section 5-9-2 Upon Determining That the Request Was Meritless.

Because section 5-9-2 does not apply to the assessments from which he sought relief, *see supra* § I.A, and because defendant failed to make a showing of good cause to grant relief in any event, *see supra* § I.B, the circuit court did not abuse its discretion by sua sponte denying the request within 30 days of filing. Absent any statutory limits on the circuit court's authority to deny requests for relief under section 5-9-2, the court was free to deny the request upon determining that it was meritless. *People v. Vincent*, 226 Ill. 2d 1, 12 (2007). In any event, any procedural error in denying the request was harmless for the same reason: defendant was not entitled to relief.

A. The circuit court had authority to sua sponte deny a meritless request for relief under section 5-9-2 at any time.

In general, a circuit court "may, on its own motion, dispose of a matter when it is clear on its face that the requesting party is not entitled to relief as a matter of law." *Vincent*, 226 Ill. 2d at 12. Accordingly, Illinois courts may deny all kinds of meritless motions, petitions, and other requests for relief sua sponte. *See Hennings v. Chandler*, 229 Ill. 2d 18, 31 (2008) (courts may sua sponte deny applications for habeas corpus relief that are "insufficient on their face to warrant any relief"); *People v. O'Connell*, 227 Ill. 2d 31, 38 (2007) (court may sua sponte deny motion for DNA testing pursuant to 725 ILCS 5/116-3 "after determining that [the] motion d[oes] not provide a legal basis for the request"); *Vincent*, 226 Ill. 2d at 12 (court may sua sponte deny section 2-1401 petition "when it is clear on its face that the requesting party is not entitled to relief as a matter of law"); *Mason v. Snyder*, 332 Ill. App. 3d 834, 835, 842 (4th Dist. 2002) (court may sua sponte strike legally insufficient mandamus petition).

As defendant concedes, section 5-9-2 on its face provides no basis to limit the circuit court's usual authority to deny a request for a relief sua sponte upon determining that it is meritless. Def. Br. 7; *see* 730 ILCS 5/5-9-2. And the absence of such limitation cannot be construed to include one (or to create an ambiguity as to whether such limitation was intended). *See, e.g.*, *People v. Grant*, 2022 IL 126824, ¶ 25 (courts may not "under the guise of construction . . . add exceptions, limitations, or conditions, or otherwise

change the law so as to depart from the plain meaning of the language employed in the statute") (internal quotation marks omitted)); *Radloff v. Vill. of West Dundee*, 140 Ill. App. 3d 338, 340 (2d Dist. 1986) (statute's silence on subject does not "create an ambiguity in the statute which would require its interpretation"); *see also Mingo*, 403 Ill. App. 3d at 971 (section 5-9-2's silence regarding limits on time to file request for relief precluded imposition of time limit on filing such requests). Accordingly, the circuit court was free to deny defendant's meritless request for relief under section 5-9-2 sua sponte.

There is no legal basis for defendant's attempt to import one (and only one) of the procedures governing petitions for relief from judgment under section 735 ILCS 5/2-1401 to bar sua sponte dismissal of a request for relief under section 5-9-2. Defendant argues that a court may not sua sponte deny a request for relief under section 5-9-2 within 30 days of filing, just as it may not deny a petition for relief from judgment under section 2-1401 within 30 days of filing, because both a request for relief under section 5-9-2 and a petition for relief from judgment under section 2-1401 are "'freestanding, collateral action[s].'" Def. Br. 7-8 (quoting *Mingo*, 403 Ill. App. 3d at 970-71). But defendant does not explain why the fact that a request for relief under section 5-9-2 is a collateral action means that it is subject to procedural rules specific to petitions for relief from judgment, an entirely separate action codified in the Code of Civil Procedure, rather than, for example, the procedural rules governing applications for habeas relief or motions for DNA

testing or postconviction petitions, all of which are also freestanding, collateral actions. *See People v. Gawlak*, 2019 IL 123182, ¶ 32 (motions for DNA testing are collateral actions, "independent for any other type of collateral postconviction action"); *Hennings*, 229 Ill. 2d at 23 n.1 (applications for habeas relief are collateral actions); *People v. Tenner*, 206 Ill. 2d 381, 392 (2002) (postconviction petitions are collateral actions).

Indeed, review of *Mingo*'s observation in full reveals that it provides no basis to subject requests for relief under section 5-9-2 to the procedural rules governing petitions for relief from judgment under section 2-1401. *Mingo* rejected an argument that the circuit court lacked jurisdiction to address a defendant's request for relief under section 5-9-2 due to the pendency of a direct appeal from the underlying criminal conviction because a request for relief under section 5-9-2 "will always be a freestanding, collateral action, similar to a petition under section 2-1401 of the Code of Civil Procedure or a postconviction petition" in that "it will always be collateral to whatever is pending on appeal." 403 Ill. App. 3d at 972. This observation that a pending direct appeal does not deprive the circuit court of jurisdiction over a collateral action does not suggest that a request for relief under section 5-9-2 is governed by the procedures governing petitions for relief from judgment any more than it suggests that such requests are subject to the procedures governing postconviction petitions or any other particular collateral action.

Moreover, requests for relief under section 5-9-2 are not the same kind of collateral actions as a petition for relief from judgment under section 2-1401. Contrary to defendant's assertion, requests for relief under section 5-9-2 are not "challenges to a final sentencing judgment." Def. Br. 9. Unlike petitions for relief from judgment, which allow a defendant to challenge the validity of a judgment by proving "a defense or claim that would have precluded entry of the judgment in the original action," *Vincent*, 226 Ill. 2d at 7-8, requests for relief under section 5-9-2 do not challenge the validity of the penal fine imposed in the underlying criminal case. In other words, a successful request for relief under section 5-9-2 does invalidate the sentence containing the fine, but merely provides equitable relief from the otherwise valid obligation to pay it.

By contrast, petitions for relief from judgment are governed by specific statutory procedures designed to accomplish a particular end. "Section 2-1401 establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days," and is applicable to judgments in both civil and criminal cases. *Vincent*, 226 Ill. 2d at 7-8; *see* 735 ILCS 5/2-1401(b). Unlike collateral actions specific to criminal cases, petitions for relief from judgment "are essentially complaints inviting responsive pleadings" like any other civil complaint. *Id.* Therefore, they "are subject to the usual rules of civil practice," *Vincent*, 226 Ill. 2d at 8, including Rule 105(a), *People v. Laugharn*, 233 Ill. 2d 318, 323 (2009), which provide

that default judgment may be entered against the responding party "unless he files an answer or otherwise files an appearance in the office of the clerk of the court within 30 days after service," Ill. S. Ct. R. 105(a). Thus, a petition for relief from judgment is not "ripe for adjudication" until the adverse party has been afforded 30 days to respond under the civil rules. *Laugharn*, 233 Ill. 2d at 323. This procedural protection is critical in civil cases where the responding party's interests will be directly and adversely affected by a judgment vacating the prior civil judgment in its favor.

But the fact that petitions for relief from judgment are subject to the rules of civil procedure does not suggest that section 5-9-2, a collateral action available only in criminal cases and codified in the Code of Corrections, are also subject to the rules of civil procedure. Indeed, where the General Assembly intends specific rules of civil procedure to apply to particular collateral actions, it has said as much in the statutes creating those actions. *See, e.g.*, 725 ILCS 5/122-5 (detailing proceedings on postconviction petitions and authorizing circuit court to allow amendment and filing of pleadings "as is generally provided in civil cases"); 735 ILCS 5/10-137 (providing that when person is granted habeas relief from imprisonment for contempt for nonpayment of judgment, such unpaid judgment "may be enforced against the property of such person as other orders and judgments are enforced in civil cases"). That the General Assembly did not do so with respect to requests for relief under section 5-9-2 demonstrates that it did not intend

those proceedings to be subject to the rules of civil procedure. For that reason, defendant's reliance on inapposite cases concerning the language and procedural requirements of section 2-1401 is misplaced.

Moreover, defendant does not explain why, if requests for relief under section 5-9-2 are merely a kind of petition for relief from judgment, they are not also subject to the other procedural requirements that govern such petitions. For example, petitions for relief from judgment generally must be filed "'not later than 2 years after the entry of the order or judgment.'" *Laugharn*, 233 Ill. 2d at 322 (quoting 735 ILCS 5/2-1401(c)). But applying this statute of limitations to requests for relief under section 5-9-2 would defeat the purpose of the statute, which is to afford criminal defendants a means to obtain equitable relief from penal fines based on circumstances that arise after the fine was imposed at sentencing (and potentially long after the fine was imposed at sentencing).

At bottom, defendant's complaint appears to be that allowing the circuit court to deny his request for relief under section 5-9-2 without a response from the People deprived him the opportunity to "know the State's position and its perceived inadequacies of his revocation petition, allowing him some opportunity to remedy any issues therein." Def. Br. 12. But when, as here, the circuit court recognizes a request for relief as meritless on its face, there is no reason to delay denial. Even if the People expressly declined to oppose a request for relief under section 5-9-2, the court could not grant

relief unless it determined the offender had in fact shown good cause to revoke or modify his penal fines. *See* 730 ILCS 5/5-9-2 (court's discretion to grant relief contingent on showing of "good cause"); *cf. People v. White*, 2011 IL 109616, ¶ 23 (agreement of parties does not permit court to impose sentence in violation of statute). Further, if the People chose not to respond, as is its prerogative, defendant would be unable to ascertain any deficiencies from his request based on the People's silence.

In sum, the circuit court properly denied defendant's request for relief under section 5-9-2 in an exercise of its inherent authority to sua sponte deny meritless requests for relief. Defendant's argument that the civil "ripeness" requirement applicable to petitions for relief from judgment under the Code of Civil Procedure must also govern requests for relief under section 5-9-2 of the Code of Correction simply because both are collateral actions is legally baseless. Defendant identifies no authority requiring this treatment of requests for relief under section 5-9-2 and offers no convincing rationale as to why, if they are to be governed by the procedures of an unrelated collateral action, the procedures should be those governing petitions for relief from judgment rather than postconviction petitions, applications for habeas corpus relief, and motions for DNA testing.

B. In the alternative, any procedural error in sua sponte denying defendant's request for relief under section 5-9-2 within 30 days was harmless.

Even assuming the court erred when it denied defendant's request sua sponte within 30 days, the error was harmless because, as discussed,

defendant's request was meritless. An error is harmless if the result of the proceeding would have been the same absent the error. *Thurow*, 203 Ill. 2d at 363. Here, any error was harmless because the circuit court correctly determined that defendant failed to establish good cause. Defendant's assessments were not subject to relief under section 5-9-2, *see supra* § I.A, and even if they were, defendant could not show good cause because his request for relief and accompanying application for leave to proceed as a poor person demonstrated that he had sufficient funds to pay the outstanding balance, *see supra* § I.B. Accordingly, any error in denying defendant's request for relief was harmless.

CONCLUSION

This Court should affirm the appellate court's judgment.

March 16, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ALASDAIR WHITNEY
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(773) 590-7070
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 41 pages.

/s/ Alasdair Whitney
ALASDAIR WHITNEY
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 16, 2023, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on counsel at the following e-mail address:

Andrew Thomas Moore
Assistant Appellate Defender
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, Illinois 60120
2nddistrict.eserve@osad.state.il.us

/s/ Alasdair Whitney
ALASDAIR WHITNEY
Assistant Attorney General