

2026 IL App (2d) 250475-U
No. 2-25-0475
Order filed October 23, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

DEAN M. TOWNSEND, Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable Donald M. Tegeler Jr., Judge, Presiding.
No. 24-CF-332

PRESIDING JUSTICE KENNEDY delivered the judgment of the court.
Justices Hutchinson and Mullen concurred in the judgment.

ORDER

¶ 1 *Held:* Although defendant’s claim of error is formally one of ineffective assistance of counsel, it is in effect a claim for additional presentence credit, which defendant raises for the first time on appeal. Therefore, Illinois Supreme Court Rule 472(e) (eff. Feb. 1, 2024) requires us to allow the trial court to address the claim in the first instance. We dismiss the appeal and remand the cause so that the trial court may consider whether defendant is entitled to the additional credit.

¶ 2 Defendant, Dean M. Townsend, entered an open plea of guilty to one charge of aggravated driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (d)(1)(C) (West 2022)) and was sentenced to three years’ imprisonment with credit for 21 days served in jail before sentencing. On appeal, he argues that his plea counsel was ineffective for failing to seek sentencing credit for time before sentencing when he was “confined” for substance abuse treatment (see 730

ILCS 5/5-4.5-100(b) (West 2024)). The State argues that (1) under Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024), we lack jurisdiction to hear the appeal and must remand the cause to the trial court, and, alternatively, (2) defendant's argument fails on the merits. We agree with the State that we lack jurisdiction over the appeal. Therefore, we dismiss the appeal and remand the cause with directions.

¶ 3

I. BACKGROUND

¶ 4 On February 17, 2024, defendant was charged by complaint with four counts of aggravated DUI, based on one incident. Counts I and II alleged that, on or about February 16, 2024, defendant was driving or in physical control of a motor vehicle while he was under the influence of alcohol and had two previous convictions of DUI (see 625 ILCS 5/11-501(a)(1), (a)(2), (d)(1)(A) (West 2022)). Counts III and IV alleged that, on or about the same date, defendant was driving or in physical control of a motor vehicle while he was under the influence of alcohol and the violation was a proximate cause of a crash that resulted in great bodily harm or permanent disability or disfigurement to another (see *id.* § 11-501(a)(1), (a)(2), (d)(1)(C)).

¶ 5 Between his arrest on February 16, 2024, and March 7, 2024, defendant was in jail. On March 4, 2024, he moved to be released for residential treatment at the Northern Illinois Recovery Center (Center). On March 7, 2024, after a hearing, the trial court agreed to release defendant from custody and have him transferred to the Center for inpatient treatment. The court ordered that, after defendant's release from the Center, he would have 48 hours to report to the probation department to be fitted with an ankle-worn Secure Continuous Remote Alcohol Monitoring (SCRAM) device.

¶ 6 On March 8, 2024, defendant was admitted to the Center and began residential treatment. On March 27, 2024, defendant was transferred to the Center's partial hospitalization program, which provided supportive housing. Also on the same date, he was indicted on the same charges

brought in the complaint. On April 17, 2024, defendant was switched to an outpatient program operated through the Center.

¶ 7 On March 8, 2024, the trial court ordered, as a condition of defendant's bond, that he wear the SCRAM device until further notice of the court. On June 6, 2024, defendant was successfully discharged from the Center and thereafter was monitored via SCRAM.

¶ 8 On April 11, 2025, defendant entered an open plea of guilty to count IV of the indictment, and the State dismissed the remaining charges. The trial court ordered all conditions of pretrial release to continue until the sentencing hearing.

¶ 9 On July 23, 2025, the trial court sentenced defendant to three years' imprisonment with credit for 21 days served in jail. Defendant's counsel did not seek credit for any of defendant's time as an inpatient at the Center or for any other time before sentencing other than the 21 days defendant spent in jail. Defendant moved to reconsider the sentence but raised no claim of error as to sentencing credit. The court denied the motion, and defendant timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Defendant contends that his attorney was ineffective for failing to request that the trial court award him sentencing credit for the days he spent as an inpatient at the Center and for the time he was released on SCRAM monitoring. We agree with the State that, under Rule 472, we lack jurisdiction and must remand the cause so that defendant may bring his request for sentencing credit to the trial court in the first instance.

¶ 12 As pertinent here, Rule 472 reads:

“(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 the motion of any party:

(3) Errors in the calculation of presentence custody credit; and

(c) No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited.

(e) In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472 (eff. Feb. 1, 2024).

¶ 13 Defendant concedes that, were he raising a simple claim that he is entitled to presentence credit that he did not request in the trial court, Rule 472 would require us to hold that we have no jurisdiction to entertain the claim and remand the matter to the trial court to allow defendant to raise the claim there. See *People v. Edwards*, 2020 IL App (1st) 170843, ¶ 27; *People v. Whittenburg*, 2019 IL App (1st) 163267-U, ¶¶ 3-4; *People v. Scott*, 2019 IL App (1st) 163022, ¶¶ 24-26. Defendant, however, contends that he is not raising a mere claim for credit but an independent claim of ineffective assistance of plea counsel, and that, therefore, he has successfully invoked our jurisdiction. We disagree because defendant’s interpretation of Rule 472 contradicts the intent of the rule’s adopters and would create an absurd result.

¶ 14 In construing a supreme court rule, we rely on the same principles that govern our construction of statutes. *Skarbek v. Woodman’s Food Market, Inc.*, 2026 IL App (2d) 250054, ¶ 26.

Our primary goal is to ascertain and effectuate the drafter's intent. *Id.* Ordinarily, the best guide to this intent is the language of the rule, which should be given its plain and ordinary meaning. *Id.* To the extent necessary, we may consider the purpose and necessity for the rule, the evils to be remedied, and the goals to be achieved. *Id.* ¶ 27. Further, we presume that the drafters, in their enactment of the rule, did not intend absurdity, inconvenience, or injustice. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 60 (2006). Finally, because Rule 472 is remedial, it should be construed broadly to further its purpose. *People v. Nibbelin*, 2026 IL 131825, ¶ 21.

¶ 15 The plain language of Rule 472 gives the trial court the first say on the matters the rule covers, including the proper calculation of presentence credit. *People v. Eason*, 2020 IL App (3d) 180296, ¶¶ 11-12, aptly explained the purpose of the rule:

“The intent behind Rule 472 is readily apparent. Issues relating to fines and fees [the subject matter of the *Eason* appeal] have frequently gone unaddressed in the lower courts, a result of the fact that such assessments are often only imposed after sentencing. As a result, appellate courts faced a growing tide of appeals raising only those monetary issues. Rule 472 attempts to quell that tide by providing the circuit court with jurisdiction, at any time after sentencing, to address those issues for the first time.

We need not rely on our own suppositions. Our supreme court itself has set forth in explicit detail the policy considerations underlying the new rule. ***:

‘To deal with those situations, the new rules create a clear and unambiguous mechanism for fixing the specified types of sentencing errors discovered after judgment has been entered, eliminating uncertainty regarding what needs to be done, where, when and how. The rules make clear that motions to correct the enumerated errors may be made at any time after judgment, including while the

case is on appeal, *but such motions must always be directed to the circuit court in the first instance*. If they are not—if the circuit court is not given first crack at fixing the error—the error cannot be grounds for an appeal.’ (Emphasis added.) Lloyd A. Karmeier, *Overcoming the Chronic Challenge of Correcting Sentencing Errors: Help is on the Way*, Ill. Cts. Connect (Ill. Supreme Court), Feb. 25, 2019, http://illinoiscourts.gov/Media/enews/2019/022519_chief_article.asp [(last visited Oct. 1, 2026)] [<https://perma.cc/R3H6-7X3B>].”

¶ 16 The reasoning of *Eason* and the supreme court’s explanation of Rule 472 apply fully to the issue of presentence credit.

¶ 17 Defendant’s appeal is in substance and practical effect a claim that the trial court erred in its calculation of presentence credit. His brief effectively reduces the merits of the ineffectiveness issue to the merits of the presentence custody issue. His argument that plea counsel was ineffective depends wholly on the merits of the presentence credit issue and has no independent significance.

¶ 18 To entertain this appeal would violate the purpose of Rule 472. It would make us, and not the trial court, the initial tribunal to address the merits of defendant’s claim to additional presentence credit. To allow defendants to circumvent the intent of Rule 472 by casting their newly raised claims as ones of ineffective assistance would produce an absurd result. By its terms, Rule 472 applies only when the defendant has failed to make the credit claim in the trial court. See Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024). We take judicial notice that, in the vast majority of criminal cases, defendants are represented by counsel at sentencing. Therefore, were we to allow a defendant to invoke appellate jurisdiction by recasting a newly raised claim for a type of relief specified in section (a) of Rule 472 as one of ineffective assistance of counsel, the vast majority of these cases would require the appellate court to decide the merits of the substantive issue before the trial court has done so. The exception would all but swallow the rule, and the rule’s goal of

stemming the “growing tide of appeals raising only [a claim listed under section (a) of Rule 472]” (*Eason*, 2020 IL App (3d) 180296, ¶ 11) would be thoroughly frustrated. We cannot accept the absurd suggestion that the supreme court intended that Rule 472 be all but a dead letter.

¶ 19 Our decision finds support in the supreme court’s recent decision in *Nibbelin*. There, the court held that a defendant whose attorney failed to file a certificate entitling the defendant to a waiver of court assessments under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) may not raise, for the first time on appeal, an ineffectiveness claim based on counsel’s failure. *Nibbelin*, 2026 IL 131825, ¶¶ 21-23. The court rejected the suggestion that “Rule 472’s reference to an allegation of an error in the imposition of assessments refers only to errors by the trial court.” *Id.* ¶ 22. To allow such ineffectiveness claims to be brought for the first time on appeal “would be to reinstate the very problem that Rule 472 was designed to eliminate.” *Id.* ¶ 24.

¶ 20 Because defendant’s ineffectiveness claim is essentially a claim of error covered by Rule 472(a), we lack jurisdiction over this appeal. Accordingly, per Rule 472(e), we must dismiss the appeal and remand the cause to the trial court for defendant to bring his claim for additional presentence credit. See *Eason*, 2020 IL App (3d) 180296, ¶¶ 15, 17.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we dismiss the appeal and remand the cause with directions for the trial court to allow defendant to raise a claim of presentence credit.

¶ 23 Appeal dismissed; cause remanded with directions.