THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

No. 121483

IN THE
SUPREME COURT OF ILLINOIS

IN RE: JARQUAN B., a minor (PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. JARQUAN B., a minor, Respondent-Appellant).	) Appeal from the Appellate Court of Illinois, First Judicial District) No. 1-16-1180))) There on Appeal from the Circuit Court of Cook County, Illinois) No. 15 JD 00085))) The Honorable Stuart F. Lubin,) Judge Presiding.

BRIEF OF PETITIONER-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

*****Electronically Filed*****

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

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NATURE OF THE ACTION

In 2015, respondent Jarquan B.[1] was found delinquent for committing the misdemeanor offense of criminal trespass to a motor vehicle, R9, 67,[2] and sentenced to a six-month term of probation, R67; C79-80. In 2016, respondent's probation was revoked and he was sentenced to commitment to the Department of Juvenile Justice (DJJ). C121.

Respondent appealed, and the Illinois Appellate Court, First District, affirmed. *In re Jarquan B.*, 2016 IL App (1st) 161180, ¶ 35. Respondent now appeals the judgment of the appellate court. No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Section 5-720(4) of the Juvenile Court Act of 1987 (the Act) provides that, upon finding that a minor has violated a condition of probation, a circuit court "may revoke probation . . . and impose any other sentence that was available under Section 5-710 at the time of the initial sentence." 705 ILCS 405/5-720(4) (2016). In 2015, when respondent was initially sentenced for misdemeanor criminal trespass to a motor vehicle, the sentences available under Section 5-710 included commitment to the DJJ. 705 ILCS 405/5-710(1)(b) (eff. Jan 1, 2015 to Dec. 31, 2015). By the time respondent's probation was revoked and he was committed to the DJJ in 2016, Section 5-710 had been amended to prohibit commitment to the DJJ for misdemeanors. 705 ILCS 405/5-710(b)(1) (eff. Jan. 1, 2016 to Dec. 31, 2017).

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[1] It is unclear whether respondent's name is Jarquan or Jaquan; although respondent's name appears in the caption as "Jarquan," respondent's probation officer identified this as a typographical error, which the trial court attempted to correct. *See* R21.

[2] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to the supplemental report of proceedings as "Supp. R__," and to respondent's brief as "Resp. Br.__."

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The issue presented is whether, upon finding that a minor has violated a condition of probation, a court may sentence the minor to commitment to the DJJ where that sentence was available under Section 5-710 at the time of the initial sentence but is unavailable under the amended Section 5-710 in effect at the time of the subsequent sentencing.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 612(b), and 660(a). On January 5, 2017, this Court allowed respondent's petition for leave to appeal (PLA).

STATUTES INVOLVED

At all relevant times, Section 5-720 of the Juvenile Court Act of 1987 provided as follows:

> **Section 5-720. Probation Revocation.**
>
> . . . .
>
> (4) If the court finds that the minor has violated a condition at any time prior to the expiration or termination of the period of probation or conditional discharge, it may continue him or her on the existing sentence, with or without modifying or enlarging the conditions, or may revoke probation or conditional discharge and impose any other sentence that was available under Section 5-710 at the time of the initial sentence.

705 ILCS 405/5-720(4) (2016).

At the time respondent was initially sentenced to probation in 2015, Section 5-710 of the Juvenile Court Act of 1987 provided in relevant part as follows:

> **Section 5-710. Kinds of Sentencing Orders.**
>
> (1) The following kinds of sentencing orders may be made in respect to of wards of the court:
>
> . . . .

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> (b) A minor found to be guilty may be committed to the Department of Juvenile Justice under Section 5-750 if the minor is 13 years of age or older, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. The time during which a minor is in custody before being released upon the request of a parent, guardian or legal custodian shall be considered as time spent in detention.

705 ILCS 405/5-710(1)(b) (eff. Jan. 1, 2015 to Dec. 31, 2015).

At the time respondent's probation was revoked in 2016, Section 5-710 of the Juvenile Court Act of 1987 provided in relevant part as follows:

> **Section 5-710. Kinds of Sentencing Orders.**
>
> (1) The following kinds of sentencing orders may be made in respect of of wards of the court:
>
> . . . .
>
> (b) A minor found to be guilty may be committed to the Department of Juvenile Justice under Section 5-750 if the minor is at least 13 years and under 20 of age, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of imprisonment in the penitentiary system of the Department of Corrections is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. The court shall include in the sentencing order any pre-custody credits the minor is entitled to under Section 5-4.5-100 of the Unified Code of Corrections. The time during which a minor is in custody before being released upon the request of a parent, guardian or legal custodian shall be considered as time spent in detention.

705 ILCS 405/5-710(1)(b) (eff. Jan. 1, 2016 to Dec. 31, 2016).

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STATEMENT OF FACTS

On January 12, 2015, the People filed a petition for adjudication of wardship, alleging that on December 18, 2014, respondent committed criminal trespass to a motor vehicle in violation of 720 ILCS 5/21-2 (2014). C6. On February 26, 2015, respondent admitted to the allegations of the petition, R8; C20, and the court continued the case for twelve months under supervision, the terms of which included remaining at his Department of Child and Family Services (DCFS) residential placement with the Uhlich Children Advantage Network (UCAN) and attending school. C19; R9. The court also ordered a thirty-day period of stayed detention in the juvenile temporary detention center (JTDC), explaining to respondent that if he violated the terms of supervision, "I can place you on probation, I can hold you in custody for up to 30 days, or I could send you to the Department of Corrections."[3] R9.

Two weeks later, the People moved to execute the stayed mittimus on the ground that respondent had left his residential placement without permission on four separate occasions. C22-23. The court ordered that respondent be placed on electronic monitoring. R13-14; C24-25. Later that day, respondent violated his electronic monitoring, R18, and he was still violating it nearly two weeks later when the court issued a warrant for respondent's arrest. R18; C30. After he was arrested and spent four days in custody, respondent was released to continue supervision. R25.

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[3] The court and respondent's probation officer appear to have used the terms Department of Corrections and Department of Juvenile Justice interchangeably, *see* R9, R103, perhaps because juvenile corrections facilities were managed by the Department of Corrections prior to the creation of the Department of Juvenile Justice in 2006. *See* Pub. Act 94-696 (eff. June 1, 2016).

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On July 15, 2015, the People filed a second motion to execute the stayed mittimus on the ground that respondent had left his residential placement eight times, each time leaving in the afternoon or evening and not returning until early morning the next day. C42-43; R31. The court entered and continued the motion, ordering home confinement with electronic monitoring at the request of respondent's probation officer. R31; C45-46. Two days later, respondent violated electronic monitoring and left his residential placement. C48-50; R35-36. At the hearing on the People's motion, respondent admitted to violating supervision in exchange for ten days in the JTDC. R36; C51. Respondent's probation officer subsequently reported that after being released from the JTDC, respondent had left his residential placement a number of times. C53; R40.

On September 28, 2015, the People filed a petition alleging that respondent again had violated his supervision by leaving his residential placement. C56. Respondent did not appear at the hearing and his whereabouts were unknown. R46. The court issued a warrant for respondent's arrest. R46; C57.

On October 13, 2015, respondent appeared before the court and admitted to violating supervision. R59. The court admonished respondent that by admitting to the violation, "I could com[m]it you to the Department of Juvenile Justice," R60, and continued the case for sentencing, R62. At the subsequent sentencing hearing on November 5, 2015, the court found respondent delinquent and sentenced him to a six-month term of probation under the same conditions as the previous supervision. R67; C80. After the sentencing hearing, on the way back to the residential placement, respondent ran away from the UCAN staff. C94. (When respondent was later arrested, he explained that he "had to" run away during the trip

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back from his sentencing hearing "because once the car gets inside the fence at UCAN it's too tough to go AWOL." C94.) The next day, the People filed a petition alleging that respondent had violated probation. C81.

On November 17, 2015, respondent admitted to violating probation. R77. The court admonished respondent that, "based on this admission, I could commit you to the Department of Juvenile Justice," R78, and continued the case to December 1, 2015, for sentencing, R79. On December 1, 2015, the court continued the case for sentencing a second time. R85. Four days later, respondent violated electronic monitoring, left his residential placement, and his whereabouts were unknown. C103; R89. On December 7, 2015, the court issued a warrant for respondent's arrest, which was executed on February 5, 2016. C104.

On February 18, 2016, respondent's probation officer explained that "[i]n December it was my recommendation that [respondent] might be best suited to the Department of Juvenile Justice," but that "[h]e got one more chance on [electronic monitoring], which he violated, and the law changed making him less eligible for the Department of Corrections." R103. Informed by the court that all the sentences that were available when respondent was initially sentenced to probation were still available, R104, the probation officer stated her belief that commitment to the DJJ was in respondent's best interest, R105. The court continued the case two weeks for sentencing, warning respondent that he had "one more chance," but that if he left his residential placement again, the court would commit him to the DJJ because the court "ke[pt] [its] promises to people." R107.

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On March 3, 2016, respondent's probation officer stated that she did not "feel that he can do what's necessary to be . . . on probation" because "[h]e doesn't stay put" and "[h]e doesn't go to school." R115. When respondent turned seventeen and a half years old, he would be eligible for referral to a transitional living program (TLP) instead of a group home, but "[a]t this point he's had zero luck being accepted at a group home because of his AWOLs and aggressive behavior." R115-17. If respondent were committed to the DJJ, "he'd be paroled to a TLP and he . . . could move on." R116. The court continued the case another two weeks for sentencing, admonishing respondent that, "[o]nce again, you're holding the keys to the cell in your own hand," and that any further violations of probation would result in commitment to the DJJ. R120.

Respondent did not appear at the sentencing hearing on March 14, 2016, and his whereabouts were unknown. R123. The court issued an arrest warrant, C114, which was executed on April 21, 2016, C117. The court noted that it had "told him he had the keys [to the cell] in his pocket." R126.

At the April 26, 2016 sentencing hearing, respondent's probation officer stated that since November 2015, they had given respondent "chance after chance to try to get back on target in his placement at UCAN," but he "has zero commitment to UCAN." R132-33. Accordingly, she believed that commitment to the DJJ was in respondent's best interest. R133. She explained that committing respondent to the DJJ was "the only way to get another type of placement" because there "they can have a CIPP [Clinical Intervention for Placement Preservation, 89 Admin. Code 3§ 337.20]." R133. The court sentenced respondent to commitment to the DJJ, C121, agreeing with his probation officer that commitment was in

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respondent's best interests, since it would "start this process of getting you out of UCAN and into something more permanent." R137-38.

On April 28, 2016, after the DJJ apparently attempted to refuse to accept respondent, the Court ordered its April 26, 2016 sentencing order to stand. R144.

Respondent appealed, C124, and the appellate court affirmed. *In re Jarquan B.*, 2016 IL App (1st) 161180, ¶ 35.

ARGUMENT

In 2016, the circuit court revoked the term of probation to which it had initially sentenced respondent in 2015 and committed him to the DJJ. Respondent argues that the court could not commit him to the DJJ because, although that sentence was available under Section 5-710 of the Act at the time of his initial sentence in 2015, it was not available under the newly amended Section 5-710 at the time of the revocation proceedings in 2016. But Section 5-720(4) of the Act, which governs juvenile probation revocation proceedings, clearly and unambiguously provides that upon finding that a minor has violated the conditions of his probation, the court "may revoke probation . . . and impose any other sentence that was available under Section 5-710 *at the time of the initial sentence*." 705 ILCS 405/5-720(4) (2016) (emphasis added). Accordingly, this Court should affirm the judgment of the appellate court.

I. Standard of Review

The question of whether 705 ILCS 405/5-720(4) allows a minor to be sentenced upon the revocation of probation to commitment to the DJJ where such sentence was available under the version of 705 ILCS 5-710(1)(b) in effect at the time of the initial sentence to

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probation but is not available under the version of 705 ILCS 5-710(1)(b) in effect at the time of the revocation proceedings is a question of statutory construction that this Court reviews de novo. *People v. Smith*, 2016 IL 119659, ¶ 15.

II. Under 705 ILCS 405/5-720(4), Respondent Could Be Sentenced upon Revocation of Probation to Commitment to the Department of Juvenile Justice Because Such Sentence Was Available Under 705 ILCS 405/5-710 at the Time of His Initial Sentence to Probation.

The Court's "primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature," with "[t]he most reliable indicator of legislative intent [being] the language of the statute, given its plain and ordinary meaning." *People v. Boyce*, 2015 IL 117108, ¶ 15. "Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Ill. State Treasurer v. Ill. Worker's Comp. Comm'n*, 2015 IL 117418, ¶ 21 (citing *Solich v. George & Anna Portes Cancer Prevention Ctr. of Chi., Inc.*, 158 Ill. 2d 76, 83 (1994)).

Section 5-720(4) of the Juvenile Court Act of 1987 governs sentencing upon the revocation of a previously imposed term of probation. *See In re Shelby R.*, 2013 IL 114994, ¶ 34 (citing 705 ILCS 405/5-720 (2010) and quoting 705 ILCS 405/5-720(4) (2010)) ("Section 5-720 of the Act governs the process of revoking a delinquent minor's sentence of probation" and "how the court must proceed '[i]f the court finds that the minor has violated a condition' of probation"). Section 5-720(4) provides that "[i]f the court finds that the minor has violated a condition at any time prior to the expiration or termination of probation," the court "may revoke probation . . . and impose any other sentence that was

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available under Section 5-710 at the time of the initial sentence." 705 ILCS 405/5-720(4) (2016). Thus, under the plain language of Section 5-720(4), the sentences available upon the revocation of a minor's probation are determined by the version of Section 5-710 in effect at the time of the initial sentence to probation, not the version of Section 5-710 in effect at the time of the subsequent revocation proceeding.

Here, as respondent concedes, Resp. Br. 8, commitment to the DJJ was among the sentences available when the court initially sentenced him to probation in November 2015. C80 (Nov. 5, 2015 sentencing order); *see* 705 ILCS 405/5-710(1)(b) (eff. Jan. 1, 2015 to Dec. 31, 2015) (providing that commitment to DJJ is available "if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent"); 730 ILCS 5/5-4.5-55(a) (2014) (permitting sentence of imprisonment for Class A misdemeanors); 720 ILCS 5/20-2(b) (2014) (providing that criminal trespass to motor vehicle is Class A misdemeanor). Therefore, under the plain language of Section 5-720(4), the circuit court was authorized to sentence respondent to commitment in the DJJ when it revoked his probation in 2016 because that sentence was available under Section 5-710 at the time of respondent's initial sentence to probation in 2015.

Section 5-720(4)'s retrospective focus on the sentences available under Section 5-710 at the time of a minor's initial sentence to probation serves an important purpose: it provides minors with certainty regarding the consequences of violating probation, thereby endowing those consequences with deterrent force. *See* 705 ILCS 405/5-715(6) (2016) ("The General Assembly finds that in order to protect the public, the juvenile justice system must compel compliance with conditions of probation by responding to violations with swift, certain, and

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fair punishments and intermediate sanctions."); *Harmelin v. Michigan*, 501 U.S. 957, 989 (1991) (noting that "deterrent effect depends not only upon the amount of the penalty but upon its certainty"); 90th Ill. Gen. Assem., Senate Proceedings, Jan. 29, 1998, at 7 (statements of Sen. Hawkinson) (stating that "one of the ways that [children] have to be taught is that . . . there are consequences to misbehavior. Too often that has not been true in the juvenile justice system."). If the consequences of violating probation varied over the term of probation depending on the version of Section 5-710 in effect at the moment, they would be uncertain and could no longer effectively deter probation violations. By enacting Section 5-720(4) with its retroactive focus, the General Assembly ensured that, although it might amend Section 5-710 from time to time, such amendments would not diminish compliance with the conditions of previously imposed terms of probation by compromising the certainty of the consequences. *See* 705 ILCS 405/5-720(4). Accordingly, the General Assembly has left Section 5-720(4) unchanged each of the fifteen times[4] that it has amended Section 5-710 since the two sections were added to the Act in 1999. *See* Pub. Act. 90-590 (eff. Jan. 1, 1999) (adding 705 ILCS 405/5-710 and 705 ILCS 405/5-720); 720 ILCS 5-720(4) (eff. Jan. 1, 1999).

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[4] *See* 705 ILCS 405/5-710 (eff. Jan. 1, 2000 to Dec. 31, 2001); 705 ILCS 405/5-710 (eff. Jan. 1, 2002 to Sept. 10, 2005); 705 ILCS 405/5-710 (eff. Sept. 11, 2005 to May 31, 2006); 705 ILCS 405/5-710 (eff. June 1, 2006 to May 31, 2008); 705 ILCS 405/5-710 (eff. June 1, 2008 to Aug. 14, 2008); 705 ILCS 405/5-710 (eff. Aug. 15, 2008 to Aug. 20, 2008); 705 ILCS 405/5-710 (eff. Aug. 21, 2008 to Aug. 9, 2009); 705 ILCS 405/5-710 (eff. Aug. 10, 2009 to Dec. 31, 2009); 705 ILCS 405/5-710 (eff. Jan. 1, 2010 to July 1, 2010); 705 ILCS 405/5-710 (eff. July 2, 2010 to Jan. 24, 2013); 705 ILCS 405/5-710 (eff. Jan. 25, 2013 to Aug. 22, 2013); 705 ILCS 405/5-710 (eff. Aug. 23, 2013 to Dec. 31, 2014); 705 ILCS 405/5-710 (eff. Jan. 1, 2015 to Dec. 31, 2015); 705 ILCS 405/5-710 (eff. Jan. 1, 2016 to Dec. 31, 2016); 705 ILCS 405/5-710 (eff. Jan. 1, 2017).

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Consequences of probation violations that remain certain regardless of the regular amendments to Section 5-710 also prevent minors from strategically violating probation. If the consequences of violating probation were contingent on the version of Section 5-710 in effect at the time of the revocation proceedings, minors violating probation could ensure sentencing under a more favorable upcoming amendment by evading arrest until after the amendment's effective date. For example, here, respondent violated probation when he left his residential placement on December 5, 2015. *See* C103. At that time, the sentences available to the court included committing respondent to the DJJ. *See* 705 ILCS 405/5-710(1)(b) (2015). But the court was unable to sentence respondent while that version of Section 5-710 was in effect because, although the court issued a warrant for respondent's arrest, R89, respondent successfully evaded capture until February 5, 2016, C16, by which time the 2016 version of Section 5-710 had gone into effect, 705 ILCS 405/5-710 (eff. Jan. 1, 2016 to Dec. 31, 2016). Were respondent's sentence upon his subsequent probation revocation contingent upon the version of Section 5-710 in effect at the time of the revocation rather than the initial sentence to probation, his prolonged probation violation would have spared him commitment to the DJJ where a shorter violation would not. Section 5-720(4)'s retrospective focus prevents such gamesmanship.

The consequences of violating probation also must be certain in order to preserve the juvenile court's credibility in the eyes of the minors before it. Here, the court repeatedly warned respondent that the eventual consequence for probation violations would be commitment to the DJJ. *See* R78 (warning that if respondent admitted to probation violation, court "could commit [him] to the Department of Juvenile Justice"); R107 (warning

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respondent that he had "one more chance" and that violation of probation during continuance for sentencing would result in commitment to DJJ because court "ke[pt] [its] promises to people"); R120 (warning respondent again that violation of probation during continuance for sentencing would result in commitment to DJJ, noting that, "[o]nce again, you're holding the keys to the cell in your own hand"). Had the court failed to commit respondent to the DJJ after these repeated warnings, not only would it have failed to provide him with the services that he needed but could not receive on probation, *see* R132-33, it would have confirmed to him that judicial warnings are of no moment and emboldened him to defy similar admonishments in the future, when the consequences might be considerably more damaging for him. The General Assembly reasonably believed that this was not a lesson the juvenile courts should teach children. *See* 90th Ill. Gen. Assem., Senate Proceedings, Jan. 29, 1998, at 10 (statements of Sen. Hawkinson) (stating that proposed legislation adding, among others, Sections 5-720(4) and 5-710 to the Act "is a comprehensive overview of our juvenile justice system, to teach young offenders right off the bat that there are consequences to misbehavior, and hopefully, by doing that and by applying the appropriate services and preventive services at the beginning, we will keep them from joining that group of chronic offenders that end up populating our prisons"); 705 ILCS 405/5-101(1) (2016) ("It is the intent of the General Assembly to promote a juvenile justice system capable of dealing with juvenile delinquency, a system that will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively.").

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III. The 2016 Version of 705 ILCS 405/5-710(1)(b) Does Not Govern Probation Revocation Proceedings Involving Pre-2016 Probation Sentences.

A. The 2016 version of Section 5-710(1)(b) does not apply to probation revocation proceedings involving pre-2016 probation sentences because Section 5-720(4) states that it does not.

Respondent attempts to sidestep the plain language of Section 5-720(4) by arguing that it was error to consider Section 5-720(4) at all because the revocation of his 2015 sentence of probation took place after the effective date of the 2016 version of Section 5-710(1)(b), which clearly and unambiguously prohibited committing minor misdemeanants to the DJJ. Resp. Br. 10-11. But the clarity of the 2016 version of Section 5-710(1)(b) is irrelevant because the 2016 version of Section 5-710(1)(b) does not govern sentencing in probation revocation proceedings involving sentences of probation initially imposed before 2016. As explained above, *see* supra § II, Section 5-720(4) governs sentencing in probation revocation proceedings, *see In re Shelby R.*, 2013 IL 114994, ¶ 34 (quoting 705 ILCS 405/5-720(4) (2010)), and is clear and unambiguous in its direction that juvenile courts revoking probation may impose a sentence that was available under the version of Section 5-710 in effect at the time of the initial sentence, regardless of the sentences available under the version of Section 5-710 in effect at the time of the revocation proceeding. *See* 705 ILCS 405/5-720(4) (providing that sentences in probation revocation proceedings include "any other sentence that was available under Section 5-710 at the time of the initial sentence"). Because Section 5-720(4) provides that the 2016 version of Section 5-710 does not govern revocation of a 2015 sentence of probation, there is no conflict between Section 5-720(4), which permits committing minor misdemeanants to the DJJ in revocation proceedings involving 2015 probation sentences under the 2015 version of Section 5-710, and the 2016

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version of Section 5-710, which otherwise would prohibit committing minor misdemeanants to the DJJ. The Court need look no further than the plain language of Section 5-720(4).

To the extent that Section 5-720(4) could be interpreted as conflicting with, rather than directing courts to disregard, post-sentencing changes to the available punishments under Section 5-10, the established principles of statutory construction require that Section 5-720(4) be construed as governing sentencing in probation revocation proceedings rather than versions of Section 5-710 that become effective after initial sentencing. "[W]hen there is an apparent conflict between statutes, they must be construed in harmony if reasonably possible." *1010 Lake Shore Ass'n v. Deutsche Bank Nat'l Trust Co.*, 2015 IL 118372, ¶ 37 (citing *Knolls Condo. Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002)). To be harmonized, "[s]tatutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible." *Knolls Condo. Ass'n*, 202 Ill. 2d at 459 (*Heinrich v. Libertyville High Sch.*, 186 Ill. 2d 381, 392 (1998)). Accordingly, "[w]here there is an alleged conflict between two statutes, a court has a duty to interpret those statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such interpretation is reasonably possible." *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001) (citing *McNamee v. Federated Equip. & Supply Co.*, 181 Ill. 2d 415, 427 (1998)).

Here, were there any conflict, the statutes could be easily harmonized by construing Section 5-720(4) as governing sentencing in juvenile probation revocation proceedings and Section 5-710(1)(b) as governing initial sentencing in juvenile proceedings (with the 2015 version of Section 5-710(1)(b) governing initial sentencing in 2015, the 2016 version of

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Section 5-710(1)(b) governing initial sentencing in 2016, and so on). This construction gives effect to the provisions of both statutes, with the effect that a minor misdemeanant who was initially sentenced in 2016 could not be committed to the DJJ, 705 ILCS 405/5-710(1)(b) (eff. Jan. 1, 2016 to Dec. 31, 2016), but a minor misdemeanant who was initially sentenced to probation *before* January 1, 2016, could be committed to the DJJ in 2016 probation revocation proceedings because that sentence "was available under Section 5-710 at the time of the initial sentence," 705 ILCS 405/5-720(4); *see* 705 ILCS 405/5-710(1)(b) (2015). Respondent's contrary construction of the 2016 version of Section 5-710(1)(b) as an exception to Section 5-720(4), *see* Resp. Br. 15, renders inoperative Section 5-720(4)'s provision allowing courts to revoke probation and impose any sentence that "was available under Section 5-710 at the time of the initial sentence," 705 ILCS 405/5-720(4), effectively rewriting that provision to allow courts to revoke probation and impose any sentence that "is available under Section 5-710." Had the legislature meant for Section 5-720(4) to operate in that way, it could have easily said so. Instead, it deliberately chose to tie sentencing after revocation expressly to the sentences that were available at the time probation was initially imposed.

Respondent argues that construing Section 5-720(4) as an exception to the 2016 version of Section 5-710(1)(b) is contrary to the legislative intent that the 2016 version of Section 5-710(1)(b) reduce the number of minors committed to the DJJ. Resp. Br. 14; *see* 99th Ill. Gen. Assem., Senate Proceedings, April 22, 2015, at 177-78 (statements of Sen. Raoul) ("This is a bill to address the fact that we're committing too many people – too many minors to the Department of Juvenile Justice, at quite a cost to the State."). But nothing in

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the legislative history of the 2016 version of Section 5-710(1)(b) suggests that the General Assembly intended to repeal every application of Section 5-720(4) that does not reduce the number of minors committed to the DJJ. And construing Section 5-720(4) according to its plain language still reduces the numbers of minors committed to the DJJ, while avoiding rewriting Section 5-720(4) to defeat the General Assembly's intent that the consequences of violating probation be fixed and certain. *See supra* § II. After all, no minor misdemeanants initially sentenced in 2016 were committed to the DJJ; only minor misdemeanants whose pre-2016 probation sentences were revoked could be committed to the DJJ in 2016. Had the General Assembly intended that Section 5-720(4) never result in sentences to commitment to the DJJ for misdemeanants, it could have amended Section 5-720(4) to prohibit commitment under previous versions of Section 5-710 in probation revocation proceedings, regardless of the sentences available at the time of the initial sentence. Or it could have drafted the 2016 version of Section 5-710(1)(b) to prohibit sentencing misdemeanants to commitment to the DJJ after January 1, 2016, "notwithstanding Section 5-720(4)." It did not do so.

B. The 2016 version of Section 5-710(1)(b) does not apply to probation revocation proceedings involving pre-2016 probation sentences because Section 5-720(4) governs such proceedings as the more specific of the two statutes.

Section 5-720(4) also must be construed as taking precedence over the 2016 version of Section 5-710 in the context of probation revocation proceedings because it is the more specific statute. "'[I]t is a commonplace of statutory construction' that when two conflicting statutes cover the same subject" — here, sentencing in juvenile proceedings — "'the specific governs the general.'" *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 31 (quoting and

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altering *Morales v. Trans World Airlines, Inc.*, 504 U.S. 437, 445 (1987)). When "'a general permission or prohibition is contradicted by a specific prohibition or permission,'" the contradiction is resolved by construing "'the specific provision . . . as an exception to the general one.'" *Burge*, 2014 IL 115635, ¶ 31 (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012)).

Unlike Section 5-720(4), Section 5-710 does not address the sentences available in the specific circumstances of probation revocation proceedings. *See* 705 ILCS 405/5-710 (2016). Rather, Section 5-710 lists the "[k]inds of sentencing orders" generally available in juvenile proceedings, *id.*, including probation, 705 ILCS 405/5-710(1)(a)(i); detention in a juvenile detention center, 705 ILCS 405/5-710(1)(a)(v); suspension of driving privileges, 710 ILCS 405/5-710(1)(a)(vii); commitment to the DJJ, 705 ILCS 405/5-710(1)(b); restitution, 705 ILCS 405/5-710(4); and community service, 705 ILCS 405/5-710(8). Therefore, Section 5-720(4), as the statute addressing sentencing in the specific context of probation revocation proceedings, *see In re Shelby R.*, 2013 IL 114994, ¶ 34 (quoting 705 ILCS 405/5-720(4) (2010)), governs over Section 5-710, which generally addresses sentencing in all juvenile court proceedings. *See In re Shelby R.*, 2013 IL 114994, ¶¶ 34, 36 (rejecting argument that Section 1-4.1 overrode section 5-720 where section 1-4.1 "does not refer to probation revocation proceedings specifically"); *People v. Botruff*, 212 Ill. 2d 166, 175-76 (2004) (where two statutes addressed the appointment of independent examiners under Sexually Violent Persons Commitment Act, section addressing appointment in periodic reexamination proceedings governed over section addressing appointment in all proceedings); *People v. Latona*, 184 Ill. 2d 260, 270 (1998) (where two statutes impacted calculation of credits for

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time served in presentence custody, section applying specifically to calculation of consecutive sentences governed over section generally applying to calculation of credits in general).

Respondent argues that the 2016 version of Section 5-710(1)(b) should prevail over Section 5-720(4) because it was the later enacted of the two. Resp. Br. 16. "However, the canon that the specific governs the general holds true regardless of the priority of enactment." *Burge*, 2014 IL 115635, ¶ 32 (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)) (internal citations omitted). "Indeed, because repeals by implication are disfavored, the canon that the specific governs the general applies with special force where, as here, the earlier provision is specific and the later, general provision makes no mention of the earlier provision." *Burge*, 2014 IL 115635, ¶ 32. This is especially so when the earlier, more specific statute expressly directs courts to disregard the later, more general one.

C. Neither the rule of lenity nor the Statute on Statutes entitled respondent to be sentenced under the 2016 version of Section 5-710(1)(b) where the plain language of Section 5-720(4) permitted sentencing under the 2015 version.

Respondent argues that the rule of lenity and Section 4 of the Statute on Statutes entitled him to be sentenced under the 2016 version of Section 5-710(1)(b) upon the revocation of his 2015 probation sentence. Resp. Br. 12, 16-19. But the rule of lenity and Section 4 of the Statute on Statutes do not apply here, because the plain language of Section 5-720(4) clearly indicates the General Assembly's intent that statutes enacted subsequent to a juvenile probationer's initial sentence of probation not limit the sentences available in that probationer's revocation proceedings.

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"The rule of lenity applies only if, after seizing everything from which aid can be derived, [the Court] can make no more than a guess as to what [the legislature] intended." *People v. Gutman*, 2011 IL 110338, ¶ 43 (quoting *United States v. Wells*, 519 U.S. 482, 499 (1997)) (internal citations omitted). There is no need to guess about the General Assembly's intent with respect to the sentences available in probation revocation proceedings. As explained above, *see supra* § II, the plain language of Section 5-720(4) allows juvenile courts revoking probation to impose any sentence that was available at the time of the initial sentence. *See* 705 ILCS 405/5-720(4).

Section 4 of the Statute on Statutes is inapplicable for the same reason. Respondent argues that he was entitled to be sentenced under the 2016 version of Section 5-710(b)(1) under Section 4 of the Statute on Statutes, which provides that, "[i]f any penalty, forfeiture or punishment be mitigated by any provision of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect." 5 ILCS 70/4 (2016). But Section 4 of the Statute on Statutes is a tool to guide statutory construction where the General Assembly is silent regarding a statute's intended temporal reach; it is inapplicable where the General Assembly has clearly stated that reach. *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 406 (2009) ("Because section 4 of the Statute on Statutes operates as a default standard, it is inapplicable to situations where the legislature has clearly indicated the temporal reach of a statutory amendment."); 5 ILCS 70/1 (2016) (providing that Statute on Statutes does not govern construction of statute where "such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute."). Because the plain language of Section 5-720(4)

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clearly indicates the General Assembly's intent that statutes enacted subsequent to a juvenile probationer's initial sentence to probation not limit the sentences available in revocation proceedings, *see* 705 ILCS 405/5-720(4), and the 2016 version of Section 5-710(1)(b) does not expressly state that it nonetheless applies, Section 4 of the Statute on Statutes is inapplicable.

Respondent's reliance on *People v. Reyes*, 2016 IL 119271, and *People v. Ward*, 32 Ill. App. 3d 781 (4th Dist. 1975), in support of his Statute on Statutes argument is misplaced, for those cases are inapposite. *Reyes* did not consider the relationship between Section 5-720(4) and Section 5-710 because it did not concern sentencing in probation revocation proceedings at all, much less sentencing in juvenile probation revocation proceedings. *See Reyes*, 2016 IL 119271, ¶¶ 1-7. Rather, *Reyes* considered whether a juvenile sentenced as an adult may constitutionally receive a de facto sentence of mandatory life without parole. *Id.* at ¶¶ 7, 10. *Reyes*'s consideration of the Statute on Statutes was limited to accepting the parties' agreement that, under Section 4 of that statute, any constitutionally mandated resentencing on remand must be under the new sentencing scheme enacted during the pendency of the defendant's direct appeal. *Id.* at ¶¶ 11-12.

Ward also did not consider sentencing in juvenile probation revocation proceedings. Rather, *Ward* addressed the sentences available in adult probation revocation proceedings where the revocation proceedings took place *after* the effective date of the Unified Code of Corrections (the Code) but involved probation terms imposed *before* the Code's effective date. *Ward*, 32 Ill. App. 3d at 782. Section 5-6-4(e) of the Code provided, like Section 5-720(4), that a court revoking probation "may impose any other sentence that was available

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under Section 5-5-3 at the time of the initial sentencing." *Id.* (quoting Ill. Rev. Stat. 1973, ch. 38, 1005-6-4(e)). *Ward* explained that Section 5-6-4(e)'s provision regarding the sentences available "at the time of the initial sentencing" did not apply to revocations of pre-Code terms of probation because, "[u]nder pre-[Code] law, probation was not a sentence." *Id.* at 783. Under these unusual circumstances, "[f]or purposes of defining 'judgment' as used in the statute on Statutes, there was not yet a judgment when the [Code] took effect," and so the defendant "should have been given the choice of having the [Code's] sentencing provisions applied to his probation revocation under section 4 of the statute on Statutes." *Ward*, 32 Ill. App. 3d at 783.

Neither *Reyes* nor *Ward* suggests that section 4 of the Statute on Statutes applies to defeat Section 5-720(4)'s clear and unambiguous direction that a juvenile court "may revoke probation . . . and impose any other sentence that was available under Section 5-710 at the time of the initial sentence," 705 ILCS 405/5-720(4), regardless of whether Section 5-710 has been amended subsequent to that initial sentence.

IV. The Court Should Consider the Issue Presented Under the Public Interest Exception to the Mootness Doctrine.

Although respondent's appeal is moot because he has served his sentence, *In re Shelby R.*, 2013 IL 114994, ¶ 15, the Court should decide the question presented under the public interest exception to the mootness doctrine. The issue falls within the public interest exception because it is of a public nature, an authoritative determination of the issue is desirable for the future guidance of public officers, and the question is likely to recur. *See id.* at ¶ 16 (citing *Wisnarsky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 12). The issue of the sentences available in juvenile probation revocation proceedings is a matter of public

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concern, and this Court's authoritative determination of the issue is necessary for the future guidance of public officers, as evidenced by the dispute between the circuit court and the DJJ regarding whether the DJJ could take custody of respondent. *See* R144. The issue is also likely to recur, as the General Assembly has frequently amended Section 5-710 and is likely to continue doing so, adjusting the available sentences from year to year in response to evolving legislative concerns and federal constitutional requirements.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

March 16, 2017

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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 twenty-three pages.

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

The undersigned certifies that on March 16, 2017, the **Brief of Petitioner-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, and three copies were served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, in an envelope bearing sufficient first-class postage, and one copy was served upon the following by e-mail:

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Additionally, upon the brief's acceptance by the Court's electronic filing system, the undersigned will mail the original and twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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