2026 IL 130932

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 130932)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v.
GREGORY A. JOHNSON JR., Appellant.

Opinion filed November 12, 2026.

JUSTICE CUNNINGHAM delivered the judgment of the court.

Justices Rochford and O'Brien concurred in the judgment and opinion.

Chief Justice Neville specially concurred, with opinion.

Justice Overstreet specially concurred, with opinion.

Justice Holder White dissented, with opinion.

Justice Tailor took no part in the decision.

OPINION

¶ 1 After he was charged with first degree murder in the circuit court of Vermilion County, the defendant, Gregory A. Johnson Jr., was found unfit to stand trial because of his mental condition. Johnson subsequently received treatment, and following a hearing, the trial court found he had been restored to fitness. Johnson then pled guilty to the murder charge.

¶ 2 Johnson thereafter filed an amended motion to reconsider his guilty plea. His motion was denied by the trial court on the merits. Johnson appealed. On appeal, Johnson argued for the first time that the trial court erred when it found he had been restored to fitness. According to Johnson, his condition of unfitness had therefore never been lifted, and his subsequent guilty plea was involuntary and had to be set aside.

¶ 3 Reviewing Johnson's claim under the plain-error standard, the appellate court held that the trial court committed plain error when it found Johnson had been restored to fitness prior to the entry of his guilty plea. 2024 IL App (5th) 220608-U, ¶ 21. The appellate court therefore vacated the trial court's order finding Johnson restored to fitness and remanded the cause to the trial court for the limited purpose of conducting a retrospective fitness hearing to determine whether Johnson had, in fact, been restored to fitness before entering his guilty plea. *Id.* ¶ 22. The appellate court did not vacate the guilty plea. Instead, the court left the issue of the validity of the guilty plea to be resolved following the outcome of the retrospective fitness hearing. *Id.* ¶¶ 22-23. For the reasons that follow, we affirm the judgment of the appellate court.

¶ 4 ### I. BACKGROUND

¶ 5 On October 20, 2017, the State charged Johnson in a three-count information with the first degree murder of Timothy Ellis (720 ILCS 5/9-1(a)(1), (2) (West 2016)). A preliminary hearing was held on November 2, 2017. During that hearing, the trial court heard police testimony stating that Johnson had admitted stabbing Ellis to death because Johnson had "discovered that in his mind" Ellis had molested the 16-year-old daughter of a friend. After finding probable cause for the murder offense, the trial court began formal arraignment. Johnson interrupted the

proceedings, telling his appointed attorney that he did not "want to say not guilty" because "saying you're guilty is saying you're guilty" and that he wanted to "plead innocent" and "plead insanity." The trial court eventually had Johnson removed from the courtroom, and a plea of not guilty was entered on his behalf.

¶ 6 On December 21, 2017, Johnson's attorney filed a motion pursuant to section 104-11(b) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-11(b) (West 2016)), requesting that the trial court order a fitness examination of Johnson. In the motion, Johnson's attorney asserted a *bona fide* doubt existed as to Johnson's mental fitness to stand trial based on counsel's personal observations of Johnson's behavior as well as Johnson's own stated "belief that he had mental health issues of an unknown nature." The motion requested that the fitness examination be conducted by Dr. David Coleman and additionally asked that Dr. Coleman prepare a report regarding his findings pursuant to section 104-15 of the Code (*id.* § 104-15). On January 5, 2018, the trial court, Judge Nancy Fahey presiding, granted the motion in a written order.

¶ 7 A fitness hearing was held on March 29, 2018, pursuant to section 104-16 of the Code (*id.* § 104-16). During that hearing, the following colloquy took place:

"THE COURT: Purpose of the hearing?

MR. MARA [(DEFENSE ATTORNEY)]: This is a hearing on fitness, Your Honor.

THE COURT: Is there a report?

MR. ALIKHAN [(ASSISTANT STATE'S ATTORNEY)]: Yes, Your Honor.

MR. MARA: Yes.

MR. ALIKHAN: I can tender—

THE COURT: Somebody needs to tell Dr. Coleman that he needs to get copies of these reports to the clerk to get in the court file, because they are not getting in there.[1]

MR. MARA: I will certainly do that, Your Honor. I apologize.

THE COURT: It's not your fault, but this is the third one today. And are you stipulating to the contents of the report?

MR. MARA: Your Honor, I am. There is one correction on the first page, Dr. Coleman indicates that [Johnson] was referred for a fitness evaluation in November of 2014. I believe that's just a misprint. The referral happened in January of this year, but otherwise, I would be stipulating to the contents.

THE COURT: Mr. Alikhan?

MR. ALIKHAN: Judge, we'll stipulate to the opinions made by Dr. Coleman in the report.

THE COURT: And do we have an order?

MR. MARA: I do and Ms. Lacy [(Vermilion County State's Attorney)] reviewed it and signed it as well, Your Honor.

THE COURT: Based on the stipulation of the parties and the contents of the report, the order on fitness will enter this date. I'm going to set this for a status on—I did the last one on May 29th. Is that too far out or is that okay?

MR. MARA: That should be fine, your Honor."

¶ 8 No copy of Dr. Coleman's report is contained in the record on appeal. Nor is there any written order in the record regarding the trial court's determination as to whether Johnson was fit to stand trial. Thus, the trial court's statement regarding the entry of an order "on fitness" was unclear and ambiguous at best. However, the

[1]Section 104-19 of the Code states that "[a]ny report filed of record with the court concerning diagnosis, treatment or treatment plans made pursuant to this Article [(the fitness statute)] shall not be placed in the defendant's court record but shall be maintained separately by the clerk of the court." 725 ILCS 5/104-19 (West 2016). It is not clear if the trial court was referring to this separate file.

parties do not dispute that Johnson was found unfit by the trial court with the expectation that he would be restored to fitness after receiving treatment (see *id.* § 104-16(d)), and the record indicates that on May 18, 2018, Johnson was admitted to the Chester Mental Health Center (Center), a secure mental health hospital operated by the Department of Human Services.[2]

¶ 9 On May 21, 2018, the Center completed a 10-page "Treatment Plan" for Johnson (see *id.* § 104-17(e)) that was file-stamped as received by the clerk of the circuit court on June 4, 2018. This form document indicated that Dr. Coleman found Johnson unfit to stand trial and quoted Dr. Coleman's fitness report as stating:

> " 'Mr. Johnson presented with an animated and irritable affect. He made constant rants about the Public Defender being in collusion with the State's Attorney, and frequent allusions to his trial needing to be by God and Jesus. His verbal IQ appeared to be in the borderline to low-average range, but his insight, judgment, and impulse control appeared to be limited. He does not appear to presently meet criteria for fitness, but he should be able to be made fit within one year.' "

¶ 10 The May 21, 2018, treatment plan also stated that, upon admission to the Center, Johnson received a primary diagnosis of paranoid schizophrenia and a secondary diagnosis of antisocial personality disorder. The treatment plan noted that Johnson had a "significant history of sexual and physical abuse, homicidal and suicidal thoughts, [and] numerous psychiatric hospitalizations" and further noted that he was receiving the medications olanzapine (for "psychosis") and lorazepam (for "anxiety"). The treatment plan outlined various goals for Johnson to meet and was signed by Dr. Nagaswararao Vallabhaneni, as treating psychiatrist, and Carri Morris, as coordinating therapist.

¶ 11 On June 27, 2018, the parties appeared in court for a status hearing on Johnson's fitness. At that hearing, both defense counsel and the State indicated they had

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[2]Section 104-17(b) of the Code (725 ILCS 5/104-17(b) (West Supp. 2025)) now states: "No defendant may be ordered to inpatient restoration unless at least one licensed physician, clinical psychologist, or psychiatrist who has examined the defendant testifies in person at the hearing. The defendant may waive the requirement of the testimony subject to the approval of the court." No question is raised in this appeal as to whether this provision was satisfied in this case.

received a treatment plan from the Center and that the Center indicated it would take approximately five months to restore Johnson to fitness. The trial court continued the case and set a new status date.

¶ 12 On August 2, 2018, the Center prepared a "90 Day Fitness Evaluation/Progress Report" pursuant to section 104-18(a)(1) of the Code (*id.* § 104-18(a)(1)). This two-page, form progress report was signed by Dr. Vallabhaneni and, along with a transmittal letter from the Center's interim administrator, was file-stamped as received by the clerk of the circuit court on September 7, 2018. The progress report stated that Johnson had "no rational understanding of court proceedings and [was] not capable of assisting his public defender" and that he remained on the medications olanzapine and lorazepam. The report concluded that Johnson remained unfit to stand trial with a "substantial probability" that he could be restored to fitness within a year of the original finding of unfitness to stand trial.

¶ 13 On September 7, 2018, the same date the trial court received the progress report, the parties appeared in court for a status hearing. At that hearing, the parties stipulated to the contents of the progress report, and a new status date was set for December 7, 2018.

¶ 14 On October 22, 2018, a 14-page "Treatment Plan Review" was prepared by the Center. This form document stated that, because Johnson was no longer displaying signs of psychosis, his primary mental health diagnosis had been changed by Dr. Vallabhaneni on September 26, 2018, to "Adult Oppositional Defiant Disorder," with a secondary diagnosis of "Anti-Social Personality Disorder with Paranoia." The document also indicated that Johnson was still prescribed olanzapine (although now for "aggression") and lorazepam (now for "agitation") and stated that "Mr. Johnson will be advised to continue medications currently prescribed while in custody to maintain clinical stability."

¶ 15 The October 22, 2018, treatment plan review contained conflicting statements regarding Johnson's fitness. On two different pages the treatment plan review stated Johnson was found fit to stand trial on September 24, 2018. However, in a section of the document setting forth Johnson's treatment plan for attaining fitness, one of Johnson's social workers listed his fitness to stand trial as an "active" goal and listed the "target date" for his attaining fitness as December 30, 2018. In addition, and significantly, on the last page of the treatment plan review, in a section labeled

"Fitness Statement," the following sentence appears: "The treatment team currently believes that [Johnson] is *Unfit to Stand Trial*." (Emphasis in original.)

¶ 16 The October 22, 2018, treatment plan review was unsigned. There is also no file stamp on the document and no entry in the trial court's docket sheet indicating when or whether the document was ever filed in the trial court.

¶ 17 On October 30, 2018, the trial court, Judge Karen Wall presiding, entered an "Immediate Transport Order," directing that Johnson be released from the Center and remanded to the Vermilion County jail. The transport order noted that the court had received a progress report from the Center, pursuant to section 104-18(a)(2) of the Code (*id.* § 104-18(a)(2)), indicating that Johnson was fit to stand trial. The progress report cited in the transport order was not appended to the transport order and does not appear in the appellate record. There is also no entry in the trial court's docket sheet indicating the progress report was filed in the trial court.

¶ 18 On November 1, 2018, the Center prepared a "Notice of Change in Status" (see 405 ILCS 5/3-902(c) (West 2018)). This single-page form was completed by the facility director of the Center and was file-stamped as received by the clerk of the circuit court on November 5, 2018. The document stated that, on November 1, 2018, Johnson was discharged to the Vermilion County sheriff and "recommended as fit to stand trial."

¶ 19 Also on November 1, 2018, the Center prepared a "Discharge Summary/Transition Record." This was an 11-page form, signed by both a social worker and Johnson, that set forth Johnson's care plan following his discharge from the Center. The document did not discuss Johnson's fitness to stand trial. The document stated that Johnson retained a primary diagnosis of adult oppositional defiant disorder, with a secondary diagnosis of antisocial personality disorder with paranoia, and that he was not prescribed any medications. The document was not file-stamped, and there is no entry in the trial court's docket sheet indicating when or whether it was filed in the trial court.

¶ 20 A restoration to fitness hearing was subsequently held on November 14, 2018, pursuant to section 104-20 of the Code (725 ILCS 5/104-20 (West 2018)), with Judge Fahey presiding. At that hearing, the following colloquy took place regarding Johnson's fitness:

"MR. MARA [(DEFENSE ATTORNEY)]: Your Honor, Mr. Johnson has been returned from [the Center]. There is a report that I know the State has received. I don't know if the Court has received the—

THE COURT: A discharge—notice of change in status filed November 5th.

MR. MARA: I have—

THE COURT: I got that. Let me see what else is in the file.

MR. MARA: A report dated 10-25-18, a 90-day fitness evaluation progress report. I would be happy to let the Court—

THE COURT: Hang on. Let me just double check. *There's not one in the Court file*.

MR. MARA: I believe at this point it's the intention of both parties to stipulate that if the doctor who wrote the report were to testify, he would testify consistently with his report.

THE COURT: Which is restoring him to fitness.

MR. MARA: To fitness, yes, Your Honor.

THE COURT: Ms. Weber [(assistant state's attorney)], are you in agreement?

MS. WEBER: Yes, Your Honor.

THE COURT: Okay. The Court will accept the stipulation of the parties as to the contents of the report that if the doctor were testifying, that is what he would testify to, and Mr. Johnson will be restored to fitness based on that." (Emphasis added.)

¶ 21 At a March 11, 2019, hearing, at which Judge Fahey also presided, the parties announced they had reached a fully negotiated plea agreement, wherein Johnson would plead guilty to one count of first degree murder with the intent to kill for which he would serve a prison sentence of 45 years followed by 3 years of mandatory supervised release. In exchange for his guilty plea, the State agreed to dismiss the two remaining counts of first degree murder along with the charges in

two unrelated cases. The State provided a factual basis. During admonishments, Johnson disclosed that he had not been taking any medications for his mental health condition since November 1, 2018, but answered in the affirmative when asked by the trial court if he was thinking clearly and was able to make important decisions about his case. Ultimately, the trial court accepted Johnson's guilty plea and sentenced him pursuant to the plea agreement.

¶ 22 After accepting the plea, the trial court then admonished Johnson of his appeal rights, informing him that, prior to taking an appeal, he would first need to file a written motion seeking to withdraw his plea and that any issue or claim of error not raised in that motion would not be considered by the appellate court. When asked by the trial court if he understood his appeal rights, Johnson replied, "Yes."

¶ 23 Johnson thereafter filed a *pro se* "Petition to Withdraw Guilty Plea and Vacate Sentence." In this motion, Johnson alleged that his guilty plea should be set aside because, at the time he pled guilty, he was a mental patient under great mental and emotional stress and he was not receiving his prescribed medications, he was not adequately represented by plea counsel, and he was threatened by the assistant state's attorney that his sentence would increase if he did not accept the plea agreement. Johnson's motion to withdraw his guilty plea was denied by the trial court as untimely. Johnson appealed, and the appellate court reversed the judgment of the trial court and remanded the cause for consideration of Johnson's motion to withdraw his guilty plea and vacate the sentence on the merits. *People v. Johnson*, No. 4-19-0412 (2020) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 24 On remand, Johnson, now assisted by appointed counsel, filed an "Amended Motion to Withdraw Guilty Plea and Vacate Judgement." In this amended motion, Johnson alleged that he was denied his prescribed medications from November 1, 2018, to the date of his plea on March 11, 2019, and that, because of this, at the time of his plea he was not thinking clearly and was unable to truly understand what was happening. Johnson argued that the trial court erred "in proceeding with the plea on March 11, 2019, having been advised by [Johnson] of his mental illness and his not receiving medication dating back to November 1, 2018," and that the performance of Johnson's attorney "during the plea process on March 11, 2019 was inadequate and ineffective and was so deficient that the attorney's performance

prejudiced [Johnson] in that he continued with a plea without first determining whether [Johnson] was competent to do so." Of note, the amended motion did not allege that the trial court erred in restoring Johnson to fitness on November 14, 2018.

¶ 25 Attached to Johnson's amended motion to withdraw his plea was (1) part of the transcript for the March 11, 2019, plea hearing, (2) the progress report from the Center dated August 2, 2018, (3) the treatment plan review from the Center dated October 22, 2018, (4) the notice of change in status form dated November 1, 2018, (5) the discharge summary for Johnson dated November 1, 2018, and (6) an affidavit from Johnson. Defense counsel filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017), indicating he had consulted with Johnson and had made any amendments to Johnson's previous motion to withdraw his plea that were necessary to address any defects in the guilty plea proceedings. The State filed a response to Johnson's amended motion to withdraw his plea and provided the trial court with a full transcript of Johnson's plea hearing.

¶ 26 On August 3, 2022, Judge Fahey[3] held a hearing on Johnson's amended motion to withdraw his guilty plea. At the conclusion of the hearing, the court denied the motion. Johnson then filed a *pro se* notice of appeal that listed the appealed judgment as "Aug 3, 2022 on motion to withdraw guilty plea and vacate sentence."

¶ 27 On appeal, Johnson argued for the first time that the trial court erred in finding him restored to fitness on November 14, 2018, before accepting his guilty plea. Johnson maintained that "the trial court erred in finding him restored to fitness where the trial court adopted the conclusions of [Johnson's] treatment providers based on a stipulation by the parties to the contents of a report that the trial court never received." 2024 IL App (5th) 220608-U, ¶ 14. Johnson also asserted that, even if he were properly restored to fitness, the trial court erred by not addressing his requests to represent himself during postplea proceedings. The State, in

[3]While the cover page for the transcript of the hearing on this date lists Judge Charles C. Hall as the trial judge, the docket entry for the hearing states that Judge Fahey presided. Additionally, it was noted several times during the proceedings that the judge presiding over the hearing was the same judge who found defendant unfit, found defendant restored to fitness, and accepted Johnson's guilty plea.

response, maintained Johnson had not raised either issue in the trial court and, therefore, had failed to preserve both issues for appeal.

¶ 28 As to whether the trial court properly found that Johnson had been restored to fitness, the appellate court reviewed the matter under the plain-error doctrine, noting that Johnson had "failed to raise the issue in a posttrial motion." *Id.* ¶ 16. The appellate court then stated:

> "In the instant matter, it is unclear whether the trial court ever saw the expert's report concluding that the defendant had been restored to fitness. The record reveals that the expert's report was not in the court's file, and it is unclear whether the trial court was provided with a copy of that report at the hearing. Instead, it appears that the trial court merely relied on the stipulation of the parties that the defendant had been restored to fitness and, thus, failed to exercise its judicial discretion. Because the record does not demonstrate that the trial court ensured that the defendant was able to understand the nature of the proceedings or to assist in his own defense before determining he had been restored to fitness, we find that plain error has been established." *Id.* ¶ 21.

¶ 29 Having determined that plain error occurred, the appellate court then concluded that the appropriate remedy was to vacate the trial court's order finding Johnson restored to fitness and to remand the "cause with directions that the trial court conduct a retrospective fitness hearing to determine whether the defendant was restored to fitness prior to his guilty plea." *Id.* ¶ 25. The appellate court further noted that, if the trial court could fairly and accurately determine that Johnson had been restored to fitness, then the appellate court retained jurisdiction under Illinois Supreme Court Rule 615(b)(2) (eff. Jan. 1, 1967) to consider the merits of Johnson's second claim regarding his requests to represent himself. 2024 IL App (5th) 220608-U, ¶ 22. If, on the other hand, the trial court concluded that Johnson's fitness could not be accurately determined, then Johnson was entitled to a new trial. *Id.* ¶ 23.

¶ 30 Johnson filed a petition for rehearing in the appellate court arguing primarily that, having vacated the trial court's order finding him restored to fitness, the appellate court should not have remanded the cause to the trial court to conduct a retrospective fitness hearing but, instead, should simply have vacated his guilty plea. The appellate court denied Johnson's petition for rehearing.

¶ 31 Johnson thereafter filed a petition for leave to appeal in this court, which we allowed. See Ill. S. Ct. R. 315(a) (eff. Dec. 7, 2023). The State has also sought cross-relief. See Ill. S. Ct. R. 343(b)(1) (eff. July 1, 2008).

¶ 32 II. ANALYSIS

¶ 33 In his appeal to this court, Johnson asserts the appellate court correctly vacated the trial court's November 14, 2018, order finding him restored to fitness but incorrectly failed to vacate his guilty plea. Johnson maintains it is not possible to conduct a retrospective fitness hearing in this case and that the appellate court erred in ordering the trial court to do so. Johnson further argues that the appellate court's vacatur of the trial court's restoration order meant that he was returned to the status of being mentally unfit to stand trial prior to pleading guilty. Thus, according to Johnson, he was necessarily unable to knowingly and voluntarily plead guilty, and the appellate court's failure to vacate his subsequent guilty plea violated his right to due process.

¶ 34 In response, the State first contends we need not reach Johnson's due process claim. In its request for cross-relief, the State argues the appellate court lacked jurisdiction to review the trial court's restoration order and, therefore, should not have vacated that order or remanded the cause to the trial court for further proceedings. Because determining whether the appellate court lacked jurisdiction is a threshold issue, we first address that question. See *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009).

¶ 35 A. Whether the Appellate Court Lacked Jurisdiction to Review the Trial Court's November 14, 2018, Order Finding Johnson Restored to Fitness

¶ 36 The State argues that Johnson's notice of appeal failed to confer jurisdiction on the appellate court to review the trial court's November 14, 2018, restoration order. The State notes that Johnson's *pro se* notice of appeal listed the judgment being appealed as "Aug 3, 2022 on motion to withdraw guilty plea and vacate sentence" but did not mention the trial court's order finding him restored to fitness. Because Johnson's notice of appeal referenced only the trial court's denial of his amended

motion to withdraw his guilty plea, the State maintains the appellate court lacked jurisdiction to consider the correctness of the trial court's restoration order. We disagree.

¶ 37 In criminal cases in Illinois, " '[a] notice of appeal confers jurisdiction on an appellate court to consider only the judgments or parts of judgments specified in the notice.' " (Emphases omitted.) *People v. Bingham*, 2018 IL 122008, ¶ 16 (quoting *Lewis*, 234 Ill. 2d at 37). However, when a defendant files a timely notice of appeal from a final judgment, that notice brings up for review any prior nonfinal orders that merged into, or were steps in the "procedural progression" leading to, the final judgment. *People v. Jones*, 207 Ill. 2d 122, 138 (2003) (citing *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 434-35 (1979)). In other words, under this "merger rule," a notice of appeal that designates a final judgment encompasses not only that judgment but also all prior interlocutory orders that produced the judgment. *Id.*[4]

¶ 38 Both the Code and this court's rules provide that an order finding a criminal defendant *unfit* to stand trial is a final order for purposes of appeal. See 725 ILCS 5/104-16(e) (West 2022); Ill. S. Ct. R. 604(e) (eff. July 1, 2017). By contrast, no statute or rule allows for the immediate appeal of an order finding a criminal defendant *restored* to fitness. Such an order is a nonfinal, interlocutory order. See 725 ILCS 5/104-20(b) (West 2018) (stating that, if the trial court finds a defendant has been restored to fitness, "the court shall set the matter for trial").

¶ 39 Further, because the due process clause of the fourteenth amendment (U.S. Const., amend. XIV) bars the criminal prosecution of a defendant who is mentally unfit to stand trial (*People v. Waid*, 221 Ill. 2d 464, 470 (2006)), it follows that an order finding a defendant restored to fitness is necessarily a step in the procedural progression leading to the judgment of conviction. See *People v. Elsholtz*, 136 Ill. App. 3d 209, 211 (1985) (noting that the criminal prosecution of a defendant is "totally dependent on" the defendant's fitness). Thus, an order finding a defendant

[4]Of note, Illinois is not alone in following the merger rule. The Federal Rules of Appellate Procedure, for example, also recognize the rule. See Fed. R. App. P. 3(c)(4) ("The notice of appeal encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order. It is not necessary to designate those orders in the notice of appeal.").

has been restored to fitness merges into a final judgment of conviction for purposes of appeal. See, *e.g.*, *People v. Finlaw*, 2023 IL App (4th) 220797, ¶¶ 46-70 (reviewing a trial court's finding that the defendant was restored to fitness in an appeal after a jury trial).

¶ 40 To be sure, the present case concerns an appeal following a guilty plea rather than an appeal following a trial. And, as the United States Supreme Court has put it, the general rule is that a guilty plea "represents a break in the chain of events which has preceded it in the criminal process" (*Tollett v. Henderson*, 411 U.S. 258, 267 (1973)), such that the defendant is precluded from challenging on appeal "case-related government conduct that takes place before the plea is entered" (*Class v. United States*, 583 U.S. 174, 182 (2018)). However, this rule—the doctrine of waiver by guilty plea—is not a jurisdictional rule. See *United States v. Riojas*, 139 F.4th 465, 469-73 (5th Cir. 2025) (discussing the difference between jurisdiction and the doctrine of waiver by guilty plea); *United States v. De Vaughn*, 694 F.3d 1141, 1154-58 (10th Cir. 2012); *United States v. Jacobo Castillo*, 496 F.3d 947, 951-57 (9th Cir. 2007) (*en banc*); *State v. Kelty*, 2006 WI 101, ¶ 18, 294 Wis. 2d 62, 716 N.W.2d 886 ("Like the general rule of waiver, the guilty-plea-waiver rule is a rule of administration and does not involve the court's power to address the issues raised."). But see *United States v. Combs*, 657 F.3d 565, 571 (7th Cir. 2011) (holding that a federal circuit court of appeals lacks jurisdiction over preplea claims because those claims are no longer part of a live " 'case or controversy' " within the meaning of article III of the United States Constitution (U.S. Const., art. III, § 2) (quoting *Jacobo Castillo*, 496 F.3d at 957 (Callahan, J., dissenting))).

¶ 41 In Illinois, the appellate court's jurisdiction in an appeal following the entry of a guilty plea is determined solely by the notice of appeal and the application of the merger rule. *People v. Patrick*, 2011 IL 111666, ¶ 20 ("timely filing of a notice of appeal is the only jurisdictional step for initiating appellate review"). Whether the defendant in that appeal is barred from challenging a trial court order entered prior to the plea under the doctrine of waiver by guilty plea is a separate question.

¶ 42 In arguing that Johnson's notice of appeal was inadequate to confer jurisdiction on the appellate court to review the trial court's restoration order, the State also relies on *People v. Ratliff*, 2024 IL 129356. In *Ratliff*, the defendant entered an open guilty plea to a charge of robbery and was sentenced to 15 years' imprisonment. *Id.*

¶ 6. He thereafter timely filed a *pro se* motion to withdraw his guilty plea or, in the alternative, to reconsider his sentence. *Id.* ¶ 7. However, before the trial court ruled on that motion, the defendant requested an attorney, and one was appointed. At a subsequent status hearing, defense counsel informed the trial court that the defendant no longer wanted the court to vacate his guilty plea. Instead, the defendant only wanted the trial court to reconsider his sentence. Counsel subsequently filed a motion seeking reconsideration of the sentence that was denied by the trial court. *Id.*

¶ 43 The same day the motion to reconsider the sentence was denied, the defendant filed a notice of appeal. *Id.* ¶ 8. Consistent with the proceedings in the trial court, the notice of appeal stated that the defendant was appealing only the trial court's order denying his motion to reconsider sentence. *Id.*

¶ 44 More than six months later, the defendant filed in the appellate court an unopposed motion for leave to file an amended notice of appeal. *Id.* In that motion, the defendant stated that the original notice of appeal had erroneously stated he was appealing only the trial court's order denying his motion to reconsider sentence. According to the motion, the defendant was not, in fact, appealing just his sentence but instead was appealing "his conviction and all rulings related thereto." *Id.* The appellate court allowed the motion to file an amended notice of appeal. *Id.* The appellate court then considered and rejected the defendant's arguments that his guilty plea should be set aside and affirmed his conviction. *Id.* ¶¶ 9-11.

¶ 45 On appeal, this court concluded that the appellate court had no jurisdiction to consider the defendant's motion to amend his notice of appeal because that motion was untimely. *Id.* ¶ 16. And, because the motion to amend was untimely, this meant that the "appellate court only had jurisdiction as conferred by the defendant's original notice of appeal." *Id.* Citing the rule that a notice of appeal must specify the order or judgment being appealed, this court then concluded that the original notice of appeal did not confer jurisdiction on the appellate court to review the judgment entered on the defendant's guilty plea because the notice of appeal stated that the defendant was appealing only the trial court's order denying his motion to reconsider his sentence. *Id.* ¶¶ 17-18. After reaching that conclusion, this court then invoked its supervisory authority and went on to reject the merits of the defendant's challenge to his guilty plea. *Id.* ¶ 19.

¶ 46 Before this court, the State contends that *Ratliff* controls the outcome of this case. The State reads *Ratliff* as limiting the appellate court's jurisdiction solely to the judgment or order specified in the notice of appeal (in *Ratliff* the order denying the motion to reconsider sentence) and barring the appellate court from reviewing other judgments or orders (such as the judgment entered on the guilty plea in *Ratliff*) that might otherwise be reviewable under the merger rule. In other words, the State essentially reads *Ratliff* as having eliminated the merger rule. That, however, is too broad a reading of *Ratliff*.

¶ 47 Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) provides, in part:

> "No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment."

The postplea motion required under Rule 604(d) is a condition precedent to maintaining an appeal. Thus, when a defendant fails to file a motion to withdraw a guilty plea, the appellate court cannot reach the merits of a challenge to the plea but, instead, must dismiss the appeal. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011) (citing *People v. Flowers*, 208 Ill. 2d 291, 301 (2003)).

¶ 48 In *Ratliff*, the defendant initially filed a postplea motion asking to withdraw his guilty plea. However, the defendant, with the assistance of counsel, subsequently abandoned that motion, which was never ruled on by the trial court. The defendant's knowing abandonment of the motion to withdraw his plea meant that the motion to reconsider his sentence was the only postplea motion before the trial court. That being the case, the merger rule could not have been applied to allow the appellate court to review the merits of the guilty plea. If the merger rule had been applied to the appellate court's decision in *Ratliff*, that would have permitted the defendant to proceed in the appellate court with a challenge to his plea without first complying with Rule 604(d)'s requirement that he file a motion to withdraw his plea as a condition precedent to an appeal. In other words, applying the merger rule would have meant giving the appellate court the authority to negate Rule 604(d)'s postplea motion requirement. That was, and is, impermissible. See *Ratliff*, 2024 IL 129356, ¶ 75 (O'Brien, J., specially concurring, joined by Cunningham, J.) (noting this

court's use of its *supervisory authority* to reach the merits of the defendant's challenge to his plea, despite his noncompliance with Rule 604(d)'s postplea motion requirement).

¶ 49 *Ratliff* was limited to its facts. *Ratliff* stands only for the proposition that, under the circumstances presented in that case, the merger rule cannot be invoked by the appellate court to confer jurisdiction over the judgment entered on the guilty plea because doing so would circumvent the postplea motion requirement of Rule 604(d). Contrary to the State's suggestion in this case, *Ratliff* did not eliminate the merger rule.

¶ 50 In this case, Johnson timely filed a notice of appeal from the trial court's denial of his amended motion to withdraw his guilty plea. Under the merger rule, that notice of appeal brought up for review the trial court's November 14, 2018, restoration order. Accordingly, the appellate court did not lack jurisdiction over that order.

¶ 51 B. Whether the Appellate Court Erred When It Found That Johnson Did Not Preserve His Challenge to the Trial Court's November 14, 2018, Restoration Order

¶ 52 The appellate court in this case reviewed Johnson's challenge to the trial court's November 14, 2018, restoration-to-fitness order under the plain-error doctrine, noting that Johnson had failed to preserve his claim for appeal because he did not raise it in his amended motion to withdraw his plea. 2024 IL App (5th) 220608-U, ¶ 16. Johnson contends there was no need for the appellate court to conduct a plain-error review because, contrary to the appellate court's conclusion, his claim was properly preserved in his amended postplea motion.

¶ 53 The principal purpose of the postplea motion requirement of Rule 604(d) is to ensure that any improper conduct or legal errors that may have produced a guilty plea are brought to the trial court's attention before an appeal is taken, thus enabling the trial court to either correct those errors or to make a record for the appellate court in cases where the defendant's claims are disallowed by the trial court. *People v. Wilk*, 124 Ill. 2d 93, 106 (1988). In this case, Johnson's amended postplea motion consisted of 13 numbered paragraphs. Paragraphs one through nine set forth the

background facts of the case. In paragraphs 10 through 12, Johnson alleged two claims for the trial court to consider: (1) whether the trial court erred in proceeding with the plea on March 11, 2019, after being told by Johnson of his mental illness and of his not having received medication since November 1, 2018, and (2) whether Johnson's plea counsel was ineffective during the plea proceeding on March 11, 2019, for failing to request a fitness hearing to determine if he was competent to plead guilty. Neither of these two claims challenged the trial court's November 14, 2018, restoration order. Indeed, the amended postplea motion only mentioned the November 14, 2018, proceedings once, tangentially in paragraph seven, stating simply that, "[o]n November 14, 2018, Petitioner/Defendant was present in court for a Status Hearing where he was found by the court to be restored to fitness."

¶ 54 Before this court, Johnson now concedes that his amended motion to withdraw his plea "did not expressly state that the trial court erred in finding [him] restored to fitness." Nevertheless, Johnson maintains that the text of his amended postplea motion, considered as a whole, shows that he properly preserved his challenge to the trial court's November 14, 2018, restoration order. Johnson points out that the background section of his motion noted inconsistences in his treatment providers' assessment of his fitness and whether he was to receive medication upon discharge from the Center. In addition, Johnson notes that the motion expressly alleged that the trial court erred by accepting his guilty plea when the court was aware he had not been receiving his medication for his mental illness since November 1, 2018—a date before the trial court found him restored to fitness on November 14, 2018. Johnson maintains that the inclusion of these facts in his amended postplea motion was sufficient to make clear that he was challenging the trial court's restoration order and, therefore, the claim was preserved for appeal. This argument is unpersuasive.

¶ 55 As the State points out, while Johnson's amended motion did identify inconsistencies in his treatment and findings of fitness, and it did allege he stopped receiving medications on November 1, 2018, those facts were noted solely in the context of alleging that plea counsel erred during the plea hearing and not in the context of alleging that error occurred during the restoration to fitness hearing. This point is underscored by the fact that Johnson attached to his amended postplea motion a portion of the transcript from his guilty plea hearing on March 11, 2019, but did *not* attach the transcript from the restoration to fitness hearing. Similarly,

the State, in its written response to Johnson's amended postplea motion, focused solely on the guilty plea hearing and attached the full transcript from that hearing. If the propriety of the trial court's November 14, 2018, restoration-to-fitness order was in fact being challenged, it is reasonable to assume Johnson would have attached the hearing transcript from that proceeding.

¶ 56 Finally, in an affidavit given by Johnson and attached to his motion, Johnson also focused solely on the March 11, 2019, plea proceedings. The affidavit made no mention of the November 14, 2018, proceedings and expressly stated that "Without my medication from November 1, 2018 to March 11, 2019 *at the time of my plea* I was not thinking clearly and unable to truly understand what was happening." (Emphasis added.)

¶ 57 Johnson's amended postplea motion challenged only the March 11, 2019, plea proceedings. To find that Johnson's challenge to the November 14, 2018, proceedings had been properly preserved would mean holding the appellate court was required to construct Johnson's argument for him, based on inferences and assumptions, which the appellate court may not do. Accordingly, we conclude the appellate court did not err in finding that Johnson failed to preserve his claim regarding the November 14, 2018, restoration order.

¶ 58 C. Whether the Appellate Court Erred in Conducting a Plain-Error Review of Johnson's Claim

¶ 59 The State next argues that, once the appellate court determined that Johnson had failed to preserve his challenge to the November 14, 2018, restoration order, it should not have gone on to consider whether plain error occurred. This is so because, according to the State, plain-error review is unavailable in appeals taken following a guilty plea.

¶ 60 The State notes the distinction in criminal law between the concepts of forfeiture and waiver, with forfeiture defined as the passive failure to make a timely assertion of a right and waiver defined as the intentional relinquishment or abandonment of a known right or privilege. See *People v. Lesley*, 2018 IL 122100, ¶¶ 36-37. The State then points to Rule 604(d). That provision states, in relevant part, that "[u]pon appeal any issue not raised by the defendant in the motion to

reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. July 1, 2017). The State also notes that Illinois Supreme Court Rule 605(c)(6) (eff. Oct. 1, 2001) requires a defendant who has pled guilty to be admonished regarding the obligation to file the proper postplea motion in order to pursue an appeal and also admonished that any issue or claim of error not raised in that motion "shall be deemed waived."

¶ 61 Based on the language of Rule 604(d) and Rule 605(c)(6), the State maintains that, if a defendant who has pled guilty and been properly admonished of his appeal rights then fails to include an issue or claim in his postplea motion, that issue or claim is not merely forfeited for purposes of appellate review. Instead, the issue or claim is "deemed waived" as a matter of law. That is, even if the defendant did not consciously or knowingly omit the issue or claim, it will nevertheless be treated as having been intentionally relinquished or abandoned by the defendant. Further, according to the State, a defendant's waiver of an issue or claim creates an absolute, and effectively jurisdictional, bar to any appellate review. Thus, the State asserts that a defendant's failure "to comply with Rule 604(d) precludes plain error review." We disagree.

¶ 62 The proper understanding and operation of the "waiver" rule in Rule 604(d) was explained by this court in *People v. Sophanavong*, 2020 IL 124337. In that case, this court stated:

> "Over the years, this court has noted that the terms forfeiture and waiver have, at times, been used interchangeably, and often incorrectly, in criminal cases. *People v. Hughes*, 2015 IL 117242, ¶ 37; *People v. Blair*, 215 Ill. 2d 427, 443 (2005). Forfeiture is defined 'as the failure to make the timely assertion of [a] right.' *People v. Lesley*, 2018 IL 122100, ¶ 37; see also *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 320 n.2 (2008) (stating 'forfeiture is the failure to timely comply with procedural requirements'). Waiver, on the other hand, 'is an intentional relinquishment or abandonment of a known right or privilege.' *Lesley*, 2018 IL 122100, ¶ 36." *Id.* ¶ 20.

This court in *Sophanavong* then went on to state:

> "Although *** Rule 604(d) has been referred to as the 'waiver rule' (*People v. Stewart*, 123 Ill. 2d 368, 374 (1988)), it is more appropriate to 'use "forfeited"

to mean issues that could have been raised but were not, and are therefore barred' (*People v. Allen*, 222 Ill. 2d 340, 350 n.1 (2006))." *Id.* ¶ 22 n.1.

¶ 63 As *Sophanavong* and other cases have explained, Illinois law historically tended to use the term "waiver" interchangeably with the term "forfeiture," meaning a procedural default. That is the case with Rule 604(d). When Rule 604(d) states that an issue that is passively or inadvertently omitted from a postplea motion is "waived," it in fact means that the claim has been procedurally defaulted or forfeited. As a result, plain-error review is available on appeal. That understanding of Rule 604(d) makes sense both as a simple matter of logic and in light of decades of precedent from this court.

¶ 64 For example, in *People v. Walker*, 109 Ill. 2d 484, 497 (1985), the defendant argued for the first time on appeal that his guilty plea was unknowing and involuntary because he received improper admonishments under Illinois Supreme Court Rule 402 (eff. Feb. 1, 1981) during his plea hearing. The State argued that the issue was "deemed waived" under Rule 604(d) because it had not been included in the defendant's postplea motions. *Walker*, 109 Ill. 2d at 497. This court reviewed the defendant's contention for plain error and expressly held that plain-error review is available in an appeal from a guilty plea. *Id.*

¶ 65 Thereafter, in *People v. Davis*, 145 Ill. 2d 240, 250-51 (1991), this court again held that plain-error review is available in an appeal following a guilty plea. This court stated:

> "Generally, under Illinois Supreme Court Rule 604(d), any issue not raised by the defendant in his motion to withdraw the plea of guilty shall be deemed waived upon appeal. (*People v. Tannenbaum* (1980), 82 Ill. 2d 177.) However, if a lower court fails to give the defendant the admonishments required by Rule 402 it is possible that this action can amount to plain error, *an exception to the waiver rule*, as outlined under Illinois Supreme Court Rule 615 (134 Ill. 2d R. 615). (*People v. Adkisson* (1979), 78 Ill. App. 3d 923, 927, *rev'd on other grounds* (1980), 83 Ill. 2d 1; see *People v. Waldorf* (1981), 94 Ill. App. 3d 976, 980-81). Although this court overruled [the appellate decision in] *Adkisson*, it was because the trial court's error amounted to harmless error, and not because an exception was not available to Rule 604(d). The doctrine of plain error is applied to remedy errors so plain and prejudicial that failure to object to them

is not a waiver for purposes of appeal. *People v. Young* (1975), 33 Ill. App. 3d 443, 447." (Emphasis added.) *Id.*

¶ 66 Yet again, in *People v. Fuller*, 205 Ill. 2d 308, 322-23 (2002), this court stated:

"Under Supreme Court Rule 604(d), any issue not raised in a motion to withdraw a guilty plea is waived. 188 Ill. 2d R. 604(d). However, if a trial court fails to give the defendant the admonishments required by Rule 402, it is possible that this action can amount to plain error, *an exception to the waiver rule*, as set forth in Supreme Court Rule 615(a) (134 Ill. 2d R. 615(a))." (Emphasis added.)

¶ 67 Indeed, Illinois courts have explicitly recognized that the "waiver" that occurs under Rule 604(d) when a defendant inadvertently fails to include an issue in a postplea motion is, in fact, a *forfeiture* that permits plain-error review. As our appellate court has stated:

"Any issue not raised in the motion to withdraw the plea of guilty or motion to reconsider shall be deemed forfeited on appeal. 210 Ill. 2d R. 604(d); *In re J.T.*, 221 Ill. 2d 338, 346 (2006); *People v. Davis*, 145 Ill. 2d 240, 250 (1991). Respondent filed the requisite motion to withdraw his plea, but acknowledges that he did not raise this particular issue in his motion.

Nevertheless, where the trial court fails to give a defendant the admonishments required by the supreme court rules governing guilty pleas, the plain error doctrine has been applied as an exception to the forfeiture rule as set forth in Supreme Court Rule 615(a) (134 Ill. 2d R. 615(a)); *People v. Davis*, 145 Ill. 2d at 250; see also *People v. Blankley*, 319 Ill. App. 3d 996, 1007 (2001) ***." *In re Timothy P.*, 388 Ill. App. 3d 98, 101 (2009).

See, *e.g.*, *People v. Barker*, 83 Ill. 2d 319, 324-27 (1980) (reviewing the defendant's unpreserved claim that the charging instrument was insufficiently clear and certain to apprise him of the crimes with which he stood charged and, thus, his plea was unknowing and involuntary); *People v. Gilmore*, 63 Ill. 2d 23, 25, 29-30 (1976) (same); *People v. Reher*, 60 Ill. App. 3d 32, 34-35 (1978) (holding that the plain-error doctrine may be applied where the defendant alleges his guilty plea was induced by the unfulfilled promise of a prosecutor and was therefore involuntary);

People v. Jones, 88 Ill. App. 3d 737, 740 (1980) (same); *People v. Thomas*, 246 Ill. App. 3d 708, 712 (1993) (reviewing for plain error the defendant's claim that his guilty plea was involuntary because he was unfit at the time the plea was entered).

¶ 68 The State cites *Ratliff* in support of its contention that plain-error review is unavailable in appeals taken following a guilty plea. The State correctly notes that, in *Ratliff*, this court held that a defendant's failure to include an issue or claim in a postplea motion does not result in a mere forfeiture but is, instead, deemed a "waiver" as a matter of law, and from this, the State contends that plain-error review is unavailable. The State notes that this court overruled *Sophanavong* in *Ratliff*, wherein this court stated

> "We recognize that we have strayed from the text of Rule 604(d), commenting without rationale that the defendant's failure to raise an issue in a postplea motion is more properly termed a forfeiture than a waiver. *Sophanavong*, 2020 IL 124337, ¶ 22 n.1. Here, we rectify that misstep and track the language of what we previously called the 'waiver rule.' *People v. Stewart*, 123 Ill. 2d 368, 374 (1988) ('by its explicit terms, Rule 604(d) states that issues not preserved in a motion to vacate a guilty plea are waived')." *Ratliff*, 2024 IL 129356, ¶ 23 n.2.

¶ 69 We now acknowledge that both these sentences in *Ratliff* describing *Sophanavong* were incorrect. First, *Sophanavong* did not hold "without rationale" that a defendant's inadvertent failure to raise an issue in a postplea motion is more properly deemed a forfeiture than a waiver. To the contrary, *Sophanavong* explained that, historically, the terms waiver and forfeiture have been used interchangeably—a point that is indisputably true—and that, logically, an inadvertent failure to include an issue in a postplea motion can *only* be understood as a forfeiture. *Ratliff* did not challenge or reject these propositions.

¶ 70 Second, *Ratliff* stated that it was returning to what this court "previously called the 'waiver rule' " (*id.*), as if this court had always understood the term "waiver" in Rule 604(d) to mean the intentional relinquishment of a known right. However, as the review of the relevant cases set forth above demonstrates, the opposite is clearly true. Prior to *Ratliff*, this court had consistently recognized that the term "waiver" in Rule 604(d) meant the failure to make the timely assertion of a right and, thus, had repeatedly recognized that plain-error review is available in an appeal taken

following a guilty plea. This court stated that principle explicitly in *Davis*, 145 Ill. 2d at 250-51, where we held that the plain-error rule is "an exception to the waiver rule" under Rule 604(d), and we stated it again in *Fuller*, 205 Ill. 2d at 322-23, where we held the same thing. See *People v. Precup*, 73 Ill. 2d 7, 16-17 (1978) (noting, in an appeal taken following a *trial*, that the plain-error rule "has been designed as a means of meliorating the harshness of the strict application of the general waiver rule"); *People v. Harvey*, 211 Ill. 2d 368, 389 (2004) (using the term "waiver" to mean "forfeiture" and applying plain-error review).

¶ 71 This court has observed that "[f]airness *** is the foundation of our plain-error jurisprudence." *People v. Herron*, 215 Ill. 2d 167, 177 (2005). As a simple matter of fairness and in order to protect the integrity of the plea process, plain-error review *must* be preserved for appeals arising from guilty pleas. To hold, as *Ratliff* did, that the inadvertent failure to include an issue in a postplea motion is in fact an intentional waiver of that issue, and from that fact draw the conclusion that plain error is *never* available in an appeal taken following a guilty plea, would mean that there would inevitably be instances where the appellate court would be required to leave in place a guilty plea *even when it had been conclusively established that the plea was involuntary*. Such an outcome is unacceptable and would undermine the principle of fairness that lies at the heart of the plain-error rule. *Ratliff*'s holding that the inadvertent failure to include an issue in a postplea motion is in fact an *intentional* waiver of that issue was ill-advised. That portion of *Ratliff* is therefore overruled.

¶ 72 We recognize that taking this step implicates the doctrine of *stare decisis*. However, it must be noted that *Ratliff* itself failed to respect that doctrine and the precedent of this court. *Ratliff* did not discuss or even acknowledge *Walker*, *Davis*, *Fuller*, or any of the many appellate court decisions that have recognized that plain error is an exception to the "waiver" rule of Rule 604(d). Nor did *Ratliff* offer any reasoned justification for departing from the holdings of those decisions. Principles of *stare decisis* hold little weight under these circumstances.

¶ 73 As Justice Frankfurter once observed, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (*per curiam*) (Frankfurter, J., dissenting). We have good cause to depart from *stare decisis* when the governing

decision is unworkable or poorly reasoned (*People v. Sharpe*, 216 Ill. 2d 481, 520 (2005)), and *stare decisis* does not preclude this court from correcting a mistake (*People v. Mitchell*, 189 Ill. 2d 312, 339 (2000)). That is the case here. *Ratliff*'s determination that the inadvertent failure to include an issue in a postplea motion is, in fact, an intentional waiver of that issue was unfortunate. Accordingly, we overrule *Ratliff* on that point and restore the holding of *Sophanavong*. Plain-error review is therefore available in an appeal following a guilty plea. This ruling is effective immediately and is applicable to all cases pending on review in the appellate court and this court.

¶ 74 Although plain-error review is available in appeals taken from guilty pleas, the scope of that review is necessarily limited. As this court noted in *People v. Townsell*, 209 Ill. 2d 543, 545 (2004), under the waiver-by-guilty-plea doctrine, a knowing and voluntary guilty plea generally bars a defendant from subsequently raising objections to nonjurisdictional defects that preceded the plea.[5] That being the case, a defendant cannot later employ the plain-error doctrine to challenge those same defects on appeal. To allow a defendant to enter a knowing and voluntary guilty plea and then invoke the plain-error doctrine to raise on appeal the very challenges that a guilty plea is designed to relinquish would give the defendant the benefits of that guilty plea without the attendant loss of rights that a plea necessarily entails. *Id.* at 547-48 (holding that the plain-error rule "in no way speaks" to the right, under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to have a jury decide facts that increase a criminal penalty beyond the statutory maximum, because the right to a jury trial is expressly waived by a guilty plea). Accordingly, while plain-error review is an exception to any forfeiture that arises under Rule 604(d), any issue or claim that is barred by the waiver-by-guilty-plea doctrine is necessarily precluded from that plain-error review.

[5]The United States Supreme Court has recognized certain exceptions to this doctrine. See *Blackledge v. Perry*, 417 U.S. 21, 30-31 (1974) (guilty plea does not bar a defendant's claim of vindictive prosecution under the due process clause); *Menna v. New York*, 423 U.S. 61, 62 n.2 (1975) (*per curiam*) (guilty plea does not bar a defendant's claim of a double jeopardy violation); *Class*, 583 U.S. 174 (guilty plea does not, by itself, bar a defendant's claim that the statute under which he was convicted is unconstitutional). See generally 5 Wayne R. LaFave, *Criminal Procedure* § 21.6(a), at 1105 (4th ed. 2016).

¶ 75 In this case, the State does not argue that Johnson's claim is barred by the waiver-by-guilty-plea doctrine, and understandably so. It is axiomatic that the bar to challenging legal defects that precede a voluntary guilty plea "has no application to defects which go directly to the guilty plea itself" including, as in this case, defects "which make the plea other than voluntary, knowing and intelligent." See 5 Wayne R. LaFave, *Criminal Procedure* § 21.6(a), at 1105 (4th ed. 2016). Indeed, the United States Supreme Court and several states have addressed the issue of a defendant who lacks the mental capacity to understand the proceedings, as Johnson alleges was true here. There is a body of law that clearly establishes that a defendant cannot logically "waive" the right to challenge his own competency by pleading guilty. See *Pate v. Robinson*, 383 U.S. 375, 384 (1966) ("[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial."); *State v. Cleary*, 2003 VT 9, ¶ 10, 175 Vt. 142, 824 A.2d 509 (appeal of competency determination not barred by guilty plea), *overruled on other grounds by In re Bridger*, 2017 VT 79, 205 Vt. 380, 176 A.3d 489; *State v. Bishop*, 679 P.2d 1054, 1058 (Ariz. 1984) (rejecting the "bootstrapping argument that a plea of guilty can act as a waiver of an invalid determination of competency to enter that very plea"); *People v. Armlin*, 332 N.E.2d 870, 874 (N.Y. 1975) ("there is an inherent contradiction in arguing that a defendant may be incompetent, and yet knowingly or intelligently waive his right to have a court determine his capacity to stand trial"); *State v. Wead*, 609 N.W.2d 64, 68 (Neb. Ct. App. 2000) ("a defendant's plea of guilty or no contest does not preclude the defendant from raising on direct appeal the issue of competency to plead or stand trial"); *People v. Parney*, 253 N.W.2d 698, 700 (Mich. Ct. App. 1977) ("defendant's later guilty plea did not waive the alleged error arising from the prior competency determination").

¶ 76 In sum, plain-error review is available in an appeal taken following a guilty plea, with the caveat that any issue or claim that is barred under the waiver-by-guilty-plea doctrine is precluded from that review. Johnson's claim in this case challenges the voluntariness of his plea on the basis of his mental fitness to stand trial and, therefore, is not barred by the waiver-by-guilty-plea doctrine. Accordingly, the appellate court did not err in conducting a plain-error review.

¶ 77 D. Whether the Appellate Court Correctly Found Plain Error

¶ 78 The State next argues that the judgment of the appellate court must be reversed because the appellate court incorrectly held that the trial court committed plain error during the restoration hearing. The State's argument on this point centers initially on this court's decision in *People v. Lewis*, 103 Ill. 2d 111 (1984).

¶ 79 At issue in *Lewis* was whether, in a restoration proceeding, a trial court may determine the defendant's fitness to stand trial based on stipulated evidence. *Id.* at 112. Consistent with common-law rules regarding stipulated evidence, this court held the trial court may accept a stipulation from the parties as to the expected testimony from a treating psychiatrist, including opinion testimony from the psychiatrist that the defendant was able to understand the nature of the charges pending against him and cooperate with counsel in his own defense such that he was mentally fit to stand trial. *Id.* at 116; see Ill. R. Evid. 704 (eff. Jan. 1, 2011) (stating that a witness may testify to an "ultimate issue" in a case). This court then held that, upon considering such a stipulation, the trial court could find the defendant fit, request additional information from the parties, "or find the evidence insufficient to support a finding of restoration to fitness." *Lewis*, 103 Ill. 2d at 116.[6]

¶ 80 At the same time, however, *Lewis* was careful to note that the trial court may not accept or consider a stipulation that simply states that the parties agree the defendant has been restored to fitness. This is so because the determination of whether the legal standard for fitness has been met under a given set of facts must be made by the trial court and the parties cannot bind the trial court's decision on that point through the use of a stipulation. *Id.* (" '[t]he ultimate issue was for the trial court, not the experts, to decide' " (quoting *People v. Bilyew*, 73 Ill. 2d 294, 302 (1978))); see *People v. Levisen*, 404 Ill. 574, 578-79 (1950) ("While stipulations of fact are always proper and binding upon the parties, a stipulation as to the legal conclusions arising from facts is inoperative."); *Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 289 (1917) ("If the stipulation is to be treated as an agreement concerning the legal effect of admitted facts, it is obviously inoperative; since the court cannot be controlled by agreement of counsel on a subsidiary

[6]*Lewis* did not decide whether the evidence in that case was sufficient to establish the defendant's fitness to stand trial, as the issue had not been raised by the parties. See *Lewis*, 103 Ill. 2d at 116.

question of law."); 83 C.J.S. *Stipulations* § 28 (Apr. 2026 Update) ("parties cannot bind a court by stipulating to the legal effect of a factual finding").

¶ 81 In this case, the State maintains that the principles regarding stipulated evidence set forth in *Lewis* were satisfied. The State notes that, during the restoration hearing, the State and defense counsel agreed that, if called as a witness, a "doctor" would testify that Johnson was restored to "fitness" and that this testimony would be consistent with a "progress report" written by the "doctor" that the parties had not submitted into evidence and that was not otherwise of record. According to the State, this oral stipulation was admissible because the State and defense counsel were not stipulating to the conclusion that Johnson was fit to stand trial but, rather, were stipulating to the opinion testimony of a doctor. The State further contends that the trial court correctly accepted and considered the stipulation and, therefore, no error occurred during the restoration proceeding. Thus, according to the State, there was no plain error, and the appellate court improperly vacated the trial court's November 14, 2018, restoration order.

¶ 82 The State's argument misses the mark. The fundamental problem with the restoration proceeding in this case is not the admissibility of the stipulation but, rather, the fact that the evidence before the trial court, including the stipulated testimony, did not satisfy the statutory standard for finding Johnson restored to fitness.

¶ 83 Under section 104-10 of the Code, a criminal defendant will be deemed unfit to stand trial if, "because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 104-10 (West 2016). A defendant is presumed to be fit to stand trial. *Id.* However, once a defendant is found unfit at an initial fitness hearing, "a presumption attaches at any subsequent fitness hearing that the defendant remains unfit until proven otherwise by the State." *Finlaw*, 2023 IL App (4th) 220797, ¶ 49; *People v. Maynard*, 347 Ill. 422, 428 (1932) ("where insanity is proved as existing at a particular time it will be presumed to continue until disproved"). "[T]he burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State." 725 ILCS 5/104-11(c) (West 2016).

¶ 84 In this case, the State did not meet its burden of establishing that Johnson was fit to stand trial. To begin with, the stipulation accepted by the trial court regarding the expected testimony of a "doctor" and the contents of his progress report was extremely vague. The "doctor" referenced in the stipulation was not named, and it was never stated if he was a psychiatrist or psychologist or whether he was qualified, in any way, to speak to the question of Johnson's fitness. No explanation was given in the stipulation as to how, when, or even if Johnson was examined by the "doctor," and no reference was made to any clinical findings regarding Johnson's mental diagnosis or how he was restored to fitness after he received an initial primary diagnosis of paranoid schizophrenia. In addition, no indication was given to the court as to whether, in the opinion of the "doctor," Johnson's fitness was dependent on medication and, if so, what that medication might be. Critically, the stipulation gave no indication to the court that Johnson understood the nature of the charges pending against him and was able to cooperate with counsel in his own defense such that he met the statutory standard for fitness. In short, the only information provided in the stipulation regarding the expected testimony and progress report was that an unknown "doctor," for unknown reasons, was of the opinion that Johnson had been restored to "fitness." The stipulation was so vague as to have essentially no probative value.

¶ 85 The State suggests that the trial court had additional evidence before it regarding Johnson's fitness and points to the treatment plan review dated October 22, 2018. However, there is no indication in the record that the trial court was aware of this document at the time of the restoration to fitness proceeding. Although the parties referred to a "progress report" dated October 25, 2018, no mention was made of a "treatment plan review" dated October 22, 2018. Further, there is no file stamp on the treatment plan review and no entry in the trial court's docket sheet indicating that the document was ever filed in the trial court or that the court was aware of it at the hearing in question. The treatment plan review only came before the trial court *after* Johnson pled guilty, when Johnson's postplea counsel attached it to Johnson's amended motion to withdraw his guilty plea. Thus, the treatment

plan review could not have formed the basis of the trial court's ruling finding Johnson restored to fitness.[7]

¶ 86 The State also notes that, during the restoration hearing, the trial court mentioned it had the November 1, 2018, "Notice of Change in Status" form prepared by the Center. However, this document contained only a single line stating that Johnson had been discharged to the Vermilion County sheriff and had been "recommended as fit to stand trial." The document did not add anything to the information contained in the stipulation regarding Johnson's fitness to stand trial.

¶ 87 Finally, we note that the State did not attempt to question Johnson regarding his understanding of the proceedings and his ability to assist his counsel, nor did the trial court independently examine Johnson.

¶ 88 Given the extremely brief and vague oral stipulation, the lack of any reports or other documentation regarding Johnson's treatment and mental diagnosis, and the lack of any judicial examination of Johnson, we hold that the trial court erred in finding that the State met its burden to show that Johnson had been restored to fitness.

¶ 89 The State briefly argues that Johnson is barred from raising any challenge to the trial court's restoration order under the invited error doctrine. In general, under the invited error doctrine, a party cannot invite or induce an action by the trial court and then claim that action constituted error on appeal. *People v. Hughes*, 2015 IL 117242, ¶ 33 ("the invited error rule" states that "a party cannot complain of error that it brought about or participated in"); *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) ("[A] party cannot complain of error which that party induced the court to make or to which that party consented.").

¶ 90 In this case, defense counsel asked the trial court to accept the stipulation regarding the expected testimony of the unidentified doctor, and Johnson is thus barred from arguing on appeal that the trial court erred in considering that stipulation in reaching its decision. However, Johnson's challenge to the trial

[7]Even if the trial court had considered the treatment plan review, it could not support a finding that Johnson was restored to fitness, as the document was unsigned and contained contradictory statements regarding Johnson's treatment and fitness status.

court's restoration order goes beyond simply disagreeing with the admissibility of the stipulation. Johnson contends that, even with the stipulation, "the State failed to meet its burden to establish by a preponderance of the evidence that Johnson was restored to fitness." Johnson is not barred from raising *that* challenge because stipulating to the expected testimony of a treating psychiatrist does not foreclose the separate argument that the evidence as a whole was insufficient to meet the statutory fitness standard. See *Lewis*, 103 Ill. 2d at 116 (after accepting stipulated testimony, a court may "find the evidence insufficient to support a finding of restoration to fitness").

¶ 91 Second-prong plain error is generally equated with structural error, *i.e.*, an error that erodes the integrity of the judicial process and renders the proceeding fundamentally unfair. *People v. Moon*, 2022 IL 125959, ¶ 28. "[P]rosecuting a defendant where there is a *bona fide* doubt as to that defendant's fitness renders the proceeding fundamentally unfair ***." *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). In this case, the trial court incorrectly found that Johnson had been restored to fitness and, in so doing, allowed the prosecution to go forward even though Johnson was presumptively unfit to stand trial. Accordingly, on this record, the appellate court did not err in concluding that the trial court committed second-prong plain error.

¶ 92 E. Whether the Appellate Court Correctly Ordered a Retrospective Fitness Hearing

¶ 93 After finding plain error in this case, the appellate court vacated the trial court's order finding Johnson restored to fitness and remanded the cause to the trial court for the limited purpose of conducting a retrospective fitness hearing to determine whether Johnson had been restored to fitness prior to entering his guilty plea. 2024 IL App (5th) 220608-U, ¶ 22. Johnson contends the appellate court should not have ordered such a hearing but, instead, should have vacated his guilty plea outright.

¶ 94 There are "inherent difficulties" with retrospective fitness hearings. See *Drope v. Missouri*, 420 U.S. 162, 183 (1975). As time passes, memories may fade, witnesses may become unavailable, and contemporaneous observations of the defendant's mental condition may become more difficult to reconstruct. *Robinson*, 383 U.S. at 387 (noting the "difficulty of retrospectively determining an accused's

competence to stand trial"); *Dusky v. United States*, 362 U.S. 402, 403 (1960) (*per curiam*). Nevertheless, there is no *per se* rule prohibiting retrospective fitness hearings. Instead, determining whether a retrospective fitness hearing is an appropriate remedy is done on a case-by-case basis, with the controlling question being whether there is sufficient contemporaneous evidence from the time of the original proceedings—including medical records, expert evaluations, trial transcripts, and the observations of those who interacted with the defendant at the relevant time—to permit a fair and accurate determination of the defendant's fitness to stand trial. *People v. Cortes*, 181 Ill. 2d 249, 276-77 (1998); *People v. Thomas*, 43 Ill. 2d 328, 333 (1969) (suggesting that retrospective fitness determinations may be permissible where evidence of the defendant's mental condition at the time of the relevant proceeding "could be reconstructed").

¶ 95 Johnson argues the appellate court did not correctly apply the foregoing principles in this case. In support of this contention, Johnson points first to language taken from this court's decision in *Mitchell*, 189 Ill. 2d at 339, where this court, after reviewing several prior decisions addressing fitness determinations, stated that retrospective fitness hearings are "now the norm." Johnson maintains this "now the norm" language has been "seized on" by our appellate court to "reflexively" order retrospective fitness hearings without undertaking a case-specific analysis as to whether such a hearing is appropriate and that this language is a misstatement of the law. Johnson also notes that, in ordering a retrospective fitness hearing in this case, the appellate court cited a previous appellate decision that, in turn, relied on the "now the norm" language from *Mitchell*. See 2024 IL App (5th) 220608-U, ¶ 22 (citing *People v. Payne*, 2018 IL App (3d) 160105, ¶ 14). Thus, according to Johnson, the misstatement of the law in *Mitchell* improperly led to the appellate court's decision in this case, and for that reason, the judgment of the appellate court ordering a retrospective fitness hearing should be reversed.

¶ 96 Johnson misreads both *Mitchell* and the appellate court's decision in this case. First, with respect to *Mitchell*, that decision was the culmination of a series of cases dealing with fitness determinations that began in 1994, with *People v. Brandon*, 162 Ill. 2d 450 (1994). In *Brandon* and in several subsequent cases, this court applied an "automatic reversal rule," which held that where "there exists a *bona fide* doubt of fitness and no fitness hearing is held, a new trial is the appropriate remedy." *People v. Nitz*, 173 Ill. 2d 151, 163 (1996). However, this court retreated

from that rule in 1997 in *People v. Burgess*, 176 Ill. 2d 289 (1997). In *Burgess*, this court held that "a rule of automatic reversal is not always appropriate" and affirmed the defendant's convictions where the trial court held a posttrial retrospective fitness hearing and correctly determined based on the available evidence that the defendant was fit at the time of trial. *Id.* at 303. Subsequently, in *People v. Neal*, 179 Ill. 2d 541, 552 (1997), this court reiterated that we had "abandoned our prior view that retrospective fitness determinations were always improper." This court explained that, in some cases,

> "the issue of [a] defendant's fitness or lack of fitness at the time of trial may be fairly and accurately determined long after the fact. In such cases, *Burgess* will apply, and a defendant will not automatically be entitled to have his original conviction and sentence automatically set aside for a new trial." *Id.* at 554.

¶ 97 Thereafter, in *Mitchell*, this court addressed a postconviction claim in which the petitioner alleged he should have received a pretrial fitness hearing because he was taking medication for epilepsy. *Mitchell*, 189 Ill. 2d at 325-31. This court held that the petitioner's counsel did not err by failing to request a hearing. *Id.* at 332-38. While discussing the history of Illinois law regarding fitness hearings, *Mitchell* stated that "it appear[ed]" that retrospective fitness hearings were "now the norm." *Id.* at 339. Critically, however, *Mitchell* did *not* hold that a retrospective fitness hearing should automatically be ordered in every case. Indeed, immediately preceding the "now the norm" language in *Mitchell*, this court expressly stated that it had recently adopted "the 'case-by-case' approach" to determining whether a retrospective fitness hearing is an appropriate remedy. *Id.* at 338. Viewed in context then, it is clear that *Mitchell*'s "now the norm" statement was simply an observation by this court that retrospective fitness hearings were now an available remedy in appropriate cases. *Mitchell* did not hold that a retrospective fitness hearing is automatically required in every case in which error occurs during a fitness proceeding.

¶ 98 Further, the appellate court in this case did not "reflexively" order a retrospective fitness hearing or state that one was automatically required. To the contrary, the appellate court explicitly and correctly stated that a retrospective hearing is appropriate if a "defendant's fitness can be fairly and accurately determined on remand." 2024 IL App (5th) 220608-U, ¶ 22. Accordingly, the

appellate court did not apply an incorrect standard in determining whether a retrospective fitness hearing was appropriate in this case.

¶ 99 Johnson also argues that, even under the case-by-case approach for determining whether a retrospective fitness hearing is appropriate, the appellate court incorrectly ordered such a hearing in this case. Johnson maintains that, due to "the passage of time," his fitness prior to his guilty plea "cannot accurately be determined" and, therefore, "a retrospective fitness inquiry would not be feasible." According to Johnson, any disputes about his fitness prior to his guilty plea "are now impossible to resolve" on the "cold record." Johnson therefore argues that the appellate court erred in remanding the cause to the trial court for the purpose of conducting a retrospective fitness hearing and that this court should vacate his guilty plea outright.

¶ 100 While the passage of time is one factor to consider in determining whether a retrospective fitness hearing is appropriate, it is not necessarily dispositive. As one court has stated, "[a] reliable reconstruction of petitioner's mental status [at the time of trial] depends less on time than on the state of the record. Especially where medical information substantially contemporaneous to trial is available, the chances for an accurate assessment increase." *Bruce v. Estelle*, 536 F.2d 1051, 1057 (5th Cir. 1976) (nine-year gap between trial and retrospective fitness hearing did not render that hearing invalid); *United States v. Makris*, 535 F.2d 899, 904 (5th Cir. 1976) ("The passage of even a considerable amount of time may not be an insurmountable obstacle if there is sufficient evidence in the record derived from knowledge contemporaneous to trial."); *Musaid v. Kirkpatrick*, 114 F.4th 90, 117-18 (2d Cir. 2024); *United States v. Wingo*, 789 F.3d 1226, 1238 (11th Cir. 2015); *United States v. Mason*, 52 F.3d 1286, 1293 (4th Cir. 1995).

¶ 101 Today, we clarify that a retrospective fitness hearing may be ordered by the appellate court if it finds a *reasonable* probability that a defendant's mental fitness at the time of the original proceeding can be accurately determined from the contemporaneous record. In so holding, we emphasize that it is the review of the contemporaneous record existing at the time of the original proceeding that should guide the trial court's ultimate fitness determination, as allowing entirely new testimony to be presented may raise due process concerns. See, *e.g.*, *Drope*, 420 U.S. at 183. This guidance is consistent with our recognition in *Burgess* of the

"difficulty in determining, long after the conclusion of the underlying proceedings, the degree of mental functioning enjoyed then by the defendant" (*Burgess*, 176 Ill. 2d at 303) and our pronouncement in *Neal* "that retrospective fitness determinations will normally be inadequate to protect a defendant's due process rights when more than a year has passed since the original trial and sentencing" (*Neal*, 179 Ill. 2d at 554). Accordingly, we reaffirm our "case-by-case approach" to determining whether a retrospective fitness hearing is an appropriate remedy (*Mitchell*, 189 Ill. 2d at 338) and maintain our established rule that retrospective hearings should be reserved for "exceptional cases" (*Neal*, 179 Ill. 2d at 554).

¶ 102 The state of the record in this case indicates a reasonable probability that detailed, contemporaneous evidence regarding Johnson's fitness prior to his guilty plea exists and is available for the trial court's consideration during a retrospective fitness hearing. Pursuant to section 104-18(a)(2) of the Code, when a defendant is initially found unfit and transferred for treatment, the defendant's treatment supervisor must "submit a written progress report to the court" when the supervisor "believes that the defendant has attained fitness." 725 ILCS 5/104-18(a)(2) (West 2018). Such a report must contain the clinical findings of the treatment supervisor and the facts upon which the findings are based; the opinion of the treatment supervisor as to whether the defendant has attained fitness; and if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage, and the effect of the medication on the defendant's appearance, actions, and demeanor. *Id.* § 104-18(b).

¶ 103 On October 30, 2018, the trial court in this case, Judge Wall presiding, entered an "Immediate Transport Order," directing that Johnson be released from the Center and remanded to the Vermilion County jail. The transport order referred to a "progress report" having been received from the Center, pursuant to section 104-18(a)(2) of the Code, indicating that Johnson was fit to stand trial. See *id.* § 104-18(a)(2). Similarly, at the restoration hearing, the parties also referred to a "progress report" from the Center dated October 25, 2018, indicating that Johnson had been restored to fitness. However, that report was never considered by the trial court during the restoration hearing. Judge Fahey, who presided over the restoration hearing (and did not enter the transport order), expressly stated that she did not have the report, and the report was never entered into the record.

¶ 104 Given the trial court's transport order and the reference made by the parties to a progress report, it appears probable that such a report was prepared by the Center and, if so, that it would provide significant, contemporaneous evidence regarding Johnson's fitness to stand trial. Of course, given the passage of time, it is possible that the progress report may no longer exist or cannot be found. If that is the case, the trial court is ordered to vacate Johnson's guilty plea and begin the proceedings anew. However, based on the current record before us, we cannot say the appellate court erred in remanding the cause for a retrospective fitness hearing. Such a hearing would allow the trial court to confirm whether the report exists and, if it does, to review that report to determine Johnson's mental fitness to stand trial prior to the entry of his guilty plea.

¶ 105 Finally, Johnson also argues that the appellate court should have vacated his guilty plea outright because, by "vacating only the order finding Johnson fit, without vacating the underlying plea, the appellate court guaranteed that constitutional error would persist." We disagree. The appellate court's order did not "guarantee" anything. Remanding the cause to the trial court for a retrospective fitness hearing fully protects Johnson's due process right not to plead guilty while unfit. Johnson's guilty plea will only be upheld if the trial court finds, based on the progress report discussed above, that there is sufficient contemporaneous evidence existing prior to the entry of his guilty plea showing that he was restored to fitness. If the trial court finds that the progress report does not exist or is inconclusive as to Johnson's fitness, his guilty plea will be vacated, and he will be entitled to a new trial, consistent with principles of due process.

¶ 106 III. CONCLUSION

¶ 107 For the foregoing reasons, the judgment of the appellate court vacating the trial court's order finding Johnson restored to fitness and remanding the cause to the trial court to conduct a retrospective fitness hearing to determine whether Johnson was restored to mental fitness prior to the entry of his guilty plea is affirmed. If the trial court can fairly and accurately determine that Johnson was restored to mental fitness, then the appellate court retains jurisdiction under Illinois Supreme Court Rule 615(b)(2) (eff. Jan. 1, 1967) to consider the merits of Johnson's second claim regarding his requests to represent himself. If, on the other hand, the trial court

concludes that Johnson's mental fitness cannot be fairly and accurately determined, then Johnson is entitled to a new trial.

¶ 108 Appellate court judgment affirmed.

¶ 109 Circuit court judgment vacated and remanded.

¶ 110 CHIEF JUSTICE NEVILLE, specially concurring:

¶ 111 I agree with the lead opinion that the appellate court had jurisdiction to decide whether the circuit court erred by finding Johnson restored to fitness (*supra* ¶¶ 35-50), I agree with the lead opinion's decision to overrule *People v. Ratliff*, 2024 IL 129356 (*supra* ¶¶ 62-73), and I agree that the appellate court correctly remanded the case for a retrospective fitness hearing (*supra* ¶¶ 92-101).

¶ 112 But the lead opinion's reasoning conflicts with the courts' duty to ensure that courts do not accept guilty pleas from defendants who do not understand the proceedings, the pleas, and the consequences of the pleas. "When *** facts are brought to the attention of the court *** which raise a *bona fide* doubt of the defendant's present sanity, a duty devolves upon the court to then cause a sanity hearing to be held as provided by law." *People v. Burson*, 11 Ill. 2d 360, 370 (1957). "[T]he conviction of an accused person while he is legally incompetent violates due process." *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

¶ 113 I would hold that the waiver provisions of Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) do not apply to defendants found unfit to stand trial, unless the circuit court, after a hearing in accord with the requirements of article 104 of the Code of Criminal Procedure of 1963 (725 ILCS 5/art. 104 (West 2024)), finds him restored to fitness. I would also hold that the allegations in Johnson's motion to withdraw his guilty plea adequately presented the issue of whether the circuit court erred by finding him restored to fitness in November 2018.

¶ 114 I. Rule 604

¶ 115 The lead opinion holds that, under Rule 604(d), Johnson did not preserve the issue of whether the circuit court erred by finding him restored to fitness in November 2018. *Supra* ¶¶ 51-57. The waiver provision of Rule 604(d), which places stringent requirements on a defendant who seeks to appeal from a judgment entered on a guilty plea, should apply only to guilty pleas knowingly and intelligently made by competent defendants who pled guilty after having an adequate opportunity to confer with counsel. See *Ratliff*, 2024 IL 129356, ¶¶ 120-23 (Neville, J., dissenting). "[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right[s]." *Robinson*, 383 U.S. at 384.

¶ 116 The Illinois Supreme Court, like the federal courts, has an independent and institutional interest in ensuring that legal proceedings, especially guilty pleas, appear fair to all who observe them. *Hunter v. United States*, 608 U.S. 713, 724-30 (2026); see *id.* at 727 ("an appeal waiver [as part of a guilty plea] is unenforceable when it would result in a miscarriage of justice"); see also Mawia Khogali *et al.*, *Fairness for All? Public Perceptions of Plea Bargaining*, 14 Applied Psych. in Crim. Just. 136, 149 (2018) ("perceptions of procedural fairness drive beliefs about legitimacy," and therefore "it is important to understand whether the public views the plea bargaining system so that the perceived legitimacy of the criminal justice system is not threatened"). In addition, this court has an interest, along with the public, in correcting grossly prejudicial errors of law that undermine confidence in our legal system. *Hunter*, 608 U.S. at 724-30.

¶ 117 The circuit court, in a proceeding under section 104-16 of the Code of Criminal Procedure (725 ILCS 5/104-16 (West 2016)), found Johnson unfit to stand trial. As the lead opinion acknowledges, the circuit court never entered a properly supported finding of restoration to fitness. *Supra* ¶¶ 77-88. Courts should not apply the waiver provision of Rule 604 to a defendant whose mental health renders him unfit to stand trial. See *Robinson*, 383 U.S. at 378, 384. Although I agree with the lead opinion's analysis of Rule 604(d) as it applies to competent defendants advised by counsel, I would find the forfeiture provisions of Rule 604(d) inapplicable to Johnson, because the circuit court found him unfit to stand trial and never made a properly

supported finding of restoration to fitness.

¶ 118 II. Sufficiency of the Motion to Withdraw the Guilty Plea

¶ 119 The lead opinion holds that the allegations of Johnson's motion to withdraw his guilty plea did not adequately present the issue of whether the circuit court erred by finding him restored to fitness in November 2018. *Supra* ¶¶ 51-57. The lead opinion acknowledges that Johnson in his motion "noted inconsistences in his treatment providers' assessment of his fitness [in November 2018] and whether he was to receive medication upon discharge from the Center." *Supra* ¶ 54. The lead opinion finds it has a duty not to construe the allegations as an argument the court erred in finding Johnson restored to fitness in November 2018, as the lead opinion holds, "To find that Johnson's challenge to the November 14, 2018, proceedings had been properly preserved would mean holding the appellate court was required to construct Johnson's argument for him, based on inferences and assumptions, which the appellate court may not do." *Supra* ¶ 57.

¶ 120 For courts to meet their obligation not to accept guilty pleas from defendants who lack competence to knowingly, willingly, and understandingly plead guilty, the courts may, at times, need to construct the defendant's argument from the defendant's factual allegations. I would apply to defendants like Johnson the standards courts use at the first stage for postconviction petitions: "If a petition alleges sufficient facts to state the gist of a constitutional claim, even where the petition lacks formal legal argument or citations to authority, first-stage dismissal is inappropriate." *People v. Allen*, 2015 IL 113135, ¶ 24; see 725 ILCS 5/122-2 (West 2024). The absence of formal legal argument should not prevent the court from determining whether the facts alleged adequately state a claim for relief.

¶ 121 I would find that Johnson's motion to withdraw his guilty plea adequately alleged facts that could support a finding that the State, in the November 2018 hearing, did not meet its burden of proving Johnson restored to fitness. Accordingly, I would find the lead opinion did not need to resort to plain-error analysis to find the circuit court erred in finding Johnson restored to fitness.

¶ 122 III. Retrospective Fitness Hearing

¶ 123 Finally, I concur with the lead opinion's decision affirming the appellate court's remand for a retrospective fitness hearing. This court held in *People v. Burgess*, 176 Ill. 2d 289, 302-04 (1997), that courts may remand a case for a retrospective fitness hearing if the medical records and other evidence may allow for a determination of the defendant's degree of mental functioning during the initial proceedings. As the lead opinion notes, the regular progress reports and other evidence from Johnson's treatment provide some basis for determining whether Johnson regained fitness to stand trial by November 2018. *Supra* ¶¶ 98-105. But the memories of those who provided Johnson's medical care may have faded, and the reconstruction of his mental state may not reach the level of certainty needed for a finding that Johnson regained his fitness to stand trial by November 2018 and that a fit Johnson knowingly and willingly pled guilty in March 2019. The lead opinion correctly holds that, if the State cannot meet its burden of proving retrospective fitness, the circuit court must vacate the conviction and set the case for a new trial. *Supra* ¶ 105.

¶ 124 IV. Conclusion

¶ 125 Therefore, I agree with the lead opinion that the appellate court had jurisdiction to address Johnson's appeal, I agree with the decision to overrule *Ratliff*, and I agree that the appellate court correctly remanded the case to give the State an opportunity to meet its burden of proving that Johnson had attained fitness to stand trial when the court found him fit in November 2018 and when the court accepted his guilty plea in March 2019. I would also find the allegations of his motion to withdraw his guilty plea sufficient to raise the issue of whether the circuit court erred in November 2018 when it found him restored to fitness. Finally, I would find that the waiver provisions of Rule 604(d) do not apply at all to Johnson (1) because the circuit court found him unfit to stand trial and never entered a properly supported finding that he attained fitness to stand trial and (2) because the record does not establish that Johnson's guilty plea was knowingly and intelligently made, such that invoking Rule 604(d) results in a miscarriage of justice and denies him due process. *Hunter*, 608 U.S. at 724-30; *Robinson*, 383 U.S. at 378, 384.

¶ 126 JUSTICE OVERSTREET, specially concurring:

¶ 127 I specially concur. I agree with the lead opinion's findings that the appellate court properly exercised jurisdiction to review the restoration-to-fitness order in this appeal (*supra* ¶¶ 35-50), that the trial court erroneously entered the order finding Johnson's mental fitness restored (*supra* ¶¶ 77-91), and that the appellate court correctly ordered a retrospective fitness hearing here (*supra* ¶¶ 92-101). If the trial court finds the evidence inconclusive as to Johnson's restoration of mental fitness, he will be entitled to a new trial, consistent with principles of due process.

¶ 128 I disagree with the lead opinion's conclusion that Johnson failed to include in his amended motion to withdraw his guilty plea the argument that the circuit court erred when it found that his mental fitness had been restored. *Supra* ¶¶ 2, 27. I also write separately to diverge from the language used in the lead opinion with regard to *People v. Ratliff*, 2024 IL 129356, and to suggest that a proposal to amend Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) be submitted to the Illinois Supreme Court Rules Committee and public hearing and comment process as set forth in Illinois Supreme Court Rule 3 (eff. Dec. 1, 2021).

¶ 129 I disagree with the lead opinion's conclusion that Johnson waived, or forfeited, under Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) his challenge to the November 14, 2018, restoration-to-fitness order. In his May 23, 2022, amended motion to withdraw guilty plea, Johnson clearly alleged that he was not mentally fit after November 1, 2018, when he was refused the medication deemed necessary to maintain his mental fitness and "clinical stability," as established in the reports attached to his motion, and accordingly he remained mentally unfit 13 days later when the circuit court entered its order finding that his mental fitness had been restored. *Supra* ¶¶ 14, 25. Johnson also noted and attached to his motion the equivocal reports regarding his fitness prior to the restoration-to-fitness order. As noted by the lead opinion, these reports indicated both that he was fit to stand trial and that "the treatment team currently believes that he is *Unfit to Stand Trial*" (emphasis in original) with an active goal target date for fitness of December 30, 2018, a date subsequent to the trial court's order finding his mental fitness restored. *Supra* ¶ 15. As noted by the lead opinion, Johnson also attached an affidavit wherein he stated that from November 1, 2018, until March 25, 2019, when he

began prescriptions for clonidine and Depakene, he was " 'not thinking clearly and unable to truly understand what was happening.' " *Supra* ¶ 56.

¶ 130 The lead opinion improperly concludes that Johnson's claim was waived, or forfeited, even though he sufficiently raised the issue to allow the circuit court the opportunity to review the claim. See *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009) (this court will not find a claim forfeited when it is clear that the trial court had the opportunity to review the same essential claim); see also *People v. Walls*, 2022 IL 127965, ¶ 25 ("Rule 604(d) is intended to ensure that trial courts have an opportunity to correct any potential errors in guilty pleas and sentences prior to appeal, while witnesses are available and memories are fresh."). Indeed, at the hearing on the motion to withdraw the guilty plea on August 3, 2022, defense counsel noted the equivocal statements regarding Johnson's fitness in the October 22, 2018, treatment plan, Johnson's assertion of mental unfitness at the time of the hearing and order finding his mental fitness restored, and the reports the trial court did not have before it when it found Johnson's mental fitness restored. At the hearing, the trial court questioned whether it should have assessed "what was going on in late 2018," when the restoration-to-fitness proceeding occurred, before it took Johnson's plea in March 2019. The circuit court thus recognized its opportunity to review Johnson's claims that he remained unfit while unmedicated both at the hearing finding his mental fitness restored and at the guilty plea hearing. Johnson sufficiently raised the issue in his amended motion to withdraw his guilty plea to satisfy

> "[t]he principal purpose of the postplea motion requirement of Rule 604(d) *** to ensure that any improper conduct or legal errors that may have produced a guilty plea are brought to the trial court's attention before an appeal is taken, thus enabling the trial court to either correct those errors or to make a record for the appellate court in cases where the defendant's claims are disallowed by the trial court. *People v. Wilk*, 124 Ill. 2d 93, 106 (1988)." *Supra* ¶ 53.

¶ 131 Because Johnson adequately raised his challenge to the restoration-to-fitness order in his postplea motion, there was no procedural default, and the court need not decide whether an inadvertently omitted issue is "waived" or "forfeited" under Rule 604(d)—much less overrule a decision filed barely two years ago. See *People v. Sharpe*, 216 Ill. 2d 481, 519-20 (2005) ("[A]ny departure from *stare decisis* must

be specially justified," and "prior decisions should not be overruled absent 'good cause' or 'compelling reasons' " nor "merely because the court is of the opinion that it might decide otherwise were the question a new one." (Internal quotation marks omitted.)). It is a fundamental principle of judicial restraint that this court does not decide questions unless it is necessary to do so. See generally *People v. White*, 2011 IL 109689, ¶ 148 (declining to reach questions unnecessary to the disposition).

¶ 132 I agree with the lead opinion's conclusion maintaining that any issue or claim barred by the waiver-by-guilty-plea doctrine, wherein waiver is considered an intentional relinquishment or abandonment of a known right or privilege (*People v. Brusaw*, 2023 IL 128474, ¶ 17), is necessarily precluded from plain-error review and that the waiver-by-guilty-plea doctrine does not apply here. *Supra* ¶ 74; see *Pate v. Robinson*, 383 U.S. 375, 384 (1966). However, I diverge from the lead opinion's refusal to acknowledge that *Ratliff* gave effect to the plain and ordinary meaning of the language used in Rule 604(d), stating that an issue not raised "shall be deemed waived." See *People v. English*, 2023 IL 128077, ¶ 13 (Illinois Supreme Court rules have the force of law); see also *People v. Shunick*, 2024 IL 129244, ¶ 22 ("As with statutes, the goal in interpreting this court's rules 'is to give effect to our intent, most often through the "plain and ordinary meaning" of the rule.' " (quoting *English*, 2023 IL 128077, ¶ 13, quoting *People v. Glisson*, 202 Ill. 2d 499, 504 (2002))).

¶ 133 The lead opinion criticizes *Ratliff*'s holding "that the inadvertent failure to include an issue in a postplea motion is *** an intentional waiver of that issue" as "ill-advised," "poorly reasoned," and "unfortunate." (Emphasis omitted.) *Supra* ¶¶ 71, 73. However, the lead opinion in *Ratliff* followed the very language of Rule 604(d), which states the same: "any issue not raised by the defendant in the motion *** shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Apr. 15, 2024); see *Ratliff*, 2024 IL 129356, ¶ 26 ("Rule 604(d) is unmistakably clear: Any issue not raised in a postplea motion is 'waived' on appeal."). The lead opinion here, as in precedent prior to *Ratliff*, seems to ignore the plain language of Rule 604(d).

¶ 134 Moreover, the lead opinion calls *Ratliff* "unworkable." *Supra* ¶ 73. However, in *People v. Marshall*, a *per curiam* decision, this court recently found that the public interest exception to the mootness doctrine did not apply because the law regarding

identical "deemed waived" language found in Rule 604(h)(2) was not in disarray. *People v. Marshall*, 2026 IL 132129, ¶ 5 (*per curiam*); see Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024) ("[A]ny issue not raised in the motion for relief *** shall be deemed waived."). In *Marshall*, the defendant had argued the law was in disarray, and the State had countered that the question was "well settled," in that "following *Ratliff*, the appellate court ha[d] consistently applied" Rule 604(h)(2)'s "shall be deemed waived" language to mean that any issue not raised in a posttrial motion is "waived" on appeal, and plain-error review is unavailable for the waived issue. See *Marshall*, 2026 IL 132129, ¶ 5; *Ratliff*, 2024 IL 129356, ¶¶ 23, 26, 28. In *Marshall*, the State argued that, since *Ratliff*, the appellate court had consistently applied Rule 604(h)(2)'s waiver language "as written and in a manner consistent with *Ratliff*" and, therefore, the public-interest exception to the mootness doctrine did not apply because the plain-error issue was well settled since *Ratliff*. See *People v. Jackson*, 2025 IL App (4th) 241411-U, ¶¶ 19-21 (citing *Ratliff*, court found that issues not raised in the motion for relief were waived and unreviewable under plain-error doctrine); see also *People v. Burries*, 2025 IL App (5th) 241033, ¶ 29; *People v. Romero*, 2025 IL App (2d) 240581-U, ¶ 26; *People v. Peoples*, 2025 IL App (4th) 241349-U, ¶ 25; *People v. Carlton*, 2025 IL App (5th) 241245-U, ¶ 27; *People v. Thomas*, 2024 IL App (1st) 241846-U, ¶ 29. This court agreed with the State's conclusion, found the law addressing the availability of plain error in pretrial detention cases was not in disarray, and dismissed the appeal on this basis. See *Marshall*, 2026 IL 132129, ¶ 5. The fundamental principle of judicial restraint has particular force where the court itself recently considered the post-*Ratliff* law as settled and consistently applied. See *id.*

¶ 135 The lead opinion states that, although Rule 604(d) has been referred to as the "waiver rule," it deals with issues that could have been raised in a motion but were not and is therefore more appropriately considered a "forfeiture rule." *Supra* ¶ 62; see *People v. Sophanavong*, 2020 IL 124337, ¶¶ 20, 22 n.1 (although Rule 604(d) has been referred to as the "waiver rule," the "forfeiture rule" is more appropriate because "forfeited" means issues that could have been raised but were not and are therefore barred); see also *People v. Hillier*, 237 Ill. 2d 539 (2010) (forfeiture by failure to raise is reviewable under the plain-error doctrine of Illinois Supreme Court Rule 615(a) (eff. Oct. 1, 1993)). Thus, the lead opinion holds that, "[w]hen Rule 604(d) states that an issue that is passively or inadvertently omitted from a postplea motion is 'waived,' it in fact means that the claim has been procedurally

defaulted or forfeited," thereby allowing plain-error review. *Supra* ¶ 63; see *Sophanavong*, 2020 IL 124337, ¶¶ 20, 22 n.1; *People v. Fuller*, 205 Ill. 2d 308 (2002); *People v. Davis*, 145 Ill. 2d 240, 250-51 (1991); *People v. Walker*, 109 Ill. 2d 484, 497 (1985). The lead opinion thus concludes that "the 'waiver' that occurs under Rule 604(d) when a defendant inadvertently fails to include an issue in a postplea motion is, in fact, a forfeiture that permits plain-error review." (Emphasis omitted.) *Supra* ¶ 67.

¶ 136 Because the lead opinion's comments indicate that the mismatch lives in Rule 604(d)'s terminology, the precise fix may be to replace "shall be deemed waived" with "shall be deemed forfeited." Accordingly, the disciplined response is to propose a rule amendment for submission to the rules committee and public hearing and comment to reflect the terminological distinction between "forfeiture" and "waiver" in Rule 604(d) so that Rule 604(d)'s language matches its current legal effect, leaving plain-error review available by the rule's own terms. See Ill. S. Ct. R. 604(d), (h) (eff. Apr. 15, 2024). It is an issue worthy of review by this court's rules committee, and the differences of opinion and competing considerations are such that this court would benefit from having the issue go through the committee and public hearing process to determine whether a rule amendment is prudent. See *In re Michael D.*, 2015 IL 119178, ¶ 27.

¶ 137 For these reasons, I specially concur.

¶ 138 JUSTICE HOLDER WHITE, dissenting:

¶ 139 I respectfully dissent. The lead opinion addresses matters irrelevant to the ultimate issues in this case, including overruling this court's recent decision in *People v. Ratliff*, 2024 IL 129356. Moreover, given our appellate court has cited *People v. Mitchell*, 189 Ill. 2d 312 (2000), in considering the appropriateness of retrospective fitness hearings, the lead opinion overlooks Johnson's suggestion that *Mitchell* is irrelevant to situations other than the absence of fitness hearings under the former version of section 104-21(a) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1989, ch. 38, ¶ 104-21(a)), which related to the taking of psychotropic medication.

¶ 140 Given the numerous arguments raised by both parties, it is crucial to first identify the claim for which the appellate court granted relief in this case. A review of the appellate briefs shows Johnson raised a due process violation, contending he was unfit to plead guilty because errors in his fitness restoration hearing rendered the proceedings invalid and left him considered unfit to stand trial.

¶ 141 First, I agree with the lead opinion that the appellate court had jurisdiction of Johnson's appeal but disagree with its lengthy reasoning. In his appellant brief in the appellate court, Johnson asserted that, based on the due process violation, the court should reverse the denial of his motion to withdraw his plea, vacate his conviction, remand for new fitness proceedings, and allow him to plead anew based on the due process violation. As Johnson notes, the judgment listed in his notice of appeal (denial of motion to withdraw his guilty plea) matches the relief he sought on appeal. Thus, Johnson's timely filed notice of appeal correctly listed the judgment he was appealing. Further, because Johnson is challenging one judgment and that judgment is listed in his timely filed notice of appeal, his case is distinguishable from *Ratliff*, which involved two separate judgments. There, the timely notice of appeal specified that the defendant was appealing the denial of the defendant's motion to reconsider his *sentence*, and we found the appellate court lacked jurisdiction to review the order entering judgment on the defendant's *guilty plea*. *Ratliff*, 2024 IL 129356, ¶ 18. Accordingly, I see no reason to limit *Ratliff* to its facts based on the facts of this appeal.

¶ 142 Second, I would find the type of claim raised by Johnson falls outside the procedural bar established by Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2017)). Here, Johnson is alleging he was unfit to plead guilty based on the presumption of unfitness remaining due to an invalid restoration to fitness hearing. The procedural bar established by Rule 604(d) works in tandem with the waiver-by-guilty-plea doctrine. *Ratliff*, 2024 IL 129356, ¶ 23. This court has affirmed the principle that, when a procedural error occurs at a fitness proceeding, denying the defendant a fair hearing, "such prejudice vitiates any subsequent guilty plea." *People v. Boose*, 33 Ill. App. 3d 250, 255 (1975), *aff'd*, 66 Ill. 2d 261 (1977). Johnson alleges both evidentiary and substantive errors in his restoration to fitness hearing. As such, I agree with the lead opinion: the waiver-by-guilty-plea doctrine does not bar such claims because the guilty plea was not voluntary, knowing, and intelligent due to

the defendant being unfit to stand trial. See *supra* ¶ 75. Likewise, the procedural bar of Rule 604(d) does not apply.

¶ 143 Additionally, I note compliance with Rule 604(d)'s motion requirement has not been applied when there was a *bona fide* question concerning the defendant's fitness because the defendant cannot be presumed to have understood the court's admonishments under Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001). See *People v. Jones*, 349 Ill. App. 3d 255, 259 (2004) (addressing the defendant's claim that the circuit court's conditional fitness finding was unauthorized by statute despite the defendant's failure to file a Rule 604(d) motion). Rule 605 admonishments include Rule 604(d)'s waiver rule. See Ill. S. Ct. R. 605(b)(6), (c)(6) (eff. Oct 1, 2001). Here, Johnson is asserting the alleged errors in his restoration to fitness hearing resulted in him being presumptively unfit when he pleaded guilty, which is the same hearing at which he received his Rule 605 admonishments. As such, the Rule 605 admonishment exception to compliance with Rule 604(d) would apply to Johnson's due process claim. In other words, Johnson's claim implies he was not properly admonished under Rule 605(c)(6), precluding the application of Rule 604(d)'s waiver rule.

¶ 144 Given the type of claim raised by Johnson cannot be procedurally barred by Rule 604(d), the lead opinion should not have addressed the matters of whether (1) Johnson preserved his error in his amended postplea motion, (2) Rule 604(d) provides for waiver or forfeiture of an unpreserved error, and (3) plain-error review is available. Thus, the propriety of our decision in *Ratliff* is not before this court on the claim raised by Johnson.

¶ 145 Third, because Johnson's claim was not procedurally barred (I agree with the lead opinion's invited-error analysis) and plain-error review not applicable, this court should review the propriety of the acceptance of the stipulation at Johnson's restoration hearing under the abuse of discretion standard (see *In re D.T.*, 212 Ill. 2d 347, 356 (2004) (noting abuse of discretion standard of review applies to decisions regarding the admissibility of evidence)) and ultimately review whether the circuit court's finding that Johnson was fit to stand trial was against the manifest weight of the evidence (*People v. Stahl*, 2014 IL 115804, ¶ 40). Here, the circuit court abused its discretion in accepting the parties' stipulation because there was literally nothing to accept. Inherent in a stipulation based on a report is that the

court received and read the report. In *People v. Lewis*, 103 Ill. 2d 111, 116 (1984), in finding the stipulations were proper, this court noted that, "[u]pon considering these stipulations and personally observing defendants, the circuit court could find defendants fit, seek more information, or find the evidence insufficient to support a finding of restoration to fitness." Johnson's counsel described the report that was allegedly the subject of the stipulation as a 90-day fitness evaluation progress report dated October 25, 2018. The circuit court stated that report was not in the court file, and its inquiry after the stipulation, "[w]hich is restoring him to fitness," suggests the court had not read the report. The October 28, 2018, report is not in the record before this court. As such, the record indicates the court had nothing to consider in relation to the stipulation.

¶ 146 As to any other evidence, the circuit court noted it had received the change in status notice filed on November 5, 2018. The notice only states Johnson's discharge and the conclusory statement that he was recommended as fit to stand trial. The record does not indicate any other documents were considered or contain any observations of Johnson by the court. No questions were asked of Johnson, and he did not speak on the record. The transcript for the restoration hearing is only two pages long. Given the record of the restoration hearing before this court, the circuit court's finding Johnson had been restored to fitness was against the manifest weight of the evidence.

¶ 147 Lastly, I find a retrospective fitness hearing inappropriate in Johnson's case. *Mitchell*'s discussion of retrospective fitness hearings is irrelevant outside its context, which was when a defendant failed to receive a fitness hearing based on former section 104-21(a). Former section 104-21(a) provided, "[a] defendant who is receiving psychotropic drugs or other medications under medical direction is entitled to a hearing on the issue of his fitness while under medication." Ill. Rev. Stat. 1989, ch. 38, ¶ 104-21(a). The entitlement to a fitness hearing provided by former section 104-21(a) was a statutory right granted by the legislature, which the legislature later took away. *Mitchell*, 189 Ill. 2d at 329. The provision did not equate the administration of psychotropic medication to a defendant with a *bona fide* doubt as to the defendant's fitness to stand trial. *Id.* at 331. As such, the denial of a fitness hearing based on former section 104-21(a) was not "in and of itself a due process violation." *Id.* at 327-29 (overruling *People v. Nitz*, 173 Ill. 2d 151, 164 (1996)).

¶ 148 In *Mitchell*, this court painstakingly reviewed its jurisprudence regarding a defendant's failure to receive a fitness hearing based on former section 104-21(a), overruling several of this court's prior cases. *Id.* at 327-31, 334. In discussing this court's approach to retrospective fitness hearings, all the cases cited in *Mitchell* involved a lack of a fitness hearing based on former section 104-21(a). *Id.* at 338-39 (citing *People v. Gevas*, 166 Ill. 2d 461, 471 (1995), *Nitz*, 173 Ill. 2d at 164, *People v. Neal*, 179 Ill. 2d 541, 553-56 (1997), *People v. Brandon*, 162 Ill. 2d 450 (1994), and *People v. Kinkead*, 182 Ill. 2d 316, 340 (1998)).

¶ 149 I do not find former section 104-21(a) cases relevant to other cases because (1) the legislature did away with the provision, (2) this court's jurisprudence was inconsistent as set forth in *Mitchell*, (3) the section did not directly implicate due process, and (4) the effects of psychotropic medication on fitness are easily verifiable. Further, I point out the parties do not identify a case, and I am unaware of a case, by this court finding appropriate a retrospective fitness hearing that did not involve former section 104-21(a).

¶ 150 Outside former section 104-21(a) cases, the parties cite the following two cases from this court. In *People v. Thompson*, 36 Ill. 2d 332, 334 (1967), the defendant's due process right was violated when the State suggested to the jury the burden of showing the defendant's unfitness to stand trial rested with the defense. This court considered whether a retrospective fitness hearing was an appropriate remedy but "remanded for a complete new trial." *Id.* at 335-36. In reaching that conclusion, this court relied on *Pate v. Robinson*, 383 U.S. 375, 387 (1966). *Thompson*, 36 Ill. 2d at 335.

¶ 151 There, the United States Supreme Court emphasized "the difficulty of retrospectively determining an accused's competence to stand trial," citing *Dusky v. United States*, 362 U.S. 402 (1960), where the Court noted the difficulties of retrospectively determining the petitioner's competency of more than a year prior. *Robinson*, 383 U.S. at 387. The Court also pointed out "[t]he jury would not be able to observe the subject of their inquiry, and expert witnesses would have to testify solely from information contained in the printed record." *Id.* Such difficulties were aggravated by the six-year lapse in time. *Id.* Additionally, the Court explained "[t]his need for concurrent determination distinguishes the present case from *Jackson v. Denno*, 378 U. S. 368 (1964), where we held that on remand the State

could discharge its constitutional obligation by giving the accused a separate hearing on the voluntariness of his confession." *Id.*

¶ 152 In *People v. Thomas*, 43 Ill. 2d 328, 333 (1969), this court considered but declined to order a retrospective fitness hearing where more than three years had elapsed since the defendant's trial, making it doubtful that the evidence bearing upon his competence could be reconstructed. There, this court found a *bona fide* doubt of the defendant's fitness. *Id.* at 332-33.

¶ 153 Additionally, I note that, in *People v. Sandham*, 174 Ill. 2d 379, 389 (1996), this court held that the circuit court's failure to conduct a fitness hearing pursuant to section 104-11 (725 ILCS 5/104-11 (West 1992)) required that the defendant's conviction be vacated and the cause remanded for a new trial. This court reasoned that

> "[o]nly in this manner can it be ensured that defendant was not convicted in violation of the due process clause of the fourteenth amendment (U.S. Const., amend. XIV), which provides that a defendant is unfit to stand trial or be sentenced if unable to understand the nature and purpose of the proceedings against him." *Sandham*, 174 Ill. 2d at 389.

¶ 154 Accordingly, I agree with the lead opinion that this court applies a case-by-case approach to determining whether a retrospective fitness hearing is an appropriate remedy and such hearings will rarely be an appropriate remedy. See *supra* ¶ 101. However, I would rely on the aforementioned cases and not the former section 104-21(a) cases cited by the lead opinion.

¶ 155 In applying a case-by-case approach, this court should look to *Lewis*, the only case from this court addressing a restoration to fitness hearing. There, this court noted that both the stipulation and personally observing the defendant allowed the circuit court to find a defendant fit, seek more information, or find the evidence insufficient to support a finding of restoration to fitness. *Lewis*, 103 Ill. 2d at 116. Here, even if the parties could find the October 28, 2018, report that was the basis for the stipulation at Johnson's restoration hearing, the record lacks evidence providing observations of Johnson at the restoration hearing. Moreover, almost eight years have passed since the hearing, prohibiting a concurrent determination of Johnson's fitness at that time. Given the invalid restoration proceedings, Johnson

is still presumed unfit to stand trial, and the only way to ensure Johnson did not plead guilty in violation of his due process rights is for new restoration to fitness and plea proceedings. Accordingly, Johnson's guilty plea and sentence should be vacated and the cause remanded for further proceedings.

¶ 156 JUSTICE TAILOR took no part in the consideration or decision of this case.