No. 129402

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. EMANUEL WELLS, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-22-0552 There on Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 20-CF-1103 The Honorable J. Casey Costigan, Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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11/15/2023 3:55
CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE ACTION

Pursuant to the terms of a fully negotiated plea agreement, defendant, Emanuel Wells, pleaded guilty to unlawful possession of cannabis with intent to deliver, C115,[1] in exchange for the dismissal of additional charges, and he was sentenced to the agreed-upon statutory minimum of 6 years in prison, with the agreed-upon 54 days of presentence custody credit, *id*. Defendant did not file a motion to withdraw his plea. Months later, defendant filed a pro se "motion for order nunc pro tunc" seeking additional presentence custody credit not included in the plea agreement, C133-34, which the circuit court denied, C11. Defendant appeals from the appellate court's judgment holding that he had waived any presentence custody credit not specified in the terms of his fully negotiated plea agreement. *See People v. Wells,* 2023 IL App (4th) 220552-U (A9-16). No question is raised concerning the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether Supreme Court Rule 472 permits a defendant to unilaterally reduce the sentence imposed pursuant to a fully negotiated plea

[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to appellant's brief as "Def. Br. __," and to appellant's appendix as "A__." Pursuant to Illinois Supreme Court Rule 318(c), the People asked the Fourth District Appellate Court clerk to certify and file the appellate court briefs in the Illinois Supreme Court. Citations to the appellate court briefs appear as "Exh. A" for appellant's brief, "Exh. B" for appellee's brief, and "Exh. C" for the reply brief.

agreement at any time and without first withdrawing their guilty plea pursuant to Supreme Court Rule 604(d).

2. Whether, by entering into a fully negotiated plea agreement, defendant waived additional presentence custody credit beyond the amount of credit specified in the plea agreement.

3. Whether, if defendant's plea was not knowing and voluntary because he and/or his attorney were unaware that he might be statutorily eligible for additional presentence credit, his remedy lies in a petition under the Post-Conviction Hearing Act.

JURISDICTION

On May 24, 2023, this Court allowed defendant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

In October 2020, the Bloomington Police Department was alerted that a person involved in large-scale cannabis trafficking would be arriving at Central Illinois Regional Airport in Bloomington, Illinois. R15. The officers identified that person as defendant and found approximately 25 pounds (or 11,702 grams) of marijuana packaged for sale in his checked luggage. R59. Police arrested defendant, C36, and the People charged him with cannabis trafficking (Count 1), unlawful possession of cannabis with the intent to deliver (Count 2), and unlawful possession of cannabis (Count 3), C49-51.

Motions to Reduce and Modify Bond

At defendant's initial bond hearing two days later, bond was set at $400,000. C6. After defendant spent 45 days in jail, the court reduced his bond to $125,000 with the added conditions of GPS monitoring and 24-hour home confinement, R23; C76, explaining that the conditions were warranted due to the severity of the offense charged in Count 1, R23, defendant's criminal history, R22, and defendant's numerous prior failures to appear in court, R21. Defendant posted bond eight days later, C8, 84, and he was released to Pretrial Services monitoring the next day, after being fitted with an electronic monitoring device, C79, 130. In total, defendant spent 54 days in jail.

During his home detention, defendant initially was allowed to leave his home only for work, church services, medical appointments, and emergencies. R23. After a month, defendant's bond conditions were modified to allow him to leave his home for any reason between 9 a.m. and 3 p.m. R29, 31. After an additional four months, the conditions were further relaxed to allow him to leave his home between 7:00 a.m. and 8:00 p.m. C36, 98, 102-03. Ultimately, after 208 days of home detention, defendant's GPS and travel restrictions were removed entirely. R44-46; C105.

Guilty Plea Agreement and Proceedings

On November 5, 2021, pursuant to a fully negotiated plea agreement, defendant entered a plea of guilty to Count 2, which charged him with unlawful possession of more than 5,000 grams of a substance containing cannabis with intent to deliver. R55. This Class X felony carried a sentencing range of 6 to 30 years in prison. *Id.*

The People and defendant jointly submitted a written plea agreement to the court. C115. Defendant signed this agreement, which stated that he would plead guilty to Count 2 in exchange for the People's agreement to dismiss the two remaining charges — cannabis trafficking and unlawful possession of cannabis, C115, 118, 120; R56 — and that he would be sentenced to the statutory minimum of 6 years in prison with presentencing credit for the period that he was in jail (54 days), and that he would pay a $100,000 street-value fine. A22. The judge recited these terms in open court, and defendant confirmed that they accurately stated the parties' agreement. R56.

The People then provided a factual basis, stating that on October 11, 2020, Bloomington Police officers were called to the airport because there was a checked bag with a large amount of cannabis inside. *Id.* At the airport, the officers met with the defendant; he had flown into Bloomington on an American Airlines flight from California. *Id.* Defendant's checked bag contained approximately 25 pounds of a substance containing cannabis

packaged for sale. *Id.* That the substance contained cannabis was confirmed by the lab. *Id.*

After receiving this stipulated factual basis, the circuit court found that defendant "understands the nature of the charges, possible penalties, his legal rights, and that he is voluntarily entering into the guilty plea today." R59. The court then explained defendant's appeal rights, including his obligation to file a motion to withdraw his plea before pursing an appeal. C60. When asked whether he had "any questions on those rights?" defendant replied, "No, sir." *Id.* The court then sentenced defendant to six years in prison pursuant to the terms of the negotiated plea agreement, R59-60, and defendant agreed that he had no questions regarding his fully negotiated guilty plea, R60-61. Defendant also signed a "waiver of jury and plea to complaint" acknowledging that he was admonished by the court as to the effect of his plea. C116.

Defendant did not file a motion to withdraw his guilty plea. *See* C10-11. Instead, months later, on March 31, 2022, defendant filed a pro se "motion for order nunc pro tunc," arguing that pursuant to 730 ILCS 5/5-4.5-100, he was entitled to an additional 166 days of sentencing credit for the days he was subject to GPS monitoring. C10, 133.[2] The circuit court denied

[2] Defendant's request for 166 days (rather than the 208 days he spent on home confinement) appears to have rested on a miscalculation.

the motion, holding that defendant was given the correct pretrial sentencing credit. C11.

Appellate Court Proceedings

Defendant appealed the judgment denying his motion for order nunc pro tunc, arguing that he was entitled to additional sentencing credit under 730 ILCS 5/5-4.5-100(b) (2021). Exh. A (Appellate Opening Brief) at 6.

In response, the People argued that defendant could not obtain additional sentencing credit that was not encompassed by the terms of the fully negotiated plea agreement via a motion for a nunc pro tunc order, and that defendant was bound by the terms of the plea agreement specifying that he would receive 54 days of presentence custody credit. Exh. B (Appellate Appellee Brief) at 3-4.

In reply, defendant argued — for the first time — that the trial court had authority to grant additional sentencing credit because defendant's nunc pro tunc motion was in substance a Rule 472 motion. Exh. C (Appellate Reply Brief) at 1. As relevant here, that Rule provides that a circuit court "retains jurisdiction to correct [errors in the calculation of presentence custody credit] at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party." Ill. S. Ct. R. 472(a)(3). In response to the People's argument that defendant was bound to the terms of his plea agreement providing for 54 days of credit, defendant argued that the record did not show

that he "agreed to forgo" the additional presentence custody credit. Exh. C at 6-8.

The appellate court affirmed. A16. Addressing the "threshold issue" of whether defendant waived his right to additional credit, A12-14, and relying on *People v. Evans*, 174 Ill. 2d 320 (1996), the court held that defendant had waived the presentence custody credit not specified in the terms of his fully negotiated plea agreement, reasoning that plea agreements are governed in part by contract law principles, and "a fully negotiated guilty plea constitutes a waiver of presentence custody credit not provided for in the plea agreement." A14-15.

The appellate court rejected defendant's argument that he had not affirmatively waived the additional sentencing credit, holding that "because defendant bargained for a disposition providing for a specified amount of presentence credit and other significant benefits, he waived the right to any additional credit" and "is not entitled to renege on the agreement and receive additional presentence credit." A15. A recent amendment to 730 ILCS 5/5-4.5-100(b) did not "change the analysis," the court explained, because "it is difficult to comprehend how the addition of language further defining home detention would cause defendant to be unaware he could be entitled to presentence credit or that it is subject to waiver." A16. "[M]ore to the point," the court added, mandatory sentencing credit "has long been subject to waiver by a fully negotiated guilty plea," and "the new language [further

defining home detention] does not alter the contractual nature of plea agreements." *Id*. In sum, the appellate court concluded, "[d]efendant cannot reap the benefit of his bargain with the State and then turn to the trial court to further sweeten the deal." *Id*.

STANDARDS OF REVIEW

"[T]he interpretation of a supreme court rule presents a question of law, which [this Court] review[s] de novo." *People v. Tousignant*, 2014 IL 115329, ¶ 8.

Where the terms of a plea agreement are in dispute, the terms of the plea agreement are reviewed under an objective standard and the circuit court's determination should not be reversed unless contrary to the manifest weight of the evidence. *People v. Navarroli*, 121 Ill. 2d 516, 521-22 (1988).

ARGUMENT

Defendant entered into a fully negotiated plea agreement, in which he pleaded guilty in exchange for dismissal of two charges — including a Class X trafficking charge — and the People's concession that he would receive the statutory minimum sentence plus 54 days of presentence custody credit. Defendant now seeks to retain the benefit of this bargain while challenging the amount of sentencing credit. But this Court has held that to "allow a defendant to unilaterally modify his agreement under these circumstances while holding the State to its end of the bargain" would violate the contract principles that underlie plea agreements. *People v. Diaz*, 192 Ill. 2d 211, 224

(2000); *People v. Evans*, 174 Ill. 2d 320, 326 (1996); *see also Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) (plea bargaining depends upon the "mutuality of advantage" to defendants and prosecutors). Thus, "to challenge his sentence, a defendant must first move to withdraw his plea in the trial court." *Diaz*, 192 Ill. 2d at 225. And "[i]f the court grants the motion, both parties are then returned to the status quo as it existed prior to the acceptance of the plea." *Id.* Consistent with the contract law principles underlying these precedents, this Court's Rule 604(d) provides that "[n]o 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." Ill. S. Ct. R. 604(d).

Here, defendant did not move to withdraw his plea. Instead, defendant impermissibly seeks to retain the benefit of his plea agreement *and* to unilaterally receive additional benefits in the form of additional presentence custody credit not included in the agreement through a post-judgment motion.[3] Such a request flies in the face of the contract principles that govern negotiated plea agreements.

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[3] Had defendant's negotiated guilty plea not waived any additional presentence custody credit, by the terms of the relevant statute, he would have been entitled to 127 days of credit for time spent on electronic monitoring and under a curfew of 12 or more hours per day. C98, 102, 112; *see* 730 ILCS 5/5-4.5-100(b) (home detention "includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement"). It is far from clear

This Court should affirm the appellate court's judgment because the circuit court correctly denied defendant's "motion for order nunc pro tunc," defendant waived any presentence custody credit not included in the fully negotiated plea agreement he knowingly and voluntarily entered, and Rule 472 does not permit defendant to make an end run around the contract law principles that govern his plea agreement.

I. Rule 472's Purpose is to Allow Circuit Courts to Correct Routine Sentencing Errors, Not to Allow Guilty Plea Defendants to Make an End Run Around Rule 604 and Avoid the Waiver Resulting from a Fully Negotiated Guilty Plea.

Before this Court, defendant does not contend that his motion for a nunc pro tunc order was the proper vehicle for his claim of entitlement to additional presentence custody credit. Nor could he, for nunc pro tunc orders are "limited to incorporating into the record something which was actually previously done by the court but inadvertently omitted by clerical error." *People v. Melchor*, 226 Ill. 2d 24, 32-33 (2007). Because defendant's motion sought not to correct a clerical error or omission, but instead sought 166 days of additional presentence custody credit not contemplated in the parties' fully negotiated plea agreement, C10, 133, the circuit court correctly denied it, and this Court can affirm on that basis alone. Apparently recognizing this,

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whether defendant is eligible for an additional 81 days of credit, from April 9, 2021, to June 29, 2021, during which he was under an 11-hour-per-day curfew and electronic monitoring. C98, 102, 105; *see* 730 ILCS 5/5-8A-2(C) ("significant restrictions on liberty such as 7pm to 7am curfews shall qualify" as home detention).

defendant attempts on appeal to recharacterize his "motion for order nunc pro tunc" as a Rule 472 motion. Def. Br. 13. But defendant's new argument is both forfeited and meritless.

A. Defendant has forfeited his Rule 472 argument.

As an initial matter, defendant has forfeited his argument that his claim to additional presentence custody credit may be properly considered under Rule 472. *See* Def. Br. 13-16. First, the argument is forfeited because defendant raised it for the first time in his reply brief in the appellate court. *See* Exh. C; Ill. S. Ct. R 341(h)(7) ("[p]oints not argued are forfeited and shall not be raised in the reply brief, in oral argument"); *see also People v. Brown*, 169 Ill. 2d 94, 108 (1995) (issue raised for first time in reply brief is "waived"). In the appellate court below, the People's appellee's brief argued that any claim to additional presentence custody credit lacked merit because defendant could not unilaterally modify the terms of the fully negotiated plea agreement and instead was required to file a motion to withdraw his guilty plea. Exh. B at 4. In his reply brief, defendant sought to recharacterize his "motion for order nunc pro tunc" as a Rule 472 motion. Exh. C at 1. By waiting until his reply brief to raise this argument for the first time, defendant forfeited it. *See Brown*, 169 Ill. 2d at 108.

Moreover, because the People had no opportunity to respond to defendant's belated argument, defendant's argument before this Court that the People have forfeited any argument that defendant's motion could not be

properly considered as a Rule 472 motion, Def. Br. 15, is unpersuasive. *Holliday v. Shepherd,* 269 Ill. 429, 436 (1915) (issue may not be raised for the first time in reply brief as "contrary practice would permit appellants to argue questions in their reply briefs as to which counsel for appellees would have no opportunity to reply").

Second, the argument is forfeited for the additional and independent reason that defendant omitted it from his petition for leave to appeal. *See People v. McKown*, 236 Ill. 2d 278, 310 (2010) ("failure to include an issue in a petition for leave to appeal results in forfeiture of that issue for review") (citing *People v. Carter*, 208 Ill. 2d 309, 318 (2003)). Accordingly, this argument is doubly forfeited.

Contrary to defendant's argument, the lower courts did not treat defendant's "motion for order nunc pro tunc" as a Rule 472 motion, such that he could be said to have properly preserved the issue below. Defendant's contentions that the "trial court appears to have recognized and treated the document as [a] Rule 472 motion," Def. Br. 15, and that the appellate court "appears to have treated [his] motion as a Rule 472 motion" because it reached the merits of his claim*, id*. at 16, find no support in the record.

Indeed, the circuit court plainly treated defendant's motion as it was captioned, i.e., as a motion for order nunc pro tunc, because the relevant docket entry states, "Defendant's motion for Order Nunc Pro Tunc denied. Defendant was given the correct pretrial detention credit on this case." C11.

The appellate court expressly stated that it was disposing of defendant's claim on waiver grounds and did not reach "any other issues." A16. And neither the circuit court nor the appellate court so much as mentioned Rule 472. *See* C11; A9-16. Accordingly, this Court should enforce defendant's forfeitures.

B. Defendant may not use Rule 472 to circumvent his plea agreement and rules of waiver.

Forfeitures aside, defendant's Rule 472 argument is meritless. A defendant who enters into a fully negotiated plea agreement may not unilaterally seek to reduce their negotiated-for sentence and must instead move to withdraw their guilty plea. *Diaz*, 192 Ill. 2d at 225; *Evans*, 174 Ill. 2d at 332. Rule 472's purpose is to correct routine sentencing errors, and not to provide a defendant with a means to attain additional sentencing credit not included in their fully negotiated plea agreement. This Court should reject defendant's argument that he should be permitted to do so.

1. Defendants who enter into fully negotiated plea agreements may not unilaterally seek to reduce their negotiated sentences.

Defendant agreed — both in a signed written plea agreement and verbally in open court — to plead guilty to possession of cannabis with intent to deliver in exchange for the People's agreement to dismiss two other charges and to a minimum sentence of 6 years in prison and 54 days of presentence custody credit. C115. This fully negotiated plea agreement was extremely favorable to defendant because it included the People's agreement

to dismiss the Class X felony cannabis trafficking charge, which carried a sentencing range of 12 to 60 years in prison, which is double the sentence defendant faced under the possession charge to which he pleaded guilty. 720 ILCS 550/5.1(b) (a "person convicted of cannabis trafficking shall be sentenced to a term of imprisonment not less than twice the minimum term . . . and not more than twice the maximum term . . . based on the amount of cannabis brought . . . into this State"); 730 ILCS 5/5-4.5-25(a) (Class X felony sentence shall be not less than 6 years and not more than 30 years).

Under this Court's precedents, defendant may not now unilaterally seek to reduce his negotiated-for sentence. For example, in *People v. Evans*, 174 Ill. 2d 320 (1996), as in the present case, the defendants entered negotiated guilty pleas. *Id.* at 327. The trial court accepted the pleas and entered judgments that conformed with the agreements. *Id.* The defendants then unilaterally sought to reduce their sentences by filing a motion for reconsideration. *Id.* This Court held that "the defendants' efforts unilaterally to reduce their sentences while holding the State to its part of the bargain cannot be condoned." *Id.* "Such a practice," the Court explained, "flies in the face of contract law principles" and "constitutional concerns of fundamental fairness." *Id.* Indeed, the Court stated, a contrary holding would "'encourage gamesmanship of a most offensive nature." *Id.* (internal quotation and citation omitted). Were the rule otherwise, the defendant "could negotiate with the State for the best deal possible," including dismissal

or reduction of charges, and obtain a lighter sentence than he would have received had he gone to trial or entered an open guilty plea, "and then attempt to get that sentence reduced even further by reneging on the agreement," rendering the defendant's agreement "nothing more than a 'heads-I-win-tails-you-lose' gamble." *Id.* at 327-28 (internal citation and quotations omitted).

In addition, this Court continued, "[p]rosecutors would be discouraged from entering into negotiated plea agreements were such an unfair strategy allowed to succeed," in contravention of the Court's "policy of encouraging properly administered plea bargains." *Id.* at 328. Stated another way, in a negotiated plea, "the guilty plea and the sentence 'go hand in hand' as material elements of the plea bargain," and to "permit a defendant to challenge his sentence without moving to withdraw the guilty plea in these instances would vitiate the negotiated plea agreement he entered into with the State." *Id.* at 332. Accordingly, the Court concluded, "following the entry of judgment on a negotiated guilty plea, even if a defendant wants to challenge only his sentence, he must move to withdraw the guilty plea and vacate the judgment so that, in the event the motion is granted, the parties are returned to the status quo." *Id.*; *see Diaz*, 192 Ill. 2d at 225 (when "a plea agreement limits or forecloses the State from arguing for a sentence from the full range of penalties available under law, in order to challenge his sentence, a defendant must first move to withdraw his plea in trial court"). Because it

is undisputed that defendant has never filed a motion to withdraw his guilty plea, Def. Br. 6, he may not now unilaterally challenge his sentence.

2. As the appellate court correctly concluded, defendant's guilty plea waived any additional sentencing credit.

Defendant does not dispute that, as the appellate court found, these principles apply equally to requests that, like his, seek additional presentence custody credit. Def. Br. 8 (quoting *People v. Williams*, 384 Ill. App. 3d 415, 417 (4th Dist. 2008); *see* A13 (noting that under *Williams*, a defendant may request additional presentence custody credit at any time unless he has agreed to forgo it as part of a plea or sentencing agreement.). Rather, defendant argues that he did not agree to forgo the credit he now seeks. Def. Br. 8. Defendant is incorrect.

As the appellate court held, A12-15, even if defendant would have been entitled to additional presentence custody credit had he bargained for it in his plea agreement, defendant's guilty plea waived any and all such credit save for the 54 days included in his agreement. "[P]lea agreements, although they are unique in the sense that they are negotiated, executed, approved, and enforced in the context of a criminal prosecution that affords the defendant a due process right to fundamental fairness, are contracts nonetheless." *United States v. Smith*, 759 F. 3d 702, 706 (7th Cir. 2014). Where, as here, "a defendant enters a negotiated plea of guilty in exchange for specified benefits . . . [,] both the State and the defendant must be bound

by the terms of the agreement." *People v. Whitfield*, 217 Ill. 2d 177, 190 (2005). Thus, by agreeing to plead guilty in exchange for the statutory minimum sentence of 6 years in prison, 54 days of presentence custody credit, and the dismissal of two additional charges, defendant waived any additional presentence credit. *See Jones,* 2021 IL 126432, ¶ 20 ("'It is well established that a voluntary guilty plea waives all non-jurisdictional errors or irregularities, including constitutional ones.'").

3. Rule 472 does not permit defendant to circumvent this Court's established precedents.

There is no merit to defendant's contention that, because the record does not "indicate[] that he discussed home-detention credit and agreed to waive it," his guilty plea did not waive the additional presentence custody credit. Def. Br. 16-17. Defendant's argument that he could waive the additional sentencing credits only via a statement on the record to that effect, *see id*. at 17-19, ignores his explicit agreement to 54 days of presentence custody credit and misconstrues the effect of a fully negotiated plea agreement.

Defendant's written plea agreement and his assent to the terms of the agreement in open court establish his agreement to 54 days of presentence custody credit as part of the bargain into which he entered. "Fundamentally, plea agreements are contracts, and principles of waiver apply equally to them." *Jones,* 2021 IL 126432, ¶ 21; *see People v. Absher*, 242 Ill. 2d 77, 87 (2011) ("Beginning with our 1996 decision in *People v. Evans*, 174 Ill. 2d 320

[ ] (1996), we have repeatedly held that fully negotiated guilty pleas . . . are governed by principles of contract law."); *see also United States v. Brown*, 779 F.3d 486, 492 (7th Cir. 2015) (a plea agreement is interpreted using ordinary contract principles, and these terms are examined objectively relying on the plain meaning of the plea agreement's terms as evidence of the parties' intent). "When a plea agreement is unambiguous on its face, this court generally interprets the agreement according to its plain meaning." *United States v. Monroe*, 580 F.3d 552, 556 (7th Cir. 2009) (citing *Santobello v. New York*, 404 U.S. 257, 262-63 (1971)). Here, defendant clearly and unambiguously agreed to plead guilty in exchange for 6 years in prison and 54 days of presentence custody credit. Accordingly, defendant may not now seek additional credit not included in the agreement. *See Virginia Sur. Co., Inc. v Northern Ins. Company of New York,* 224 Ill. 2d 550, 556 (2007) ("[i]f the contract language is unambiguous, it should be given its plain and ordinary meaning").

Defendant's argument that, due to an amendment to 730 ILSC 5/5-4.5-100(b) months before his plea, the parties and the court may have been unaware of defendant's potential eligibility for home-detention credit, Def. Br. 17-18, is unavailing. As the appellate court noted, the applicable sentencing statute had provided since 2012, i.e., nearly a decade before defendant's plea, that the trial court "shall" award presentence custody credit "for time spent in home detention." A16. Thus, the court reasoned, "it is

difficult to comprehend how the addition of language further defining home detention would cause defendant to be unaware he could be entitled to presentence credit or that it is subject to waiver." *Id.*

"More to the point," the court added, the statute's mandatory language "has long been subject to waiver by a fully negotiated guilty plea, and the recent addition of language clarifying what constitutes home detention does not change the analysis" or "alter the contractual nature of plea agreements." *Id.* Thus, because the parties knowingly and intentionally agreed that defendant would receive credit for 54 days served upon pleading guilty, any confusion by the parties as to how much additional credit he might have been entitled to – if any – is of no matter. *See, e.g., Tilton v. Fairmount Lodge, A.F. & A.M.*, 244 Ill. 617, 622 (1910) ("Where the terms of the written instrument were used deliberately and knowingly by the parties, even though under a misapprehension of their legal effect, there can be no relief and no reformation of the contract."). In short, defendant expressly agreed that his plea agreement included 54 days of presentence custody credit, thereby waiving any claim of entitlement to additional credit; a formal statement discussing and relinquishing any additional credit was not required.

Relying on *People v. Ford*, 2020 IL App (2d) 200252, and *People v. Malone*, 2023 IL App (3d) 210612, defendant nevertheless proposes a new "rule" whereby, "if a defendant asks for mandatory presentence credit which he has not been awarded after a guilty plea, a court would look to the

transcript of the plea hearing and the written terms of the plea agreement." Def. Br. 21. "If the parties did not discuss the credit in question, it was not a term of the plea agreement[,] and the court should award the credit," without disturbing the remaining terms of the negotiated plea agreement. *Id.* at 21-22. Defendant's proposed rule should be rejected as incompatible with this Court's precedents, including: the Court's determination that the plea bargaining process should be encouraged rather than undermined; the requirement in Rule 604 that any motion to withdraw a guilty plea be filed within 30 days of the plea; and Rule 472 itself, which does not purport to create a broad exception to Rule 604 but instead is limited to correcting clerical errors.

For starters, to adopt defendant's proposed rule would undermine the plea bargaining process, which is "vital to and highly desirable for our criminal justice system." *Evans*, 174 Ill. 2d at 325; *accord People v. Donelson*, 2013 IL 113603, ¶ 18 ("Plea bargaining leads to prompt disposition of cases, preserves finite judicial and financial resources, and allows the State to focus its prosecutorial efforts where they are most needed."); *see also Brady v. United States*, 397 U.S. 742, 752 (1970) ("For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious."). Were defendants able to seek additional sentencing credit not encompassed in their plea agreement, while at the same time holding the People to their end of the agreement, this "heads I win, tails

you lose" tactic would dissuade the People from entering into plea bargains in the first place, contravening this Court's policy of encouraging properly administered plea bargains. *See Evans*, 174 Ill. 2d at 328.

Nor can defendant's proposed new rule be squared with the text and the purpose of Rules 472 and 604. The same principles of construction that apply to statutes guide this Court's construction of its rules. *Tousignant*, 2014 IL 115329, ¶ 8. The Court's "goal is to ascertain and give effect to the intention of the drafters of the rule," and "[t]he most reliable indicator" of the drafters' intent is the "plain and ordinary meaning" of the rule's language. *Id.* The rule's "[w]ords and phrases," however, "should not be considered in isolation; rather, they must be interpreted in light of other relevant provisions and the [rule] as a whole." *Id.* Thus, where two rules "concern[] the same subject," they "must be considered together in order to produce a harmonious whole." *People v. Rinehart*, 2012 IL 111719, ¶ 26 (internal quotation marks omitted). In addition, the Court "may consider the purpose behind the [rule]," as well as "the consequences that would result from construing [it] one way or the other." *Tousignant*, 2014 IL 115329, ¶ 8.

Rule 604(d) creates a 30-day deadline for filing motions to withdraw guilty pleas, which "ensures that fact finding takes place and a record is made at a time when witnesses are still available and memories are fresh." *People v. Sophanavong*, 2020 IL 124337, ¶ 23. Contrary to defendant's preferred reading, Rule 472 did not create a broad exception to Rule 604 that

allows a defendant to challenge the length of his sentence at any time and without first moving to withdraw his negotiated guilty plea. Rule 472 provides, in relevant part:

> (a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:
>
> * * *
>
> (3) Errors in the calculation of presentence custody credit.

Ill. S. Ct. R. 472. Thus, Rule 472 does not, by its plain terms, provide an exception to Rule 604. And it would be bizarre, indeed, for the drafters to have sub silentio carved out a broad new exception to Rule 604.

Indeed, a review of this Court's jurisprudence and Rule 472's history confirms that the rule was not intended to do any such thing. After this Court abolished the void sentence rule, which had permitted the correction of a statutorily non-conforming sentence at any time, *see People v. Castleberry,* 2015 IL 116916, ¶ 13, a new rule was needed to correct statutorily unauthorized sentences, including sentences reflecting errors involving the imposition of fines and fees or other clerical mistakes that are prevalent but easily corrected by the circuit court. *See People v. Jones*, 2022 IL App (2d) 210079-U, ¶ 31 (Rule 472 was promulgated "to quell that tide by providing the [trial] court with jurisdiction, at any time after sentencing, to address

those issues [for] the first time") (cleaned up).[4] To promote judicial economy, the People proposed a rule that would allow these errors to be corrected at any time in the circuit court. *See People ex rel. Berlin v. Bakalis*, 2018 IL 122435, ¶ 24; *People v. Vara*, 2018 IL 121823, ¶ 10. This Court referred that proposal to the rules committee and, a year later, Rule 472 was adopted. *See Bakalis*, 2018 IL 122435, ¶ 27. Thus, Rule 472's purpose was to allow for circuit courts to correct routine sentencing errors, and not, as defendant proposes, to provide a new mechanism for guilty plea defendants to receive additional sentencing credit inconsistent with the terms of their negotiated plea without first moving to withdraw their plea under Rule 604(d).

Finally, defendant's reliance on *Ford* and *Malone* is misplaced, *see* Def. Br. 18-21, because those cases were wrongly decided. In *Ford*, the appellate court held that Rule 472 permitted it to address the defendant's claim that he was entitled to additional sentencing credit despite his having agreed to a lesser amount of days in a fully negotiated plea agreement. 2020 IL App (2d) 200525, ¶¶ 15, 28. In *Malone*, the appellate court held that the defendant could request additional credit not included in his plea agreement through a pro se motion to correct the mittimus. 2023 IL App (3d) 210612, ¶ 19. For the reasons explained, the court's holding in each case conflicts with this Court's cases holding that plea agreements are interpreted and applied

[4] A copy of this unpublished opinion, *People v. Jones,* 2022 IL App (2d) 210079-U, is available at https://tinyurl.com/5n7wx5je. *See* Ill. S. Ct. R. 23(e)(1).

according to contract law principles, as well as the plain language of Rules 604(d) and 472, which require a defendant challenging his guilty plea to file a motion to withdraw that plea within 30 days and create no exception for challenges to the agreed-upon sentence.

II. Defendant's Remedy Lies in a Petition Under the Post-Conviction Hearing Act.

If, as defendant claims, he and/or his attorney were unaware at the time of his plea that section 5-4.5-100 might have permitted him to negotiate for additional sentencing credit, and defendant learned of this more than 30 days after his plea, i.e., after it was too late to file a timely Rule 604(d) motion, then defendant's remedy lies in a postconviction petition alleging ineffective assistance of plea counsel. *See People v. Rissley*, 206 Ill. 2d 403, 457 (2003) (counsel's performance is deficient under *Strickland* "if the attorney failed to ensure that the defendant entered the plea voluntarily and intelligently"); *People v. Hall*, 217 Ill. 2d 324, 341 (2005) (if defendant were able to demonstrate that plea counsel was ineffective, he would be permitted to withdraw guilty plea).

Defendant's proposed remedy to grant him the credit outright, Def. Br. 26-27, "ignores [the] basic principles of fairness governing the enforcement of plea agreements." *In re Derrico G.*, 2014 IL 114463, ¶ 99. Here, one of the basic assumptions underlying the plea agreement was that defendant would receive 54 days of presentencing credit towards his minimum 6-year sentence and dismissal of two other charges. *See Evans*, 174 Ill. 2d at 332 (sentence is

"material element[] of the plea bargain"). Accordingly, defendant cannot "seek[] to hold the State to its part of the bargain while unilaterally modifying the sentences to which [he] had earlier agreed" because to do so both "flies in the face of contract law principles" and is "inconsistent with constitutional concerns of fundamental fairness." *Evans*, 174 Ill. 2d at 327; *Absher*, 242 Ill. 2d at 87 (same); *see also People v. McCutcheon*, 68 Ill. 2d 101, 107 (1977) ("Fairness for the interests of the People demands that the State not be bound by a plea agreement, once a condition of that agreement . . . is no longer valid."). Moreover, defendant's request for this Court to grant him the requested credit outright ignores both that the purpose of Rule 472 was to situate such requests in the circuit courts in the first instance and that it is also far from clear whether he is entitled to all of the claimed credit.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the appellate court's judgment.

November 15, 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, the certificate of service, is 26 pages.

/s/ Jalan L. Jaskot
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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 November 15, 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 provided service to the following:

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