

2026 IL App (2d) 24079-U
No. 2-24-0749
Order filed October 16, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

MARVELO WILSON, Defendant-Appellant.

Appeal from the Circuit Court of Lake County.
Honorable Patricia S. Fix, Judge, Presiding.
No. 22-CF-967

JUSTICE MULLEN delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Aggravated unlawful use of a weapon statute was not unconstitutional; cause would be remanded to allow defendant to seek waiver of fees and costs assessed to him.
- ¶ 2 Defendant, Marvelo Wilson, entered a fully negotiated guilty plea to one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2022)). He was sentenced to 24-months' probation and assessed certain fees and costs. Defendant's probation was subsequently revoked. Defendant now appeals, arguing that the statute under which he was convicted is unconstitutional under the second amendment of the United States Constitution (U.S. Const., amend. II). He also asserts that trial counsel was ineffective for failing to pursue a waiver

of the imposed fees and costs based upon his alleged indigency. For the reasons that follow, we affirm in part, vacate in part, and remand.

¶ 3

I. BACKGROUND

¶ 4 On July 6, 2022, defendant was charged by indictment with three counts of AUUW. Count II, to which defendant pleaded guilty, alleged that defendant possessed a loaded, immediately accessible firearm while not on his land, abode, or place of business without having a valid Firearm Owners Identification card (FOID card) (see 430 ILCS 65/0.01 *et seq.* (West 2022)). 720 ILCS 5/24-1.6(a)(1)(3)(c) (West 2022). Defendant, who was represented by private counsel at the time, entered a plea of guilty. The State recited the factual basis for the plea:

“If this matter were to proceed to trial, the State would provide the testimony of Detective Harris of the Waukegan Police Department that on or about June 8th, 2022, in Waukegan, Lake County, Illinois, the defendant knowingly carried in a vehicle a firearm, being a handgun, at a time when the defendant was not on his own land or abode, legal dwelling, or place of business, or on the land or in the legal dwelling of another person as an invitee, and said defendant—this defendant had not been issued a currently valid Firearm Owners Identification card.”

The trial court accepted defendant’s plea on September 22, 2022. Pursuant to the plea, he received a sentence of 24-months’ probation. Fees and costs in the amount of \$1,874 were also imposed.

¶ 5 Following the entry of the plea, defense counsel moved for a waiver of the assessed fees and costs in accordance with section 124A-20 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/124A-20 (West 2022)). This section allows for a full or partial waiver of such assessments based on a defendant’s indigency. See 725 ILCS 5/124A-20(b) (West 2022). The trial

court set a hearing on defendant's motion for November 14, 2022. Neither defendant nor his attorney appeared at the scheduled hearing, so the trial court struck the motion.

¶ 6 On March 11, 2024, the State filed a motion to revoke defendant's probation. The motion alleged various failures by defendant to comply with the terms of his probation. Defendant was represented by appointed counsel from the public defender's office during revocation proceedings. The trial court granted the State's motion and sentenced defendant to two years' imprisonment. It also entered the following order: "On motion of the prosecuting attorney and the court finding that the above defendant has \$1,874.00 due and owing that was previously ordered to be paid on or before this date; [t]herefore, judgment is entered in favor of the People of the State of Illinois and against MARVELO WILSON in the amount of \$1,874.00." Defendant's appointed counsel did not file a motion to waive this assessment. Defendant now appeals.

¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant raises two main issues. First, he contends that the statute (720 ILCS 5/24-1.6(a)(1)(3)(c) (West 2022)) under which he stands convicted is unconstitutional, both on its face and as applied to him. Second, he argues that trial counsel was ineffective for failing to pursue a waiver of the fees and costs imposed by the trial court.

¶ 9 A. Constitutionality of the AUUW Statute

¶ 10 Defendant first contends that the statute upon which his conviction is based violates the second amendment to the United States Constitution (U.S. Const., amend. II), both facially and as applied to him. Specifically, he contends that section 24-1.6(a)(3)(C) of the Criminal Code of 2012 (720 ILCS 5/24-1.6(a)(3)(C) (West 2022)), which prohibits possession of a firearm without a FOID card, is unconstitutional under *New York State Rifle & Pistol Ass'n., Inc., v. Bruen*, 597 U.S. 1 (2022), and its progeny.

¶ 11 Before we proceed further, we must consider the effect of defendant's guilty plea upon this appeal. Generally, a guilty plea waives all non-jurisdictional errors. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004). This includes errors of a constitutional magnitude. *Id.* However, where a constitutional claim "does not contradict the terms of the indictment or [the] plea agreement and does not focus upon case-related constitutional defects that occurred prior to the entry of [a] guilty plea" and instead "challenges the State's power to prosecute [the] admitted conduct and thereby questions the State's power to constitutionally prosecute" the defendant, a guilty plea does not foreclose the challenge. *People v. Patterson*, 2018 IL App (1st) 160610, ¶ 21. Of course, a judgment based on a facially unconstitutional statute is void. *People v. Price*, 2016 IL 118613, ¶ 31. A void judgment may be attacked at any time. *People v. Miller*, 144 Ill. App. 3d 69, 70 (1986).

¶ 12 Here, defendant's facial challenge, which would render the AUUW statute void *ab initio*, is clearly outside the scope of any waiver. Defendant's as-applied argument is quite brief and fails to identify any facts and circumstances particular to defendant that would render application of the statute to defendant unconstitutional (if it did, it would be waived by defendant's guilty plea). In any event, we see no meaningful difference between it and defendant's facial challenge. Accordingly, we limit our analysis to the facial challenge.

¶ 13 After defendant filed his opening brief, our supreme court decided *People v. Thompson*, 2025 IL 129965. There, it considered a facial challenge to the constitutionality of the enforcement of the FOID card requirement through the AUUW statute. *Id.* ¶ 53. It held, "For the reasons expressed in *Bruen* itself, Illinois's shall-issue regime is not facially unconstitutional under the second amendment." *Id.* ¶ 53. This court is, of course, bound by the decisions of the supreme court. *People v. Leavitt*, 2014 IL App (1st) 121323, ¶ 48. As *Thompson* has conclusively addressed the issue, there is no need for us to engage in a historical analysis of the statutory scheme. See

Thompson, 2025 IL 129965, ¶ 44. In short, *Thompson* compels us to reject defendant’s argument on this point.

¶ 14

B. Waiver of Fees and Costs

¶ 15 Defendant next contends that his trial attorneys were ineffective for not moving to waive the fees and costs assessed to him. Following his guilty plea, fees and costs in the amount of \$1,874 were imposed. Defendant’s retained counsel at the time moved for a waiver of these fees; however, neither counsel nor defendant showed up for a scheduled hearing on the motion and the trial court struck it. Then, after his probation was revoked, the trial court entered a judgment against defendant for this amount. Appointed counsel did not seek a waiver of the assessment.

¶ 16 Section 124A-20 of the Code provides, *inter alia*, “If the court finds that the applicant is an indigent person, the court shall grant the applicant a full assessment waiver exempting him or her from the payment of any assessments.” 725 ILCS 5/124A-20(b)(1) (West 2022). It further authorizes graduated, partial waivers where the applicant’s income increases up to a threshold of 400% of the poverty level. 725 ILCS 5/124A-20(b)(2) (West 2022). As noted, neither retained nor appointed counsel pursued such a waiver. We note that, in the case of appointed counsel, this was a mandatory step. See Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023) (formerly Ill. S. Ct. R 404(d) (eff. July 1, 2019)).

¶ 17 The parties concur—almost—on a remedy; both agree that a remand is necessary. Defendant contends that counsel was ineffective and the case should therefore be remanded to allow defendant to file a motion seeking a waiver under section 124A-20. The State contends that Illinois Supreme Court Rule 472 controls errors in the imposition of fees, costs, fines, or assessments, providing, in pertinent part, as follows: “In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment ***: []

Errors in the imposition or calculation of fines, fees, assessments, or costs.” Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024). The rule further states, “No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024). Further, “When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited.” *Id.* Finally, the rule specifies the remedy for such omissions: “In all criminal cases *** in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. Feb. 1, 2024). Since defendant did not raise this issue before the trial court, the State reasons, the proper remedy is a remand for the filing of a motion in accordance with this rule. Defendant counters that an ineffectiveness claim is outside the scope of Rule 472. We agree with the State.

¶ 18 Here, we are concerned with our jurisdiction over the initial order imposing fees and costs on defendant following his guilty plea. That the trial court rearticulated the order following revocation proceedings does not render the earlier order appealable. See *People v. Speed*, 318 Ill. App. 3d 910, 915 (2001) (“An appeal from a sentence entered upon revocation of probation does not revive voidable errors in the guilty plea proceeding.”); *People v. Dieterman*, 243 Ill. App. 3d 838, 841 (1993) (“In an appeal from an order revoking a defendant’s probation, the court cannot consider the correctness of the underlying judgment of conviction unless that judgment is void.”); see also *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 151 (1994) (“The ‘mistake’ in the instant case was the belief of the circuit court and [claimant’s] counsel that a motion to vacate the judgment order, more than 30 days after its entry, was a valid means by which the circuit court could reenter the same order and thereby start a new 30-day period in which to file [a] notice of appeal.”);

DeBouse v. Bayer AG, 385 Ill. App. 3d 812, 824 (2008), *rev'd on other grounds by DeBouse v. Bayer AG*, 235 Ill. 2d 544, 560 (2009), (“Thus, the trial court lacked the authority to vacate and reenter the same order more than 30 days after it had been originally entered in order to excuse compliance with the filing requirements of [Supreme Court] Rule 306.”). For example, in *People v. Anderson*, 2023 IL App (4th) 220357, ¶ 17, the reviewing court held that the trial court lacked jurisdiction to consider a claim of ineffective assistance of counsel following revocation of the defendant’s probation where more than 30 days had elapsed since the entry of the original judgment. Hence, if the earlier order is appealable, it is by virtue of Supreme Court Rule 472, which vests a trial court with continuing jurisdiction to correct certain errors in sentencing, including those pertaining to the imposition of a fee, fine, cost, or assessment. Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024).

¶ 19 Rule 472 contains certain conditions to which parties must adhere. The rule requires that “[n]o appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024). Here, there is no indication that the issue of counsels’ alleged ineffectiveness had been raised before the trial court. The specified remedy in such cases is to “remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. Feb. 1, 2024). We do so here.

¶ 20 While this case was pending, our supreme court decided *People v. Nibbelin*, 2026 IL 131825, ¶ 27 (we held this appeal in abeyance while the supreme court acted). It affirmed the fourth district’s decision in *People v. Nibbelin*, 2025 IL App (4th) 240446-U, and resolved a split of authority on this issue. *Nibbelin*, 2026 IL 131825, ¶ 18.

¶ 21 The supreme court in *Nibbelin* held, “[W]hen a defendant alleges that he was erroneously charged assessments despite being entitled to an assessment waiver under [Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023)], this claim must be raised for the first time in the trial court via a motion under [Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024)]. Such an argument may not be framed as ineffective assistance of counsel and raised for the first time on appeal.” *Id.* ¶ 27.

¶ 22 Accordingly, the proper remedy here is to vacate the trial court’s order imposing fees and costs against defendant and remand this cause to allow defendant to move for an assessment waiver. Parenthetically, we note that since the trial court has continuing jurisdiction over the waiver issue pursuant to Rule 472, defendant, on remand, can simply move for a waiver rather than addressing earlier counsels’ effectiveness.

¶ 23 III. CONCLUSION

¶ 24 In light of the foregoing, defendant’s conviction is affirmed. We vacate the trial court’s order imposing fees and costs against defendant and remand this cause to allow defendant to pursue a waiver of those fees and costs.

¶ 25 Affirmed in part and vacated in part; cause remanded.