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## NATURE OF THE CASE

Petitioner appeals from the appellate court's judgment affirming the summary dismissal of his postconviction petition. No issue is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

After a jury found petitioner guilty of two counts of criminal sexual assault, the circuit court orally sentenced him to two consecutive seven-year prison terms without specifying the corresponding term of mandatory supervised release (MSR). Under 730 ILCS 5/5-8-1(d)(4), petitioner's sentence included an indeterminate MSR term of three years to natural life, but the written sentencing order erroneously listed the MSR term as "3 years" for each criminal assault conviction. While petitioner's direct appeal was pending, the circuit court issued a corrected written sentencing order that reflected the statutorily mandated indefinite MSR term for each. The issue presented on appeal is:

Whether the circuit court retained jurisdiction under Illinois Supreme Court Rule 472(a)(4) to correct the discrepancy between the written sentencing order and its actual judgment, which included the statutorily mandated MSR term as a matter of law.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a), 612(b)(2), and 651(d). On November 30, 2022, this Court allowed petitioner's petition for leave to appeal.

## SUPREME COURT RULE INVOLVED

Illinois Supreme Court Rule 472(a)(4) provides, in relevant part:

**Rule 472. Correction of Certain Errors in Sentencing.**

(a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:

- (1) Errors in the imposition or calculation of fines, fees, assessments, or costs;
- (2) Errors in the application of per diem credit against fines;
- (3) Errors in the calculation of presentence custody credit; and
- (4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

## STATEMENT OF FACTS

The People charged petitioner with two counts of criminal sexual assault, one count of criminal sexual abuse, and one count of unlawful restraint. C22-24, 71.<sup>1</sup>

At petitioner's jury trial, the victim testified that after she gave petitioner a ride home after they and others watched a boxing match televised at a hotel, he turned off her car engine. R397-405. Without her

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<sup>1</sup> Citations to the report of proceedings appear as "R\_"; to the common law record as "C\_"; to petitioner's brief as "Pet. Br. \_"; and to the appendix of petitioner's brief as "A\_."

consent and despite her protests, petitioner then pulled down her pants and digitally penetrated her, fondled her breasts, forced her to perform oral sex on him, and forcibly picked her up and placed her on top of him in an attempt to vaginally penetrate her with his penis. R404-415, 785-789. A friend and a family member both testified to the victim's outcry to them immediately after the assault. R463-483. An officer who interviewed petitioner testified that after initially denying any physical contact with the victim, petitioner admitted to turning off her car and engaging in sexual activity, explaining that as "a male . . . you had to continue trying to make sure that a woman was not really interested." R542-47. Petitioner testified that the sexual activity was consensual. R696-781.

The jury found petitioner guilty on all four counts. R876. At the October 2017 sentencing hearing, the circuit court sentenced petitioner to a total of 15 years in prison: consecutive 7-year terms on the two criminal sexual assault charges, a consecutive 1-year term on the unlawful restraint charge, and a concurrent 3-year term on the criminal sexual abuse charge. R911-12. The court did not mention MSR during the sentencing hearing.

The written sentencing order correctly listed the statutory citations for each of the crimes of conviction and the prison terms that the court imposed in its oral judgment, and further listed a three-year MSR term for each criminal sexual assault conviction. A7; C394.

On direct appeal, petitioner raised a number of claims unrelated to the current issue before the Court, all of which the appellate court rejected when it affirmed the circuit court's judgment. *People v. Fukama-Kabika*, 2020 IL App (4th) 170809-U. This Court denied petitioner's ensuing petition for leave to appeal. *People v. Fukama-Kabika*, No. 126454 (May 26, 2021).

In February 2019, while petitioner's direct appeal was pending, the Department of Corrections (DOC) sent a letter addressed to the circuit court to the Assistant State's Attorney (ASA) who had prosecuted the case; in March 2019, the ASA forwarded the letter to the trial judge's clerk with an accompanying note. C432-33. The letter stated that the MSR term listed in in the written sentencing order for each criminal sexual assault conviction was erroneous and requested an "amended order, issued nunc pro tunc to the original sentencing date," that included the correct, statutorily required MSR term of three years to life. *Id.* In his note forwarding DOC's letter, the ASA stated that the circuit court could amend its written sentencing order under Rule 472. C432, 437. The circuit court entered a corrected sentencing order reflecting an MSR term of three years to natural life for both criminal sexual assault counts. C442.

In July 2020, after the circuit court issued the corrected written sentencing order and while his direct appeal was pending, petitioner filed a pro se petition for postconviction relief pursuant to 725 ILCS 5/122-1, raising



claims not relevant to the present appeal. C446. The circuit court dismissed the petition as frivolous and patently without merit. C523.

Petitioner appealed, arguing for the first time that the corrected sentencing order was void because Rule 472 did not grant the circuit court jurisdiction to correct the MSR terms. *See* A21 ¶ 30. The appellate court affirmed, explaining that “the MSR term is included in the sentence as a matter of law and that the failure to include the term in the written sentencing order does not on its own invalidate the sentence or any part of it.” A22 ¶ 32 (quoting *Round v. Lamb*, 2017 IL 122271, ¶ 16). Thus, entry of the incorrect term on the written sentencing order qualified as a “clerical error,” and Rule 472(a)(4) granted the circuit court jurisdiction to enter a corrected order reflecting “the actual judgment of the court.” A23 ¶ 34 (quoting Ill. S. Ct. R. 472(a)(4)).

### STANDARD OF REVIEW

Whether the circuit court had jurisdiction to correct the discrepancy between the MSR terms recorded in the written sentencing order and the MSR terms that were included in petitioner’s sentence as a matter of law requires interpretation of Illinois Supreme Court Rule 472. The interpretation of this Court’s Rules presents a question of law that the Court reviews de novo. *People v. Walls*, 2022 IL 127965, ¶ 16.

**ARGUMENT**

Rule 472(a)(4) grants the circuit court jurisdiction to correct “[c]lerical errors in the written sentencing order” that result from a discrepancy between that order and “the actual judgment of the court.” Ill. S. Ct. R. 472(a)(4). The “actual judgment” of the circuit court is the court’s oral pronouncement of petitioner’s sentence, which included the statutorily mandated indeterminate MSR term as a matter of law. The omission of those terms from the written sentencing order and the erroneous recording of a three-year MSR term in their place was merely a clerical error, for reducing the court’s judgment to a written sentencing order is a purely ministerial task that involves no exercise of judicial discretion or engagement in judicial reasoning. Accordingly, just as a failure to record an MSR term in the written sentencing order does not negate the MSR term, correction of an erroneously recorded MSR term in a written sentencing order does not change the MSR term. Indeed, Rule 472(a)(4) was enacted to allow the circuit court to correct just such a discrepancy between the actual judgment and the written sentencing order without burdening this Court with original mandamus actions to correct what are fundamentally record-keeping errors. Accordingly, this Court should affirm the appellate court’s judgment.

**Rule 472(a)(4) Authorized the Circuit Court to Correct the Written Sentencing Order to Reflect the Statutorily Mandated MSR Term That Was Included in the Court’s Actual Judgment as a Matter of Law.**

Rule 472(a)(4) grants the circuit court jurisdiction to correct “[c]lerical errors in the written sentencing order” that render that order inconsistent with the “actual judgment of the court.” Ill. S. Ct. R. 472(a)(4). To answer whether a written sentencing order’s reference to an erroneous MSR term — that is, an MSR term other than the statutorily mandated MSR term — is a clerical error that renders the order inconsistent with the circuit court’s “actual judgment,” this Court must construe Rule 472(a)(4), which it does by applying the same principles that govern the construction of statutes. *Walls*, 2022 IL 127965, ¶ 16. The objective of that construction is to ascertain and give effect to the intent of the drafters. *Id.* And the most reliable indicator of that intent is the plain and ordinary meaning of the Rule’s language, *id.*, which this Court construes in light of the purpose behind the Rule, the evils sought to be remedied, and the consequences of construing the Rule one way or another, *People v. Tousignant*, 2014 IL 115329, ¶ 8.

Review of the plain language of the Rule, informed by the Rule’s purpose and this Court’s precedent regarding the relationship between the circuit court’s judgment, the written sentencing order, and the statutorily mandated MSR term, makes clear that Rule 472(a)(4) authorized the circuit court to correct the erroneous MSR term recorded in the written sentencing order.

**A. The “actual judgment” is the circuit court’s oral pronouncement of the sentence, not the written sentencing order.**

Rule 472(a)(4) grants the circuit court jurisdiction to correct discrepancies between the written sentencing order and the “actual judgment” of the court. As this Court’s precedent shows, the circuit court’s actual judgment is the sentence itself, which has the force of law, and not the written sentencing order, which merely records that sentence.

This Court has long held that in “a criminal case the pronouncement of the sentence is the judicial act which comprises the judgment of the court,” and the “entry of the judgment order” — the reduction of the court’s actual judgment to a written sentencing order — “is a ministerial act and is merely evidence of the sentence.” *People v. Allen*, 71 Ill. 2d 378, 381 (1978); *see also People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 87 (“Although a written order of the circuit court is evidence of the judgment of the circuit court, the trial judge’s oral pronouncement is the judgment of the court.”) (internal quotation marks omitted); 730 ILCS 5/5-1-12 (“Judgment’ means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.”). Accordingly, the written sentencing order need not even be drafted by the circuit court. *See* Ill. S. Ct. R. 452 (“At the time of sentencing in a criminal case, the court shall enter a written order imposing the sentence . . . . The State shall draft such order and present the order for review by defendant or, if defendant is represented, by defense counsel, before

submitting it to the court.”). And because the written sentencing order is “merely evidence” of the circuit court’s actual judgment and not the judgment itself, *Allen*, 71 Ill. 2d at 381, if “the oral pronouncement of the court and the written order are in conflict, the oral pronouncement controls,” *Carlisle*, 2015 IL App (1st) 131144, ¶ 87 (internal quotation marks omitted).

**B. The circuit court’s “actual judgment” includes the statutorily mandated MSR term as a matter of law.**

Although the circuit court did not mention the statutorily mandated indeterminate three-years-to-life MSR term when it orally sentenced petitioner for his two criminal sexual assault convictions, his sentence included the indeterminate MSR term as a matter of law. Therefore, the omission of that term from the written sentencing order was a clerical error in reducing the court’s actual judgment to a written order.

By statute, “[e]xcept when a term of natural life is imposed, every sentence includes a term in addition to the term of imprisonment,” which, for defendants sentenced after February 1, 1978, is called “a mandatory supervised release term.” 730 ILCS 5/5-4.5-15(c). For criminal sexual assault, the MSR term “shall range from a minimum of 3 years to a maximum of the natural life of the defendant.” 730 ILCS 5/5-8-1(d)(4). This means that the MSR term is indeterminate, lasting at least three years and continuing until the Prisoner Review Board (PRB) discharges the MSR term upon determining that the supervised person is likely to remain at liberty without committing another offense. *See People v. Rinehart*, 2012 IL 111719,

¶ 30 (provision governing MSR terms for sex offenses “contemplate indeterminate MSR terms, not determinate terms”); 730 ILCS 5/3-3-8(b) (PRB may enter order discharging indeterminate MSR term upon determination that supervised person is “likely to remain at liberty without committing another offense”).

When the circuit court pronounces a sentence for an offense that includes a prison term — here, the consecutive seven-year prison terms for two counts of criminal sexual assault — the “MSR term [for that offense] is included in the sentence as a matter of law.” *Round*, 2017 IL 122271, ¶ 16. As now explained, the requirement that the “mandatory supervised release term shall be written as part of the sentencing order,” 730 ILCS 5/5-8-1(d), relates to the written sentencing order’s role as the mittimus communicating the sentence to DOC, and “was designed to provide greater clarity for [DOC].” *Round*, 2017 IL 122271, ¶ 15.

**C. Because the written sentencing order did not accurately record the circuit court’s actual judgment, which necessarily included the statutorily mandated indeterminate MSR term, the circuit court had authority to correct that discrepancy under Rule 472(a)(4).**

Rule 472(a)(4) expressly recognizes the distinction between the judicial act of pronouncing judgment and the ministerial act of reducing that judgment to a written sentencing order, and authorizes the circuit court to ensure that the latter accurately reflects the former by permitting the court to correct “[c]lerical errors *in the written sentencing order* or other part of the record resulting in a discrepancy between the record and the *actual judgment*

of the court.” Ill. S. Ct. R. 472(a)(4) (emphasis added). Although the written sentencing order is not the circuit court’s actual judgment and has no independent legal effect, ensuring its accuracy is nonetheless important because the written sentencing order serves an important purpose: it acts as the mittimus to communicate the circuit court’s actual judgment to DOC, which is tasked with enforcing the sentence. *See Round*, 2017 IL 122271, ¶ 15; *see also* 735 ILCS 5/2-1801(a) (written sentencing order “shall . . . constitute the mittimus”); *Black’s Law Dictionary* (11th ed. 2019) (defining “mittimus” as “[a] court order or warrant directing a jailer to detain a person until ordered otherwise”). Thus, Rule 472(a)(4) codifies and retains the common law rule that a circuit court retains jurisdiction to correct the mittimus so that it accurately reflects the court’s actual judgment. *Compare* Ill. S. Ct. Rule 472(a)(4) (circuit court retains jurisdiction to correct written sentencing order to accurately reflect actual judgment), *with People v. Latona*, 184 Ill. 2d 260, 278 (1998) (circuit court retains jurisdiction to correct mittimus to accurately reflect actual judgment).

Accordingly, the omission of the statutorily mandated MSR term from a written sentencing order (or the inclusion of a statutorily non-compliant MSR term in that order) cannot override the circuit court’s actual judgment, which includes the statutorily mandated MSR term as a matter of law. *Round*, 2017 IL 122271, ¶ 16. Because “the MSR term is included in the sentence as a matter of law,” any “failure to include the term in the written

sentencing order does not on its own invalidate the sentence or any part of it.” *Id.*; see *Carlisle*, 2015 IL App (1st) 131144, ¶ 87 (where court’s actual judgment and written sentencing order conflict, actual judgment controls).

This Court’s decision in *Round* is instructive. In *Round*, the circuit court orally imposed a sentence for the offense of violating an order of protection, which “[b]y statute . . . include[d] a four-year MSR term.” 2017 IL 122271, ¶ 3. But the circuit court did not mention that MSR term when pronouncing the sentence and no MSR term was recorded in the written sentencing order. *Id.* This Court held that DOC nonetheless was not barred from enforcing the unmentioned but statutorily mandated MSR term, *id.* ¶¶ 16-17, because “the circuit court’s failure to comply with the requirement that the MSR term be included in the written sentencing order [did] not invalidate that part of the sentence,” *id.* ¶ 28; see also *id.* ¶ 16 (circuit court could not “overrule the legislature’s directive” “by failing to write the term in the sentencing order”). In other words, because the circuit court’s actual judgment included the MSR term as a matter of law, any error in recording that term in the subsequent written sentencing order had no effect on the existence or enforceability of the term.

Likewise, the circuit court’s actual judgment here included the statutorily mandated MSR term of three years to natural life as a matter of law. When the circuit court pronounced petitioner’s sentence for the two criminal sexual assault convictions, the statutorily mandated MSR term of



three years to natural life was “included in the sentence as a matter of law.” *Round*, 2017 IL 122271, ¶ 16; *see* 730 ILCS 5/5-8-1(d)(4) (mandating indeterminate MSR term of three years to natural life for criminal sexual assault). Due to an error during the ministerial task of reducing the judgment to a written sentencing order, the written sentencing order did not accurately reflect the indeterminate MSR term, instead showing a three-year MSR term for each criminal sexual assault conviction. A7; C394. Accordingly, the erroneously recorded MSR terms were “[c]lerical errors in the written sentencing order . . . resulting in a discrepancy between the record and the actual judgment of the court,” and the circuit court had jurisdiction under Rule 472(a)(4) to correct them. Ill. S. Ct. R. 472(a)(4).

**D. Petitioner’s contrary arguments are meritless.**

Petitioner’s contrary arguments proceed from the mistaken premise that the written sentencing order was the “actual judgment.” Petitioner argues that amending a written sentencing order to reflect the statutorily mandated MSR term constitutes “changing of the MSR term,” Pet. Br. 10; *see also id.* (arguing that “there was no ‘discrepancy between the record and the actual judgment of the court’ to correct”) (quoting Ill. S. Ct. R. 472(a)(4)), and that “Rule 472 does not give a circuit court jurisdiction to change an MSR term,” Pet. Br. 9. But, as discussed, the written sentencing order is *not* the actual judgment of the court. Rather, the circuit court’s “actual judgment” is its oral pronouncement of the sentence, which includes the statutorily mandated MSR term as a matter of law. *See supra* Sections A-B. Thus,

correcting the written sentencing order to accurately reflect the MSR term included in the judgment does not change the MSR term, just as the entry of a written sentencing order that erroneously omits the MSR term does not remove that term from the judgment. *See Round*, 2017 IL 122271, ¶ 16.

Nor is petitioner correct that Rule 472 does not authorize “changing” an erroneous MSR term because an error in imposing the MSR term is not among the errors identified in subsections (a)(1), (a)(2), and (a)(3), Pet. Br. 9, which address errors “in the imposition or calculation of fines, fees, assessments, or costs,” Ill. S. Ct. R. 472(a)(1); “the application of *per diem* credit against fines,” Ill. S. Ct. R. 472(a)(2); and “the calculation of presentence custody credit,” Ill. S. Ct. R. 472(a)(3). As a threshold matter, subsections (a)(1)-(3) are distinct from subsection (a)(4) and do not assist in interpreting the terms “actual judgment” or “clerical errors” in subsection (a)(4). Indeed, subsections (a)(1)-(3) concern *substantive* errors — the imposition of monetary assessments against a defendant as part of the judgment — whereas subsection (a)(4) concerns *record-keeping* errors — errors in recording the judgment. The language describing the record-keeping errors that can result in a discrepancy between the “actual judgment” and the written sentencing order is intentionally broad because the universe of potential record-keeping errors is likewise broad. For example, if the actual judgment imposed a sentence of 24 years in prison but the written sentencing order erroneously reflected a term of 34 years, that

discrepancy may be corrected under subsection (a)(4). And subsection (a)(4) has effect independent of subsections (a)(1) through (a)(3). That is, even if a court correctly imposed the assessments, calculated the presentence custody credit, and applied that credit against the assessments, if the written sentencing order did not accurately reflect that imposition, calculation, and application, then those discrepancies could be corrected under subsection (a)(4). Because the correct, statutorily mandated MSR term is included in the actual judgment as a matter of law, a written sentencing order that reflects an MSR term other than the statutorily mandated MSR term (or no MSR term at all) is a record-keeping error under subsection (a)(4), not a substantive error beyond the scope of subsections (a)(1)-(3).

Petitioner's reliance on *People v. Lake*, 2020 IL App (1st) 170309, is misplaced for the same reason, Pet. Br. 9; *Lake's* statement in dicta that Rule 472 is an exclusive list of substantive errors that may be corrected at any time and that changing an erroneously imposed MSR term is not permitted under Rule 472 overlooks that the statutorily mandated MSR term is always included in the actual judgment as a matter of law. 2020 IL App (1st) 170309, ¶ 20. Moreover, *Lake* noted that neither party had addressed the possible application of Rule 472, and so reached its conclusion without the benefit of adversarial briefing on the rule's construction and application.

Petitioner's argument that an erroneously recorded MSR term is not a "clerical error" within the meaning of Rule 472(a)(4), Pet. Br. 10-12, similarly

confuses the act of reducing the court's judgment to a written sentencing order with the act of imposing the judgment itself. Again, the actual judgment was the oral pronouncement of the sentence, which included the statutorily mandated indeterminate MSR term as a matter of law. *See supra* Sections A-B. Thus, correcting the written sentencing order to accurately reflect this judgment did not "change" the MSR term; it simply corrected the discrepancy between the actual judgment and the written sentencing order.

For that reason, this Court has identified the duty to include the correct MSR term in the sentencing order as "ministerial." *See Allen*, 71 Ill. 2d at 381; *see also People v. Bakalis*, 2018 IL 122435, ¶¶ 16, 18 (granting mandamus relief because "MSR term was statutorily mandated, the trial court in this case had no discretion but to impose that term on defendant," and entry of MSR term was "purely ministerial duty that does not involve an exercise of discretion").

The dictionary defines a "ministerial" act as involving "involv[ing] obedience to instructions or laws instead of discretion, judgment, or skill," such as "recording judgments on the docket." *Black's Law Dictionary* (11th ed. 2019). Thus, this definition confirms that the "clerical errors" contemplated in Rule 472(a)(4) include errors committed when performing the ministerial act of transcribing the actual judgment to writing in the written sentencing order, such as erroneously recording the statutorily mandated MSR term included in that judgment as a matter of law.

Indeed, this Court has recognized that the ministerial act of recording a judgment is not the judicial act of pronouncing the judgment, and errors in the recording therefore are clerical errors, not part of the judgment itself. In *People v. Vara*, 2018 IL 121823, this Court held that the appellate court lacked jurisdiction to entertain the defendant’s challenge to a fine that was not imposed by the court but instead was erroneously reflected in a court record, explaining that the “recording of a fine is a *clerical, ministerial* function and is not a judgment — void or otherwise.” *Id.* ¶ 23 (emphasis added); *see also id.* ¶ 16 (“clerical responsibilities of circuit clerks” include recording of judgments and orders).

Finally, respondent is incorrect when he argues that *People v. Melchor*, 226 Ill. 2d 24 (2007), defined “clerical errors” in a way that bars correction of incorrectly recorded MSR terms in written sentencing orders under Rule 472. *See* Pet. Br. 11-12. *Melchor* did not define clerical errors at all, but rather addressed the validity of an appellate court opinion issued several days after denying rehearing but nunc pro tunc to the date of the initial opinion. *Id.* at 32. This Court did not hold the second opinion invalid, but merely expressed “two concerns” with the appellate court’s procedure. *Id.* First, the Court noted that the delay between the denial of rehearing and the issuance of the subsequent opinion “may have jurisdictional consequences” because a petition for leave to appeal filed during that interval would render the opinion void for lack of jurisdiction. *Id.* Second, this Court cautioned that

nunc pro tunc orders are used for correcting clerical errors so that records accurately reflect previous judicial actions, and not for supplying omitted judicial action or correcting judicial errors. *Id.* at 32-33. Thus, *Melchor*'s explanation of the limited utility of nunc pro tunc orders did not suggest that correcting a written sentencing order to accurately reflect the MSR term included in the judgment as a matter of law would be somehow improper. Indeed, *Melchor* did not address the amendment of a written sentencing order at all, much less overrule the well-established precedent that the written sentencing order is not the actual judgment of the court but a record of that judgment. Nor did *Melchor* address the manner in which a statutorily mandated MSR term is included in the judgment — that is, as a matter of law when the judgment is pronounced, rather than inclusion in the written sentencing order when the judgment is reduced to writing. In short, *Melchor* is inapposite.

In sum, petitioner's arguments that Rule 472(a)(4) does not authorize a circuit court to correct a written sentencing order to accurately reflect the statutorily mandated MSR term included in the judgment as a matter of law misapprehend the term "actual judgment of the court" and fail to recognize that recording the correct MSR term in the written sentencing order is merely a ministerial duty.

**E. Allowing the circuit court to correct written sentencing orders that do not accurately reflect statutorily mandated MSR terms included in the judgment promotes justice and efficiency.**

Contrary to petitioner's assertion, allowing the circuit court to correct written sentencing orders that do not accurately reflect statutorily mandated MSR terms does not "produce absurd, inconvenient, and unjust results." Pet. Br. 12. Instead, consistent with the purpose of Rule 472, it promotes justice and judicial efficiency. Specifically, Rule 472(a)(4) provides an efficient means to correct clerical errors in the written sentencing order that have no effect on the actual sentence without burdening this Court with original mandamus actions.

In support of his contention that this construction of Rule 472(a)(4) produces absurd and inconvenient results, petitioner makes two arguments that misapprehend the significance of *People v. Castleberry* 2015 IL 116916, which abolished the void sentence rule established by *People v. Arna*, 168 Ill. 2d 107 (1995). First, petitioner argues that interpreting Rule 472 to allow correction of inaccurate written sentencing orders would contradict *Castleberry's* holding abolishing the void sentence rule. Pet. Br. 13. As he notes, in *Castleberry*, this Court explained that the void sentence rule rested on the faulty premise that imposing a sentence that is not statutorily authorized was a jurisdictional error, when, in fact, circuit courts' jurisdiction derives from the Illinois Constitution, and so noncompliance with a statutory mandate, though error, did not deprive the court of jurisdiction. Pet. Br. 13

(citing *Castleberry* 2015 IL 116916, ¶¶ 15-16). But *Castleberry* merely held that the circuit court’s sentencing error — failure to impose a mandatory firearm enhancement — was not jurisdictional and therefore did not render the resulting sentence “void,” such that it could be attacked at any time. 2015 IL 116916, ¶¶ 15-16. *Castleberry* had nothing at all to say about how or when discrepancies between the actual judgment of the court and the subsequent reduction of that judgment to a written sentencing order could be corrected, and it did not overturn the precedent holding that such clerical errors may be corrected at any time. Rule 472(a)(4) provides an efficient means to do so.

Second, petitioner argues that interpreting Rule 472(a)(4) to allow correction of the MSR term recorded in the written sentencing order would undermine the finality of judgments. Pet. Br. 13-14 (citing *Castleberry*, 2015 IL 116916, ¶ 15). Not so. Correcting an inaccurate written sentencing order has *no* effect on the finality of the judgment because it has no effect on the judgment at all; the court’s actual judgment included the statutorily mandated MSR term as a matter of law, and correcting the written sentencing order in an efficient manner to accurately reflect that judgment is a ministerial act that has no effect on its finality.

For that reason, petitioner is mistaken in asserting that correcting the written sentencing order to accurately reflect the MSR term included in the judgment order unjustly “increased” his sentence. Pet. Br. 14. Petitioner’s



sentence included the statutorily mandated MSR term of three years to natural life as a matter of law. Correcting the written sentencing order to accurately reflect that judgment did not increase the MSR term. Accordingly, this Court has long rejected the “premise that the [statutorily mandated] MSR term was not included as part of [a defendant’s] original sentence because it was not written in the sentence.” *People v. McChriston*, 2014 IL 115310, ¶ 16. Enforcing the statutorily mandated MSR term, even though not included in the written sentencing order, “[i]s not an increase in sentencing, as the MSR term attached automatically as though written into [the] defendant’s sentence.” *Id.* ¶ 31; *see Round*, 2017 IL 122271, ¶ 16 (“conclud[ing] the MSR term is included in the sentence as a matter of law and that the failure to include the term in the written sentencing order does not on its own invalidate the sentence or any part of it”). Thus, a correction under Rule 472(a)(4) does not increase petitioner’s sentence. Instead, the rule provides an efficient means to correct clerical errors in the written sentencing order and avoids burdening this Court with original mandamus actions. *See Bakalis*, 2018 IL 122435, ¶¶ 24-27 (referring proposal to allow circuit court to correct erroneous MSR terms to rules committee in case granting mandamus relief).<sup>2</sup>

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<sup>2</sup> Rule 472 can also be used to correct written sentencing orders that incorrectly record MSR terms that are longer than the statutorily mandated MSR terms included in the sentence as a matter of law.

Nor does allowing the circuit court to correct clerical errors involving the MSR term in its written sentencing order run afoul of the limits on the People's right to appeal a sentencing order in a criminal case. Pet. Br. 16-18 (citing Ill. S. Ct. R. 604(a)(1)). Correcting a written sentencing order under Rule 472(a) involves no appeal, so the rule implicates no limitation on the People's appellate rights. And as petitioner recognizes, the rule sets no limitation on the People's ability to bring a clerical error in a written sentencing order to the circuit court's attention, for "Rule 472 allows 'any party,' including the State, to move to correct the sentencing errors listed therein." Pet. Br. 16 (quoting Ill. S. Ct. R. 472(a)). Moreover, as petitioner also recognizes, the People could obtain the same remedy by bringing an original mandamus action in this Court. Pet. Br. 17. Thus, it is far from absurd to construe Rule 472(a)(4) to permit correction of clerical errors involving the statutorily mandated MSR term through the more efficient means of simply bringing them to the attention of the circuit court.

Finally, petitioner asserts that because a letter from DOC to the State's Attorney prompted the circuit court's correction of the written sentencing order in this case, this "permit[ted] IDOC to direct a court to reassess and increase [his] sentence." Pet. Br. 18. But Rule 472 allows correction of errors in the written sentencing order on "the court's own motion, or on motion of any party." Ill. S. Ct. R. 472(a). Petitioner does not contest that the circuit court was authorized to act on its own motion, so the

fact that DOC brought the error to the court's attention in the first instance is irrelevant. Contrary to petitioner's argument, DOC did not "essentially move, via letter, for a reassessment and increase in [his] sentence," Pet. Br. 19; rather, it simply prompted the circuit court to correct a clerical error so that the written sentencing order would match the MSR term that was included in the sentence as a matter of law and that DOC was already authorized to enforce.

### CONCLUSION

This Court should affirm the judgment of the appellate court.

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Respectfully submitted,

KWAME RAOUL  
Attorney General of Illinois

JANE ELINOR NOTZ  
Solicitor General

KATHERINE M. DOERSCH  
Criminal Appeals Division Chief

ELDAD Z. MALAMUTH  
Assistant Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601-3218  
(773) 590-7973  
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellee  
People of the State of Illinois*

**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 23 pages.

/s/ Eldad Z. Malamuth  
ELDAD Z. MALAMUTH  
Assistant Attorney General

