

No. 131825

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 4-24-0446, 4-24-0447 &
Plaintiff-Appellee,	)	4-24-0450 (Consolidated).
)	
-vs-	)	There on appeal from the Circuit Court
	)	of the Eleventh Judicial Circuit,
	)	McLean County, Illinois, No. 17-CF-
CARTHELL EUGENE NIBBELIN,	)	402, 20-CF-434 & 21-CF-850.
)	
Defendant-Appellant.	)	Honorable
	)	Amy McFarland,
	)	Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

CATHERINE K. HART
Deputy Defender

NANCY L. VINCENT
Assistant Appellate Defender
Office of the State Appellate Defender
Fourth Judicial District
400 West Monroe Street, Suite 303
Springfield, IL 62704
(217) 782-3654
4thdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

E-FILED
3/31/2026 3:17 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

ARGUMENT

Defense counsel was ineffective for failing to file a Illinois Supreme Court Rule 404 Certification for Waiver of Court Assessments, and Illinois Supreme Court Rule 472 is not the proper remedy for that error.

The state agrees that this case boils down to how to correct an error both parties agree exists. (State's brief, 12) The state miscasts Mr. Nibbelin's assertion as one couched in the imposition or assessment of financial matters. (State's brief, 2, 7, 8-9, 12, 18, 20-21) It is not.

No one would suggest that the pre-Rule 472 claims concerning the improper imposition of fines and fees was better handled in the appellate courts as plain error, or in the alternative ineffective assistance of counsel claims. That, however, was the only way to address them.

Rule 472 provided, and provides, a way to address such errors in the first instance: in the circuit court, where such errors must be corrected, as that is the body that imposes the financial matters. The state quotes extensively from Chief Justice Karmeier's article putting practitioners and courts on notice of the pending rule changes. (State's brief, 13-14, 19) However, the state overlooks a key qualification made by Chief Justice Karmeier when discussing Rules 452 and 472: "[T]hey do not govern correction of all sentencing errors, only those regarding the following: (1) *the imposition or calculation of fines, fees, assessments or costs*; (2) application of per diem credit against fines; (3) 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. The court focused on these four areas because they are the most common." Chief Justice Lloyd Karmeier, *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/>. (emphasis supplied). The state is correct that Rule 472 is remedial in nature (State's brief, 13); however, it is certainly no catch-all for every conceivable error.

The state insists Mr. Nibbelin's claim is one of imposition of financial matters because he would be entitled to a waiver, and thus the imposition was in error and subject to Rule 472 as a remedy. (State's brief 9-11, 15) He would have been entitled to the waiver, of course, had defense counsel filed the Rule 404(e) certificate, but that is not the same thing as an error in the initial imposition of the financial matters. The state compresses two occurrences into one in order to make its case.

First, the circuit court had the power, the authority, and the legal obligation to impose the financial matters it did, and the circuit clerk has the duty to carry it out. See, e.g., 705 ILCS 135/5-10 (a) (2023) ("In each case, the court *shall* order an assessment at the time of sentencing, as set forth in this Act, for a defendant to pay in addition to any fine, restitution, or forfeiture ordered by the court[.]")(emphasis supplied); 705 ILCS 135/15-5 (2023) ("SCHEDULE 1: Unless assessments are imposed by the court under another schedule of this Act, for a felony offense, the Clerk of the Circuit Court *shall* collect \$549 and remit as follows[.]")(emphasis supplied).

Second, defense counsel has the obligation to provide a Rule 404(e) certificate averring his or her status, which alerts the circuit court as to whether the aforementioned duties upon the circuit court and the circuit clerk are waived. Rule 404(e). These are distinct acts done by different entities with differing authorities and powers.

The state uses a Webster's Dictionary definition of the word "impose" as evidence that anything that happens, due to anyone's error, suffices to fall within the Rule 472 language because it encompasses a definition "to cause" someone to be "burdened." (State's brief 14-15) Miriam-Webster's definition of that word is different, however. "Impose" means to "establish or apply by authority," such as a tax or penalties; "establish or bring about as if by force;" "force someone to accept (something);" or "force into the company or on the attention of another." <https://www.merriam-webster.com/dictionary/impose> (Last visited March 26, 2026). The Cambridge English Dictionary defines "impose" as "to officially force a rule, tax, punishment, etc. to be obeyed or received;" "to force someone to accept something, especially a belief or way of living;" or "to expect someone to do something for you or spend time with you when they do not want to or when it is not convenient for them[.]" <https://dictionary.cambridge.org/us/dictionary/english/impose> (Last visited March 26, 2026); see also *Impose*, *Black's Law Dictionary* (10th ed. 2014) (defining "impose" as "[t]o levy or exact (a tax or duty)"). There is nothing in the word "impose" that suggests that any error that occurs before or after imposition of otherwise authorized assessments is what is meant by this Court's phrase "errors in the imposition or calculation of fines, fees, assessments, or costs" as used in Rule 472(a)(1).

The state takes issue with Mr. Nibbelin's citation to the appellate court cases from his opening brief, arguing that the cases are unhelpful because they do not address application of Rule 472. (State's brief, 15-16; Opening brief, 14-16) The state is correct that many of the cases discussed do not address Rule 472. That is because there was no need to do so, as Rule 472 does not apply.

After Mr. Nibbelin filed his opening brief, the Fourth District issued a Rule 23 order in *People v. Fields*, 2026 IL App (4th) 250109-U, ¶¶ 95-99, where the defendant argued, and the state conceded, that defense counsel was ineffective for failing to file an application for a waiver of assessments. The Fourth District agreed, finding that defense counsel was ineffective. *Id.* The issue there was the waiver of assessments, not the certificate. *Id.*, at ¶¶ 97-98. However, the record indicated that the defendant was eligible for the waiver, and that defense counsel should have filed the application for a waiver of assessments, citing *People v. Chase*, 2025 IL App (4th) 230407-U, ¶ 89. *Id.*, at ¶¶ 98-99. “Defense counsel performed deficiently by failing to timely file an application for a waiver of criminal assessments for defendant, and counsel’s failure prejudiced defendant because there is a reasonable probability that the fees imposed against defendant would have been waived.” *Id.*, at ¶ 99. The Fourth District did not mention or address Rule 472 in *Fields*. It has no bearing on the error or the remedy.

The state cites to *People v. Cox*, 2017 IL App (1st) 151536, ¶¶ 105-107, and *People v. Hood*, 2019 IL App (1st) 162194, ¶¶ 75-77, for the “before and after” Rule 472 methods of handling claims of imposition of fines and credit. (State’s brief, 19-20) In *Cox*, the appellate court addressed the defendant’s ineffective assistance claim for not objecting to erroneously imposed fines and fees, as well as making sure the *per diem* credit had been applied because there was no Rule 472 remedy in existence. In *Hood*, the defendant filed a brief prior to the effective date of Rule 472 challenging “various fines and fees imposed by the trial court,” as well as application of the per diem credit. 2019 IL App (1st) 162194, ¶ 75. The appellate court issued its ruling after the effective date of Rule 472 and remanded the matter in order to have the parties utilize Rule 472. *Id.*, at 77. Both of those rulings make

sense, as one predated Rule 472 and the other had claims that fit squarely within the language of the then existing Rule 472(a)(1). Neither are helpful to this Court, however, as the problem presented by the error in Mr. Nibbelin's case is not within the four corners of Rule 472.

The state's position is that there is no need for Rule 472 to authorize the circuit court to resolve claims of ineffective assistance of counsel because the rule allows for correcting errors in the imposition of assessments, and the only question for the circuit court to resolve is whether Mr. Nibbelin should be required to pay an assessment. (State's brief, 20) The state is answering the wrong question. Again, the problem is not that Mr. Nibbelin's eligibility for a waiver was in doubt. The problem is that his attorney failed to perform the act necessary for the waiver. That is not an error in the "imposition" of the assessment. That is an error on counsel's part.

The state asserts that Mr. Nibbelin's reading of the Rule and argument that the error in question is one of counsel's performance is "blame assessment," and something the promulgation of Rule 472 was designed to avoid. (State's brief, 18, 20) Correcting the error in a streamlined way is, of course, the idea behind Rule 472. The state argues that defense counsel's failure to file the required Rule 404(e) certificate is an error in the imposition of fines, fees, assessments, or costs, governed by Rule 472. (State's brief, 1-27) However, the errors addressed by Rule 472 are not of counsel's making - they are the court's ultimate error to make and to repair via a corrected order. The state, while observing that the error presented in this case is one of defense counsel's and not the court's making, sees no distinction between how the error is made and the vehicle to resolve it.

The state correctly points out that Rules 452 and 472 are in place in order for the parties and court to agree as to the ultimate financial order, and to operate as checks on the other. (State's brief, 18-19) See also Karmeier, *Overcoming the Chronic Challenge of Correcting Sentencing Errors*; *supra*. The state also correctly points out that Rule 404(e) is driven by defense counsel, as defense counsel is the only party with the knowledge necessary to certify the truth of the matter. (State's brief, 10-11)

It is not a matter of "blame." It is a matter of understanding the basis of the error in order to apply the correct remedy. Rule 472, as explained in the opening brief and by Chief Justice Karmeier, addresses just four errors. (Opening brief, 16-17) A defendant may use Rule 472 as a remedy only if the order reflects an error in imposing or calculating financial matters, applying credit against fines, calculating presentence credit, or making clerical errors in the judgment. Defense counsel (or the prosecution, for that matter) is not responsible for any of those roles. While Rule 452 places the burden on the state to produce a draft order for review by the defendant or defense counsel, that document is just a piece of paper or characters on a screen unless and until the circuit court takes action. Thus, it is a court-based action, only becoming an enforceable order once the circuit court acts, and any errors are therefore ultimately the court's responsibility.

Conversely, compliance with Rule 404(e) is driven by one actor in the structure, and that actor is not the circuit court. (State's brief, 10-11) "[T]he attorney representing that defendant shall file a certification with the court...[.]" Rule 404(e). The state seeks to distinguish this by arguing this is merely an act in keeping with being an officer of the court as opposed to an advocate. (State's brief, 10-12)

This is a distinction without a difference. This Court placed a duty upon defense counsel, and if defense counsel fails to carry out that duty, that failure has a consequence - the deprivation of the right to the waiver without having to apply for it. It can be fairly argued that failing to carry out this duty impacts defense counsel's being an effective advocate for the client at the sentencing stage by allowing the otherwise legal imposition of financial obligations which would otherwise be easily waived but for defense counsel's failure to perform a simple ministerial act.

Note that the financial matters imposed in this case are within the court's power because of the lack of a certificate. For that reason, it is not an error in the "imposition" of the monetary matters. The trial court correctly imposed them according to the law. It is defense counsel who dropped the ball by failing to take the required step in the process. That goes to the very heart of a claim of ineffective assistance of counsel: that counsel performed in a manner below professional standards, and that the sentence imposed was affected by that performance. *People v. Steidl*, 177 Ill.2d 239, 257 (1997).

The state posits that because Mr. Nibbelin "complains that he is obligated to pay assessments...that should have been waived," that is an error in the imposition of those assessments. (State's brief, 12-13) It is not. It is the prejudice prong of a claim of ineffective assistance of counsel. The error, as the parties agree, is defense counsel's failure to file the required certificate pursuant to Rule 404(e). (State's brief, 12) The state admits Mr. Nibbelin is entitled to the waiver. (State's brief, 12) Mr. Nibbelin established the error, and the prejudice is that he was entitled to a waiver of the assessments he is currently under a court order to pay.

The state argues that inasmuch as there is no time limit on when defense counsel can file the Rule 404(e) certificate, unlike 725 ILCS 5/124A-20 (or Rule 404(a)), there is no impediment to Rule 472 as a remedy. (State's brief, 22) A scenario exists where, even if a defendant would be entitled to the certificate, if defense counsel does not file it, the record may fail to demonstrate eligibility for a waiver. This could occur, for example, with the flip side of the argument made by the state in favor of eschewing a *Strickland [v. Washington]*, 466 U.S. 668, 684-686 (1984) approach. (State's brief, 23) The state points out that a defendant may not be able to demonstrate eligibility for the waiver without the certificate. (State's brief, 23) The state posits that then the defendant could not address prejudice on direct appeal because it would contain matters outside the record, and a Rule 472 remedy would be suited to resolve that. (State's brief, 23)

That could happen to, for example, a defendant who initially had funds, but then did not and was appointed counsel or received the services of "criminal legal services providers, or attorneys in court-sponsored pro bono program." Rule 404(e). If counsel does not file the certificate, or does and the state or court objects, refuses to acknowledge the waiver, or some other impediment, then the defendant may be in a position of having to apply for a waiver pursuant to Section 124A-20 and Rule 404, and the time limits may become another barrier. Rule 472 would provide no remedy for a person in this situation, as it is not one of the enumerated errors that can be corrected using that Rule. Moreover, the state's theory that one can pursue a Rule 404(e) certificate at any time cannot be what this Court intends with the promulgation of that Rule. It would be very inefficient for circuit courts to attempt to address Rule 472 motions ten years after the judgment,

attempting to locate the original attorney to certify who they are, their position, and thus the defendant's eligibility for the waiver at the sentencing hearing. It cannot be this Court's intent to create a never-ending Rule 404 waiver process that would result if the state's reading of Rule 472 is adopted.

The state argues that Rule 472 provides a better remedy for Rule 404(e) violations, offering as an example that if the circuit court knows that defense counsel is obligated to file a Rule 404(e) certificate, the court can order it to be filed. (State's brief, 22-23) This does not convert the responsibility from counsel to the court, as defense counsel still must file the certificate. And the remedy for failing to file a certificate is found nowhere in the language of Rule 472.

The state, in arguing against the use of an ineffective assistance rubric to assess claims of failure to file the certificate, argues that appellate courts may not be able to determine prejudice due to the lack of a certificate. (State's brief, 24-25) That is so, and all the more reason to treat the claim as one of ineffective assistance of counsel, remand it for purposes of filing the certificate, and then have the circuit court and parties assess the financial matters from there, without the extra step of requiring a *pro se* defendant to understand that he or she must file a Rule 472 motion attempting to argue rather hypertechnical rules and math problems. It bears noting that the state's reading also conflicts with general forfeiture and waiver principles, as claims are forfeited or waived (depending upon the context) if not raised on appeal where the record fully supports those claims. *People v. Veach*, 2017 IL 120649, ¶ 47.

The state points out that the waiver provisions of Section 124A-20 apply only to assessments imposed under 705 ILCS 135/15-5 through 15-70. (State's

brief, 24) Whether any financial impediments remain cannot always be determined from the record. The state uses an example of where the clerk has first applied a bond, citing *People v. Sellars*, 2023 IL App (4th) 200-500-U, ¶ 17-18, 27. (State's brief, 25) The state argues that if no waiver was sought, there is no way to determine from the record whether the court ordered bond application before or after the waiver, and thus it would be impossible to tell from the record whether the waiver caused the defendant to lose out on the bond funds or if the bond was properly applied and there was no assessment to waive. (State's brief, 25-26) This is so, and the very reason to use the ineffective assistance rubric to remand the matter to sort that out. Claims that can be brought on direct appeal where the record will support them, must be. *Veach*, at ¶ 47. The state's reading of Rule 472 will create an exception to that.

Mr Nibbelin's case illustrates the problem. The state agrees that Mr. Nibbelin has a waiveable assessment in the 2021 case. (State's brief, 24, n. 7; 4-24-0450, C40) Therefore, the prejudice is easily seen from failing to file the certificate. The state notes that in sentencing Mr. Nibbelin in the 2020 case, the trial court did not mention financial assessments. (R339; State's brief 24, n. 7) The trial court did not mention bond. (4-24-0447, R101) The original sentencing order, however, has that assessment, to which the bond was applied. (4-24-0447, C52-54, 83-84; R101)

For the reasons stated in his opening and this reply brief, Rule 472 does not offer a remedy when defense counsel fails to abide by Rule 404(e). This Court should reverse the Fourth District, and/or remand the matter to the circuit court for the filing of the required certificate and further proceedings to correct the financial matters accordingly.

CONCLUSION

For the foregoing reasons in his opening and this reply brief, Carthell Eugene Nibbelin, defendant-appellant, respectfully requests that this Court reverse the judgment of the Fourth District and remand the matter to the circuit court for the filing of a Rule 404(e) certificate, and proceedings upon a waiver of assessments.

Respectfully submitted,

CATHERINE K. HART
Deputy Defender

NANCY L. VINCENT
Assistant Appellate Defender
Office of the State Appellate Defender
Fourth Judicial District
400 West Monroe Street, Suite 303
Springfield, IL 62704
(217) 782-3654
4thdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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 eleven pages.

/s/Nancy L. Vincent
NANCY L. VINCENT
Assistant Appellate Defender

No. 131825

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 4-24-0446, 4-24-0447 &
Plaintiff-Appellee,	)	4-24-0450 (Consolidated).
)	
-vs-	)	There on appeal from the Circuit Court
	)	of the Eleventh Judicial Circuit,
	)	McLean County, Illinois, No. 17-CF-
CARTHELL EUGENE NIBBELIN,	)	402, 20-CF-434 & 21-CF-850.
)	
Defendant-Appellant.	)	Honorable Amy McFarland,
	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 115 S. LaSalle Street, Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Ms. Erika Reynolds, McLean County State's Attorney, 104 W. Front St., Room 605, Bloomington, IL 61701-2400, stateattny@mcleancountyil.gov;

Mr. Carthell Eugene Nibbelin, Register No. Y60373, Dixon Correctional Center, 2600 North Brinton Avenue, Dixon, IL 61021

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 31, 2026, 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 Springfield, 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.

/s/Kaitlyn K. M. Wolke
 LEGAL SECRETARY
 Office of the State Appellate Defender
 400 West Monroe Street, Suite 303
 Springfield, IL 62704
 (217) 782-3654
 Service via email will be accepted at
4thdistrict.eserve@osad.state.il.us