THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 132129

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JIMMIE MARSHALL, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-25-0426. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 2025 CF 73. Honorable Jennifer H. Bauknecht, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT IN SUPPORT OF RULE 604(h) APPEAL

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ARGUMENT

I. This Court should affirm its longstanding position that a defendant may not be considered to have knowingly and intentionally relinquished a right where he was not informed of that right or of the consequences of relinquishing it.

A. Barring plain-error review of Pretrial Fairness Act claims would violate defendants' due process rights.

It is self-evident that a defendant "has the right to remain free pending trial unless the requirements of the [pretrial release] statute are followed." *People v. Vojensky*, 2024 IL App (3d) 230728, ¶ 10. Here, the State argues that defendants appealing a ruling under the Pretrial Fairness Act ("PFA") nevertheless *choose* to abandon the right to remain free when their attorneys fail to preserve issues for appeal. The State insists that even though defendants are not admonished about the preservation of issues and even though pretrial attorneys are not required to ascertain and present the defendant's contentions of error, claims of illegal detention can be deemed waived and unreviewable regardless of the irreparable harm they may cause. *See County of Riverside v. McLaughlin,* 500 U.S. 44, 52 (1991) (improper detention may "unjustly 'imperil [a] suspect's job, interrupt his source of income, and impair his family relationships.'") (quoting *Gerstein v. Pugh,* 420 U.S. 103, 114 (1975)). (St. Br. 20)

However, *People v. Ratliff* made clear that for a right to be waived, it must be given up knowingly and intentionally: "Waiver . . . is never inadvertent because it is an intentional relinquishment of a right." 2024 IL 129356, ¶ 26. While the State urges this Court to reject that definition and find waiver even where a defendant inadvertently gives up an unknown

right, this Court has consistently found that to be a violation of due process. *See, e.g., People v. Jamison*, 181 Ill. 2d 24, 29 (1998); *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011); *People v. Flowers*, 208 Ill. 2d 291, 301 (2003); *People v. Foster*, 171 Ill. 2d 469, 472 (1996). Tellingly, the State never once uses terms related to knowledge, voluntariness, or intent when discussing the alleged waiver of PFA issues; its failure to engage with the actual substance of Marshall's argument regarding the requirements for waiver demonstrates the weakness of its position.

The State argues that *Ratliff* held that, no matter the context and no matter the admonishments, the word "waived" prevents plain-error review. (St. Br. 6-7) But that is not true: *Ratliff* confirmed that waiver requires knowledge and intent. 2024 IL 129356, ¶ 26. Moreover, in *People v. Johnson*, 2024 IL 130191, decided two weeks after *Ratliff*, this Court looked beyond the plain language of waiver in Rule 605(a)(3)(C) to review an unpreserved sentencing error.

In *Johnson*, the defendant filed a motion to reconsider sentence, but on appeal raised an issue that was not included in the motion to reconsider. 2024 IL 130191, ¶¶ 30-31. One of the rules governing challenges to sentences on appeal states that "any issue or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion [to reconsider sentence] *shall be deemed waived*." Rule 605(a)(1)(3)(C) (emphasis added). In spite of the plain language regarding waiver, this Court considered the error forfeited, not waived. *Id.*, ¶ 38. It went on to find that that specific error alleged was not second-prong plain error, but left open the

possibility that other unpreserved sentencing errors might be. *Id.*, ¶ 92. It then explicitly stated that the error "is reviewable under the first prong of plain error analysis." *Id.* Given that *Johnson* came after *Ratliff*, *Ratliff* clearly allowed this Court to consider *the context* of the language regarding waiver, which is precisely what Marshall seeks here.

Not only does *Ratliff* allow plain-error review, due process requires it. The State argues that PFA defendants are not entitled to due process because the right to appeal a pretrial detention order "derives from this Court's rules" and "not the Constitution." (St. Br. 21) The State fails to realize that, "where a liberty or property interest is infringed, the process which is due under the United States Constitution is that measured by the due process clause, *not that called for by state regulations*." *Giovanni v. Lynn*, 48 F.3d 908, 912 (5th Cir. 1995) (emphasis added), citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 539-41 (1985). A defendant cannot be denied due process simply because a right is governed by state procedures. *Medina v. California*, 505 U.S. 437, 445 (1992). Further, "any denial of the right to appeal a criminal case may be subject to due process and equal protection guarantees of Federal and State Constitutions, even though the right to appeal is not, *per se*, of constitutional dimensions." *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). The State is simply incorrect that PFA defendants, who are presumed innocent by the constitution and presumed eligible for release by the statue, are not entitled to due process on appeal.

Further, contrary to the State's claim, Marshall has never denied that the plain language of Rule 604(h) states that issues not raised in a motion for

relief "shall be deemed waived." (See Def. Br. 15; St. Br. 13-17) Rather, he argues that a literal reading of the statute must fail where, as here, it yields unjust results. (Def. Br. 15); *see, e.g.*, *Cassidy v. China Vitamins*, LLC, 2018 IL 122873, ¶ 17; *see also People v. Scheib*, 76 Ill. 2d 244, 252 (1979) (this Court does not favor interpretations of a statute or rule "that would raise legitimate doubts as to the constitutional validity of a statutory provision."). Nor has Marshall argued that the court below violated any of this Court's rules. But that does not mean that the procedures comply with due process. *Medina*, 505 U.S. at 445.

The State's argument that the intent behind the amended Rule 604(h) is irrelevant is also unavailing. (St. Br. 19) In fact, where a literal reading of the rule or statute yields unjust results, the intent of the drafters is of paramount concern. *See, e.g.*, *People v. Rinehart*, 2012 IL 111719, ¶ 24. Rule 604(h) was amended to ensure that courts could "provid[e] meaningful appellate review of cases that are *meaningfully presented*." Ill. Sup. Ct. Pretrial Release Appeals Task Force, Report and Recommendations, 2024 at 5 (emphasis in original). Plain-error review is consistent with this intent: issues presented for plain-error review are, by necessity, meaningfully presented. Contrary to the State's claim, the amendment did not intend to *bar* meaningful appellate review of such claims. (St. Br. 19)

The State further insists that the use of the word "deemed" to modify "waived" in Rule 604(h) demonstrates that this Court "intended that principles of waiver apply to bar consideration of issues omitted from a motion for relief." (St. Br. 18) But there are no greater principles of waiver

than knowledge and intent—the very concepts the State refuses to acknowledge. "The party alleged to have waived a right must have had both *knowledge* of the existing right and the *intention* of forgoing it." Black's Law Dictionary, "Waiver," 1574 (7th ed., 1999) (emphasis added). *Ratliff* affirmed that "'waiver' refers to the 'voluntary relinquishment of a known right.'" 2024 IL 129356, ¶ 22, quoting *People v. Townsell*, 209 Ill. 2d 543, 547 (2004) (other internal quotation marks omitted). There simply cannot be valid waiver without knowledge and intent.

The State further argues that *Townsell* holds that "plain-error review does not apply to waived issues," but in fact the holding in *Townsell* applies when there is actual waiver, with knowledge and intent, and issues that were not actually waived should be reviewed as plain error. (St. Br. 20) In *Townsell* this Court found that plain-error review did not apply to an *Apprendi* claim that was waived pursuant to a *knowing and voluntary* guilty plea. 209 Ill. 2d at 544. Such a plea must, of course, be proceeded by extensive admonishments about the waiver of rights, an explicit determination that the plea is knowing and voluntary, and a description of the results of the plea. Ill. Sup. Ct. R. 402(a)(4), (b), (d). No such protections exist in the context of PFA appeals, and thus the reasons for barring plain-error review in *Townsell* show why it is required here.

Nor is the State correct that the right to due process is not implicated because PFA defendants "must take [the] consequences" for abandoning rights they did not know they possessed, as "parties and their attorneys are presumed to know the rules of court." (St. Br. 21), quoting *Clark v. Ewing*, 93

Ill. 572, 577 (1879). *Clark* is a 146-year-old civil case that has never been relied on in a criminal context and that has not been relied on at all for nearly 80 years. The State follows this quote with a parenthetical quote from the vastly more relevant *Wilk*, which states that "[i]t is incumbent upon counsel and courts alike to follow [this Court's rules]." (St. Br. 21); *Wilk*, 124 Ill. 2d at 103. Notably, *Wilk* declined to place this requirement on criminal defendants like Marshall and, moreover, stated that counsel's failure to preserve the defendant's appeal rights raises questions of ineffective assistance, while the State, of course, seeks to deny PFA defendants that avenue for relief as well. (See Argument II, below); *id.* at 106. Further, *Wilk* had nothing to do with plain error and does not support the State's claim that such review is barred in PFA cases.

The State relies on *People v. Breedlove*, 213 Ill. 2d 509, 516 (2004), for the uncontroversial proposition that "[d]ue process does not require that a defendant be admonished of the right to an appeal," much less of "all the steps necessary to preserve every alleged error." (St. Br. 22) The State wrongly claims that that quote proves that a PFA defendant's loss of appeal rights "pose[s] no due process concerns." (St. Br. 22) This argument ignores *Breedlove*'s actual holding, and Rule 615(a), which show why unpreserved PFA issues must be eligible for plain-error review.

At sentencing following a jury trial, the *Breedlove* defendant was given the Rule 605(a) admonishments that then existed, and told that he must file a notice of appeal within 30 days. 213 Ill. 2d at 511. Two months later, this Court amended Rule 605(a) to require courts to admonish defendants that, in

order to challenge a sentence, the defendant must file a motion to reconsider sentence; moreover, any sentencing issue not raised in that motion "would *be considered waived*." *Id.* (emphasis added). The *Breedlove* defendant did not file a post-sentencing motion and on appeal argued only that he was entitled to be remanded for the new admonishments. *Id.* at 512.

This Court found that the defendant was not entitled to remand for admonishments regarding waiver, as Rule 605(a) did not contain such language at the time of his sentencing. *Breedlove*, 213 Ill. 2d at 517. That is, the State is correct that due process does not require a defendant to be admonished about the waiver of rights on appeal. But that is not the end of the *Breedlove* holding. This Court then confirmed that where defendants raise unpreserved sentencing issues, "[t]heir sentences *may still be reviewed for plain error*." *Id.* at 522 (emphasis added).

This is precisely what Marshall argues is required. He does not, as the State claims, argue that Rule 604(h) violates due process. (St. Br. 25, 27) Nor does he argue that the Rule 605(d) admonishments are "deficient" or that he should be remanded for different admonishments. (St. Br. 21) Rather, he argues that due process is violated where he is deprived of any review of issues not raised in a motion for relief but was not admonished about those rights or the consequences of failing to preserve them.

In his opening brief, Marshall stressed that PFA appeals are not analogous to guilty-plea appeals, which impose waiver only when all of the required due process protections have been provided, as opposed to PFA appeals, in which some courts have found waiver in spite of the lack of

protections. (Def. Br. 11-15); *see, e.g.*, *People Nettles*, 2024 IL App (4th) 240962, ¶ 21 (refusing plain-error review because appeals from guilty pleas are a "reasonable analog" to PFA appeals). Courts that, like the State, insist on this analogy fail to acknowledge the lack of analogous due process protections for PFA defendants. Moreover, they fail to engage at all with the actual meaning of waiver and its requirements of knowledge and intent. The State encourages this Court to make the same error.

The State argues that the lack of analogous protections in PFA appeals and guilty-plea appeals does not violate due process because the two rules "apply in different contexts." (St. Br. 25) Of course they do; that is why they require different approaches to unpreserved issues. Defendants who plead guilty—the "quintessential waiver"—have already received all of the admonishments and protects required for a plea. *People v. Jackson*, 199 Ill. 2d 286, 297 (2002). Following that admission of guilt beyond a reasonable doubt, they are admonished regarding the waiver of rights on appeal and are represented by attorneys who are bound to ascertain and present their contentions of error in order to avoid such waiver. Rule 604(d), 605(b), (c). Because of the harsh ramifications of waiver, it is a violation of due process to find the knowing and intentional abandonment of issues without all of those protections. *See, e.g., Jamison*, 181 Ill. 2d at 29; *Skryd*, 241 Ill. 2d at 41; *Flowers*, 208 Ill. 2d at 301; *Foster*, 171 Ill. 2d at 472.

PFA proceedings, by contrast, are predicated on the defendant's presumed innocence and presumed eligibility for release, and are preceded by no such "quintessential waiver." Moreover, PFA defendants receive none of the appeal admonishments and protections provided following a guilty plea.

And yet, should this Court find that plain-error review is not available to PFA defendants, PFA appeals may be the only kind of appeal in which a defendant is found to have "waived" rights without knowledge or intent. When found guilty after trial, a defendant is not considered to have *waived* issues that were not included in a motion for new trial. The defendant's unpreserved sentencing issues are reviewed for plain error in spite of the fact that Rule 605 states that they are to be "deemed waived." Ill. Sup. Ct. R. 605(a)(3)(C). And defendants who plead guilty are provided with layers of protections to ensure that their waiver is knowing and voluntary. Ill. Sup. Ct. R. 604(d), 605(b), (c). It is only those presumed innocent and entitled to release who are left without protections or recourse when they are found to have voluntarily abandoned issues without admonishments or protections.

Finally, the State relies on *People v. Marcum*, 2024 IL 128687, ¶ 26-41, to argue that due process permits the unadmonished waiver of the right to appeal PFA issues. (St. Br. 23) In *Marcum*, this Court found that the *statutory* right to a speedy trial was not eligible for second-prong plain-error review, though defendants are not admonished regarding the waiver of that right. *Id.*, ¶ 41. However, the statutory right to a speedy trial is not analogous to the right not to be held in violation of the pretrial release statute. The statutory speedy trial right is technical, based on the specific number of days following a defendant's placement in custody; the constitutional right to trial relies on a multi-factor assessment of the defendant's rights. *Id.*, ¶ 25; *People v. Echols*, 2018 IL App (1st) 153156, ¶ 11. *Marcum* in no way held that the general constitutional right to a speedy trial could be barred from plain-error review. Nor did it hold that a defendant

could not show that counsel was ineffective for failing to assert even the statutory right, though the State insists that PFA defendants cannot be prejudiced by counsel's ineffectiveness.

This reliance on *Marcum* harks back to the State's original assertion that there is somehow no constitutional dimension to jailing a presumed-innocent defendant in violation of the pretrial release statute. (St. Br. 6-7, 21) However, the claim that there is no due process implication in stripping a defendant, without admonishments, of his right to appeal issues related his illegal detention is baseless. *See, e.g., Skryd*, 241 Ill. 2d at 41 (imposing consequences on a defendant without admonishments violates due process). It additionally ignores the fact that the "pretrial release provisions complement the bail clause" in the Illinois constitution. *Rowe v. Raoul*, 2023 IL 129248, ¶ 30; *see also* U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."). Regardless of whether the procedures governing the appeal are dictated by rule, statute, or constitution, a defendant cannot be considered to have knowingly and intentionally waived a right he did not know existed. *Id.*

B. Barring plain-error review would lead to absurd and unjust results.

The State recognizes that defendants are entitled to "an opportunity to gain relief from a clearly erroneous detention order," yet, in rejecting plain-error review, it fails to suggest a realistic solution. (St. Br. 27) Its suggestions are either of dubious value (arguing that PFA defendants may file unlimited challenges to a single detention order) or ignore the realities of the PFA statute (claiming that a continued-detention hearing under 725 ILCS 5/110-

6.1(i-5) could substitute for plain-error review).

First the State claims that defendants may file motions for relief challenging the original detention order again and again—apparently as many times as they would like, raising new issues that could have been raised in earlier motions for relief. (St. Br. 27-30) Marshall would certainly welcome the right to repeatedly challenge the same detention under the PFA. However, should this Court accept the State's position, this would not necessarily lead to relief: there would be no way to ensure that counsel would in fact raise the issue in subsequent attempts, and thus the filing of multiple motions for relief, without plain-error review, could simply lead to multiple unadmonished waivers of substantial errors with no appellate review.

Additionally, it is also necessary to point out that the cases the State cites in support of repeated motions for relief in lieu of plain-error review do not actually stand for that proposition. For instance, *Nettles*, 2024 IL App (4th) 240962, does not hold that defendants may file multiple motions for relief. (St. Br. 27) Rather, it held that the defendant in that case "could *still* file a proper motion for relief and take a proper appeal," because he had actually not yet filed a single motion for relief. *Id*, ¶¶ 11, 19-21, 25 (emphasis in original). Likewise, the defendant in *People v. Cooksey*, 2024 IL App (1st) 240932, ¶ 19, had not filed a motion for relief and the court noted that the defendant could still do so. (St. Br. 28)

The court in *People v. Pederson*, 2024 IL App (2d) 240441-U, ¶¶ 19, 26, did appear to claim that multiple motions could be filed, but it also reviewed the defendant's unpreserved issue for plain error, making repeated motions for relief unnecessary. (St. Br. 28)

Should this Court find that a defendant may file multiple challenges to the same detention order, it should also clarify whether issues that were originally waived may be heard in the subsequent motions and on subsequent appeals, which the State insists is permissible. (St. Br. 28; *see* Def. Br. 27-28, 34) This Court should also ensure that a defendant could obtain relief through an ineffective assistance of counsel claim or plain-error review, depending on the nature of the error. (*See* Def. Br. 34)

In a footnote the State appears to suggest that, should multiple motions for relief from the same order not be permitted, continued-detention hearings under 725 ILCS 5/110-6.1(i-5) would be sufficient to address any serious errors. (St. Br. 27, n.4) This claim ignores the extensive discussion of this issue in Marshall's opening brief. (Def. Br. 23-26, 32-33) In fact, given the limitations of continued-detention hearings—which are predicated on the earlier finding that the State sufficiently showed that the defendant committed a detainable offense and requires pretrial detention—many improperly detained defendants would not be entitled to relief. This would include defendants functionally not present at their original hearings (*People v. Gatlin*, 2024 IL App (4th) 231199); defendants not charged with a detainable offense (*People v. Davis*, 2024 IL App (3d) 240244); defendants denied the right to testify (*People v. Wallace*, 2024 IL App (4th) 240673-U); or defendants who are detained due to the trial court's personal biases (*People v. Atterberry*, 2023 IL App (4th) 231028). (Def. Br. 26-27)

The State does not even attempt to address these problems. Yet the implication of its argument is that these improper detentions would not

violate due process simply because of the use of the word "waived."[1]

II. PFA defendants whose attorneys provide ineffective assistance should not be forced to suffer the consequences of their attorneys' errors.

The State does not deny that pretrial defendants are guaranteed the right to counsel. Nor does it deny that the right to counsel "necessarily includes the right to *effective* counsel." *People v. Rogers*, 2021 IL 126163, ¶ 23. But the State has no answer to the question posed in Marshall's opening brief: "How could a defendant be guaranteed effective assistance unless he could challenge *ineffective* assistance?" (Def. Br. 36) Indeed, the State has not identified a single circumstance in which a defendant is entitled to counsel but also barred from challenging counsel's effectiveness.

A. The right to continued-detention hearings does not prevent a defendant from suffering prejudice due to counsel's errors.

The State maintains that a defendant cannot prove prejudice from counsel's failure to preserve an issue related to his improper detention because attorneys will have further opportunities to improve their performance. It relies on *Nettles*, 2024 IL App (4th) 240962, ¶ 25; *People v. Claver*, 2025 IL App (1st) 251041-U, ¶¶ 67-68; and *Pederson*, 2024 IL App (2d) 240441-U, ¶ 26, all of which stated that a defendant cannot "establish

[1] The State also does not address Marshall's observation that, at the time Rule 604(h) was amended, this Court had not yet definitively declared that the term "waiver" in Rule 604(d) precluded plain-error review. *See Ratliff*, 2024 IL 129356, ¶ 23 n.2. Rather, the term "waived" could still be seen as permitting plain-error review, if the failure to preserve an issue was not knowing and voluntary. *See People v. Sophanavong*, 2020 IL 124337, ¶¶ 20, 28 (abrogated by *Ratliff*, ¶ 20). (Def. Br. 18, n.3)

that he has been prejudiced by his attorney 'dropping the ball' when the ball is still in the air." (St. Br. 32-33)

However, Marshall discussed this claim at length in his opening brief and explained why the availability of continued-detention hearings does not prevent a defendant from showing that he was prejudiced by counsel. (Def. Br. 31-34) He pointed out that continued hearings do not include a presumption of release, a proffer of the State's evidence, or a determination of whether the State had sufficiently shown that the defendant committed a detainable offense. Rather, they begin from the premise the defendant must be detained in order to prevent flight or danger. 725 ILCS 5/110-6.1(i-5). Marshall also discussed some of the many errors that a defendant would have no opportunity to present at a continued hearing. (Def. Br. 33) Any ball that is "still in the air" is not the same ball that was in the original detention hearing. The State has no answer to any of this.

In addition to arguing that defendants cannot show prejudice due to the availability of continued-detention hearings under 110-6.1(i-5), the State also argues that defendants cannot make that showing because they can, allegedly, file multiple motions for relief challenging the same detention order. (St. Br. 32) The State also does not explain how, even if a continued-detention hearing operated the same way as the original detention hearing or multiple motions for relief were allowed, a defendant could ensure that counsel would not omit the same issues in those later hearings or filings. (Def. Br. 33) Not every attorney would recognize the prior failure and use the continued-detention proceeding or successive motion for relief to improve their performance.

Other cases the State cites for the proposition that a defendant cannot prove prejudice under *Strickland* for failure to raise viable PFA in fact hold no such thing. (St. Br. 32-33) For instance, in *People v. Luebke*, 2025 IL App (5th) 241208-U, ¶ 35, the court did not find that it would be impossible for any defendant to show prejudice, but rather that the "defendant's claim of ineffective assistance of counsel fails *under the facts of this case*." (Emphasis added.) The court in *People v. Romero*, 2025 IL App (2d) 24-0581-U, ¶ 29, reached the same conclusion: *Strickland* might apply, but not in that particular case. In *People v. Collins*, 2025 IL App (2d) 240734-U, ¶ 31, the court likewise concluded not that *Strickland* does not apply to PFA cases but rather that the record was insufficient to show that the attorney in that case was ineffective.

The State cites no other context in which a defendant who is entitled to effective assistance of counsel has no means of challenging that assistance and must instead simply hope that counsel improves on the next try.

B. A defendant who is wrongly incarcerated due to pretrial counsel's error suffers prejudice regardless of the outcome of the trial.

The State does not acknowledge Marshall's argument that, in PFA appeals, the question is whether counsel's errors affected the outcome of the *PFA proceeding*, not the outcome of the trial itself. (Def. Br. 36-39) Indeed, some PFA defendants never go to trial, as their charges are dismissed; others are found not guilty. Instead of addressing this, the State relies on inapposite cases in which a convicted defendant unsuccessfully argued that pretrial counsel prejudiced the *trial itself*. (St. Br. 33) But the PFA guarantees the right to effective counsel *at the PFA proceeding*, which necessarily entails the

right to challenge counsel's effectiveness.

The United States Supreme Court has explicitly held that errors before trial are cognizable as ineffective assistance of counsel regardless of whether they affect the fairness of the trial itself. *Lafler v. Cooper*, 566 U.S. 156, 164-65 (2012). Even though a PFA hearing does not concern the ultimate result of the trial, ineffective assistance during a PFA hearing "can result in *Strickland* prejudice because 'any amount of [additional] jail time has Sixth Amendment significance.'" *Id.*, quoting *Glover v. United States*, 531 U.S. 198, 203 (2001). The United States Supreme Court has never "followed a rigid rule"—a rule that the State insists that this Court must follow—"that an otherwise fair trial remedies errors not occurring at the trial itself." *Id.* at 165. And the "traditional right to freedom before conviction . . . serves to prevent the infliction of punishment prior to conviction." *Stack v. Boyle,* 342 U.S. 1, 4 (1951). The State's argument that a defendant can show prejudice from improper pretrial detention only after trial is illogical on its face, ignores relevant case law, and takes away the meaning of the presumption of innocence. *Id.*

The State's argument would also lead to absurd results, as only defendants who were eventually convicted would be able to prove prejudice from PFA counsel's errors. Defendants who were acquitted or whose charges were dismissed could never prove that their attorney's failures prejudiced them, even if they were illegally detained under the PFA statute. But that cannot be true if any additional jail time caused by counsel's errors has Sixth Amendment significance. *Lafler*, 566 U.S. at 164-65.

The State's refusal to address the inherent contradiction between a

right to effective assistance of counsel while also being barred from challenging ineffective assistance demonstrates the indefensibility of its position.

III. This Court should apply the public interest exception to mootness.

The State's argument that none of the factors that underlie the public interest exception to mootness fails. Indeed, this Court has applied the public interest exception at least three times in the context of PFA appeals, as such appeals are particularly susceptible to becoming moot: *People v. Morgan*, 2025 IL 130626, ¶ 17; *People v. Cooper*, 2025 IL 130946, ¶ 16, n.1; and *People v. Seymore*, 2025 IL 131564, ¶ 34.

First, the State claims that the exception does not apply because a determination of whether plain-error review or ineffective assistance of counsel claims may ever apply to unpreserved PFA issues depends on the specific facts of Marshall's case alone. (St. Br. 11) This is false. Whether Marshall could prove that plain error occurred or that counsel was ineffective in his specific case would, of course, be dependant on specific facts. The predicate question of whether such review is available at all is strictly a matter of law and is widely applicable.

The State also argues that the public interest exception does not apply because the number of people detained prior to trial or subject to conditions of release is too small to be of any concern to this Court. (St. Br. 12) This claim is absurd. In 2025, the Office of the State Appellate Defender was appointed to 540 PFA appeals. *See* Annual Report Fiscal Year - 2025 Office of

the State Appellate Defender at 14. Given that OSAD does not typically handle PFA appeals originating in Cook County, the actual number of PFA appeals each year is much greater than 540, and any of those appeals could involve viable issues that were not preserved below.

The State further claims that this Court should not review this case under the public interest exception because the law is "not in disarray." (St. Br. 9-11) However, Marshall adopts the argument the State made *for* the mootness exception in *Cooper*, in which it correctly noted that

> "this Court has expressly held that no conflict in case law is necessary for the public-interest exception to apply. *In re Shelby R.*, 2013 IL 114994, ¶¶ 17-23. To the contrary, it has repeatedly found the exception satisfied even where the issue presented was one of first impression." *See id.*; *see also McHenry Twp. v. County of McHenry*, 2022 IL 127258, ¶ 52; [*In re*] Rita *P.*, 2014 IL 115798, ¶ 38.

See "People's Response in Opposition to Motion to Dismiss Appeal as Moot," *Cooper*, No. 130946, filed April 25, 2025.

The State also claims that appellate courts have been unanimous in their interpretation of waiver since *Ratliff*, but its citations show otherwise. (St. Br. 8-9) For instance, in *People v. Romero*, 2025 IL App (2d) 24-0581-U, ¶ 27, the court found waiver but nevertheless considered whether plain-error review was appropriate. (St. Br. 9) In *People v. Glass*, 2025 IL App (2d) 250103-U, ¶ 28 n.2, the court treated the defendant's arguments as preserved, as the State did not challenge the alleged waiver. (St. Br. 9) However, as this Court noted in *Ratliff*, while *forfeiture* may not limit a court's review, *waiver* outright prevents it. 2024 IL 129356, ¶ 26. This shows, then, that the *Glass* court did not interpret the term waiver as the State claims.

Additionally, *People v. Burries*, 2025 IL App (5th) 241033, ¶ 29, and *People v. Patterson*, 2025 IL App (1st) 250510, ¶¶ 9-10, both dismissed the appeal for failing to file a motion for relief and are thus not on point. (St. Br. 9) In *People v. Davis*, 2024 IL App (1st) 241747, ¶ 39, and *People v. Sample*, 2025 IL App (3d) 250302-U, ¶ 10, the defendants did not appear to seek plain-error review. (St. Br. 9)

And, as discussed above, this Court reviewed the unpreserved sentencing issue as plain error in *Johnson* in spite of the fact that Rule 605(a)(3)(C) states that such errors are "deemed waived." 2024 IL 130191, ¶¶ 30-31, 92. All of this shows that the issue regarding plain-error review in the PFA context is far from resolved. Moreover, none of the cases the State relies on have contended with the due process implications of barring plain-error review or the Sixth Amendment implications of barring ineffective assistance of counsel claims.

Finally, the State argues that these issues will continue to recur "only if a defendant fails to comply" with the rules. (R. 12) But such complete "compliance" is unlikely where the defendant is not told about the alleged waiver, counsel is not required to ascertain and present the defendant's issues, and there is no way to challenge counsel's ineffectiveness for failing to do so. *See Cooper*, 2025 IL 130946, ¶ 16 n.1 (reviewing a moot case because trial courts were likely to continue to violate the 48-hour requirement).

Therefore, even though Marshall's pretrial detention order is now moot, this Court should invoke the public interest exception and determine whether the unpreserved issues presented on appeal may be reviewed.

CONCLUSION

For the foregoing reasons, Jimmie Marshall, Defendant-Appellant, respectfully requests that this Court, in spite of this case's mootness, reverse the appellate court's decision and find that unpreserved PFA issues may be reviewed for plain error and ineffective assistance of counsel.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 20 pages.

s/ Deborah K. Pugh
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No. 132129

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JIMMIE MARSHALL, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-25-0426. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 2025 CF 73. Honorable Jennifer H. Bauknecht, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 17, 2026, the Reply Brief for Defendant-Appellant in Support of Rule 604(h) Appeal 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. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief for Defendant-Appellant in Support of Rule 604(h) Appeal to the Clerk of the above Court.

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