

2026 IL 131825

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

(Docket No. 131825)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v. CARTHELL EUGENE
NIBBELIN, Appellant.

Opinion filed September 24, 2026.

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.

Chief Justice Neville and Justices Overstreet, Holder White, Cunningham,
O’Brien, and Tailor concurred in the judgment and opinion.

OPINION

¶ 1 In this appeal, we address a split that has developed in the appellate court over whether a defendant who claims he should have been granted an assessment waiver under Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023) may raise this issue for the first time on appeal as a claim of ineffective assistance of counsel or whether he must first pursue the claim in the trial court under Illinois Supreme Court Rule

472 (eff. Feb. 1, 2024).

¶ 2

BACKGROUND

¶ 3

In April 2017, in McLean County case No. 17-CF-402, the State charged defendant, Carthell Eugene Nibbelin, with 10 counts of possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2016)). Defendant pleaded guilty to four counts, and the State nol-prossed the remaining six. The court sentenced defendant to 36 months' probation; ordered him to register as a sex offender and to refrain from consuming alcohol; and imposed a total of \$14,947 in fines, fees, and costs. The clerk applied defendant's \$10,000 bond to the assessments and added a probation fee. This left defendant owing \$5,847.

¶ 4

In October 2018, the State petitioned to revoke defendant's probation, alleging that he violated his probation by consuming alcohol. The State filed a second petition to revoke, on the same basis, in November 2018. Defendant admitted the allegations of the first petition, and the State dismissed the second one. The court sentenced defendant to a new 36-month term of probation. The only new assessments were additional bond and sheriff fees. In April 2019, the State again petitioned to revoke defendant's probation, alleging that he had (1) been charged with failing to register as a sex offender in McLean County case No. 19 CF-328, (2) consumed alcohol, and (3) failed to obtain a drug and alcohol assessment. In May 2019, the State filed a fourth petition to revoke defendant's probation, alleging that he had (1) possessed pornography and (2) possessed a device with Internet capability without prior approval. Defendant admitted to the allegations in the third petition, and the fourth petition was dismissed. Defendant pleaded guilty in case No. 19-CF-328. The court sentenced defendant to 130 days of periodic imprisonment in the McLean County jail and continued his existing term of probation.

¶ 5

The State later charged defendant in case No. 20-CF-434 with two counts of violating the Sex Offender Registration Act (SORA) (730 ILCS 150/3(a) (2020)) and one count of obstructing justice (720 ILCS 5/31-4(a)(1) (2020)). The State also filed fifth, sixth, and seventh petitions to revoke defendant's probation in case No. 17-CF-402. Defendant pleaded guilty to one count of violating SORA and admitted to the violations alleged in the sixth petition to revoke probation. The remaining

charges were dismissed. Defendant was later charged with another violation of SORA in case No. 21-CF-850.

¶ 6 The trial court conducted a sentencing hearing for case Nos. 17-CF-402 and 20-CF-434. The court said that it was “willing to give [defendant] one more chance” and sentenced him to 24 months’ probation in each case with the original fines and costs imposed on each. The court continued case No. 21-CF-850 for a status hearing.

¶ 7 The State later filed an eighth petition to revoke probation in case No. 17-CF-402 and a first petition to revoke probation in case No. 20-CF-434. These petitions were based on defendant being charged with battery and disorderly conduct. The State later filed a ninth petition to revoke probation, based on the SORA violation charge in case No. 21-CF-850. The parties agreed to a disposition of all pending matters. Defendant pleaded guilty to the charged offense in case No. 21-CF-850 and admitted the allegations in the ninth petition to revoke in case No. 17-CF-402 and the first petition in case No. 20-CF-434. In exchange, the State dismissed the eighth petition.

¶ 8 The court sentenced defendant to consecutive four-year prison terms for each of the four counts of possession of child pornography in case No. 17-CF-402, a concurrent three-year prison term for violation of SORA in case No. 21-CF-850, and a concurrent three-year prison term for violation of SORA in case No. 21-CF-850. The court imposed costs, fines, and assessments.

¶ 9 Defendant filed notices of appeal in all three cases, and the Appellate Court, Fourth District, ordered the appeals consolidated for review. 2025 IL App (4th) 240446-U, ¶ 4. On appeal, defendant argued, *inter alia*, that his counsel was ineffective for failing to file a Rule 404(e) certification for a waiver of court assessments. *Id.* ¶ 34. Defendant noted in his brief that he had been ordered to pay assessments in case Nos. 17-CF-402, 20-CF-434, and 21-CF-850. He contended that these assessments were improper because he had been represented by an assistant public defender. Defendant relied on Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023), which provides that a defendant represented by a public defender is entitled “to a waiver of assessments as defined in 725 ILCS 5/124A-20(a).” See 2025 IL App (4th) 240446-U, ¶ 34. The rule requires defense counsel to file a certification with the court. See Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). No

such certifications were filed, and defendant therefore argued that counsel was ineffective. Defendant argued that he was prejudiced by counsel's failure, as there was more than a reasonable probability that his assessments would have been waived if counsel had filed the certificate.

¶ 10 The State responded that defendant's appeal of this issue was improper. According to the State, defendant was raising an issue about the imposition of assessments, and such claims must be made for the first time in the trial court. 2025 IL App (4th) 240446-U, ¶ 35. Rule 472 grants the circuit court continuing jurisdiction to address errors in the imposition of fines, fees, assessments, and costs. *Id.* ¶ 36. That rule further provides that no appeal may be taken on such issues unless the error was first raised in the circuit court. *Id.* Accordingly, the State argued that the appellate court should decline to address the sentencing issue and, if it deemed necessary, remand the matter so that defendant could file a Rule 472 motion in the circuit court. *Id.* ¶ 35.

¶ 11 The appellate court agreed with the State. The court noted that the plain language of Rule 472 states that it applies to “ ‘[e]rrors in the imposition’ ” of assessments. *Id.* ¶ 37 (quoting Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024)). The court agreed with *People v. Hinton*, 2019 IL App (2d) 170348, ¶ 7, that this language is “ ‘broad’ ” and “ ‘unqualified.’ ” 2025 IL App (4th) 240446-U, ¶ 37 (quoting *Hinton*, 2019 IL App (2d) 170348, ¶ 7). The court viewed defendant's argument as contending that there was an error in the imposition of assessments, and therefore it concluded that defendant must pursue his claim with a motion pursuant to Rule 472. *Id.* The court remanded the matter to allow defendant to raise his claim in a Rule 472 motion. *Id.* ¶ 38.

¶ 12 This court allowed defendant's petition for leave to appeal. Ill. S. Ct. R. 315(a) (eff. Dec. 7, 2023).

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the appellate court erred in holding that he was required to pursue his claim in a motion under Rule 472. Defendant contends that Rule 472 only covers errors by the court, and he is alleging an error by his counsel. According to defendant, he is not alleging an error in the trial court's

assessments; rather, he is alleging that his counsel erred in failing to file the certificate required by Rule 404(e). Thus, defendant contends that his claim is properly raised on appeal as one of ineffective assistance of trial counsel.

¶ 15 The State agrees with defendant that he is entitled to a remand to pursue his claim. However, the State argues that the cause should be remanded so that he may file a motion pursuant to Rule 472.¹ The State argues that defendant is alleging an error in the imposition of assessments and therefore he must pursue his claim via a Rule 472 motion. The State contends that Rule 472 provides defendant with a complete remedy and therefore he may not raise the issue for the first time on appeal as a claim of ineffective assistance of counsel.

¶ 16 The issue requires us to construe Rules 404 and 472. In construing our rules, this court applies the principles applicable to statutory construction. *People v. Shunick*, 2024 IL 129244, ¶ 22. The court's primary goal is to ascertain and give effect to the drafters' intent. *People v. Tousignant*, 2014 IL 115329, ¶ 8. The most reliable indicator of the drafters' intent is the language of the rule, given its plain and ordinary meaning. *Id.* We may also consider the purpose behind the rule and the consequences of construing it one way or the other. *Id.* Because defendant's issue is solely one of law, our review proceeds *de novo*. *People v. Vesey*, 2026 IL 130919, ¶ 53.

¶ 17 Rule 472 extends the trial court's jurisdiction for the purpose of correcting certain errors in sentencing. The rule provides as follows:

“Rule 472. Correction of Certain Errors in Sentencing.

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

¹Although the State concedes that defendant is entitled to a remand to pursue his claim, the State disputes that defendant is entitled to waivers of all the assessments that defendant claims were erroneously assessed. The State argues that defendant's only waivable assessment is a Schedule 1 assessment of \$549 imposed in case No. 21-CF-850. This is an issue to be resolved in the trial court, and we express no opinion on the matter.

(1) Errors in the imposition or calculation of fines, fees, assessments, or costs;

(2) Errors in the application of *per diem* credit against fines;

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

(4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

(b) Where a circuit court's judgment pursuant to this rule is entered more than 30 days after the final judgment, the judgment constitutes a final judgment on a justiciable matter and is subject to appeal in accordance with Supreme Court Rule 303.

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

(d) If a motion is filed or judgment pursuant to this rule is entered after a prior notice of appeal has been filed, and said appeal remains pending, the pending appeal shall not be stayed. Any appeal from a judgment entered pursuant to this rule shall be consolidated with the pending appeal.

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

(f) No motion filed pursuant to this rule shall be subject to a filing fee." Ill. S. Ct. R. 472 (eff. Feb. 1, 2024).

This rule was adopted to address the problem of fine and fee assessments being raised for the first time on appeal. See Chief Justice Lloyd A. Karmeier, Ill. Cts. Connect, *Overcoming the Chronic Challenge of Correcting Sentencing Errors: Help Is on the Way* (Feb. 25, 2019), <https://www.illinoiscourts.gov/News/>

509/Overcoming-the-Chronic-Challenge-of-Correcting-Sentencing-Errors-Help-is-on-the-Way/news-detail/ [https://perma.cc/ZZC4-K873]; see also *People v. Eason*, 2020 IL App (3d) 180296, ¶ 11 (explaining that the “readily apparent” intent behind Rule 472 is to quell the rising tide of appeals raising only fines and fees issues that went unaddressed in the lower courts).

¶ 18 Rule 404 sets forth the procedures for criminal defendants to seek a waiver of court assessments as authorized by section 124A-20 of the Code of Criminal Procedure of 1963 (725 ILCS 5/124A-20 (West 2024)). Subsection (a) sets forth the procedures to apply for a waiver of assessments (*id.* § 124A-20(a)), while subsection (e) allows for a waiver of assessments without the necessity for an application in cases where a defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored *pro bono* program (*id.* § 124A-20(e)). A split has developed in the appellate court over whether a defendant whose attorney did not file a certificate entitling him or her to a waiver of assessments under Rule 404(e) must pursue the claim via a motion pursuant to Rule 472. Rule 404 provides, in relevant part, as follows:

“Rule 404. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a criminal action pursuant to 725 ILCS 5/124A-20 shall be in writing and signed under penalty of perjury by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The Application should be submitted no later than 30 days after sentencing.

* * *

(e) Cases involving representation by public defenders, criminal legal services providers, or attorneys in court-sponsored *pro bono* program. In any case where a defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored *pro bono* program, the attorney representing that defendant shall file a certification with the court, and that defendant shall be entitled to a waiver of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule. The certification shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article IV Forms

Appendix. ‘Criminal legal services provider’ means a not-for-profit corporation that (i) employs one or more attorneys who are licensed to practice law in the State of Illinois and who directly provide free criminal legal services or (ii) is established for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys. ‘Court-sponsored pro bono program’ means a pro bono program established by or in partnership with a court in this State for the purpose of providing free criminal legal services by an organized panel of pro bono attorneys.” Ill. S. Ct. R. 404 (eff. Sept. 1, 2023).

¶ 19 In the present case, the appellate court held that such a claim must be pursued under Rule 472. Other panels of the Fourth District would later follow this decision. See *People v. Bogard*, 2026 IL App (4th) 250354-U, ¶¶ 56-57; *People v. Lawson*, 2025 IL App (4th) 240718-U, ¶ 55. Still other panels of the Fourth District, however, have taken the opposite view. The reasoning of these cases is exemplified by *People v. Yarber*, 2026 IL App (4th) 250294-U.

¶ 20 The *Yarber* court held that a defendant whose attorney failed to file a Rule 404(e) certificate may raise an ineffective assistance of counsel claim on appeal and is not required to file a motion under Rule 472. *Id.* ¶ 73. The court reasoned that the defendant was alleging an error by counsel—failure to file the necessary certificate—and Rule 472 applies only to errors by the trial court:

“In the present case, defendant does not assert—and the trial court did not commit—any error regarding fines, fees, assessments, and costs at sentencing; the court properly imposed and calculated the assessments required by statute upon defendant. Defendant is not attacking the sentencing order and has no ground to do so. The error that prejudiced defendant is his *counsel’s* failure to file a certification of waiver of assessments *after* sentencing. Because the alleged (and actual) error is an omission of counsel, and not an error by the court, Rule 472 does not apply. See Ill. S. Ct. R. 472(a) (eff. Feb. 1[,] 2024) (expressly stating the rule is ‘for correcting certain sentencing errors’).” (Emphases in original.) *Id.* ¶ 72.

See *People v. Richmond*, 2026 IL App (4th) 250858-U, ¶ 90; *cf. People v. Durham*, 2025 IL App (4th) 241284-U, ¶¶ 12-15 (acknowledging State’s argument that a Rule 472 motion is required but instead holding that the defendant received ineffective assistance of counsel and remanding for counsel to file a Rule 404(e)

certificate). Nevertheless, the *Yarber* court specifically acknowledged that Rule 472 is “capable of resolving the issue” and that “appellate review is a particularly inefficient mechanism to address these kinds of claims, which instead should be addressed in trial courts so that a defendant’s trial counsel can be ordered to complete the Rule 404(e) certificate and the courts can enter the mandatory waiver.” *Yarber*, 2026 IL App (4th) 250294-U, ¶ 76.

¶ 21 We agree with the appellate court below that a claim that a defendant did not receive an assessment waiver because his attorney failed to file a Rule 404(e) certificate must be pursued via a motion pursuant to Rule 472. The parties agree that Rule 472 is remedial in nature. Accordingly, it should be broadly construed to further its purpose. See *People v. Fair*, 2024 IL 128373, ¶ 81. Decisions such as *Yarber* have instead read Rule 472 narrowly and concluded that it applies only when the error is solely of the trial court’s making. See *Yarber*, 2026 IL App (4th) 250294-U, ¶ 72. The rule contains no such limitation.

¶ 22 Defendant is clearly alleging an error in the imposition of assessments, and his claim is therefore covered by Rule 472. In so concluding, we emphasize two things. First, at the same time this court enacted Rule 472, it also enacted Rule 452. This rule provides as follows:

“Rule 452. Preparation of Sentencing Orders.

At the time of sentencing in a criminal case, the court shall enter a written order imposing the sentence and all applicable fines, fees, assessments, and costs against the defendant and specifying applicable credits. The State shall draft such order and present the order for review by defendant or, if defendant is represented, by defense counsel, before submitting it to the court.” Ill. S. Ct. R. 452 (eff. Mar. 1, 2019).

The trial court, the State, and the defense are all given a role to play in ensuring that the correct assessments are imposed. The goal of this provision was to ensure “there will be no surprises or uncertainty.” *Karmeier, supra*. “All relevant actors will have the opportunity to make sure the sentence that is actually imposed fully and accurately reflects the sentence the circuit court meant to impose and that it conforms to controlling sentencing provisions.” *Id.* Given this, we do not think it is

correct to say that Rule 472’s reference to an allegation of an error in the imposition of assessments refers only to errors by the trial court.

¶ 23 Second, we also emphasize the mandatory nature of Rule 404(e) assessment waivers. When a person such as defendant is represented by a public defender, Rule 404(e) *requires* that he be granted an assessment waiver. The rule states that the public defender “shall file a certification with the court” and that “defendant shall be entitled to a waiver of assessments.” Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). The rule allows for no discretion. The public defender must file the certificate, and the trial court must grant the waiver. Thus, when a person such as defendant is represented by a public defender and has nevertheless been charged an assessment covered by the rule, there has indeed been an error in the imposition of assessments. In this scenario, the defendant has been subjected to a penalty not required by the law, and this is one of the problems Rule 472 was designed to remedy. See Karmeier, *supra* (“Justice is not served when a defendant is subject to penalties the law does not require ***.”). Accordingly, a claim such as this must be pursued by a Rule 472 motion. We therefore overrule *Yarber* and its progeny, which held that these claims may be raised for the first time on appeal.

¶ 24 It would be directly contrary to the purposes of Rule 472 to allow these claims to be raised for the first time on appeal. Again, as we explained above, the purpose of Rule 472 was to address the growing problem of routine fines and fees issues being raised for the first time on appeal, and the court chose to focus on the most common errors. *Id.* The present issue is occurring frequently, and in most of these cases, the error is clear, and the defendant’s entitlement to the waiver is obvious. To allow these claims to be raised for the first time on appeal would be to reinstate the very problem that Rule 472 was designed to eliminate.

¶ 25 Defendant contends that it is too late for his attorney to file the certificate because Rule 472 contains a 30-day time limit. The time limit to which defendant refers, however, is in Rule 404(a), and it applies to *applications* for assessment waivers. Rule 404(a) provides that an application for an assessment waiver “should be submitted no later than 30 days after sentencing.” Ill. S. Ct. R. 404(a) (eff. Sept. 1, 2023). Rule 404(e), by contrast, applies to defendants who are entitled to a waiver of assessments “without necessity of an Application under this rule.” Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). And Rule 404(e) does not contain a 30-day time limit.

Moreover, as we hold today that a defendant may raise a claim that he was improperly denied a waiver to which he was entitled under Rule 404(e) via a motion pursuant to Rule 472, then such a claim necessarily falls within Rule 472's continuing jurisdiction, and it may be corrected "at any time following judgment" (Ill. S. Ct. R. 472(a) (eff. Feb. 1, 2024)). Therefore, the trial court may order defendant's attorney to file the required certification even when more than 30 days have passed.

¶ 26

CONCLUSION

¶ 27

For all of the above reasons, we agree with the State that, when a defendant alleges that he was erroneously charged assessments despite being entitled to an assessment waiver under Rule 404(e), this claim must be raised for the first time in the trial court via a motion under Rule 472. Such an argument may not be framed as ineffective assistance of counsel and raised for the first time on appeal. We affirm the judgment of the appellate court, which remanded this case so that defendant could file a motion under Rule 472(a).

¶ 28

Appellate court judgment affirmed.

¶ 29

Cause remanded.