

No. 129767

IN THE

SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 1-21-0385.
Respondent-Appellee,	)	
	)	There on appeal from the Circuit Court
-vs-	)	of Cook County, Illinois , No. 98 CR
	)	2438301.
	)	
SEDRICK WHITE,	)	Honorable
	)	Patrick Coughlin,
Petitioner-Appellant.	)	Judge Presiding.
	)	

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**REPLY BRIEF FOR PETITIONER-APPELLANT**

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## ARGUMENT

**I. This Court should accept the State’s concession to the only issue that Sedrick White asked this Court to review in his petition for leave to appeal, namely that White’s open guilty plea did not result in a waiver of his proportionate penalties challenge to his sentence, and remand this matter for consideration of the remaining claims that were not addressed by the appellate court.**

In the appellate court, Sedrick White argued that the circuit court erred in denying his petition for relief from judgment because he made a valid proportionate penalties challenge to his sentence.<sup>1</sup> (App. Ct. Br. at 14-33) White argued, *inter alia*, that this Court’s decision in *People v. Jones*, 2021 IL 126432, ¶26, holding that a knowing and voluntary guilty plea waived any constitutional challenge based on subsequent changes in the law, did not preclude his claim because he pleaded guilty pursuant to an open guilty plea and in the absence of agreement as to his sentence. (App. Ct. Br. at 28-33) In response, the State vigorously argued that *Jones* applied to bar White’s proportionate penalties challenge where his plea was knowing and voluntary regardless of whether he entered into a negotiated or open plea. (App. Ct. St. Br. at 13-22)

In its decision, the appellate court found *Jones* to be controlling, and held that White failed to state a meritorious claim or defense in his petition for relief from judgment because his guilty plea resulted in a waiver of his proportionate penalties challenge to his sentence. *People v. White*, 2023 IL App (1st) 210385-U, ¶¶24-25, 31-37. Although the appellate court held that the State forfeited its challenge to the timeliness of White’s petition based on its failure

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<sup>1</sup> Petitioner-appellant’s counsel has requested that the appellate court file the e-filed, stamped copies of the appellate court briefs with this Court pursuant to Supreme Court Rules 318(c) and 612(b)(2), and the First District Appellate Court’s procedure. Because they are necessary to the contentions in this appeal, appellant cites to the appellate filings in this reply brief. White’s appellate court briefs are cited to as “App. Ct. Br. \_\_\_\_” and “App. Ct. Reply Br. \_\_\_\_;” the State’s filing as “App. Ct. St. Br. \_\_\_\_.”

to file a responsive pleading in the circuit court, it did not rule on his claim that his 40-year sentence was constitutionally disproportionate, or consider any aspect of White's arguments with respect to due diligence. *White*, 2023 IL App (1st) 210385-U, ¶¶26-39.

Subsequently, White sought leave to appeal to this Court, raising one issue: whether this Court's decision in *Jones*, holding that a petitioner who entered into a negotiated guilty plea is precluded from raising a collateral challenge to his sentence under the Eighth Amendment and *Miller v. Alabama*, 567 U.S. 460 (2012), and its progeny, extends to those petitioners who enter into open or blind guilty pleas with no agreement as to the sentence. (Pet. at 2-4)

In its response brief to this Court, the State does a proverbial 180-degree turn from its position in the appellate court. (St. Br. at 14-16) It now characterizes the appellate court's ruling that White's open guilty plea waived his proportionate penalties challenge to his sentence as "incorrect." (St. Br. at 14) The State now agrees that contract principles relied upon by courts to preclude subsequent sentencing challenges arising from a negotiated guilty plea do not apply in the context of an open plea where there is no agreement as to the sentence. (St. Br. at 15) It also asserts that the appellate court's contrary holding would render this Court's rules superfluous, noting that Supreme Court Rule 604(d) sets forth a procedure for preserving a sentencing challenge following an open guilty plea that does not require a motion to withdraw the underlying guilty plea. (St. Br. at 16)

Although this Court is not required to accept a party's concession of error, in previous cases it has accepted the State's concession on a legal question if it is well-founded by the law, or otherwise supported by the record. *See People v. Denson*, 2014 IL 116231, ¶10 (accepting the State's concession where its basis was well-founded in the law); *People v. Wiley*, 205 Ill. 2d 212, 220-21 (2001) (accepting the State's concession that the circuit court improperly dismissed the defendant's post-conviction petition on timeliness grounds, after reviewing the record).

In White's case, this Court should accept the State's concession because it is both well-founded in the law and supported by the record.

White thoroughly argued that his open guilty plea did not preclude his proportionate penalties challenge in his opening brief to this Court, and incorporates those arguments herein. (Opening Br. at 18-35) Without belaboring the points made in his brief, the State's concession is consistent with White's arguments, and is well-founded in the law. *Denson*, 2014 IL 116231, ¶¶10-13. While a knowing and voluntary guilty plea waives constitutional errors antecedent to or inherent in the plea itself, federal and state case law does not support a broad conclusion that every constitutional right is waived by the entry of a guilty plea. (Opening Br. at 18-22) To that end, the type of plea matters in determining whether the defendant intentionally relinquished his right to raise a constitutional challenge to his sentence. (Opening Br. at 22-29) As this Court previously held, where a defendant pleaded guilty with no agreement as to the sentence imposed, he cannot be barred under contract principles from subsequently challenging the length of the sentence. *People v. Lumzy*, 191 Ill. 2d 182, 187 (2000). It follows that White cannot have intentionally relinquished a right to challenge the constitutional proportionality of his sentence where there was no underlying agreement as to the sentence imposed in exchange for his guilty plea. (Opening Br. at 25-29) Further, the record supports White's argument that he did not waive his sentencing challenge where there was plainly no agreement as to the sentence the court would impose, nor do the trial court's admonishments support a waiver of his sentencing challenge. (Opening Br. at 29-35) This Court should, therefore, accept the State's concession, and reverse the appellate court's ruling affirming the denial of White's petition for relief from judgment, where his open plea did not waive his proportionate penalties challenge. *White*, 2023 IL App (1st) 210385-U, ¶38; (Opening Br. at 30).

Despite its concession, the State argues that this Court should affirm the appellate court's

judgment. (St. Br. at 16-17) Contrary to the assertions of the State, however, the appropriate course of action, should this Court accept White's argument and the State's concession, is to vacate the appellate court's decision and remand the case to the appellate court for consideration of the remaining unaddressed issues. *See People v. Griffin*, 2024 IL 128587, ¶71 (remanding unaddressed ineffective assistance claim to the appellate court); *People v. Prante*, 2023 IL 127241, ¶88 (remanding unaddressed claims to appellate court). The State incorrectly asserts, without citing to any portion of the appellate court's decision, that the lower court "ruled on petitioner's proportionate penalties claim and no claims remain uncontested." (St. Br. at 17) In fact, the State argued below that the appellate court need not reach the issue of whether White had a meritorious claim that his sentence violated the proportionate penalties clause because his guilty plea waived this challenge. *White*, 2023 IL App (1st) 210385-U, ¶26. The appellate court took the State's preferred approach, and never ruled on the issue of whether White had a valid claim that his sentence was disproportionate. *Id.*, ¶39 ("Because the defendant's knowing and voluntary guilty plea waived all constitutional errors, he has no meritorious claim or defense."). Where the State now concedes the only basis for the appellate court's holding that White did not state a meritorious claim or defense, it should not be permitted to make an end-run around appellate procedure by asking this Court to rule in its favor on unaddressed claims.

Additionally, the appellate court expressly declined to consider any arguments related to due diligence in its decision. *White*, 2023 IL App (1st) 210385-U, ¶38. In his appellate briefs, White argued that the State's failure to file a responsive pleading waived any challenge to whether he established due diligence, or alternatively, that he had a reasonable excuse for his belated filing or that grounds existed for relaxing the due diligence requirement. (App. Ct. at 18-22) The State failed to squarely address White's arguments related to due diligence, and instead

focused on timeliness. (App. Ct. St. Br. at 10-13) Now, the State raises arguments that it failed to raise in the appellate court for the first time in this Court. (App. Ct. Reply Br. at 4; St. Br. at 23-26) Where at a minimum, the State forfeited any response to White's waiver argument, and the appellate court expressly declined to consider any claims related to due diligence, remand is warranted. *People v. Holman*, 2017 IL 120655, ¶28 (State forfeited its forfeiture argument), *overruled on other grounds*, *People v. Wilson*, 2023 IL 127666, ¶¶29-42; *Griffin*, 2024 IL 128587, ¶71; Ill. Sup. Ct. R. 315(h), 341(h)(7).

For the foregoing reasons, and those set forth in Sedrick White's opening brief, this Court should accept the State's concession, and remand this matter for further proceedings in the appellate court.

**II. Notwithstanding Sedrick White's argument that this Court should remand his proportionate penalties challenge to the appellate court for consideration in the first instance, his claim has a legal basis and is sufficiently pled for the purposes of section 2-1401.**

**A. This Court should reject the State's argument that White's sentencing claim is not cognizable in a section 2-1401 petition as it is not a "proper vehicle" for that claim.**

As an initial matter, the State argues that a section 2-1401 petition "is not the proper vehicle for petitioner's claim that his sentence is constitutionally disproportionate." (St. Br at 10-13) It claims that White's proportionate penalties challenge alleges only a legal, and not a factual error, and therefore is not properly raised in a petition for relief from judgment. (St. Br. at 11-12) As further support, it contends that principles of forfeiture and *res judicata* apply, and that his section 2-1401 petition "is not the proper vehicle," because he could have raised

his proportionate penalties challenge on direct appeal or in a post-conviction petition. (St. Br. at 11-13) The State is incorrect.

First, as this Court noted in *People v. Thompson*, 2015 IL 118151, ¶44, section 2-1401 “permits either a legal or factual challenge to a final judgment if certain procedural and statutory requirements are satisfied.” *See also People v. Harris*, 2018 IL 121932, ¶48 (noting an as-applied proportionate penalties challenge “could also potentially be raised in a petition seeking relief from a final judgment” as well as in post-conviction proceedings); *Warren County Soil and Water Conservation Dist. v. Walters*, 2015 IL 117783, ¶41 (citing cases raising legal challenges in section 2-1401 petitions).

Second, and perhaps more importantly, the State has either forfeited this argument or implicitly conceded that White’s claim is properly brought in a section 2-1401 petition based on its actions below. Nowhere in its appellate brief did the State contend that White’s claim was not brought in the “proper vehicle.” (App. Ct. St. Br. at 9-26) Since forfeiture also applies to the State, this Court should decline to consider its argument. *Holman*, 2017 IL 120655, ¶28. Moreover, by not contesting whether White’s claim was properly raised in a section 2-1401 petition in the appellate court, the State implicitly conceded that White’s petition was a proper vehicle for his claim. *See e.g., People v. Brown*, 2017 IL 121681, ¶27 (finding the State implicitly conceded that allegations were sufficient to establish the first prong of *Strickland* analysis where it failed to respond to petitioner’s argument). In its appellate court brief, the State argued that White could not state a meritorious claim because: (1) under *Jones*, his constitutional challenge was waived by his guilty plea; (2) his claim was not “cognizable” under *Miller* where he did not receive a *de facto* life sentence or allege how his specific characteristics rendered him more like a juvenile; and (3) his sentence was not disproportionate. (App. Ct. St. Br. at 13-26) The State’s arguments as to the merits of White’s sentencing claim should be viewed as a strategic

decision to concede that it was properly raised in a section 2-1401 petition, and this Court should honor that decision in this appeal. *See People v. Vincent*, 226 Ill. 2d 1, 8-9 (2007) (when opposing part fails to file a motion challenging the sufficiency of the petition and responds on the merits, any insufficiency is deemed waived “and the petition will be treated as properly stating a cause of action”).

Third, the State’s efforts to argue that White’s sentencing claim is barred by *res judicata* or waiver because he did not raise it on direct appeal or other collateral proceeding are not well-taken. (St. Br. at 10-13) Petitions for relief from judgment are civil in nature, and *res judicata* is an affirmative defense that is waived if not raised in a responsive pleading. *Vincent*, 226 Ill. 2d at 8; *see generally Roberts v. Burdick*, 2021 IL App (5th) 190119, ¶43 (*res judicata* is an affirmative defense, not a jurisdictional bar, and is waived if not raised in the circuit court). Here, the State failed to file a responsive pleading in the circuit court, and as with the foregoing “proper vehicle” claim, never contended that *res judicata* or waiver applied to White’s claim in the appellate court. (App. Ct. St. Br. at 9-26)

The State’s newly-raised argument that *res judicata* or waiver applies to bar White’s claim because it could have been raised in a post-conviction petition is also at odds with its prior position. Presumably, the State’s argument below that White’s knowing and voluntary guilty plea waived his constitutional sentencing challenge would apply with equal force to another collateral proceeding, so even if he had filed a post-conviction petition, the State would have made the same contention about his guilty plea in an effort to prevent him from obtaining any sentencing relief. In any event, the State failed to raise *res judicata* or waiver at any point below, and its arguments should not be considered by this Court.



**B. White’s proportionate penalties challenge warrants further proceedings under the circumstances of this case.**

As White asserted, *supra* at pages 4-5, the appellate court did not address whether White had a meritorious claim that his 40-year sentence was constitutionally disproportionate as applied to him, and therefore this Court should remand this matter to the appellate court for consideration in the first instance. *White*, 2023 IL App (1st) 210385-U, ¶¶23-39. Notwithstanding his argument that remand is appropriate, under the circumstances White’s sentencing challenge merits further proceedings.

Admittedly, this Court’s decision in *People v. Hilliard*, 2023 IL 128186, ¶¶23-29, narrowed the scope of its as-applied proportionate penalties jurisprudence, holding that in the context of young adults, *Thompson*, 2015 IL 118151, ¶44; *Harris*, 2018 IL 121932, ¶39, 41; and *People v. House*, 2021 IL 125124, ¶31, applied to those facing mandatory *de facto* life sentences. Although White’s 40-year sentence is not a *de facto* life sentence, this Court expressly noted that defendants like White are not precluded from challenging the proportionality of their sentences. *Hilliard*, 2023 IL 128186, ¶29. In addition, *Hilliard* does not preclude young adults from relying on the developing brain science to show how their particular characteristics and the circumstances of the offense render them more like juveniles than full-fledged adults for the purposes of sentencing mitigation and any argument as to the proportionality of their sentence under the Illinois Constitution’s proportionate penalties clause. 730 ILCS 5/5-4-1(a)(4) (West 2024) (at sentencing hearing, the court shall consider “evidence and information offered by the parties in aggravation and mitigation”); see *People v. Rose*, 384 Ill. App. 3d 937, 940-41 (2d Dist. 2008) (“Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.”) (internal quotations and citations omitted).

To that end, White’s claim based on the sentencing hearing and developments in brain

science stated a meritorious claim that his sentence was disproportionate. At this stage of proceedings, where the State failed to file a responsive pleading, all of White's well-pleaded facts are taken as true and a reviewing court assumes the sufficiency of his pleadings. *Vincent*, 226 Ill. 2d at 8-10. Additionally, a reviewing court can consider "the pleadings, affidavits, exhibits and supporting material before it, including the record of the prior proceedings," in determining whether further proceedings are appropriate. *Id.* at 9.

Here, White alleged that the trial court failed to take into account any of his rehabilitative potential in imposing a 40-year sentence, let alone consider whether, as a 20 year old, he was more like a juvenile offender than a full-fledged adult. (C. 34-45) Contrary to the arguments of the State, a fair reading of the trial court's comments at sentencing indicate that it was predisposed to sentence White to 40 years in prison even before he pleaded guilty, and even before it heard any evidence in mitigation. (St. Br. at 20-23) Among other things, the court accused White of not taking responsibility for his actions, even though he turned himself in, gave an inculpatory statement, and openly pleaded guilty; and characterized White as a "merchant of misery" before commenting that this was "probably a 60-year case." (R. 44-47); (App. Ct. Br. at 25-28).

In its response brief, the State argues against White's claim as if the procedural posture of this case was one on direct appeal. (St. Br. at 17-23) But White never had a direct appeal on the one issue that the State now concedes he was entitled to appeal: the constitutionality of his sentence imposed after his open guilty plea. As White outlined in his opening brief, the trial court's admonishments as to his ability to appeal were faulty, and although White's counsel filed a boilerplate motion to reconsider, White was not present at the hearing on that motion to further contest his 40-year sentence. (Opening Br. at 34-35) Inexplicably, White's counsel never filed a notice of appeal despite moving to reconsider his sentence. (Sup. C. 12) Because of that failure, White, as an indigent defendant, never received a copy of his transcripts in the

trial court until his appeal from the denial of his petition for relief from judgment. Ill. Sup. Ct. R. 607 (a) & (b)(1), (3)-(4).

Contrary to the State's assertions, the procedural posture of this case, a petition for relief from judgment in the absence of any direct appeal and in the absence of any responsive pleading by the State, does merit consideration where the consideration on review is whether White stated a meritorious claim. (St. Br. at 17-23) This Court's jurisprudence indicates that the procedural posture matters, as it has recently rejected a petitioner's reliance on *Miller* and its progeny to establish cause for a successive post-conviction sentencing claim. *People v. Clark*, 2023 IL 127273, ¶¶60-67. Furthermore, where White's sentence was not reviewed through no fault of his own, he should not be penalized for his belated claim. *See e.g., People v. Jacobs*, 61 Ill. 2d 590, 592 (1975) (reinstating direct appeal where defendant's appeal dismissed through no fault of his own). As a result, this Court should remand his proportionate penalties claim for further proceedings.

**III. The State waived any due diligence challenge, or alternatively, White has a reasonable excuse for his late filing, or due diligence should be relaxed in his case.**

Notwithstanding White's argument that remand is appropriate where the appellate court refused to consider his due diligence claims, this Court should reject the State's arguments. *White*, 2023 IL App (1st) 210385-U, ¶38. As White argued in the lower court, the State's failure to file a responsive pleading meant that it affirmatively waived any challenge to whether he established due diligence for his belated petition. (App. Ct. Br. at 19) In its ruling, the circuit court only considered due diligence with respect to White's claims related to the voluntariness of his confession and plea, holding that he was aware of these claims at the time of his plea and could not overcome the passage of time in his petition. (C. 312) White argued that the court should accept his facts as true and determine only whether he had a meritorious sentencing

challenge. *See e.g., People v. Cruz*, 2013 IL 113399, ¶¶20-25 (State forfeited challenge to whether unnotarized affidavit supported petitioner's lack of culpable negligence by failing to include it in a motion to dismiss).

Alternatively, White argued that he had a reasonable excuse based on the surrounding circumstances of his case. (App. Ct. Br. at 19-22) Among other things, White noted counsel's failure to argue his age as a mitigating factor at sentencing, the trial court's misadmonishments after his plea and the fact that White was not present during the hearing on his motion to reconsider sentence, the lack of any notice of appeal filed on his behalf, and the evolution of the law with respect to the sentencing of young adults. (App. Ct. Br. at 19-22) He further asserted that those same circumstances warranted relaxing the due diligence requirement. (App. Ct. Br. at 22) White argued that if the appellate court rejected his due diligence arguments, it should nonetheless remand this matter for further section 2-1401 proceedings on whether he established due diligence. *People v. Cathey*, 2019 IL App (1st) 153118, ¶28 (remanding for evidentiary hearing on due diligence).

For the first time, the State now contends that White failed to sufficiently plead due diligence, or alternatively whether he had a reasonable excuse for why due diligence should be relaxed. (St. Br. at 23-26) It also argues that it did not forfeit any challenge since due diligence is an element White is required to prove. (St. Br. at 25-26) As with the State's newly-raised argument that White has not stated a cognizable claim for the purposes of section 2-1401, the State has forfeited its arguments related to due diligence based on its failure to raise them in the appellate court. *Holman*, 2017 IL 120655, ¶28. In lieu of squarely addressing White's due diligence arguments, the State only challenged the timeliness of White's petition in the appellate court. (App. Ct. St. Br. at 10-13) But the appellate court held that the State forfeited any challenge to the timeliness of White's petition, and this Court should not revisit the holding under the guise of the State's due diligence argument that White did not act "expeditiously." *White*, 2023

IL App (1st) 210385-U, ¶25; (St. Br. at 23-26).

Moreover, the State's arguments related to whether White sufficiently pled due diligence are contrary to the procedural posture of his petition. Had the State wished to challenge the sufficiency of his facts, including whether White established due diligence, it had the opportunity to file a responsive pleading in the circuit court. To the extent that there was a factual dispute as to whether White could establish due diligence, White could have amended his petition or the court could have ordered an evidentiary hearing on due diligence. *Cathey*, 2019 IL App (1st) 153118, ¶28. Instead, the prosecutor informed the circuit court that she had not read White's petition and did not intend to file a response unless requested by the court. (R. 64-65) Since the State's failure to file a responsive pleading meant that White's allegations are taken as true, this Court should reject its belated attempt to argue the sufficiency of those facts for the first time before this Court. *Vincent*, 226 Ill. 2d at 8.

Finally, the State's argument that it cannot "forfeit" due diligence is not consistent with this Court's jurisprudence. (St. Br. at 25-26) This Court has indicated that the due diligence requirement can be relaxed based on the reasonableness of the petitioner's excuse or as a matter of fairness. *Warren County*, 2015 IL 117783, ¶¶38-39. The circumstances and conduct of the parties is relevant to determining the reasonableness of the excuse. *Id.*, ¶38. White's absence at the hearing on the motion to reconsider his sentence and the failure of trial counsel to file a notice of appeal on the one issue the State now concedes White could challenge following his open guilty plea supplies a reasonable excuse or basis for relaxing due diligence as a matter of fundamental fairness.

For these reasons and those set forth in the opening brief, this Court should reject the State's arguments and remand for further proceedings.

**CONCLUSION**

For the foregoing reasons, Sedrick White, petitioner-appellant, respectfully requests that this Court vacate the decision of the appellate court, and remand for further proceedings on his petition for relief from judgment under 735 ILCS 5/2-1401.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 13 pages.

/s/Rachel M. Kindstrand  
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Assistant Appellate Defender

No. 129767

IN THE

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
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	)	
SEDRICK WHITE,	)	Honorable
	)	Patrick Coughlin,
Defendant-Appellant.	)	Judge Presiding.
	)	

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**NOTICE AND PROOF OF SERVICE**

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 115 S. LaSalle St., Chicago, IL 60603, [eserve.criminalappeals@ilag.gov](mailto:eserve.criminalappeals@ilag.gov);

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 26, 2024, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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