No. 128398

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-21-0197
Respondent-Appellee,	)
v.	) There on Appeal from the Circuit Court of the 19th Judicial Circuit, Lake County, Illinois, No. 02-CF-3683
JESSICA R. LIGHTHART,	) The Honorable Robert Randall Wilt,
Petitioner-Appellant.	) Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE
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NATURE OF THE ACTION

Petitioner, Jessica Lighthart, appeals from appellate court's judgment affirming the dismissal of her postconviction petition as untimely.

No question is raised about the sufficiency of the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether a defendant who files an untimely notice of appeal and whose appeal is later dismissed for lack of jurisdiction "file[d] a direct appeal," such that her subsequent postconviction petition was due six months after the deadline for filing a petition for leave to appeal (PLA) on direct review.

JURISDICTION

On September 28, 2022, this Court allowed petitioner's PLA. Accordingly, this Court has jurisdiction over this appeal under Supreme Court Rules 315, 612(b), and 651(d).

STATUTE AND SUPREME COURT RULES INVOLVED

725 ILCS 5/122-1(c) (West 2004) provides:

> When a defendant has a sentence other than death, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the

> date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

Illinois Supreme Court Rule 604(d), provides, in relevant part:

> No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.

Illinois Supreme Court Rule 606, provides, in relevant part:

> (a) *How Perfected.* Appeals shall be perfected by filing a notice of appeal with the clerk of the trial court. . . . No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional.
>
> (b) *Time.* Except as provided in Rule 604(d) and 604(h), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion.
>
> (f) *Docketing*. Upon receipt of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or the entry of an order granting a motion for leave to appeal under paragraph (c) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

STATEMENT OF FACTS

Petitioner's Guilty Plea, Sentencing, and Posttrial Proceedings

In January 2003, petitioner and Markus Buchanan were indicted in the Lake County Circuit Court for the first degree murder of Christopher Houston and 14 other counts. C19-21.[1]

[1] The common law record, report of proceedings, and petitioner's opening brief are cited as "C__," "R__," and "Pet. Br. __," respectively.

In June 2004, petitioner pleaded guilty to first degree murder in exchange for the People dismissing the remaining counts and recommending a maximum sentence of 35 years. R463-78.

The People presented a factual basis for the guilty plea: petitioner and her boyfriend, Buchanan, lured the victim, Houston, to a house where they robbed him at gunpoint, and Buchanan shot Houston during the robbery, resulting in Houston's death. R473-74. Had the case gone to trial, the People would have introduced evidence that after Buchanan shot Houston, petitioner injected drain cleaner into Houston's neck. R474. Petitioner, Buchanan, and two accomplices then tried to conceal the death by disposing of Houston's body and car in a rural area. R474. Petitioner and Buchanan subsequently fled to Georgia, where they were arrested. *Id.*

On August 13, 2004, the circuit court sentenced petitioner to 35 years in prison. C138; R602. The court admonished petitioner that to preserve her right to appeal, she needed to file a motion to withdraw her guilty plea and vacate the judgment within 30 days. R603-04.

Four days later, on August 17, 2004, petitioner's counsel filed a motion to reconsider the sentence, C139, which the circuit court denied on October 1, 2004, R610-17. On October 14, 2004 — 62 days after being sentenced — petitioner filed a pro se motion to withdraw her guilty plea and vacate her sentence. C153-55. On February 14, 2006, petitioner's counsel filed an

amended motion to withdraw the guilty plea, C177-79, which the court denied on the same date, C183.

Petitioner's Direct Appeal is Dismissed as Untimely

On February 21, 2006, petitioner filed a notice of appeal from the circuit court's February 14, 2006, order denying the amended motion to withdraw her guilty plea. C185. About seven months later, on September 19, 2006, the appellate court dismissed petitioner's appeal for lack of jurisdiction because her notice of appeal was untimely. C194-99 (*People v. Lighthart*, No. 2-06-0201 (Ill. App. Ct. Sep. 16, 2006) (unpublished Rule 23 order)). The court explained that because petitioner's amended motion to withdraw her guilty plea was untimely, it did not extend the time to appeal. C196-97. As such, the time to file a notice of appeal began to run in October 2004 when the circuit court denied petitioner's motion to reconsider her sentence, and the notice of appeal she filed nearly 18 months later was late. *Id*. Petitioner did not file a PLA following the dismissal of her appeal. C207.

Initial Postconviction Petition and First Postconviction Appeal

Nearly a year later, on August 10, 2007, petitioner filed a pro se petition under the Post-Conviction Hearing Act (Act), in which she argued, *inter alia*, that her trial counsel was ineffective for failing to advise her on how to appeal following her guilty plea. C207-14. In October 2007, the circuit court dismissed the petition as frivolous and patently without merit. C215. In June 2009, the appellate court held that petitioner stated the gist of

a constitutional claim that trial counsel was ineffective for failing to timely file a motion to withdraw the guilty plea and remanded for second stage postconviction proceedings. C231-40 (*People v. Lighthart*, No. 2-07-1079 (Ill. App. Ct. June 10, 2009) (unpublished Rule 23 order)).

Postconviction Proceedings After Remand

In August 2018, privately retained counsel filed an amended postconviction petition on petitioner's behalf, arguing that trial counsel was ineffective for, among other things, failing to timely move to withdraw petitioner's guilty plea. C296-336. In January 2020, new private counsel filed a supplemental postconviction petition, incorporating the claims in the amended petition, providing additional supporting affidavits, and asserting an additional claim. C340-63.

In December 2020, the People filed a motion to dismiss, arguing, *inter alia*, that the initial postconviction petition was untimely because it was not filed by April 23, 2007, which was six months after the deadline expired for filing a PLA from the appellate court's September 2006 decision on direct appeal. C384-95.[2]

In January 2021, petitioner filed a response to the motion to dismiss, C410-23, in which she argued that she never filed a direct appeal due to trial counsel's ineffectiveness in failing to file the proper post-plea motion, and

[2] The motion to dismiss mistakenly said "petition for certiorari" and should have said "petition for leave to appeal," as it was referring to a petition for discretionary review in this Court. *See* C387.

accordingly, the Act's three-year limitations period applied, and her petition was timely, C412-13.

Before the hearing on the motion to dismiss, the circuit court directed that the parties be prepared to discuss *People v. Byrd*, 2018 IL App (4th) 160526. C428; R722. At the hearing, the People, relying on *Byrd*, argued that the petition was untimely under the Act's six-month time limit. R723-24. The People also noted that petitioner had made no allegations explaining the delay or showing that it was not due to her culpable negligence. R724.

In response, petitioner's counsel argued that the People forfeited the argument that filing a notice of appeal constituted filing a direct appeal by not making it in the motion to dismiss. R726-29. Petitioner contended that the Act's three-year limitations period applied because she did not file a direct appeal and was barred from doing so because trial counsel did not file a motion to withdraw her guilty plea. R732. Petitioner further argued that the circuit court was not required to follow *Byrd* because there was a conflicting decision from another appellate district, *People v. Ross*, 352 Ill. App. 617 (3d Dist. 2004), and that *Ross*, which supported her position, was better reasoned. R732-42. Finally, counsel argued that petitioner was not culpably negligent because she filed her petition in compliance with *Ross*, which was the only appellate court decision on the issue at the time. R747-49.

In March 2021, the circuit court entered an order granting the motion to dismiss the postconviction petition on the ground that it was untimely.

C434-36. It rejected petitioner's forfeiture argument, C435, and found that *Ross* was inapposite (because it construed a prior version of the statute) and that *Byrd* was binding. C435. The court also observed that petitioner made no factual allegations explaining her delayed filing and that there was no reason to believe that she filed her petition in reliance on *Ross*. C436.

Second Postconviction Appeal (*i.e.* This Appeal)

Petitioner appealed, arguing that the circuit court improperly dismissed her postconviction petition because (1) it was timely filed under the three-year time limit, and (2) the People forfeited their argument to the contrary. *People v. Lighthart*, 2022 IL App (2d) 210197, ¶ 18. The appellate court rejected petitioner's assertion that the People forfeited their timeliness argument, and her related argument that the circuit court had impermissibly acted as an advocate by asking the parties to address *Byrd*. *Id.* ¶¶ 19-24.

The appellate court held that petitioner's postconviction petition was untimely. *Id.* ¶¶ 25-49. It reasoned that the Act's six-month limitations period applied because petitioner "file[d]" a direct appeal when she filed a notice of appeal following the denial of her amended motion to withdraw her plea and vacate her sentence. *Id.* ¶ 43. The court rejected petitioner's argument that her direct appeal was not "filed" because it was not decided on the merits, finding the argument contrary to the plain and unambiguous language of the statute, which required only that petitioner have "file[d]" an appeal. *Id.* The court also rejected petitioner's argument that she should not

be "penalized for relying" on the Third District's decision in *Ross* because (1) *Ross* did not construe the version of the Act in effect when petitioner filed her petition, and (2) there was no indication in the record that petitioner had in fact relied on *Ross*. *Id.* ¶ 48.

STANDARD OF REVIEW

This Court's review of the circuit court's judgment dismissing petitioner's post-conviction petition is de novo, *People v. Edwards*, 197 Ill. 2d 239, 247 (2001), as is its review of issues of statutory construction, *People v. Johnson*, 2017 IL 120310, ¶ 15.

ARGUMENT

Petitioner Failed To Timely File Her Postconviction Petition Within Six Months of the Conclusion of Her Direct Appeal Proceedings.

Petitioner's postconviction petition was untimely. In August 2007, when petitioner filed her pro se postconviction petition, C207, the Act's statute of limitations provided two possible time limits for petitioners who had not been sentenced to death, depending on whether the petitioner had "file[d] a direct appeal": (1) "If a defendant does not file a direct appeal, the postconviction petition shall be filed no later than 3 years from the date of conviction.;" or (2) if a defendant does file a direct appeal, the petition is due (a) "6 months after the conclusion of proceedings in the United States Supreme Court," (b) "6 months [after] the date for filing a certiorari petition" expires, or (c) 6 months after the deadline for filing a PLA expires, *see Johnson*, 2017 IL 120310, ¶ 24; 725 ILCS 5/122-1(c) (West 2004).[3] Put simply, if a defendant files a direct appeal, then her petition is due six months after the direct appeal process ends. *See People v. Harris*, 224 Ill. 2d 115, 132 n.3 (2007) (citing 725 ILCS 5/122-1(c) (West 2004)) (explaining that "[d]efendants who . . . file direct appeals are entitled to wait until the end of that process before filing postconviction petitions").

Petitioner did not file her petition within six months of the conclusion of her direct appeal proceedings. On February 21, 2006, she filed a notice of

[3] The same deadlines apply today. 725 ILCS 5/122-1(c) (West 2021).

appeal from the February 14, 2006, denial of her motion to withdraw her guilty plea and vacate her conviction. C185. Seven months later, on September 9, 2006, the appellate court dismissed her direct appeal as untimely. C194-99. Petitioner did not file a PLA in this Court, so the six-month time limit started running 35 days after the appellate court dismissed her appeal, on October 24, 2006, when the deadline for filing a PLA expired. *Johnson*, 2017 IL 120310, ¶ 24; Ill. S. Ct. R. 315(b). The limitations period expired six months later, on April 24, 2007. Consequently, petitioner's August 2007 postconviction petition, C207, was untimely.

The three-year time limit does not apply because petitioner "file[d] a direct appeal" by filing a notice of appeal challenging her conviction. *See Lighthart*, 2022 IL App (2d) 210197, ¶ 43. Under the plain, commonly-understood meaning of the expression, one "file[s] a direct appeal" by initiating a direct appeal, which, under this Court's rules, is done by filing a notice of appeal. *See infra* Part A. This is consistent with the sense in which courts frequently use the phrase "file an appeal." *Id.* Nor does the untimeliness of petitioner's direct appeal change the fact that she "filed" it. *Id.* Petitioner's proposed rule — under which the three-year time limit applies if a defendant's direct appeal was not decided on the merits — ignores the Act's plain and unambiguous language and would create absurd results. *See infra* Part B. Moreover, contrary to petitioner's arguments, her failure to comply with Rule 604(d)'s requirement that she timely move to withdraw her

negotiated guilty plea did not bar her from "filing a direct appeal." *See infra* Part C. Finally, this Court's precedents limiting the retroactive application of new, shorter limitations periods are inapposite and do not entitle petitioner to avoid the unambiguous statute of limitations in effect when she filed her postconviction petition. *See infra* Part D.

A. To "file a direct appeal" means to initiate a direct appeal, which a defendant does by filing a notice of appeal.

The plain language of the Act, given its ordinary and unambiguous meaning, provides that the six-month limitations period applies whenever a defendant files a notice of appeal on direct appeal. The fundamental objective of statutory construction is to ascertain and give effect to the legislature's intent. *See, e.g.*, *People v. Castillo*, 2022 IL 127894, ¶ 24 (citing *People v. Newton*, 2018 IL 122958, ¶ 14). The most reliable indication of the legislature's intent is the language of the statute, given its plain and ordinary meaning. *Id.* Thus, "[w]here the language of the statute is plain and unambiguous, a court will apply it as written, without resort to extrinsic aids to statutory construction." *Id.* (citing *People v. Dabbs*, 239 Ill. 2d 277, 287 (2010)). "In determining the plain, ordinary, and popularly understood meaning of a statutory term, it is entirely appropriate to look to the dictionary for a definition of the term." *Id.*

The Act provides that "[i]f a defendant does not *file a direct appeal*, the post-conviction petition shall be filed no later than 3 years from the date of conviction[.]" 725 ILCS 5/122-1(c) (West 2004) (emphasis added). The

relevant definition of the verb "file" is to initiate or commence a legal proceeding. *See, e.g.*, File, American Heritage College Dictionary 518 (4th ed. 2004) (defining file as, *inter alia*, "to carry out the first stage of (a lawsuit, for example)"); File, Black's Law Dictionary 772 (11th ed. 2019) ("to commence a lawsuit"); File, Garner's Dictionary of Legal Usage 361 (3d ed. 2011) (internal citation omitted) ("file is often used as an ellipsis for *file suit* [*e.g.*,] 'Prosecutors have broad discretion to decide what charges to *file against* a criminal defendant'") (emphasis in original); File, Webster's Third New International Dictionary 893 (1993) ("to perform the first act of (as a lawsuit) [synonymous with] COMMENCE"); File, Merriam-Webster Online Dictionary, https://perma.cc/Q9FQ-B5MR (last visited Mar. 12, 2023) ("to initiate (something, such as a legal action) through proper formal procedure [*e.g.*,] threatened to *file* charges") (emphasis in original); *see also id.* (noting that "file" is also used as an intransitive verb (*i.e.*, without a direct object) as in "file for bankruptcy" where it likewise means "to submit documents necessary to initiate a legal proceeding"). Thus, the plain meaning of the expression "file a direct appeal" is to initiate a direct appeal.

A direct appeal is initiated by filing a notice of appeal challenging the judgment of conviction. Rule 606(a) provides that "[a]ppeals shall be perfected by filing a notice of appeal with the clerk of the trial court[,]" and that "[n]o step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional." *See* Ill. S. Ct. R. 606(a). Accordingly, this

Court has explained that "appeals are perfected by filing a notice of appeal," and that "filing . . . a notice of appeal is the only jurisdictional step required *to initiate appellate review*." *People v. Lewis*, 234 Ill. 2d 32, 37 (2009) (emphasis added); *see also People v. Smith*, 228 Ill. 2d 95, 104 (2008) (calling it "the jurisdictional step *which initiates appellate review*") (emphasis added).

Filing a notice of appeal also triggers a series of actions showing that the appeal process has been initiated. For example, filing a notice of appeal causes the appellate court clerk to docket the appeal. *See* Ill. S. Ct. R. 606(f) (providing that appellate court clerk "shall enter the appeal upon the docket" upon receiving the notice of appeal from the circuit court, or when the appellate court grants leave to file a late notice of appeal under Rule 606(c)). It is also "[u]pon the filing of a notice of appeal" that the circuit court appoints appellate counsel to represent indigent, unrepresented criminal defendants. Ill. S. Ct. R. 607. And it is "upon the filing of a notice of appeal" that the circuit court clerk begins preparing the record on appeal, *see* Ill. S. Ct. R. 608(a), which must "be filed in the reviewing court within 63 days from the date the notice of appeal is filed," Ill. S. Ct. R. 608(c). In other words, filing a notice of appeal sets the process of appellate review in motion.

Initiating a direct appeal by filing a notice of appeal is also consistent with the way in which courts have always used the phrase "file an appeal." *See People v. Smith*, 236 Ill. 2d 162, 169 (2010) (legislature is presumed to use "familiar legal expressions in their familiar legal sense" (cleaned up)); *see*

also, e.g., *People v. Perez*, 2014 IL 115927, ¶ 26 (courts normally infer that legislature intends a legal term to have its "settled legal meaning"). The familiar and settled legal meaning of "filing an appeal" is "filing a notice of appeal," as a plethora of opinions show by using those phrases interchangeably. For example, this Court recently held that a defendant's motion for rehearing on a Rule 604(d) motion to reconsider his sentence "did not toll the time for *filing his direct appeal*," by which the Court meant, the time for filing a notice of appeal. *See People v. Walls*, 2022 IL 127965 ¶¶ 1, 26 (emphasis added); *see also, e.g.*, *id.* ¶ 24 ("Rule 606(b) provides a 30-day time period for *filing an appeal*") (emphasis added); *People v. Salem*, 2016 IL 118693, ¶ 13 (also calling the time to file a notice of appeal "the time to file an appeal"); *Williams v. BNSF Ry. Co.*, 2015 IL 117444, ¶ 46 (same); *People v. Bridgewater*, 235 Ill. 2d 85, 91 (2009) (finding notice of appeal untimely because "a motion to reconsider does not toll the time for *filing an appeal* from an interlocutory order") (emphasis added). In short, petitioner "filed a direct appeal" when she began a direct appeal by filing a notice of appeal.

Petitioner's interpretation — under which a defendant "file[s] a direct appeal" only if her appeal is decided on the merits, Pet. Br. 8, 18 — is contrary to the Act's unambiguous language given its commonly-understood meaning. There is no language in the Act providing that, for the six-month time limit to apply, a defendant must "*properly* file" an appeal — or "file" (initiate) an appeal *and* comply with the procedures necessary to receive

appellate review on the merits. *See, e.g.*, *People v. Grant*, 2022 IL 126824 ¶ 25 (courts may not "under the guise of construction . . . add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute" (cleaned up)); *People v. Hammond*, 2011 IL 110044, ¶ 53 ("it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, conditions which conflict with the clearly expressed legislative intent"). Nor is "filing" defined anywhere as achieving some further result beyond initiating the legal proceeding, such as having one's case heard on the merits. *See* dictionaries cited *supra* p. 12; *cf. Castillo*, 2022 IL 127894, ¶ 27 (holding that plain, commonly-understood meaning of "public property" was unambiguously government-owned property, where several dictionaries defined term that way and did not add defendant's proposed qualification that property must also be publicly accessible).

Moreover, courts commonly describe appeals as having been "filed" even when they are not "properly" filed and are dismissed due to procedural defects that preclude appellate review on the merits. *See, e.g.*, *Walls*, 2022 IL 127965, ¶ 11 (noting that "[t]he *direct appeal filed* more than 14 years late[] was untimely," and the appellate court dismissed it for lack of jurisdiction) (emphasis added); *In re Dar. C.*, 2011 IL 111083, ¶ 42 ("Respondent *filed a direct appeal*, but the appellate court dismissed his appeal for lack of jurisdiction[.]") (emphasis added); *In re Gutman*, 232 Ill. 2d 145, 156 (2008)

("Mary's *appeal, filed* before the resolution of her contempt petition . . . was premature" so the appellate court lacked jurisdiction) (emphasis added); *People v. Flowers*, 208 Ill. 2d 291, 301 (2004) (holding that "Flowers should not have been permitted to continue with *the appeals she filed*," which the appellate court should have dismissed as she did not first move to withdraw her guilty plea, as Rule 604(d) required) (emphasis added).

To be sure, the untimely filing of petitioner's direct appeal likely meant that it was not "perfected" within the meaning of Rule 606(a), because "[t]he . . . jurisdictional step in perfecting an appeal is *timely* filing a notice of appeal." *See, e.g.*, *Walls*, 2022 IL 127965, ¶ 26 (citing Ill. S. Ct. R. 606(a)) (emphasis added). But the Act says nothing about "perfecting a direct appeal"; it required only that petitioner initiate or "*file* a direct appeal," which she did. An appeal filed late is still "filed," whether it is "perfected" or not. Even if an untimely notice of appeal does not confer jurisdiction on the appellate court, its filing can still prompt the appellate court clerk to docket the appeal, Ill. S. Ct. R. 606(f), lead the circuit court to appoint appellate counsel, Ill. S. Ct. R. 607, and cause the appellate record to be prepared and filed, Ill. S. Ct. R. 608(a), (c).

Indeed, that is precisely what happened here. Petitioner filed a notice of appeal, C185, the circuit court appointed counsel, C186, the appellate court docketed the appeal and set a schedule for filing the appellate record and briefs, C187, the appellate record was filed, C188, and petitioner's direct

appeal was pending for seven months before the appellate court dismissed it in September 2006, C194-200. Consequently, because petitioner initiated a direct appeal by filing a notice of appeal, she "filed a direct appeal," and her postconviction petition was due six months after that appeal ended, even if that untimely appeal was not "perfected."

Indeed, consistent with this interpretation, this Court has already stated that the three-year limitations period applies "when no notice of appeal has been filed." *Johnson*, 2017 IL 120310, ¶ 23. In *Johnson*, the Court held that the Act's six-month time limit applies when the defendant pursues a direct appeal but does not file a PLA in this Court, even though the Act does not expressly provide a time limit in this scenario, because it would be absurd for such defendants to be exempt from any deadline. 2017 IL 120310, ¶¶ 20-24. In support of this holding, the Court explained that:

> The statute even provides a three-year deadline for filing a petition *when no notice of appeal is filed*. We see no reason for the legislature to provide a deadline when *no notice of appeal has been filed* but not to include one when no petition for leave to appeal has been filed.

Id. ¶ 23 (emphasis added).

In sum, petitioner's contention that she did not "file a direct appeal" because her appeal was dismissed on a procedural ground cannot be squared with the plain and unambiguous language of the Act given its commonly understood and familiar legal meaning. Petitioner filed a notice of appeal, which began her direct appeal, and that appeal was pending for more than

half a year before it was dismissed, C185, 194; to both lay people and jurists, her direct appeal was clearly "filed." Accordingly, the appellate court correctly determined that the six-month limitations period applied, and therefore that petitioner's petition was untimely.

B. Petitioner's interpretation of "filing a direct appeal" would thwart clear legislative intent.

The legislative history further confirms the People's construction and that petitioner's approach would thwart the legislature's purposes.

From 1995 until 2003, the Act provided that:

> No proceedings under this Article shall be commenced more than 6 months after the denial of a petition for leave to appeal or the date for filing such a petition if none is filed[,] more than 45 days after the defendant files his or her brief in the appeal of the sentence before the Illinois Supreme Court (or more than 45 days after the deadline for the filing of [such a] brief . . . if no brief is filed)[,] or 3 years from the date of conviction, whichever is sooner unless the petitioner alleges facts showing that the delay was not due to his culpable negligence.

725 ILCS 5/122-1 (West 1995); 725 ILCS 5/122-1(c) (West 2002). In 2003, this Court held that a petition filed more than three years after the defendant's conviction was untimely under the three-year time limit even though his direct appeal process was ongoing because the statute's "whichever is sooner" language meant that the applicable limitations period was the earlier of the three dates. *See People v. Rissley*, 206 Ill. 2d 403, 413-17 (2003).

The General Assembly then amended the Act, first by removing its 45-day and three-year time limits, *see* 725 ILCS 5/122-1(c) (West 2003); P.A. 93-605, § 15 (eff. Nov. 25, 2003), and then by reintroducing the three-year time

limit, but not the 45-day limit or the "whichever is sooner" language; the amended statute instead provided that a postconviction petition is due three years after conviction "[i]f the defendant does not file a direct appeal." *See* 725 ILCS 5/122-1(c) (West 2004); P.A. 93-972, § 10 (eff. Aug. 20, 2004).

These amendments provided clarity for defendants and eliminated the confusion this Court first addressed in *Rissley*. *See*, *e.g.*, *People v. Ortiz*, 235 Ill. 2d 319, 330 (2009) (presuming that legislature was aware of this Court's interpretation of the Act when it amended it); *Morris v. William L. Dawson Nursing Ctr.*, 187 Ill. 2d 494, 499 (1999) ("in amending a statute, the legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge"). In 2007, the Court noted that, following these amendments, no defendant would be forced to file his initial postconviction before his direct appeal had concluded:

> Under the current version of the Act, the three-year time limit applies only to those defendants who do not file direct appeals. Defendants who do file direct appeals are entitled to wait until the end of that process before filing postconviction petitions.

Harris, 224 Ill. 2d at 132 n.3 (citing 725 ILCS 5/122-1(c) (West 2004)). The 2004 amendment clarified that defendants who file direct appeals have until six months after the direct appeal process ends to prepare and file postconviction petitions.

And in addition to clarifying when defendants must file postconviction petitions, this rule also balances defendants' interests against the other purposes of the Act's time limits, namely, promoting the finality of

judgments, *see, e.g.*, *People v. Simms*, 2018 IL 122378, ¶¶ 36-39 (noting "the importance of the Act's temporal filing requirements" and its limits on filing successive petitions, which both protect finality); *People v. Flores*, 153 Ill. 2d 264, 275 (1992) (noting that the Act's time limits "contribute[] to finality"), and deterring unnecessary delay in bringing legal actions, which is an aim of all limitations periods, *see, e.g.*, *Sundance Homes v. Cnty. of Du Page*, 195 Ill. 2d 257, 265-66 (2001) ("The purpose of a statute of limitation is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions."); *Portwood v. Ford Motor Co.*, 183 Ill. 2d 459, 463 (1998) ("Limitation periods are designed to encourage claimants to pursue causes of action before memories have faded, witnesses have died or disappeared, and evidence has been lost.").

Requiring petitions to be filed six months after direct appeals end promotes finality and the prompt litigation of postconviction claims by requiring defendants to file petitions as soon as they practicably can, but not sooner. This avoids premature postconviction litigation, which can actually undermine the finality of judgments by necessitating successive postconviction proceedings. For example, if a defendant seeks to raise a postconviction claim that direct appeal counsel was ineffective, requiring him to file his postconviction petition while his direct appeal is still pending, when such a claim is unripe, may give him cause to file a successive postconviction petition raising the claim later. *See Harris*, 224 Ill. 2d at 134; *see also, e.g.*,

People v. Tenner, 206 Ill. 2d 381, 392 (2002) (noting that "successive petitions plague the finality of criminal litigation"). The current rule also avoids forcing defendants to simultaneously litigate postconviction petitions and direct appeals, which can be inefficient, if, for example, time is spent litigating a postconviction claim that is rendered moot because a conviction is reversed on direct appeal.

Petitioner's proposed construction — under which a direct appeal not decided on the merits is treated as though it were never "filed" — would undermine the legislature's intent to clarify the Act's time limits. Defendants would not know whether their time to file a postconviction petition would expire three years after their conviction or six months after the conclusion of their direct appeal until they knew the outcome of the direct appeal, by which time it may be too late. Consider, for example, a direct appeal proceeding in which the appellate court addressed both the merits of the defendant's claim and an alleged jurisdictional defect in the appeal. After the appellate court resolved the matter, the defendant might file a PLA. If granted, briefing and argument in this Court would ensue. It is easy to conceive of such a case pending more than three years after the defendant's conviction. If this Court concluded that there was no appellate jurisdiction, then under petitioner's approach, the defendant would learn after years of litigating his direct appeal that he never "filed" it, and thus that the deadline for filing a postconviction petition had already expired. To avoid that risk, the defendant would need to

file her postconviction petition before the three-year anniversary of her conviction even if her direct appeal was still pending. Thus, petitioner's approach could reintroduce the very problems of confusion about the Act's time limits and inefficient, premature postconviction litigation that the legislature sought to address after *Rissley*.

In fact, petitioner's approach would make the Act's time limits more confusing than ever, by requiring pro se litigants to determine the legal basis on which their direct appeals were dismissed so they can determine when their postconviction petitions are due. For example, to the extent that petitioner suggests that only appeals dismissed on "jurisdictional grounds" are not "filed," Pet. Br. 18, the applicable time limit would turn on whether the direct appeal was dismissed due to a jurisdictional defect. But determining what kinds of errors are jurisdictional confuses even experienced attorneys. Case in point, petitioner's counsel suggests that noncompliance with Rule 604(d)'s motion requirement is "a jurisdictional defect," Pet. Br. 20; R732 (counsel arguing that "604(d) is a jurisdictional prerequisite"), but that is wrong, *see infra* pp. 24-25. It is implausible that the legislature meant to require pro se petitioners to analyze the decisions disposing of their direct appeals to figure out when their petitions are due, let alone that it expected them to understand legal nuances subtle enough to escape trained lawyers.

Thus, petitioner's approach, under which the postconviction filing deadline turns on how an appellate court resolved a direct appeal, rather

than on whether the "defendant . . . filed a direct appeal" 725 ILCS 5/122-1(c) (West 2004), would undermine the legislature's intent by making the Act's time limits needlessly confusing and again forcing some defendants to file postconviction petitions while their direct appeals are still pending.

C. Noncompliance with Rule 604(d) does not bar a defendant from filing a direct appeal.

Petitioner's arguments that she did not "file a direct appeal" are unavailing.

Her argument that Rule 604(d) "categorically prohibits" a defendant who enters a negotiated guilty plea from "filing . . . a direct appeal" or "even fil[ing] a notice of appeal unless she first files" a timely motion to withdraw that guilty plea, Pet. Br. 17, is both irrelevant and incorrect. As an initial matter, although petitioner's extended discussion of Rule 604(d), Pet. Br. 1, 8-9, 12-13, 17-22, seems to suggest otherwise, the appellate court did not dismiss her direct appeal due to her noncompliance with Rule 604(d), but rather because she filed her notice of appeal late, C193-97. The question before this Court is thus whether an untimely direct appeal was "filed" under the Act's statute of limitations, not whether a direct appeal dismissed for noncompliance with Rule 604(d) was "filed." However, in any event, the answer to both questions is "yes."

Rule 604(d) does not bar a defendant from filing an appeal, but instead provides that "[n]o appeal shall be *taken* upon a negotiated plea of guilty . . . unless the defendant . . . [timely] files a motion to withdraw the plea." Ill. S.

Ct. R. 604(d). In other words, the rule does not say that "no appeal shall be *filed*." *Id.* (emphasis added). Petitioner's reliance on Rule 604(d)'s 1975 committee comments, Pet. Br. 8-9, 10, 17, 21, for the proposition that "taken" means "filed" is therefore misplaced because the language of the rule is not ambiguous, *see, e.g.*, *People v. Gorss*, 2022 IL 126464, ¶ 10 ("Where the language [of a Supreme Court Rule] is clear and unambiguous, it will be applied as written without resort to aids of construction.").

Indeed, consistent with the rule's unambiguous language, this Court has made clear that noncompliance with Rule 604(d)'s motion requirement bars defendants from receiving merits review of their claims on appeal, not from filing appeals at all. If a Rule 604(d) error instead barred a defendant from even filing a notice of appeal, as petitioner argues, then it would be a jurisdictional defect, because a notice of appeal must be filed for the appellate court to have jurisdiction. Ill. Sup. Ct. R. 606(a). But it is settled that "a written motion pursuant Rule 604(d) *is not* required in order to vest the appellate court with jurisdiction." *In re William M.*, 206 Ill. 2d 595, 601 (2003) (emphasis added); *accord id.* (rejecting argument that "Rule 604(d) is a jurisdictional prerequisite to filing a notice of appeal."). Although "the failure to file a timely 604(d) motion precludes the appellate court from considering the appeal on the merits," unless an exception to Rule 604(d) applies, it "does not deprive the appellate court of jurisdiction." *Flowers*, 208 Ill. 2d at 301. And the mere fact that there are exceptions to Rule 604(d)'s bar on merits

review confirms that appeals *can* be filed despite noncompliance with the rule. *See, e.g.*, *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 42 (2011) (explaining that "[t]he admonition exception provided by Rule 605 is for the appellate court to apply after [the] defendant timely files a notice of appeal from a guilty plea even though the defendant did not first comply with Rule 604(d)" (cleaned up)). In sum, a defendant who fails to comply with Rule 604(d) can indeed file a notice of appeal and initiate (or "file") a direct appeal.

Petitioner's reliance on the Third District's decision in *People v. Ross*, 352 Ill. App. 617 (3d Dist. 2004), Pet. Br. 7, 9, 11, 15, 17-19, is also misplaced, because *Ross* interpreted an earlier and materially different version of the Act's limitations provision. Petitioner contends that *Ross* "was correct in concluding that no direct appeal is filed" where a defendant fails to timely move to withdraw her negotiated guilty plea under Rule 604(d), Pet. Br. 18-19, but *Ross* held no such thing. *Ross* concluded that "no direct appeal was *taken*" because the Rule 604(d) error "precluded appellate review" on the merits. 352 Ill. App. 3d at 619 (emphasis added). *Ross* did not consider whether the defendant "filed a direct appeal" because the 2002 version of the Act the *Ross* court construed did not contain the current language, under which the time limit turns on whether a direct appeal was filed. *See id.*

Petitioner is also incorrect that the 2004 amendment cabining the three-year time limit to defendants who do not "file" direct appeals made "no substantive change [to] the three-year limitations period as construed by

Ross." Pet. Br. 24. *Ross* construed the 2002 version of the Act, 352 Ill. App. 3d at 618-19, which, as explained *supra* Part B, provided that the applicable limitations period ran from the earlier of three dates (*i.e.*, "whichever [expired] sooner") and sometimes required defendants to file postconviction petitions while their direct appeals were still pending. This Court has already recognized that the 2004 amendment *did* work a substantive change when it explained that that situation would "never arise" under the post-2004 Act. *See Harris*, 224 Ill. 2d at 132 n.3.

Nor do the floor debates petitioner relies upon, Pet. Br. 24, show that the 2004 amendment made no substantive change. Indeed, they show the opposite. To be sure, one of the bill's sponsors indicated that the amendment did not change the *duration* of the three-year time limit, but he also stated that it *did* change "when the three years start." *See* 93d Ill. Gen. Assem. House Proceedings, May 27, 2004, at 21-22 ("It doesn't change that . . . it doesn't expand that length of time. But it's when the three years start.").

Ross was also poorly reasoned. *Ross* supported its main premise — that a defendant who did not receive appellate review on the merits had three years to file a postconviction petition under the 2002 statute — by relying on *People v. Reed,* 302 Ill. App. 3d 1007 (3d Dist. 1999), *see Ross*, 352 Ill. App. 3d at 619. *Reed*, in turn, reasoned that "where there is no appeal to the appellate court," there could be no ensuing PLA in this Court, and so the six-month time limit that would start running when the time to file a PLA

expired could not apply, and the three-year time limit must apply instead. *See* 302 Ill. App. 3d at 1009. But, as the appellate court below noted, that rationale does not apply to defendants like petitioner or Ross who filed direct appeals to the appellate court, for such defendants *can* file direct appeal PLAs, even though their appeals were dismissed on procedural grounds. *Lighthart,* 2022 IL App (2d) 210197, ¶ 46.

Petitioner is also wrong that, when read in conjunction with Rule 606(b), Rule 606(a) exempts negotiated guilty plea cases governed by Rule 604(d) from the rule that appeals are perfected by filing notices of appeal. Pet. Br. 19-20. Rule 606(b) addresses only *when* notices of appeal must be filed, and not *how* appeals are perfected. *See* Ill. S. Ct. R. 606(a), (b); *see also, e.g.*, *Walls*, 2022 IL 127965, ¶ 18 ("Rule 606(b) provides *the time* for perfecting an appeal") (emphasis added). The appellate court correctly explained that Rule 606(b)'s opening clause "[e]xcept as provided in Rule 604(d)" modifies only the time limits set forth in Rule 604(b). *See* Ill. S. Ct. R. 606(b); *Lighthart*, 2022 IL App (2d) 210197, ¶ 44. This argument is also irrelevant because the Act's six-month time limit is triggered by *filing* a direct appeal, not *perfecting* one, as explained earlier. *See supra* pp. 16-17.

Nor is there any merit to petitioner's contention that the appellate court improperly relied on this Court's statement in *Johnson* that the Act's three-year time limit applies "when no notice of appeal is filed," 2017 IL 120310, ¶ 23, as support for the conclusion that filing a direct appeal means

filing a notice of appeal, Pet. Br. 20-21. Although the definition of "fil[ing] a direct appeal" was not the main issue in *Johnson*, the Court did, nonetheless, construe that phrase as having its plain, commonly-understood and settled meaning of "filing a notice of appeal," 2017 IL 120310, ¶ 23, and so the appellate court could correctly find the Court's interpretation of the phrase persuasive, *see Lighthart*, 2022 IL App (2d) 210197, ¶¶ 42, 45. And, while *Johnson* did not involve a negotiated guilty plea, Pet. Br. 20-21, that is irrelevant, because, as explained above, compliance with Rule 604(d) is not necessary to file an appeal, which a defendant does by filing a notice of appeal, whether he entered a negotiated guilty plea or not.

D. This Court's precedent does not entitle petitioner to an exception from the Act's six-month statute of limitations.

Finally, *Central City Education Ass'n v. Illinois Educational Labor Relations Board*, 149 Ill. 2d 496 (1992) (cited at Pet. Br. 9, 24-25), is inapposite. There, the petitioner filed a petition for review from a decision of the Illinois Educational Labor Relations Board within 35 days, the time limit which had been "generally accepted" in appellate court decisions. *See Central City*, 149 Ill. 2d at 496. Because "the legislature failed to state an appeal period" in the relevant statute, the Court held that the time limit was 30 days (under Rule 303(a)) but refused to apply its holding retroactively, as

that would unfairly "penalize the petitioner for untimely filing . . . when the law governing the applicable appeal period was not settled." *Id.*

Unlike the petitioner in *Central City*, petitioner here did not face a statute silent about the time limit or file her petition within a "generally accepted" time limit. It was not "generally accepted" in 2007 — when petitioner filed her initial postconviction petition — that a defendant whose direct appeal was dismissed on procedural grounds had three years to seek postconviction relief. One case, *Ross*, 352 Ill. App. 617, held as much in 2004, based on a construction of a materially different statute. "The applicable statute of limitations for a postconviction petition is the one in effect at the time the petition is filed." *Harris*, 224 Ill. 2d at 125 n.1 (citing *People v. Bates*, 124 Ill. 2d 81, 85-86 (1988)). Accordingly, *Ross* said nothing about "[t]he law governing the applicable [time limit]," *Central City*, 149 Ill. 2d at 496, for petitioner's filing, and the statute that had been in effect for three years when she filed her August 2007 petition, C207, clearly limited the three-year time limit to defendants who did "not file . . . direct appeal[s]." P.A. 93-972, § 10 (eff. Aug. 20, 2004). In sum, *Central City* is inapposite because the Act is not silent as to the statute of limitations and petitioner did not file her petition within some other "generally accepted" time limit, such that applying the clear statutory time limit would be unfair.

Nor, as the appellate court noted, *Lighthart*, 2022 IL App (2d) 210197, ¶ 48, does the record show that petitioner *did* rely on *Ross*. She made no

factual allegations explaining her late filing, nor did she "allege facts showing that the delay was not due to . . . her culpable negligence," as she must to avail herself of the Act's exception to its statute of limitations for excusable delay. 725 ILCS 5/122-1(c); *see also, e.g.*, *Johnson*, 2017 IL 120310, ¶ 26.

In sum, the appellate court properly held that the Act's six-month limitations period applied because petitioner "filed a direct appeal," and properly affirmed the dismissal of her postconviction petition as untimely.

CONCLUSION

This Court should affirm the judgment of the appellate court.

March 21, 2023

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 30 pages.

/s/ Aaron M. Williams
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 21, 2023, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which served the person named below at this registered email address:

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