No. 128687

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CLAYTON T. MARCUM, Defendant-Appellant.	) On Appeal from the Appellate Court) of Illinois, Fourth Judicial District,) No. 4-20-0656)) There on Appeal from the Circuit) Court of the Eleventh Judicial) Circuit, Ford County, Illinois,) No. 20-CF-53)) The Honorable) Matthew J. Fitton,) Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

A Ford County jury found defendant guilty of two counts of aggravated domestic battery, C42-43; R582,[1] and the trial court sentenced him to consecutive seven-year prison terms, C49; R635. On appeal, the appellate court found the evidence insufficient to support the verdicts, reduced defendant's convictions to aggravated battery, and remanded to the circuit court for resentencing on the reduced convictions. A40, ¶ 69. The court rejected defendant's remaining contentions of error, including claims that he did not knowingly and intelligently waive counsel and was denied his statutory right to a speedy trial. A32, ¶ 51; A37, ¶ 61. Defendant appeals the appellate court's adverse judgment. No question is raised on the pleadings.

ISSUES PRESENTED

1. Whether defendant knowingly and intelligently waived counsel because the trial court substantially complied with Illinois Supreme Court Rule 401(a), and the alleged defects in the admonitions did not prejudice him.

2. Whether defendant's statutory speedy trial claim is barred because he (a) waived the claim by not seeking discharge as required by the

[1] "C__," CI__," and "SupC__," refer to the common law record, impounded common law record, and supplemental common law record, respectively. "R__" and "SupR__" refer to the report of proceedings and supplemental report of proceedings, respectively. "Exh. __ at __" refers to the People's trial exhibits. "Def. Br. __" and "A__" refer to defendant's brief and appendix. "Def. PLA __" refers to defendant's petition for leave to appeal.

plain language of 725 ILCS 5/114-1, or, in the alternative, (b) forfeited it by not raising it in the trial court, and the statutory error is not akin to structural error such that it may be noticed as second-prong plain error.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. On January 25, 2023, this Court allowed leave to appeal.

STATEMENT OF FACTS

I. Pretrial Proceedings

In the early morning hours of September 1, 2019, Greg Rudin was found severely injured in an area behind defendant's apartment building. SupR35-37. Later that day, police executed a search warrant at defendant's apartment, SupR40-41, then arrested defendant on charges of aggravated battery and obstruction of justice, SupC7-9. Five days later, defendant confessed in a videotaped statement. SupR42-46; *see* Exh. J.

On September 27, 2019, defendant was charged with class 3 felony aggravated battery. SupC12 (citing 720 ILCS 5/12-3.05(a)(1)). The information alleged that defendant "struck Greg Rudin about the head and body" and "knowingly caused [him] great bodily harm." *Id.* It also notified defendant that if convicted of the charged offense, he could be sentenced to an extended term of 5 to 10 years in prison because he had a prior class 3 felony aggravated battery conviction from Iroquois County. *Id.* The public defender's office was appointed to represent defendant. SupC4.

The case proceeded to a preliminary hearing three days later. SupR31. Officer Brandon Ryan testified that when he spoke to defendant at the scene, defendant had dried blood on his shirt and jeans. SupR38. In a videotaped statement to police following his arrest, defendant admitted that he struck Rudin's head and saw blood coming out of his mouth and demonstrated how he had stomped on Rudin after he fell. SupR44-46. Rudin suffered broken ribs, a punctured lung, and three brain hematomas; he had recently awakened from a coma and was unable to speak. SupR36, 40, 44-45. Ryan learned during his investigation that defendant and Rudin were in a dating relationship. SupR41.

The trial court found probable cause to support the aggravated battery charge and proposed a trial date in the October 2019 term. SupR52. Defense counsel objected and, after discussing with defendant, asked for a January 2020 trial date. SupR52-54. The trial court granted the request. SupR54.

In January 2020, the prosecutor moved to extend the statutory speedy trial term by no more than 20 days — because he had not yet received the results of DNA testing — and asked for a trial date no later than April 24, 2020. SupC17-18; SupR57-58. On January 6, 2020, over defense counsel's objection, the trial court granted the motion and set the trial for the April 2020 term. SupR59.

At a hearing on March 19, 2020, the prosecutor noted that he had received and provided defense counsel the DNA test results and was ready for

trial. SupR63. Defendant then filed a motion alleging ineffective assistance of counsel. SupR67.[2] Defendant alleged that appointed counsel had been "abusive and aggressive toward [him]" by "forc[ing] papers in[to] [his] hand" and "using foul language when [defendant] asked him, at least, four times to [ask the] Court for a bond reduction," and counsel "wouldn't do that along with many other things." SupR68. The court continued the matter to allow for a response. SupR68-69.

The case did not proceed to trial in April 2020 due to COVID-19 administrative orders, and the trial court scheduled the jury trial for July 13, 2020. SupC5. On May 15, 2023, defendant told the court that he wanted his attorney "removed," and the trial court continued the case for a hearing on that request. *Id.*[3] A week later, the trial court told defendant the nature of the charge, admonished him of his rights under Illinois Supreme Court Rule 401,[4] and discussed with defendant his right to counsel and the consequences of proceeding pro se. *Id.* Defendant "persist[ed]" in his request to proceed

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[2] The motion is not in the record on appeal.

[3] The record does not include reports of the proceedings held on May 15, May 22, and June 1, 2020. SupC5; SupR30. The facts provided about those proceedings are taken from docket entries and documents in the common law record. SupC5.

[4] The docket entry says that defendant was admonished "pursuant to 402 Rts if proceeding w/o Counsel." SupC5. Because the rights pertaining to "proceeding w/o Counsel" are in Rule 401 (entitled "Waiver of Counsel), "402" appears to be a typographical error.

without counsel, and the trial court allowed the request. *Id.* The court maintained the scheduled July 2020 trial date. *Id.*

On June 1, 2020, the court declined to consider defendant's request to "discuss bond" — because he had not filed a motion — and confirmed that the case remained set for jury trial in July. *Id.*

On June 9, 2020, the trial court addressed motions that defendant had filed.[5] In response to a motion requesting a plea bargain, the court explained to defendant his rights and the plea process. SupR72-75. The court noted that the prosecutor had renewed an earlier plea offer and recessed to allow the parties to discuss the offer. SupR75. Following that discussion, defendant declined the offer on the record. SupR76. The trial court reminded defendant that his maximum sentence for the pending charge was 10 years in prison. SupR77-78. In response to defendant's motion to preclude the People from introducing his prior conviction, the court ruled that evidence of the prior conviction would be admissible only if defendant opened the door to its admission. SupR78-79.

On July 6, 2020, the prosecutor filed charges against defendant in a new case with a different number. C9-11. The new information charged defendant with two counts of aggravated domestic battery, a class 2 felony. C9-10 (citing 720 ILCS 5/12-3.3(a)). Like the initial charges, both counts alleged that defendant "knowingly caused great bodily harm to Greg Rudin,"

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[5] The motions are not in the record on appeal.

and the new information added an allegation that Rudin was "a family or household member of defendant." *Id.* The new charges also alleged different acts and injuries. *Id.* Count I alleged that defendant "struck Greg Rudin in the face with his fist and . . . caused a subarachnoid hemorrhage." C9. Count II alleged that defendant "stomped on Greg Rudin with his foot and . . . caused rib fractures." C10. Both counts notified defendant that he was eligible for an extended term of 7 to 14 years based on his prior class 1 felony conviction for residential burglary in Iroquois County. C9-10.

The prosecutor then dismissed the prior case, and the new case proceeded to arraignment. R3-10. The trial court read the entirety of the new information to defendant. R3-4. It explained that the extended term was 7 to 14 years instead of 3 to 7 years, a mandatory supervised release (MSR) term of 4 years to life would be added to any prison sentence, and probation or conditional discharge were available sentences. R4-5. When defendant sought clarification of the charges, the trial court repeated them and the possible penalties, adding that defendant would need to serve 85 percent of any prison sentence and would be ineligible for day-for-day credit. R5-6. Defendant said he understood. R6.

The trial court then confirmed that defendant wanted to continue to represent himself:

> THE COURT: *** A new charge, information and new case has been filed. Are you looking to continue to represent yourself or do you want me to — you can hire Counsel, or do you want to have me entertain appointing Counsel for you?

THE DEFENDANT: I still want to counsel myself.

THE COURT: You want to represent yourself. You realize, you understand the charges; correct?

THE DEFENDANT: Yeah.

THE COURT: The minimum and maximum penalties, including in this case the possible extended, you are extended term eligible? You also understand that the sentencing, the sentencing range, the mandatory supervised release and the applicable amount of probation, fines, assessments, restitution are applicable; you do understand that; right?

THE DEFENDANT: Uh-huh.

THE COURT: You now have the right to represent yourself. Counsel could be appointed for you without cost if you are indigent. You understand that? I need you to say yes, instead of uh-huh. You agree? You said yes?

THE DEFENDANT: Yeah.

THE COURT: Thank you. And that you understand that representing yourself, as I stated to you before — you do not have Counsel. You do not have someone to ask questions. You are not experienced in litigation. They are to handle your case, and you could assist him. But you understand the State's Attorney is an experienced prosecutor and not — he is not your attorney. He is representing the People of the State of Illinois not you. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Okay. Do you understand that you are waiving your right to Counsel, and you wish to waive your right to Counsel?

THE DEFENDANT: Yeah.

R6-8.

At the prosecutor's request, the trial court continued the bond conditions from the prior case and set a date for the preliminary hearing. R8-11. Defendant interrupted to ask questions about the new charges. *Id.* In response, the court again explained to defendant the charges and potential penalties and repeatedly explained that the proper way to raise any issues was to write a motion and send it to the clerk's office. *Id.*

Defendant also asked questions about the speedy trial term. R11-13. The court explained that he and his defense attorney had agreed to continue his case and then it was continued due to COVID-19, R12, and that the term "started over" under this Court's COVID-19 administrative orders, R11-12. When defendant asked whether the prosecutor could continue to file different charges, the court told defendant that he could send the prosecutor a letter or file a motion. R12-13.

At the preliminary hearing on August 4, 2020, Officer Ryan testified about the facts underlying the charges. R16-25. His testimony was substantially consistent with the testimony at the preliminary hearing on the prior charges. *Id.*; SupR34-48. Ryan added that defendant told police in a videotaped statement that he was in a sexual relationship with Rudin. R23. And, Ryan added, Rudin was now confined to an assisted living facility, was unable to care for himself, and would require assistance for the rest of his life. R24.

Defendant did not question Ryan and elected to make statements under oath as evidence, subject to cross-examination. R24-26. Defendant affirmed that he "told the entire truth" in his videotaped statement but explained that he did not intend to kill Rudin and asserted that his blows to Rudin resulted in such severe injuries only because Rudin "was already fragile to begin with" due to a damaged liver. R26-27. The trial court found probable cause to support the charges and set a trial date for the October 2020 term. R34. Before adjourning, the trial court twice reminded defendant that he was responsible for his case. R35-37.

II. Trial

A. The trial court confirms defendant's intent to represent himself.

Before jury selection on the first day of trial, October 19, 2020, the trial court reminded defendant of the charges against him and the potential penalties. R39-43. When defendant sought clarification of the charges, the trial court informed him that there was "one case" with two separate charges of aggravated domestic battery. R42-43. Defendant asked, "If I am found guilty, I am charged with two charges?" R43. The prosecutor responded, "If you are found guilty on both, you are going to be sentenced to one sentence." *Id.* The trial court added, "You will not be sentenced twice." *Id.* Defendant confirmed his understanding that he "would be looking at seven to 14 years[.]" *Id.*

The trial court then confirmed that defendant still wanted to represent himself at trial:

> THE COURT: [Y]ou are without Counsel. I understand at one time Mr. Welch was once upon a time your Counsel, and you relieved Mr. Welch of his duties. I want to go over this one more time with you. Okay. Pursuant to Supreme Court Rule 401 A, waiver of right to Counsel, you have the absolute ability to represent yourself. And you have the ability to make and the capacity to make intelligent, knowing waiver of your right to Counsel. I consider these issues, and I consider your age and level of education and mental capacity, and if you had any prior involvement with other proceedings. You are 35 years old. So, you are not a minor. You had prior proceedings in Court, and there's been no challenge or no issue about mental capacity. And your level of education, again, that has not been an issue; am I correct on that?
>
> [THE DEFENDANT]: Right.
>
> THE COURT: Did you have anything based on what I said? Do you have any hesitation about going forward with trial on your own?
>
> [THE DEFENDANT]: Huh-huh.
>
> THE COURT: Can we have an answer, yes or no? Can you state yes or no?
>
> [THE DEFENDANT]: No, I got no problem pleading my own case.
>
> THE COURT: Representing yourself?
>
> [THE DEFENDANT]: Yeah.
>
> THE COURT: Self-representation?
>
> [THE DEFENDANT]: Yeah.

R43-44. The trial court further recited each of the ten "*Ward* admonitions," which the Fourth District has advised is "desirable" to provide additional

assurances that a defendant both "understood the perils of representing himself," and "understandingly, knowingly, and voluntarily waived his right to be represented by counsel." *People v. Hood*, 2022 IL App 4th 200260, ¶¶ 79-82 (discussing *People v. Ward*, 208 Ill. App. 3d 1073, 1081-82 (4th Dist. 1991)); *see* R44-48. Defendant confirmed after each *Ward* admonition that he understood it and had no questions. R44-48.

The prosecutor noted for the record that defendant had rejected a plea offer, pursuant to which the prosecutor would request a sentence cap of ten years if defendant pleaded guilty to either of the charged counts. R48-51. The court explained the offer to defendant, and when asked if he wanted to accept it, defendant responded, "That would be almost 14 years. So no." R50.

B. Evidence presented at trial

At trial, police officers testified about the circumstances of Rudin's injuries, statements defendant made to them, and evidence they recovered from defendant's apartment. Two of defendant's statements were videorecorded, published to the jury, and admitted into evidence. In addition, a DNA expert testified about the results of testing on blood stains found in defendant's apartment. And medical personnel and Rudin's estranged wife, Patti Rudin, testified about his injuries.

The evidence showed that police were dispatched to the area behind defendant's apartment building around 7:30 a.m., after receiving a report about a naked man laying there. R304-05. Ryan, who responded to the

scene, was wearing a body camera that videorecorded the initial investigation. R313-14; *see also* Exh. A. He found Rudin on the ground, face up, wearing a shirt and shoes but no pants or underwear. R305-06. Rudin had two black eyes, swollen ears with dried blood on them, and a dislocated jaw. R306-07.

Ryan learned from witnesses that Rudin had been with defendant, and Ryan spoke to defendant shortly thereafter. Exh. A at 7:50-8:35. Defendant initially told Ryan that he and Rudin had been drinking together the night before, and Rudin left on his own around 10:00 p.m. to walk home. *Id.* at 8:40-8:45. Defendant explained where Rudin lived, how he had met Rudin, and that he had known Rudin for five days. *Id.* at 9:45-10:00.

When asked about the stains on his clothing, defendant said the stains were blood and that he and Rudin were "wrestling around in our apartment last night but there was no fight." *Id.* at 10:32-10:47; R310-11. Ryan noted that there "was quite a bit of blood for just wrestling around," and defendant said there was no fight, and he was worried because Rudin was "starting to become a good friend of [his]." Exh. A at 10:51-10:58. Defendant said that he and Rudin had been "playing and wrestling around" then defendant "walked [him] downstairs and [Rudin] took off walking." *Id.* at 12:30-12:45.

After speaking to Ryan, defendant told emergency personnel that he and Rudin were drinking and "wrestling around," "like UFC-type wrestling around, . . . leg locks, arm bars, stuff like that." *Id.* at 15:36-16:25.

Defendant added that Rudin fell down the stairs when defendant was walking him out. *Id.* at 17:58-18:15, 26:14-26:21, 27:52-28:07. Defendant later said Rudin "fell down the stairs a couple times." *Id.* at 32:32-32:43.

Ryan later learned that Rudin's condition had worsened and "[t]here was more of a relationship between [defendant and Rudin]" than he had been led to believe. R317-18. Based on these developments, police obtained a search warrant for defendant's apartment. R319. When they arrived to execute the warrant later that day, defendant refused to open the door. R319-21. The property owner then let police inside, and Ryan read defendant his *Miranda* rights and placed him under arrest. R321-23, 328. At that time, defendant's forearms and knuckles bore red marks that looked like bruises and were consistent with someone who had been in a fight. R326-27. Defendant waived his rights and said that he knew jiu jitsu and had put Rudin in "arm bars" and "[l]eg locks." R323-24, 326. He also flipped Rudin, causing Rudin to bleed. R324. Rudin, still bleeding, left the apartment, then fell down the stairs. R324-25. Defendant admitted that he stomped on Rudin. R326.

Meanwhile, emergency medical personnel at the local hospital stabilized Rudin and treated him for multiple injuries, including a heart injury resulting from trauma to the chest, multiple rib fractures, and a laceration on his ear. R355, 361-65. His brain was bleeding, primarily in the area responsible for coordination and muscle movement. R358-60. The brain

bleed caused Rudin to have difficulty breathing, which resulted in a loss of liver and kidney function. R360-61, 365-67. The local emergency room doctor testified that Rudin's heart injury was consistent with someone having stomped on his chest, R363-64; his injuries were not consistent with a fall down stairs, R371; his blood alcohol content was "minimal" and below the legal limit to drive, R362; and, although Rudin had elevated liver enzymes consistent with chronic alcoholism, R373, his injuries resulted from trauma and not that disease, R374-80. Rudin was intubated and placed on a ventilator, R360-61, then transported to another hospital for neurosurgery, R368-70.

Five days after his arrest, defendant requested to speak with police because he had learned that Rudin "was on life support" and wanted to tell the truth about what happened. R496; Exh. J at 3:47-4:45. In a videotaped statement, defendant explained that about five days before Rudin's injuries, he met Rudin at a friend's house, "got to know" Rudin, spent the night there, then went with Rudin to defendant's apartment, where they had sexual relations. Exh. J at 2:53-3:53, 4:45-5:13. Later in the day, defendant and Rudin were "all over each other" on a friend's couch, which appeared to make other friends jealous. *Id.* at 5:12-5:48. Defendant remained in contact with Rudin during the next few days. *Id.* at 5:48-6:27.

Earlier the night of the incident, Rudin went to defendant's apartment to hang out and drink alcohol. *Id.* at 6:42-7:15. Defendant and Rudin drank

and "wrestl[ed] around to the extreme." *Id.* at 7:10-8:15. While "wrestling," defendant punched Rudin in the face two or three times and put him in a chokehold for five to seven seconds, during which he squeezed "as hard as [he] could." *Id.* at 29:28-31:40. Defendant caused Rudin to bleed, but they continued to "wrestle" until Rudin stopped it. *Id.* at 8:35-8:45, 30:17-30:25, 45:50-46:13. After they "chilled" and talked, they left to go to a bar. *Id.* at 8:40-8:50, 15:00-15:30. On their way, Rudin fell down the stairs and continued to fall as he walked; defendant helped him up each time, causing Rudin's blood to get on defendant's clothes. *Id.* at 8:50-9:50, 15:50-16:20, 31:47-32:45. When they reached the alleyway across from the apartment, Rudin fell again, so defendant stomped on him and went to sleep in his apartment. *Id.* at 9:48-10:55, 31:47-33:28, 35:00-35:38, 39:40-41:40, 42:55-43:35.

Defendant demonstrated how he had punched, choked, squeezed, and stomped on Rudin. *Id.* at 8:24-8:30, 29:28-30:40, 39:40-40:20. Defendant ultimately admitted that he gave Rudin "the beating" but claimed that he was unaware of how much force he used because he was intoxicated. *Id.* at 38:15-39:30, 44:00-44:25.

Rudin survived, but he suffered permanent brain damage and had no memory of the beating. R483-86, 500-02. Rudin was hospitalized for about two and half months, then moved to a nursing home because he could no longer live on his own. R481-84. At the time of trial, Rudin used a walker

and suffered from weakness on one side, memory issues, and diminished motor control. R484-86.

C. Matters outside the jury's presence, closing arguments, and verdict

On the last day of trial — before the People presented their final two witnesses — the prosecutor stated that he found an error that rendered defendant ineligible for an extended-term sentence. R474-75. Specifically, although the LEADS report had listed defendant as the person convicted of residential burglary in the Iroquois County case, the certified conviction for that case named a different person. R474. As a result, defendant was ineligible for an extended term, and the sentencing range for each charge was three to seven years in prison. R475-76. The prosecutor made defendant a plea offer, under the terms of which defendant would plead guilty to one count in exchange for a seven-year prison sentence. R475. The trial court admonished defendant about the offer, and defendant rejected it. R476.

After the People presented their final two witnesses and rested their case, R508, defendant moved for a directed verdict, R510-11. The trial court found that a reasonable juror could find defendant guilty of aggravated domestic battery beyond a reasonable doubt and denied the motion. R511-12.

At the ensuing jury instruction conference, defendant twice waived his right to testify. R515-17, 536-37. After the conference, defendant rested his case without presenting any evidence. R543.

In closing, the prosecutor argued that defendant and Rudin were in a dating relationship when defendant battered Rudin and caused him bodily injury. R546-47, 557-58. Defendant and Rudin had met earlier in the week, spent nights together, hung out, and were physically intimate. R546-47, 557-58. Others were jealous of their relationship. R547. Rudin went to defendant's apartment to continue this relationship, and they were on a date when defendant beat up Rudin. R547, 558.

Defendant argued that he and Rudin "were horse playing, some of it was foreplay[,] [m]ost of it was wrestling," but he did not intend to hurt Rudin or know that he caused Rudin great bodily harm. R564. Instead, defendant contended, he inflicted "a little bit of force" on Rudin, which resulted in severe injuries because Rudin was a chronic alcoholic with a bad liver who "was dying to begin with." R565-66, 570. Defendant added that he was not responsible for Rudin's injuries because he "didn't really know [Rudin] that good," so he "didn't know his liver condition." R567.

The jury found defendant guilty of both counts of aggravated domestic battery. R581-82. Defendant did not file a post-trial motion.

D. Sentencing

At the outset of the sentencing hearing, the trial court explained to defendant that the maximum sentence for each of the two counts was seven years in prison unless there was a reason to impose discretionary consecutive sentences, and that there would be a four-year MSR term. R589-90. It also

confirmed that defendant understood that he "could argue for a community based sentence, such as, probation or conditional discharge; that could last up to 48 months." R590.

The court received a presentence investigation report (PSI), which showed that defendant had 12 prior convictions in Iroquois County. CI5-6. Ten of the prior convictions were for aggravated battery, domestic battery, or battery; defendant had caused some level of bodily harm in six of those cases; and he successfully completed probation in four of the ten cases. CI5-6.

Defendant presented no evidence in mitigation. R606-07. The People presented evidence in aggravation, both from the probation officer who prepared the PSI and defendant's estranged wife Patti. R590-606. The officer observed that during preparation of the PSI, defendant was "trying to minimize" his crimes, lacked any "appreciation for the damage he caused," and blamed Rudin for leading a bad life. R592-94. Patti testified that Rudin lived in a nursing home because he was unable to live independently; still needed a walker due to weakness on one side; could not cook, clean, or "even shave himself"; and had "severe memory issues," including not being able to remember the beating or his grandchildren's birthdays. R601-03.

In argument, the prosecutor sought discretionary consecutive sentences of seven years for each conviction based on the need to protect the public. R616-17. Defendant asked for probation. R625-28.

The trial court sentenced defendant to seven years for each conviction, to be served consecutively. R635-36. It found that defendant committed two separate acts of violence against Rudin because he beat up Rudin in the apartment and later stomped on him outside. R634-35. The court further found that defendant was "a danger to the public," and consecutive prison sentences were necessary to protect society. *Id.* In reaching this conclusion, the court highlighted the seriousness of defendant's offenses, including their severity and the lasting consequences on Rudin's life; defendant's lengthy criminal history; and his lack of empathy and remorse. R632-37.

III. Appellate Court decision

Upon finding the evidence insufficient to prove a "dating relationship," the appellate court reversed defendant's convictions for aggravated domestic battery, reduced them to aggravated battery, and remanded for resentencing on the aggravated battery convictions. A37-40, ¶¶ 62-69.

As relevant here, the appellate court rejected defendant's claims that (1) he did not knowingly waive his right to counsel because the trial court failed to substantially comply with Rule 401(a), A32-37, ¶¶ 52-61; and (2) he was denied his statutory speedy trial right, A22-32, ¶¶ 29-51.

As to the first contention, the appellate court found that defendant's waiver of counsel was valid because the trial court's admonishments substantially complied with Rule 401(a) and did not prejudice defendant's rights. A32, ¶ 54; A35-37, ¶¶ 58-61. Although the trial court did not specify

that defendant could receive discretionary consecutive 7-year sentences, its admonishments substantially complied with Rule 401(a) because the trial court informed defendant at least twice — and the record clearly showed that defendant understood — that he could receive a 14-year prison sentence. A35-36, ¶¶ 58-59. In addition, defendant was not prejudiced by the incorrect admonishment that his MSR term was four years to life, rather than just four years. A35-36, ¶ 58. And he failed to show that the trial court was required to re-admonish him of his right to counsel before sentencing, or "assert how the [trial] court correctly explaining the details of why he could receive up to a sentence of 14 years' imprisonment would have affected his decision to proceed *pro se*." A36-37, ¶ 60. For these reasons, the appellate court found, defendant was not denied his right to counsel. A37, ¶ 61.

On the statutory speedy trial claim, the appellate court found that defendant had "forfeited" the claim in two ways. First, he did not include it in a post-trial motion. A23, ¶ 32. Second, he did not file a motion to dismiss before trial, as required under 725 ILCS 5/114-1. A23, ¶ 33. The court recognized that § 114-1(b) states that "grounds not raised in a timely filed motion to dismiss are waived," but held that defendant had instead "forfeited" his claim. *Id.*

The appellate court then considered and rejected defendant's request to notice the claim as second-prong plain error, A24-25, ¶ 36; A29, ¶ 46; A32, ¶ 51. It found that by operation of the compulsory joinder rule, the statutory

speedy trial period had expired before trial. A25-29, ¶¶ 38-44. But defendant failed to satisfy his burden to show second-prong plain error because the General Assembly expressly provided that the statutory right was subject to "forfeiture" if not raised before trial, A32, ¶ 51; and defendant's one-sentence second-prong plain error argument failed to establish that the statutory violation deprived him of a fair trial or challenged the integrity of the judicial process, A29-32, ¶¶ 46, 49, 51.

STANDARDS OF REVIEW

Whether the trial court substantially complied with Illinois Supreme Court Rule 401(a) presents a legal question that the Court reviews de novo. *See People v. Wilmington*, 2013 IL 112938, ¶ 26; *People v. Pike*, 2016 IL App (1st) 122626, ¶ 114.

The Court reviews de novo the statutory construction question of whether defendant waived his speedy trial claim by not moving to dismiss the charges before trial. *People v. Comage*, 241 Ill. 2d 139, 144 (2011). Alternatively, if the claim is not waived but merely forfeited, whether defendant's forfeiture is excusable as second-prong plain error is a question of law that this Court reviews de novo. *People v. Jackson*, 2022 IL 127256, ¶ 25.

ARGUMENT

The appellate court correctly found that the trial court's admonishments substantially complied with Rule 401(a), the minor errors in the admonitions did not prejudice defendant, and there was no material

change before sentencing to require another waiver of counsel. After making the informed decision to waive counsel, defendant was correctly held to the same standards as an attorney and required to follow procedural rules. *See generally People v. Wright*, 2017 IL 119561, ¶ 84.

But defendant did not comply with the statutory mandate that he file a written motion for discharge based on a speedy trial violation before going to trial. *See* 725 ILCS 5/114-1(a)(1), (b). His claim — raised for the first time on appeal — is thus waived under the plain language of the statute. *Id.*; *People v. Pearson*, 88 Ill. 2d 210, 213 (1981). At a minimum, the statutory speedy trial claim is forfeited because the statutory error is not akin to structural error, and thus cannot be noticed as second-prong plain error. Accordingly, the Court should affirm the appellate court's judgment.

I. Defendant Knowingly and Intelligently Waived Counsel.

The record establishes that defendant understood before he waived counsel that he had the right to appointed counsel, that he was charged with two counts of aggravated domestic battery, and that he could receive a sentence of up to 14 years in prison plus an MSR term of at least 4 years. Accordingly, defendant's waiver of counsel was made knowingly and intelligently, and the alleged defects in the Rule 401(a) admonitions did not prejudice him. A35-36, ¶¶ 58-59; *see People v. Reese*, 2017 IL 120011, ¶¶ 64-65. And because circumstances did not sufficiently change after defendant's

valid waiver, the trial court was not required to re-admonish defendant about his right to counsel before sentencing. A36-37, ¶ 60.

A. The trial court substantially complied with Rule 401(a), and the alleged defects in the admonitions did not prejudice defendant.

The trial court repeatedly ensured that defendant understood the consequences of representing himself before accepting his waiver of counsel. It substantially complied with Rule 401(a) by informing defendant of, and confirming that he understood, the charges and his right to counsel. And the record demonstrates that the minor defects in the admonitions did not prejudice defendant because he waived counsel only after understanding that he could be imprisoned for 14 years and serve lifetime MSR. *See* A35-36, ¶¶ 58-59.

Defendant was properly permitted to exercise his right of self-representation because his waiver of his right to counsel was "voluntary, knowing, and intelligent." *People v. Wright*, 2017 IL 119561, ¶ 39. Indeed, the trial court was compelled to accept this valid waiver even if it was "unwise" "out of that respect for the individual which is the lifeblood of the law." *People v. Kidd*, 178 Ill. 2d 92, 104 (1997). "[A] defendant's technical decisions and legal knowledge and ability are not relevant to an assessment of whether defendant knowingly exercised his right to waive counsel and defend himself." *People v. Simpson*, 172 Ill. 2d 117, 138 (1996). This is because a defendant's constitutional right to counsel includes a corresponding

right to proceed *without* counsel, *Wright*, 2017 IL 119561, ¶ 39 (citing *Faretta v. California*, 422 U.S. 806, 832-34 (1975)), that is so fundamental that a denial of that right is structural error, *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984) (right to self-representation "is either respected or denied; its deprivation cannot be harmless").

Here, the trial court ensured that defendant's waiver of counsel was knowingly and intelligently made by substantially complying with Rule 401(a), which requires that the trial court, "by addressing the defendant personally in open court, inform[] him of and determin[e] that he understands" three propositions:

> (1) the nature of the charge[s];
>
> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

Ill. S. Ct. R. 401(a). This Court has long recognized that "[s]trict, technical compliance" with Rule 401(a) is not required, and "[s]ubstantial compliance is sufficient for a valid waiver of counsel if the record indicates the waiver was made knowingly and intelligently and the trial court's admonishment did not prejudice the defendant's rights." *Reese*, 2017 IL 120011, ¶ 62. Whether there has been substantial compliance depends on a "review of the entire record," *People v. Johnson*, 119 Ill. 2d 131, 132 (1987), and "[e]ach waiver of

counsel must be assessed on its own particular facts," *Reese*, 2017 IL 120011, ¶ 62.

As the appellate court found, the record establishes that defendant's waiver of counsel was knowing and intelligent. A35-36, ¶¶ 58-59. Indeed, it is undisputed that before accepting defendant's waiver, the trial court strictly complied with the first and third propositions of Rule 401(a) by addressing defendant in open court and informing him of, and ensuring that he understood, the nature of the charges and his right to counsel. R4-8.

Moreover, the trial court substantially complied with the second admonition. The minor errors in the admonition — failing to inform defendant he could receive two consecutive seven-year sentences and misinforming him that his MSR term was four years to life, rather than four years — neither affected defendant's decision to waive counsel nor prejudiced his rights. A35-36, ¶¶ 58-59; *see Reese*, 2017 IL 120011, ¶¶ 64-65. The trial court explained, and defendant said he understood, that he could receive probation or conditional release, or a prison sentence, which could be up to 14 years, plus a MSR term of 4 years to life. R4-7. When the trial court repeated these admonishments before trial began, defendant said he understood that he was "looking at seven to 14 years" in prison for the two charges of aggravated domestic battery, before he waived counsel again. R39-48. And moments later, he declined the prosecutor's 10-year plea offer because it was "almost 14 years." R50. In sum, the record establishes that

defendant waived counsel with the knowledge and understanding that, if convicted, he could spend 14 years in prison and then serve at least 4 years on MSR.

Given this understanding, the trial court's missteps neither affected defendant's decision to waive counsel nor prejudiced his rights. This is not a case where the trial court understated the maximum penalty such that the errors in the admonishments had any possibility of affecting defendant's decision to waive counsel. *See Wright*, 2017 IL 119561, ¶¶ 52-57 (recognizing "importance of correct admonishments as to the actual maximum sentence allowed," but finding substantial compliance where trial court understated maximum sentence by 15 years). To the contrary, the trial court *over*stated the potential MSR term such that defendant believed it would be *at least* four years and could be for his lifetime, and he nevertheless insisted on representing himself. *See* A35-36, ¶ 58 ("Defendant cites no cases indicating a greater maximum term is prejudicial to the defendant in waiving his right to counsel."). Similarly, because the trial court informed defendant of, and defendant understood, "the true maximum penalty he faced," *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 14, the mere fact that the trial court misstated *how* that penalty might be served — two concurrent 14-year terms, or two consecutive 7-year terms — was not a material difference that affected defendant's decision to waive counsel. *See*, *e.g.*, *Reese*, 2017 IL 120011, ¶ 64 (where "trial court's admonition surely impressed upon defendant the gravity

of the potential punishments," defendant could not show that failure to inform him about potential for consecutive sentencing affected his decision to waive counsel); *Johnson*, 119 Ill. 2d at 132-34 (similar, where defendant not informed of mandatory minimum penalty but knew maximum penalty was death). In sum, defendant decided to go to trial without the benefit of counsel — as was his right — only after knowing the exact number of years he could spend in prison, and believing he could spend a lifetime on MSR, if he were convicted after trial.

Defendant's contrary arguments should be rejected as speculative and unsupported by the record. *See* Def. Br. 42-43. As the appellate court correctly found, A36, ¶ 59, nothing in the record supports defendant's theory — raised for the first time on appeal — that he knew that he did not have the alleged prior conviction and therefore believed it unlikely that he would receive an extended 14-year term, Def. Br. 42. Instead, defendant repeatedly said that he understood that he could spend 14 years in prison, and then waived counsel. A36, ¶ 59; R4-7, 39-48, 50.

Moreover, the record makes clear that defendant's decision to waive counsel resulted from his dissatisfaction with counsel's representation, not his sentencing exposure. *See*, *e.g.*, *Wright*, 2017 IL 119561, ¶¶ 51-57 (finding substantial compliance where defendant's reason for waiving counsel "did not hinge on maximum sentence allowed for charged offenses," despite trial court's understatement of maximum penalty by 15 years); *People v. Coleman*,

129 Ill. 2d 321, 336-39 (1989) (same where defendant's reasons for waiving counsel were not based on sentencing exposure and instead included dissatisfaction with counsel's representation). The record shows that defendant discharged counsel because counsel declined to seek a bond reduction despite defendant's repeated demands that counsel do so. SupR66-69; *see* SupC5. Nothing in the limited record that defendant has provided supports his contrary speculation that his reasons for discharging counsel were related to the admonishments, a belief that he would not receive a 14-year sentence, or that he had defenses to the charges. *See* Def. Br. 42-43.[6]

B. Defendant's valid waiver continued through sentencing.

Defendant's knowing and voluntary waiver of counsel remained effective at sentencing, as well. Absent a later request by defendant — or significantly changed circumstances that "suggest that the waiver was limited to a particular stage of the proceedings" — a valid waiver of counsel applies to all phases of trial. *People v. Baker*, 92 Ill. 2d 85, 91-92 (1982); *see also Simpson*, 172 Ill. 2d at 138-39. No change in circumstances — such as "lengthy delays between trial phases, newly discovered evidence which might require or justify advice of counsel, new charges brought, or a request from

[6] Where, as here, a defendant failed to satisfy his burden to include in the record on appeal the pertinent motions that he filed and/or reports of the proceedings on those motions, this Court resolves any doubts that arise from the incomplete record against him, not in favor of finding reversible error, as defendant requests. *People v. Carter*, 2015 IL 117709, ¶ 19.

defendant" — were present here to negate the efficacy of defendant's waiver. *See Simpson*, 172 Ill. 2d at 138-39.

As the appellate court explained, the change in circumstances here — i.e., the discovery that defendant did not have a prior residential burglary conviction and so was ineligible for an extended-term sentence — did not constitute a significant change in circumstances requiring new admonishments. A36-37, ¶ 60; *see* Def. Br. 44-45. Defendant waived counsel before trial with the understanding that he could be imprisoned for up to 14 years for his crimes. That "true maximum penalty" remained the same at sentencing, A36-37, ¶ 60, so there was no reason for the trial court to sua sponte re-admonish defendant.

Defendant's contrary argument — that new admonishments were warranted because the trial court told defendant mid-trial, after the prosecutor noted the error in the LEADS report, that he was "now looking at three to seven years" with "seven being the maximum," R476; *see* Def. Br. 40-41 — misses the mark. The question is "whether circumstances sufficiently changed since [the waiver] that the defendant can no longer be considered to have knowingly and intelligently waived the right to counsel." *United States v. Hantzis*, 625 F.3d 575, 581 (9th Cir. 2010); *see Baker*, 92 Ill. 2d at 91-92 (changed circumstances must "suggest that the waiver was limited to a particular stage of the proceedings"). But the mid-trial change in circumstances suggested only that defendant could potentially serve *less*

prison time than what he understood was possible when he insisted on representing himself. And, in any event, his maximum penalty remained the same as he understood it when he waived counsel. Thus, the changed circumstances logically could have had no effect on defendant's prior, valid waiver.

The record also belies defendant's claim that discretionary sentencing was mentioned "for the very first time" after the prosecutor finished his argument at the sentencing hearing. Def. Br. 40. In fact, the trial court informed defendant at the outset of the sentencing hearing, and defendant confirmed that he understood, that he could receive "discretionary consecutive sentence[s]." R589-90. But defendant did not then, or at any time while his case was pending in the trial court, suggest that he did not want to continue representing himself. Indeed, even now, defendant "does not assert his decision to waive counsel would have been different had he been specifically admonished regarding the possibility of [consecutive] sentence[s]" totaling 14 years, and "the record, including his alleged reasons for choosing to represent himself, indicates that he could make no such claim." *See Johnson*, 119 Ill. 2d at 134. Accordingly, defendant knowingly and intelligently waived counsel.

II. Defendant Waived, or at a Minimum Inexcusably Forfeited, His Statutory Speedy Trial Claim.

Defendant waived his statutory speedy trial claim when he failed to seek discharge before trial, as required by 725 ILCS 5/114-1(b). Even if he

did not waive the claim, he forfeited it by failing to raise it in a post-trial motion, *People v. Hutt*, 2023 IL 128170, ¶ 27, and fails to show second-prong plain error to overcome that forfeiture. Accordingly, defendant cannot obtain relief on his statutory speedy trial claim.

A. Defendant waived his statutory speedy trial claim.

1. As this Court has already held, the General Assembly explicitly provided that any statutory speedy trial claim not raised in a pretrial motion to dismiss is waived.

As in *People v. Pearson*, "[t]he controlling issue in this case is waiver," 88 Ill. 2d 210, 213 (1981), because defendant did not file a written motion before trial seeking discharge based on a violation of the speedy trial statute, *see id.*; 725 ILCS 5/114-1(a)(1), (b). "Since the speedy trial issue was not raised prior to trial[,] it was waived, and the defendant is precluded from raising it." *Pearson*, 88 Ill. 2d at 213; *see id.* at 213-19 (enforcing waiver by pro se defendant even though statutory right violated).

As an initial matter, defendant has never claimed a violation of the constitutional speedy trial right. *See* A30, ¶ 47; Def. Br. 13. To be sure, "the right to a speedy trial, guaranteed to a defendant under both the sixth amendment and the due process clause of the federal constitution is fundamental." *People v. Gooden*, 189 Ill. 2d 209, 216 (2000) (citing *Klopfer v. North Carolina*, 386 U.S. 213 (1967)). But here, defendant has invoked — for the first time on appeal — only the "additional statutory right" that the General Assembly provided in 725 ILCS 5/103-5, "which specifies periods of

time within which an accused must be brought to trial." *Gooden*, 189 Ill. 2d at 216. This statutory right is not coextensive with the constitutional speedy trial right, *People v. Mayfield*, 2023 IL 128092, ¶ 39, such that a constitutional question is raised merely because the statutory procedure has not been followed, *People v. Morris*, 3 Ill. 2d 437, 443 (1954). Nor is the statutory right "absolute in the sense that the mere passage of time . . . makes [the defendant's] release mandatory." *Pearson*, 88 Ill. 2d at 216. Rather, the General Assembly, in creating this additional statutory right, limited its scope and imposed conditions on its exercise. *See People v. Sandoval*, 236 Ill. 2d 57, 67 (2010); *People v. Cordell*, 223 Ill. 2d 380, 390-91 (2006); *People v. Staten*, 159 Ill. 2d 419, 429-30 (1994).

Among the conditions upon the statutory speedy trial right — with which defendant did not comply — is the plainly stated rule that "the right to discharge granted by the statute [i]s waived if not asserted by the defendant prior to [trial]." *Pearson*, 88 Ill. 2d at 216-17, 219; 725 ILCS 5/114-1(a)(1), (b). Section 114-1(a)(1) provides that "[u]pon the *written* motion of the defendant made *prior to trial* . . . the court may dismiss the indictment, information or complaint . . . [if] [t]he defendant has not been placed on trial in compliance with Section 103-5 of this Code." 725 ILCS 5/114-1(a)(1) (emphasis added). Under § 114-1(b), "any motion to dismiss [must] be filed within a reasonable time after the defendant has been arraigned" and "[a]ny motion not filed within such time or an extension thereof shall not be considered by the court

and the grounds therefor, except as to subsections (a)(6) and (a)(8) of this Section, are *waived*." 725 ILCS 5/114-1(b) (emphasis added). "Thus, by statute it is specifically provided that a violation of the provisions of section 103-5 of the Code relating to speedy trial is *waived* unless a motion for discharge is made prior to trial." *Pearson*, 88 Ill. 2d at 216-17 (emphasis added); *see also Staten*, 159 Ill. 2d at 431 ("defense counsel waived the [statutory] speedy-trial issue by failing to move for defendant's discharge on that ground before trial").

Section 114-1's waiver rule is not novel. As *Pearson* explained, prior to § 114-1's enactment, the rule was "long ago established" in Illinois "that the right to discharge granted by the statute was waived if not asserted by the defendant prior to conviction." 88 Ill. 2d at 216; *see*, *e.g.*, *People v. Stahl*, 26 Ill. 2d 403, 404-05 (1962) ("it is now beyond question that in order to avail himself of the implementing statute, a defendant must make application for discharge prior to conviction"). For example, the Court had previously refused to consider a statutory speedy trial claim that the defendant had raised for the first time in a post-trial motion because he "waived" the issue by "fail[ing] to raise it prior to conviction." *Pearson*, 88 Ill. 2d at 218 (discussing *People v. Walker*, 13 Ill. 2d 232, 235 (1958)).

Nor is such a waiver rule unique to Illinois. Other jurisdictions similarly apply waiver rules to foreclose review of statutory speedy trial claims not raised in the trial court. *See*, *e.g.*, 18 U.S.C. § 3162(a)(2) (federal

Speedy Trial Act provides that defendant's failure to seek discharge before trial constitutes "waiver"); *United States v. Gearhart*, 576 F.3d 459, 462 (7th Cir. 2009) ("every circuit to consider the issue has held that the failure to move for dismissal under the act constitutes a waiver, not merely a forfeiture"); *People v. Anderson*, 22 P.3d 347, 389 (Cal. 2001) (defendant waives statutory speedy trial claim by failing to move for dismissal before trial); *People v. McMurtry*, 122 P.3d 237, 242 (Colo. 2005) (en banc) (same); *State v. Burton*, 802 N.W.2d 127, 132-33 (Neb. 2011) (same); *People v. Mandes*, 91 N.Y.S.3d 194, 197 (N.Y. App. Div. 2019) (same); *State v. Contreras*, 291 P.3d 799, 799-801 (Or. Ct. App. 2012); *Welsh v. Commonwealth*, 890 S.E.2d 845, 851-52 (Va. Ct. App. 2023); *see generally* R.P. Davis, Annotation, *Waiver or Loss of Accused's Right to Speedy Trial*, 57 A.L.R.2d 302 §§ 3, 11[a]-[b] (originally published in 1958) (supplementing H.A.W., Annotation, 129 A.L.R. 574 (originally published in 1940)).

The longstanding waiver rule is unsurprising given the nature of the statutory speedy trial right and the legislative balancing of interests in favor of remedying any violation before the trial commences. First, the waiver rule is consistent with the statute's goal of serving as a prophylactic measure against languishing and prejudicial delays that may give rise to the constitutional question, not creating a constitutional question whenever the statute's terms are not followed. *See People v. Stuckey*, 34 Ill. 2d 521, 523 (1966) ("As a practical matter the statute operates to prevent the

constitutional issue from arising except in [rare] cases. . . . [A] violation of the statute or of the procedure under the statute does not in itself create a constitutional question."). Second, the waiver rule is consistent with the legislative intent that the statute serve as a shield against any attempt to hold trial outside the 120-day period, and not as a sword to defeat a conviction. *See Cordell*, 223 Ill. 2d at 390.

Third, this Court has repeatedly explained that although the prosecution has the duty to try a defendant "within the statutory period, it [i]s the defendant['s] burden on a motion for discharge to affirmatively establish a violation of [his statutory] right to a speedy trial." *People v. Jones*, 104 Ill. 2d 268, 274 (1984); *see also People v. Jones*, 33 Ill. 2d 357, 361 (1965) ("it is incumbent upon the defendant to show, in an application for discharge, that he was committed, gave no bail, and was not tried within 4 months thereafter, and that delay of trial did not happen on his application"). Placing this obligation on the defendant makes perfect sense: in requiring the accused to file a written motion before trial or forego the right altogether, the waiver rule "assigns the role of spotting violations of the [statute] to defendants — for the obvious reason that they have the greatest incentive to perform this task." *Zedner v. United States*, 547 U.S. 489, 502-03 (2006).

Fourth, the rule "ensures that an expensive and time-consuming trial will not be mooted by a late-filed motion under the [statute]." *Id.* at 503. Fifth, it "avoids double jeopardy issues, given the fact that jeopardy attaches

as soon as the jury is empaneled," and "reinforces the right of the prosecutor to appeal from the dismissal of an indictment before jeopardy attaches." *United States v. Broadnax*, 536 F.3d 695, 698 (7th Cir. 2008); *see* Ill. S. Ct. R. 604(a) (allowing State to appeal from order "dismissing a charge for any of the grounds enumerated in section 114-1"). Sixth, and finally, it "prevents undue defense gamesmanship," *Zedner*, 547 U.S. at 503, in that "defendants cannot wait to see how a trial is going (or how it comes out) before moving to dismiss," *id.* at 503 n.6; *see People v. Ingram*, 357 Ill. App. 3d 228, 234 (5th Dist. 2005) (speedy trial statute designed to promote expeditious trial "without promoting gamesmanship").

Defendant here waived his statutory speedy trial claim by not filing a written motion to dismiss the charges before trial, and for all the above reasons, that waiver should be enforced.

2. Defendant's arguments that he forfeited rather than "waived" his claim — as the General Assembly said — are unavailing.

Defendant's contention that he merely "forfeited" his claim, Def. Br. 26-33; *see also* A23, ¶ 33 (recognizing § 114-1(b)'s waiver language and *Pearson* but replacing "waived" with "forfeited"), ignores the statute's plain language, which provides that the statutory right is "waived" when a defendant does not file a written motion to dismiss charges before trial. 725 ILCS 5/114-1(b); *see People v. Christopherson*, 231 Ill. 2d 449, 454-55 (2008) (plain language of statute must be given effect).

This Court should give effect to defendant's "waiver" here, just as it has in past cases. *See Pearson*, 88 Ill. 2d at 216-17. Indeed, as the Court explained long ago, just as a defendant "waive[s]" the benefits of the statute when he "seeks and obtains a continuance to a period beyond the [statutory] period within which he would otherwise be required to be tried," he also "waives" the benefits of the statute when he fails to timely seek discharge. *Morris*, 3 Ill. 2d at 442. In using the term "waiver," the General Assembly plainly intended that a defendant who goes to trial without claiming that the statutory time has lapsed surrenders his statutory right to dismissal of the charges. *See id.*; *see also* 725 ILSC 5/103-5, Committee Comments (1963 & rev'd 1970) (Section 114-1(a)(1) "provides the procedure for invoking the [statutory] right" to a speedy trial); *cf. United States v. Hassebrock*, 663 F.3d 906, 912 (7th Cir. 2011) (federal plain error rule "does not apply to claims involving the Speedy Trial Act because the Act sets forth waiver as the sole consequence for failing to assert the claim below").

As federal courts construing the similarly worded federal statute have noted, to hold otherwise "would ignore the text of the [statute]," which "transforms what under normal circumstances would be mere forfeiture into waiver." *United States v. Zajac*, 482 F. App'x 336, 344 n.6 (10th Cir. 2012) (nonprecedential); *cf. United States v. Mosteller*, 741 F.3d 503, 507-08 (4th Cir. 2014) (collecting cases refusing to apply plain error review to federal speedy trial statute, because Congress "specifie[d] that a violation not timely

asserted before a new trial begins is waived, rather than merely forfeited"); *United States v. Alvarez*, 860 F.2d 801, 821-22 (7th Cir. 1988) (collecting additional cases "strictly" applying waiver language). Indeed, defendant's own citations show that where the General Assembly intended ordinary principles of forfeiture to apply, it was silent as to the consequence for a defendant's failure to file the requisite motions. *See* Def. Br. 31 (citing 725 ILCS 5/116-1, and 730 ILCS 5/5-4.5-50(d)). Here, the General Assembly did not remain silent but instead expressly prescribed waiver as the consequence of defendant's inaction and, consistent with its prior precedent, the Court should give effect to the General Assembly's stated intent that a defendant *waives* his statutory speedy trial right when he fails to seek discharge before trial.

Defendant's argument that interpreting § 114-1 as written conflicts with Rule 615(a), which allows a court to notice "[p]lain errors or defects affecting substantial rights . . . although they were not brought to the attention of the trial court," *see* Def. Br. 30, proceeds from a faulty premise: that a waived statutory speedy trial claim constitutes "error." Rule 615(a) applies to "errors." Ill. S. Ct. R. 615(a); *see generally People v. Williams*, 2022 IL 126918, ¶ 55. "Deviation from a legal rule is 'error' *unless* the rule has been waived." *United States v. Olano*, 507 U.S. 725, 732-33 (1993) (emphasis added). Accordingly, a claim of error predicated on a waived right is not "error" at all. *People v. Williams*, 2015 IL App (2d) 130585, ¶ 6.

Moreover, defendant is incorrect that waiver in § 114-1 must mean forfeiture because it stems from the failure to file a timely motion. *See* Def. Br. 30. Under what circumstances "a particular right is waiv[ed]" necessarily "depend[s] on the right at stake." *Olano*, 507 U.S. at 733. A failure to timely assert a constitutional right generally does not constitute waiver of the right, but "a waiver of a statutory right may be valid even if it is not knowingly made," *United States v. Gomez*, 67 F.3d 1515, 1520 (10th Cir. 1995), because "the scope of a statutory right is defined by the statute creating the right," *Zajac*, 482 F. App'x at 344 (applying *Gomez*).

The "right at stake" here is statutory, and it is not coextensive with the related constitutional right. In creating the statutory right, the General Assembly balanced the competing interests of the defendant and public and provided a strict sanction for statutory noncompliance — dismissal of charges, 725 ILCS 5/103-5(d) — and also that a statutory violation may be remedied only if a defendant invokes the right before trial. *Id.* § 114-1(a)(1), (b). So, just as the statute precludes relief for a defendant who sits idly by while his case is delayed, *see id.* § 103-5(a) ("Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record."), it similarly precludes relief for one who fails to act before he proceeds to trial. *See Cordell*, 223 Ill. 2d at 391-92; *Morris*, 3 Ill. 2d at 442; *People v. McCarrey*, 122 Ill. App. 3d 61, 66 (4th Dist. 1984).

Indeed, contrary to defendant's speculation that there was no value to filing a motion to dismiss, Def. Br. 28-30, a written motion would have alerted both the prosecutor and trial court to the compulsory joinder problem underlying the speedy trial violation, *see* A28-29, ¶¶ 43-44, and presumably would have resulted in the prosecutor pursing aggravated battery charges, which carried lower sentences than the aggravated domestic battery offenses with which defendant was charged, *see* A23-24, ¶¶ 34-35; *see generally People v. Hughes*, 2015 IL 117242, ¶¶ 37-39. Despite the trial court's repeated admonitions to defendant that he needed to file a written motion if he wanted to raise any issues for the court to consider, R9-13, defendant did not file a motion to dismiss. By explicitly providing for waiver, not forfeiture, the General Assembly intended to preclude application of the drastic remedy of complete immunity from prosecution for defendant, who went to trial without raising the statutory claim when there was an opportunity to remedy the situation.

To be sure, a defendant who raises a distinct constitutional speedy trial claim could obtain relief if he satisfies the constitutional test — which includes a showing of prejudice from the delay — but defendant has not raised a constitutional claim. For this reason, defendant's reliance on the purported availability of plain error review for "'double jeopardy claim[s],'" Def. Br. 30 (quoting *People v. Palen*, 2016 IL App (4th) 140228, ¶ 33), is misplaced. *Palen* considered a constitutional double jeopardy claim and

applied the plain error rule to that claim, as this Court had in *People v. Mink*, 141 Ill. 2d 163, 172-73 (1990). *See Palen*, 2016 IL App (4th) 140228, ¶ 33. But like *Palen*, *Mink* considered only a constitutional claim, and did not address the double jeopardy statute, *see* 725 ILCS 5/3-4, much less construe § 114-1(b). *See Mink*, 141 Ill. 2d at 172-75. Here, only the statutory right is at stake, so *Palen*'s and *Mink*'s analyses are inapposite.

Defendant's arguments predicated on Rule 604(d) are similarly unavailing. Even if defendant were correct that the word "waiver" in Rule 604(d) means "forfeiture," *see* Def. Br. 30-31, that does not suggest that the General Assembly intended the same meaning in § 114-1. To the contrary, not only did the General Assembly expressly use the word "waived," but this Court has interpreted "waived" as meaning "waived," and giving effect to the defendant's waiver is consistent with the purposes of the statute. And, in any event, Rule 604(d) "deem[s] waived" any issues not raised in a post-plea motion, but the *filing* of a timely post-plea motion is a "condition precedent to an appeal from a guilty plea," such that a defendant's failure to satisfy the condition precedent precludes appellate review of the merits of any claims, even under the plain error standard. *People v. Breedlove*, 213 Ill. 2d 509, 516-17, 521 (2004); *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). Similarly, here, the General Assembly precluded review of a statutory speedy trial claim based on the failure to even *file* a motion to dismiss before trial.

Finally, the relatively recent appellate court decisions that have applied plain error review to waived statutory speedy trial claims, *see* Def. Br. 26, were incorrect to depart from § 114-1's plain language. Prior to 2007, no Illinois court had construed a waived statutory speedy trial claim — i.e., one that was not raised before trial in a motion to dismiss — as merely forfeited and thus reviewed it for plain error. Indeed, only in circumstances where defendants had raised claims before trial but then failed to renew them in post-trial motions did courts consider whether they could be noticed for plain error. *See*, *e.g.*, *People v. Peco*, 345 Ill. App. 3d 724, 727-28 (2d Dist. 2004). But in 2007, the appellate court, without further explanation, "note[d] that a speedy trial is a substantial, fundamental right," *People v. Gay*, 376 Ill. App. 3d 796, 799 (4th Dist. 2007) (citing *People v. Crane*, 195 Ill. 2d 42, 46 (2001)), and "review[ed] defendant's [statutory speedy trial] claim under the plain-error doctrine despite defendant's failure to file a motion to dismiss the charges or file a posttrial motion," *id.* (citing *People v. Allen*, 222 Ill. 2d 340, 351 (2006)). In doing so, the appellate court did not acknowledge § 114-1, *Pearson*, or any of the myriad cases applying statutory waiver.

Nor do *Crane* and *Allen* support the appellate court's conclusion. *See* A30-31, ¶ 48. *Crane* considered only the defendant's *constitutional* speedy-trial claim, 195 Ill. 2d at 46-49; observed that "[t]he sixth amendment right to a speedy trial is fundamental," *id.* at 46; and explained that the statutory right "is not equivalent to, or coextensive with, the constitutional right," *id.*

at 48. *Allen* merely applied the well-established principle that Illinois's plain error rule "'allows a reviewing court to reach a *forfeited* error affecting substantial rights.'" 222 Ill. 2d at 351 (emphasis added) (citation omitted).

Nevertheless, since *Gay*, the appellate court has continued to apply plain error review even where defendants have failed to satisfy § 114-1, under the misapprehension that the statutory right is as substantial and fundamental as the constitutional right, or that "waiver" in § 114-1 means "forfeiture." *See*, *e.g.*, *People v. Tatum*, 2019 IL App (1st) 162403, ¶¶ 75-84; *People v. Mosley*, 2016 IL App (5th) 130223, ¶ 9; *People v. McKinney*, 2011 IL App (1st) 100317, ¶ 29; *People v. Gay*, 377 Ill. App. 3d 828, 833 (4th Dist. 2007). But more recently, the Fourth District has acknowledged that if the statutory claim is "waived" — as the General Assembly "has seen fit to provide" — rather than "forfeited," then plain error review is barred. *People v. Johnson*, 2023 IL App (4th) 210662, ¶¶ 48-50. Yet rather than apply § 114-1 as written and as interpreted by *Pearson*, the Fourth District "put aside" the question because there was no error, as this Court did in *People v. Staake*, 2017 IL 121755, ¶¶ 32-33, and *People v. Hartfield*, 2022 IL 126729, ¶ 33. *Johnson*, 2023 IL App (4th) 210662, ¶¶ 50-51. But, for all the reasons set forth above, this Court should give effect to the statute's plain language, *see generally Christopherson*, 231 Ill. 2d at 454-55, and hold that defendant waived his claim by not raising it in a pretrial motion to dismiss.

B. In the alternative, even if defendant did not waive his statutory claim, he inexcusably forfeited it because it is not subject to review under the rarely applied second-prong plain error rule.

Alternatively, and at a minimum, defendant forfeited his statutory speedy trial claim because he never raised it in the trial court. *See Hutt*, 2023 IL 128170, ¶ 27. The People agree with the appellate court's conclusion that because the new charges were subject to compulsory joinder with the original charge, defendant's trial occurred after the statutory speedy trial term had expired. *See* A25-29, ¶¶ 38-44. But this error was not structural, so it may not be noticed as second-prong plain error. *See People v. Jackson*, 2022 IL 127256, ¶ 28.[7]

As the appellate court found, A31-32, ¶¶ 50-51, a statutory speedy trial violation does not fall within the "rare" category of errors that are presumptively prejudicial, *Jackson*, 2022 IL 127256, ¶¶ 27-28. Defendant therefore inexcusably forfeited his statutory claim. A32, ¶ 51.

The plain error rule itself is "'a narrow and limited exception' to procedural default," and "errors that fall under the purview of the second prong of the plain error rule are rare," *Jackson*, 2022 IL 127256, ¶ 27 (citation omitted), and "of such magnitude that [they] undermine[] the framework within which the trial proceeds, rather than a mere error in the trial process itself," *id.* ¶ 31 (citing *Arizona v. Fulminante*, 499 U.S. 279, 310

[7] Defendant does not invoke first-prong plain error, so the Court need not address it. *See Jackson*, 2022 IL 127256, ¶ 25.

(1991)). In other words, the error must be structural. *See id.* ¶¶ 26, 28, 30 (equating second-prong plain error with structural error). A statutory speedy trial error does not rise to that level.

Structural errors "are fundamental constitutional errors that defy analysis by harmless error standards." *United States v. Davila*, 569 U.S. 597, 611 (2013) (citation omitted) (cleaned up); *accord Jackson*, 2022 IL 127256, ¶ 49. Where the effect of even a "serious" constitutional error is quantifiable, the error is amenable to harmless error analysis and therefore not structural. *People v. Stoecker*, 2020 IL 124807, ¶ 25; *id.* ¶ 24 ("an error qualifies as structural when the error has 'consequences that are necessarily unquantifiable and indeterminate'" (quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006)). Both this Court and the United States Supreme Court "adhere[] to a strong presumption that most errors of constitutional dimension are subject to harmless error analysis." *Id.* ¶ 23; *accord Fulminante*, 499 U.S. at 306; *Jackson*, 2022 IL 127256, ¶ 36.

Consistent with that presumption, in identifying whether a particular error may be noticed as second-prong plain error, the Court "look[s] to the types of errors that the United States Supreme Court has found to be structural error and determine[s] whether the error being considered is similar." *Jackson*, 2022 IL 127256, ¶ 30. Identified structural errors "include a complete denial of counsel, denial of self-representation at trial, trial before a biased judge, denial of a public trial, racial discrimination in the selection of

a grand jury, and a defective reasonable doubt instruction," *id.* ¶ 29 (citing *Washington v. Recuenco*, 548 U.S. 212, 218 n.2 (2006)), as well as the state constitutional right to have the jury sworn with a trial oath, *People v. Moon*, 2022 IL 125959, ¶ 62. Notably, all of these identified structural errors are both "'fundamental constitutional errors'" and not amenable to harmless error analysis. *Davila*, 569 U.S. at 611 (quoting *Neder v. United States*, 527 U.S. 1, 7 (1999)). A statutory speedy trial error is neither of these things, much less both, as required to be noticed as second-prong plain error.

First, a statutory speedy trial error is not a fundamental constitutional error: the statutory right is not coextensive with the underlying fundamental constitutional right to a speedy trial and operates only as a prophylactic to prevent the constitutional issue from arising. A "host of prophylactic rules [are] designed to protect fundamental rights," but the lack of "perfect compliance with the safeguard does not amount to a violation of the fundamental right itself." *People v. Flores*, 2021 IL App (1st) 192219, ¶ 16. Put differently, such rules are "designed to safeguard a constitutional right," but "do not extend the scope of the constitutional right itself." *Chavez v. Martinez*, 538 U.S. 760, 772 (2003); *see also Vega v. Tekoh*, 142 S. Ct. 2095, 2101 (2022) (warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), are "constitutionally based," but a *Miranda* violation is not "tantamount to a violation of the Fifth Amendment"). For these reasons, the Court has repeatedly held that the violation of a prophylactic rule is not structural error

because the rule is not "itself . . . a fundamental constitutional right," but merely a means "to help ensure that a defendant has been afforded" a fundamental constitutional right. *Jackson*, 2022 IL 127256, ¶¶ 35-47, 53, 66-67; *see*, *e.g.*, *id.* ¶ 46 (violation of common law right to poll jury not structural error, although designed to protect important constitutional right of juror unanimity); *People v. Thompson*, 238 Ill. 2d 598, 614 (2010) (violation of Rule 431(b) not structural, although designed to ensure jury impartiality); *People v. Glasper*, 234 Ill. 2d 173, 189, 193 (2009) (same); *see also*, *e.g.*, *Davila*, 569 U.S. at 611 (violation of federal rule prohibiting judicial participation in plea discussions not structural, although designed to ensure voluntary guilty pleas).

Like these other prophylactic measures, the General Assembly provided an "additional speedy-trial right" to facilitate an expeditious trial and prevent the constitutional issue from arising. *Mayfield*, 2023 IL 128092, ¶ 19; *Staten*, 159 Ill. 2d at 427. But this additional safeguard is not coextensive with the fundamental constitutional right to a speedy trial. *Mayfield*, 2023 IL 128092, ¶ 39. A trial held beyond the statutory time limit "does not in itself create a constitutional question," *Stuckey*, 34 Ill. 2d at 523, much less "automatically result" in a constitutional violation, *Thompson*, 238 Ill. 2d at 610; *see Barker v. Wingo*, 407 U.S. 514, 521-23 (1972) (Sixth Amendment does not require trial to be held within fixed time period). Moreover, the fact that the statute places the burden on defendants to object

to delays and file motions to discharge, and thus allows them to forgo the protections of the statute entirely — without raising constitutional speedy trial concerns — demonstrates that the statutory prophylactic right is not fundamental to a fair trial. *See Jackson*, 2022 IL 127256, ¶ 47 ("it would be inconsistent to conclude that a jury polling error denies a defendant of his right to juror unanimity when defendants can choose to forgo jury polling without any such concerns"). Thus, an error in complying with the statute does not equate to a denial of the underlying constitutional right to a speedy trial.

Second, the effect of a statutory speedy trial violation is quantifiable and thus amenable to harmless error analysis, *see Stoecker*, 2020 IL 124807, ¶ 24, notwithstanding that the General Assembly declined to require a showing of prejudice for a defendant who properly preserved a meritorious statutory speedy trial claim, 725 ILCS 5/103-5(d). Prejudice from a delay is a component of the constitutional speedy trial test. *Barker*, 407 U.S. at 530; *Crane*, 195 Ill. 2d at 52-53, 61-62. Other jurisdictions similarly inquire into whether the delay prejudiced the defendant before providing relief from a speedy trial claim not premised on the federal constitution. *See*, *e.g.*, *United States v. Taylor*, 487 U.S. 326, 341 (1988); *State v. Estrada*, 930 P.2d 1004, 1006-07 (Ariz. Ct. App. 1996); *People v. Martinez*, 996 P.2d 32, 45 (Cal. 2000); *State v. Fukuoka*, 404 P.3d 314, 322 (Haw. 2017); *State v. McNeal*, 897 N.W.2d 697, 704 (Iowa 2017); *Guice v. State*, 952 So. 2d 129, 139-40 (Miss.

2007). As these cases recognize, the impact of a delay on a defendant's case is measurable; for example, delay could prejudice a defendant if witnesses were to "die or disappear," or become "unable to recall accurately events of the distant past." *Barker*, 407 U.S. at 532. Thus, the effect of a delay in trial beyond the statutory time limit is not "'necessarily unquantifiable and indeterminate,'" such that the statutory error is akin to structural error. *Stoecker*, 2020 IL 124807, ¶ 24 (quoting *Gonzalez-Lopez*, 548 U.S. at 150). In short, a statutory speedy trial error may not be noticed as second-prong plain error. *See Jackson*, 2022 IL 127256, ¶ 28.[8]

Defendant does not argue, much less show, that a statutory speedy trial error is structural. Def. Br. 25-33. Indeed, other than a passing citation to *Moon*, *id.* at 29, he cites none of the Court's cases bearing on the question whether an error may be considered second-prong plain error, *id.* at 25-33. Instead, defendant contends that a statutory speedy trial error is second-prong plain error because the appellate court has determined that the statutory right is "substantial" and "fundamental" and amenable to plain

[8] The unavailability of second-prong plain error relief for a forfeited statutory error means that the defendant must prove a violation of the right the statute prophylactically protects, i.e., show a denial of the fundamental constitutional right to a speedy trial. *See People v. Wilmington*, 2013 IL 112938, ¶ 33. But because defendant has never alleged a constitutional claim, this Court need not decide whether a constitutional violation amounts to second-prong plain error. *See*, *e.g.*, *State v. Hintze*, 520 P.3d 1, 29-31 (Utah 2022) (Tenney, J., dissenting) (discussing various approaches to evaluating prejudice under *Barker* "[t]o avoid inadvertently converting a speedy trial violation into a form of structural error").

error review. Def. Br. 26-28. But this Court is not bound by appellate court decisions, *see generally People v. Coty*, 2020 IL 123972, ¶ 20, and the handful of appellate court decisions that defendant cites are unpersuasive because they did not analyze the second-prong plain error question, as the appellate court noted here, A30-31, ¶ 48.

In three of defendant's cited decisions, the appellate court rejected the statutory claims after asserting, without explanation, that the statutory speedy trial right is "substantial" and "fundamental," *Mosley*, 2016 IL App (5th) 130223, ¶¶ 9, 20-22; *Gay*, 376 Ill. App. 3d at 799, 803, or that it "implicates fundamental constitutional concerns," *McKinney*, 2011 IL App (1st) 100317, ¶¶ 29, 32. Indeed, *Gay* relied on an inapposite constitutional speedy trial decision to conclude that the statutory right is of similar magnitude. *See* Section II.A, *supra*.

The remaining two decisions on which defendant relies granted second-prong plain error relief, but neither analyzed the question under this Court's precedent governing whether a statutory speedy trial violation constitutes second-prong plain error. *See People v. Hilliard*, 2022 IL App (1st) 200744, ¶¶ 12, 26 ("assum[ing], without deciding, that any [statutory speedy trial] error constitutes second-prong plain error"); *People v. Smith*, 2016 IL App (3d) 140235, ¶¶ 10, 21 ("'because a speedy trial implicates fundamental constitutional concerns,'" a statutory "speedy trial error 'is so serious that it affected the fairness of the defendant's trial and challenged the integrity of

the judicial process'"). In sum, these unreasoned decisions provide no basis on which to conclude that a statutory speedy trial error is a fundamental constitutional error that defies harmless error analysis.

It is not enough to say that the statutory right addresses concerns similar to the constitutional right, or even that it is a "substantial right[]." Def. Br. 28. All constitutional rights are substantial, yet they are presumptively *not* structural. *Fulminante*, 499 U.S. at 306; *Jackson*, 2022 IL 127256, ¶ 36; *Stoecker*, 2020 IL 124807, ¶ 23. It is "only in a very limited class of cases" where the violation of a constitutional right rises to the level of structural error. *Thompson*, 238 Ill. 2d at 609. For example, the Sixth Amendment right to counsel is fundamental, but a denial of that right is presumptively prejudicial only in very narrow circumstances. *Compare United States v. Cronic*, 466 U.S. 648, 653-59 (1984), *and Satterwhite v. Texas*, 486 U.S. 249, 257 (1988), *with Strickland v. Washington*, 466 U.S. 668, 691-92 (1984). The right at issue here is not constitutional, much less a right of structural magnitude.

Contrary to defendant's argument, Def. Br. 31-32, the cause of the statutory speedy trial violation — e.g., whether due to miscalculation, misapprehension of the law, neglect, or some other reason — has no bearing on the analysis. The statutory error here resulted because the parties and the court did not consider whether the new charges were subject to compulsory joinder with the initial charges. But that does not mean that the

effect of the statutory error is immeasurable. Indeed, defendant identifies some measurable "harms" — the length of delay before the new charges were filed and the alleged impairment to his defense, Def. Br. 31-32 — that are central to the prejudice inquiry for a constitutional speedy trial claim. *See Barker*, 407 U.S. at 532-33. The prejudice inquiry further considers additional measurable harms such as oppressive pretrial incarceration and the delay's effect on the defendant's anxiety and concern about the charges. *See id.*; *Crane*, 195 Ill. 2d at 59, 61-62. In sum, the consequences of a trial held after the statutory time has passed are not "'necessarily unquantifiable and indeterminate'" such that a statutory speedy trial violation defies harmless error analysis. *Gonzalez-Lopez*, 548 U.S. at 150. Rather, as defendant tacitly acknowledges, any harms arising from delay can be identified and measured. Defendant therefore fails to satisfy his burden to show second-prong plain error.

Defendant's contention that the People are barred from arguing — in support of the trial and appellate courts' judgments — that defendant's forfeited statutory error does not constitute second-prong plain error, Def. Br. 25-26, is meritless for multiple reasons. The People indisputably raised the issue of forfeiture to the appellate court. *See* Def. Br. 25. They did not also need to anticipate whether defendant would argue that the court should excuse his forfeiture as plain error, much less predict whether he would argue that the alleged error prejudiced him under the first prong and/or was

presumptively prejudicial under the second prong. *See People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010) (burden on defendant to raise and prove plain error); *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010) (appellant may request plain error review for first time in reply brief); *see also* A31-32, ¶¶ 49-50.

Moreover, the appellate court found no second-prong plain error, A32, ¶ 51, and the People are allowed to argue in support of that judgment. "[A]n appellee may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [the party] had not previously advanced such an argument." *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010). This is because "when an appeal is taken from a judgment of a lower court, '[t]he question before [the] reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached.'" *People v. Johnson*, 208 Ill. 2d 118, 128 (2003) (citations omitted). In short, the People have permissibly argued in support of the appellate court's judgment.

Finally, defendant asked "[t]his Court to grant leave to appeal to finally resolve conflicting appellate court decisions on whether a statutory violation of a criminal defendant's right to a speedy trial may be reviewed for second-prong plain error." Def. PLA at 1. The Court relied on that request in granting review. It should not now reverse the judgments of both the appellate and trial courts without addressing the very question defendant put before this Court. *See People v. Washington*, 2023 IL 127952, ¶ 49 ("resolving

conflicts in the appellate court is one of this [C]ourt's greatest responsibilities," especially where the parties have fully briefed the issue); *People v. Jackson*, 2020 IL 124112, ¶ 118 (reviewing forfeited issue to resolve appellate court conflict).

CONCLUSION

This Court should affirm the judgment of the appellate court.

October 12, 2023

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RULE 341(c) CERTIFICATE OF COMPLIANCE

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. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in 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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13,419 words.

/s/ Gopi Kashyap
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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 October 12, 2023, the **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 provided notice to the following registered email addresses:

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