No. 129244

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. CHAR M. SHUNICK, Petitioner-Appellant.	) On Appeal from the Appellate Court) of Illinois, Fourth Judicial District,) No. 4-22-0019)) There on Appeal from the Circuit) Court of the Ninth Judicial Circuit,) Knox County, Illinois,) No. 16-CF-27)) The Honorable) Raymond Cavanaugh,) Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

E-FILED
11/27/2023 9:54
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POINTS AND AUTHORITIES

NATURE OF THE ACTION

The circuit court dismissed petitioner's postconviction petition and denied his motion to reconsider. Petitioner appealed to the appellate court, which found that it lacked jurisdiction to consider the merits of the appeal, vacated the circuit court's order denying petitioner's motion to reconsider, and directed the circuit court to dismiss the motion. Petitioner appeals from the appellate court's judgment. No question is raised about the sufficiency of the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court lacked jurisdiction to consider the merits of petitioner's appeal because his motion to reconsider and subsequent notices of appeal were untimely.

2. Whether the appellate court lacked jurisdiction to order a remand to allow petitioner an opportunity to cure the jurisdictional defect.

3. Whether petitioner has demonstrated the extraordinary circumstances necessary to justify the Court exercising its supervisory authority to reinstate his untimely appeal.

JURISDICTION

This Court allowed petitioner's petition for leave to appeal on March 29, 2023. The Court has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

In January 2016, police executed a warrant to search petitioner's person and car for cocaine and money from drug sales and found 121.6 grams of cocaine on his person during a strip search. C25-31; R12, 317.[2] Following a bench trial, petitioner was convicted of possessing more than 100 grams of cocaine (Count II), and possessing it with the intent to deliver (Count I). C18; R514-15. After merging the offenses, the circuit court sentenced petitioner on Count I to 16 years in prison. C151; R554, 558.

Petitioner filed a motion to reconsider his sentence. C153. At the hearing on the motion, the circuit court noted that it learned after the sentencing hearing that petitioner had been handcuffed during the sentencing hearing. R561-62. The court explained that if petitioner raised the issue on appeal, the appellate court may remand for a new sentencing hearing. R563-64. To avoid that result, the court offered to reduce petitioner's sentence to the minimum of nine years in prison in exchange for his agreement to waive his right to a direct appeal, while retaining the right to file a postconviction petition. R564. Petitioner agreed. *Id.*

About a year later, petitioner filed a postconviction petition, arguing, *inter alia*, that his initial trial attorney (who represented him for a period

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[2] The common law record, report of proceedings, petitioner's opening brief, and the appendix to that brief are cited as "C__," "R__," "Pet. Br. __," and "A__," respectively. Petitioner's appellate court brief is cited as "Pet. App. Ct. Br. __."

before trial) had a *per se* conflict of interest, and that petitioner's arrest and strip search violated the Fourth Amendment. C162-66. On September 30, 2021, the circuit court entered a written order dismissing the petition. C168-69. The court found petitioner's conflict-of-interest claim patently without merit because the initial attorney withdrew several months before trial and a different attorney represented him at trial. C168. The court also rejected petitioner's other claims, explaining that they were barred by his direct appeal waiver. C169.

On November 3, 2021, the circuit court received petitioner's motion to reconsider the order dismissing the postconviction petition and for leave to amend the petition to raise additional claims. C170-74. Petitioner attached a signed "Certificate of Service," which stated:

> This is to certify That [*sic*] I have on this date served true and correct copies of the foregoing to:
>
> Clerk of the Circuit Court of Knox County
>
> Knox County States [*sic*] Attorney
>
> via U.S. Mail postage fully prepaid on this 26th Day of Oct 2021 by depositing the same in the institutional mailbox at Dixon C.C.

C173.

On December 14, 2021, the circuit court entered an order denying the motion. C188. Petitioner filed a notice of appeal on January 5, 2022, challenging the denial of his motion to reconsider. C189-90. The next day, the circuit court appointed appellate counsel, who filed an amended notice of

appeal on January 11, 2022, to note that petitioner was also appealing the dismissal of his postconviction petition. C190-91, 195.

On appeal, petitioner argued that the circuit court erred in (1) dismissing his postconviction petition because it stated the gist of a claim that his arrest and search exceeded the scope of the warrant to search his person for cocaine, in violation of the Fourth Amendment; and (2) denying petitioner leave to amend his petition to add a potentially non-frivolous claim. Pet. App. Ct. Br. 15-26, 27-31.

The appellate court dismissed the appeal for lack of jurisdiction because petitioner's motion to reconsider was untimely and thus did not extend the time to appeal, making his later-filed notices of appeal untimely, too. *People v. Shunick*, 2022 IL App (4th) 220019-U, ¶¶ 14-20 (Oct. 13, 2022), *original order*, *withdrawn and modified on denial of reh'g in People v. Shunick*, 2022 IL App (4th) 220019 (Dec. 7, 2022).

Petitioner filed a petition for rehearing. He argued that his motion to reconsider was timely under the mailbox rule because the attached certificate of service substantially complied with Rule 12(b)(6). A48-50. In the alternative, petitioner asked the appellate court to remand to allow him to file a certificate that complied with Rule 12, as the First District had in *People v. Cooper*, 2021 IL App (1st) 190022. A46-47.

The appellate court denied rehearing and published a modified opinion, finding again that it lacked jurisdiction to consider petitioner's

appeal because his motion to reconsider and subsequent notices of appeal were untimely. A15-19, ¶¶ 13-21. The court rejected petitioner's argument that the mailbox rule rendered his motion to reconsider timely. A17-19, ¶¶ 19-21. It explained that petitioner's certificate of service failed to comply with Rule 12(b)(6) because it (1) lacked any "language making the certification subject to the [criminal] penalties in section 1-109" of the Code of Civil Procedure, A17-18, ¶¶ 17-19; *see* 735 ILCS 5/1-109, and (2) did not state the address to which petitioner mailed his motion to reconsider, A18, ¶ 20.

The appellate court also rejected petitioner's argument that it should follow *Cooper* and remand to allow petitioner to file a belated, but compliant, certificate of service. A19-20, ¶¶ 22-24. The court explained that *Cooper* was irreconcilable with precedent from both this Court and the Fourth District. *Id.* ¶ 23. Applying *People v. Bailey*, 2014 IL 115459, the appellate court further found that the circuit court lacked jurisdiction to rule on petitioner's untimely motion to reconsider and vacated the circuit court's order denying the motion to reconsider. A18, ¶¶ 23-24.

STANDARD OF REVIEW

The jurisdictional issues presented in this appeal are questions of law that the Court reviews *de novo*, *People v. Abdullah*, 2019 IL 123492, ¶ 18; *People v. Vara*, 2018 IL 121823, ¶ 12, as are the underlying questions concerning the interpretation of this Court's rules, *Abdullah*, 2019 IL 123492, ¶ 18.

ARGUMENT

I. The Appellate Court Lacked Jurisdiction to Consider the Merits of Petitioner's Appeal Because He Did Not File a Timely Notice of Appeal.

The appellate court lacked jurisdiction to consider the merits of petitioner's appeal. Petitioner's motion to reconsider the denial of his postconviction petition was filed on the date the circuit court received it, which was after the 30-day period for filing the motion had expired. The mailbox rule provided in Rules 373 and 12(b)(6) does not apply because petitioner failed to comply with Rule 12(b)(6)'s requirements: he neither provided a certification that complies with 735 ILCS 5/1-109, nor stated the address to which he mailed his post-judgment motion. Because petitioner's motion to reconsider was untimely, the circuit court lacked jurisdiction to rule on it, and the motion did not toll the time for filing a notice of appeal. Petitioner's subsequent notices of appeal were therefore also untimely, and the appellate court lacked jurisdiction to consider the merits of his appeal.

Accordingly, the appellate court properly vacated the circuit court's order denying petitioner's motion to reconsider, directed the circuit court to dismiss it, and declined petitioner's request that it remand to allow him to cure the deficiencies in his certificate of service.

A. Petitioner's motion to reconsider and subsequent notices of appeal were untimely.

The appellate court lacked jurisdiction to consider the merits of petitioner's appeal because petitioner did not file a timely notice of appeal.

"The only jurisdictional step in perfecting an appeal is timely filing a notice of appeal," *People v. Walls*, 2022 IL 127965, ¶ 26 (citing Ill. S. Ct. R. 606(a)), in "'compliance with [the Court's] rules . . . [and] the timelines established therein,'" *People v. Salem*, 2016 IL 118693, ¶ 11 (quoting *People v. Lyles*, 217 Ill.2d 210, 217 (2005)).

It is undisputed that petitioner did not file a notice of appeal "within 30 days after the entry of the final judgment appealed from." Ill. S. Ct. R. 606(b). Nor did he file a timely post-judgment motion to toll "the 30-day deadline to file a notice of appeal." *Salem*, 2016 IL 118693, ¶ 13; *see* Ill. S. Ct. R. 606(b) (notice of appeal due 30 days after entry of order disposing of timely filed post-judgment motion). A post-judgment motion is "filed" when it is "actually received" by the circuit court clerk. Ill. S. Ct. R. 373; *see Secura Ins. Co. v. Ill. Farmers Ins. Co.*, 232 Ill. 2d 209, 214 (2009).

Here, the circuit court entered final judgment dismissing petitioner's postconviction petition on September 30, 2021. C169; *see People v. Perez*, 2014 IL 115927, ¶¶ 11-12, 25, 29 (circuit court's final judgment dismissing postconviction petition "entered" when written order filed and docketed). Petitioner then had 30 days — until November 1, 2021[3] — in which to file a

[3] The last day of this 30-day period fell on October 30, 2021, a Saturday, so the deadline expired the following Monday, November 1. *See* 5 ILCS 70/1.11 (providing method of computing filing due dates); *City of Chicago v. Greene*, 47 Ill. 2d 30, 33 (1970) (using this method to calculate notice of appeal due date).

timely motion to reconsider. *See* 735 ILCS 5/2-1203(a) (providing 30-day deadline for filing motions to reconsider final judgments in non-jury civil actions); *People v. Bailey*, 2017 IL 121450, ¶ 29 (general civil practice rules and procedures apply to postconviction proceedings to the extent they do not conflict with the Post-Conviction Hearing Act). But the circuit court did not receive petitioner's motion to reconsider until November 3, 2021, after the due date, so the motion was untimely and did not toll the time to file a notice of appeal. *Salem*, 2016 IL 118693, ¶ 13.

Petitioner may not rely on the mailbox rule to establish timely filing. To be sure, when a post-judgment motion is "received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing." Ill. S. Ct. R. 373. But the time of mailing may be deemed the time of filing only if the litigant "files proper proof of mailing as required by Rule 12[.]" *Secura*, 232 Ill. 2d at 215-16; *see also People v. English*, 2023 IL 128077, ¶¶ 15-19, 36, *reh'g pet. pndg.*; Ill. S. Ct. R. 373 ("[p]roof of mailing *shall* be as provided in Rule 12" (emphasis added)). Thus, "the sole means of establishing 'time of mailing' under Rule 373 in the case of a *pro se* incarcerated litigant is by certification as described in Rule 12(b)(6)." *English*, 2023 IL 128077, ¶ 2.

And petitioner did not comply with Rule 12(b)(6) because he did not "file a 'certification under section 1-109 of the Code of Civil Procedure . . . stating the time and place of deposit and the complete address to which the

document was to be delivered.'" *Id.* ¶ 29 (quoting Ill. S. Ct. R. 12(b)(6)). More specifically, petitioner's certificate of service was not substantially in the form required by § 1-109, and it did not state the complete address to which the motion to reconsider was to be delivered.

1. Petitioner's certificate did not comply with Rule 12(b)(6) because it was not substantially in the form provided in § 1-109.

Petitioner failed to comply with § 1-109's certification requirement. A "[v]erification by certification" under § 1-109, is "defined to include a certification . . . under penalty of perjury as provided in [that] section." 735 ILCS 5/1-109. To provide a valid certification, § 1-109 requires

> [t]he person . . . having knowledge of the matters stated in a pleading, affidavit or other document [to] . . . subscribe to a certification in substantially the following form: 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, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies aforesaid that he verily believes the same to be true.

Id.

Petitioner's certificate did not satisfy this requirement. He "certif[ied] [t]hat [he] ha[d] on . . . [October 26, 2021] served true and correct copies of the foregoing [motion to reconsider] to" the Knox County circuit court clerk and State's Attorney "by depositing the same in the institutional mailbox at Dixon C.C." C173 (emphasis added). But this was insufficient for the certificate to be substantially in the form required by § 1-109, as it included

no language verifying, under the penalties of perjury, that the statements in the certificate were true and correct. Absent this essential language, petitioner failed to provide the proof of mailing necessary to invoke the mailbox rule, such that his motion to reconsider would be timely and toll the time for filing a notice of appeal.

A certificate of service lacking any language establishing that the statements therein are made "[u]nder the penalties as provided by law pursuant to Section 1-109" — *i.e.*, the "penalty of perjury" — is not "substantially" in § 1-109's prescribed form. 735 ILCS 5/1-109. "'Substantially' is the adverb form of 'substantial[,]'" which is defined as "'being largely but not wholly that which is specified.'" *People v. Dominguez*, 2012 IL 111336, ¶ 18 (quoting Substantial, *Merriam-Webster's Collegiate Dictionary* 1174 (10th ed. 1998)). A related term, "substance" means "'[t]he essence of something; the essential quality of something, as opposed to its mere form.'" *Id.* (quoting *Black's Law Dictionary* 1565 (9th ed. 2009)). Thus, a certification must "impart . . . largely that which is specified in the rule, or the rule's 'essence,' as opposed to 'wholly' what is specified in the rule." *Id.* ¶¶ 21-22; *see also Samour, Inc. v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 530, 541 (2007) (construing "substantially the following form" as requiring language "'that contains the essence of the form in the statute'" or "'which embodies or contains the substance or main features'" of the necessary language (quoting *People ex rel. Davis v. Chicago, B. & Q. R. Co.*,

48 Ill. 2d 176, 183 (1971)). Moreover, "the intent of the statute ultimately controls in determining what constitutes statutory compliance," *i.e.*, in determining the features of the provided language that are essential. *See Samour*, 224 Ill. 2d at 541.

Section 1-109's text establishes that language attesting to the truth of statements "under penalty of perjury" or "[u]nder penalties as provided by law pursuant to Section 1-109" is "essential" to effectuate the statute's intent. *See Abdullah*, 2019 IL 123492, ¶ 23 ("plain language of a statute or rule is the best indication of the drafters' intent"). Section 1-109's first paragraph provides that where there is a requirement that a pleading or document be "verified or made, sworn to or verified under oath, such requirement . . . is hereby defined to include *a certification* of such pleading, affidavit, or other document *under penalty of perjury as provided in this Section*." 735 ILCS 5/1-109 (emphasis added). Its second paragraph provides model certification language that includes an express verification "[u]nder penalties as provided by law pursuant to Section 1-109." *Id.* Its third paragraph further explains that documents "certified in accordance with this Section may be used in the same manner and with the same force and effect as though subscribed to and sworn under oath" before an authorized person. *Id.* And the final paragraph provides that anyone who makes a false, material statement "which he does not believe to be true, in any . . . document certified . . . in accordance with this Section shall be guilty of a Class 3 felony." 735 ILCS 5/1-109. Thus, by

clearly and repeatedly reiterating this requirement, the plain language of § 1-109 demonstrates the General Assembly's intent that language verifying the truth of statements "under penalty of perjury" or "[u]nder penalties as provided by law pursuant to Section 1-109" is essential for compliance with the statute. *Id.*

This conclusion is underscored by § 1-109's purpose: to provide a certification that "may be used in the same manner and with the same force and effect as though subscribed and sworn under oath," *i.e.*, as a substitute for a sworn affidavit. *Id.* For over 100 years, Illinois courts have defined the term "affidavit" as "'a declaration, on oath, in writing, sworn to by a party before some person who has authority under the law to administer oaths.'" *Roth v. Ill. Farmers Ins. Co.*, 202 Ill. 2d 490, 493 (2002) (quoting *Harris v. Lester*, 80 Ill. 307, 311 (1875)). "An oath is any form of attestation by which a person signifies that he or she is bound in conscience to perform an act faithfully and truthfully." *People v. Moon*, 2022 IL 125959, ¶ 50. A properly sworn affidavit "ensure[s] that [the] person [making it] understands that he subjects himself to penalties of perjury," *People v. Allen*, 2015 IL 113135, ¶ 32, and "perjury sanctions [provide] an assurance of veracity," *People v. Badoud*, 122 Ill. 2d 50, 55 (1988).

"Thus, [just as] an affidavit must be sworn to, and statements in a writing not sworn to before an authorized person cannot be considered affidavits," *Roth*, 202 Ill. 2d at 494, a certificate that does not include

language that the statements in the document are "true and correct" and made "under the penalty of perjury" or "under penalties as provided by law pursuant to Section 1-109," cannot be considered a "[v]erification by certification," 735 ILCS 5/1-109. *Compare*, *e.g.*, *People v. McClain*, 128 Ill. 2d 503, 506-08 (1989) ("[A]ny document verified in accordance with Section 1-109 . . . clearly subjects the person executing the verification to penalties for perjury," and thus satisfies requirement that document be "sworn"), *and Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 354-56 (2007) ("certification under penalty of perjury in accord with section 1-109" was "sworn statement"), *with Badoud*, 122 Ill. 2d at 54-57 (reports stating that they "solemnly, sincerely, and truly declare[d] and affirm[ed]" the stated facts "failed to comply with section 1-109" because they were not under penalty of perjury). Because petitioner's certificate contained no language stating that the statements therein were "true and correct" and made under penalty of perjury or the penalties provided in § 1-109, it was not "verified in accordance with section 1-109." *McClain*, 128 Ill. 2d at 507; *Badoud*, 122 Ill. 2d at 54-57. Accordingly, petitioner failed to file the necessary "[p]roof of mailing," and his motion to reconsider was filed on the date the circuit court received it. Ill. S. Ct. R. 373; Ill. S. Ct. R. 12(b)(6).

Petitioner's argument that the certificate's inclusion of the words "true and correct" sufficed to make it substantially comply with § 1-109, Pet. Br. 15-16, disregards both the plain language of this Court's rule and the context

in which he used those words. Petitioner's certificate did not say that his statements therein were "true and correct," as § 1-109 requires, but rather that he "served true and correct copies of the foregoing," *i.e.,* true and correct copies of his motion to reconsider. C174. And, as discussed, petitioner's certificate is insufficient in any event because it did not certify anything under penalty of perjury, as § 1-109 requires. 735 ILCS 5/1-109.

Nor does the possibility that he could be sanctioned through other legal mechanisms for making false statements in his certificate of service, Pet. Br. 17-19, make § 1-109's penalty of perjury language any less essential. Even if other legal mechanisms exist to "ensure[] the truthfulness of filings," *id.* at 19-20, to confer appellate jurisdiction, petitioner needed to comply with this Court's rules, which required proof of mailing via "certification under section 1-109." Ill. S. Ct. R. 12(b)(6); Ill. S. Ct. R. 373. In requiring this form of proof, the Court chose to ensure the truthfulness of filings with verifications under penalty of perjury, for § 1-109 certifications are considered reliable enough to substitute for sworn statements (as is their purpose) precisely because of "the evident long-standing legislative recognition of the importance of perjury sanctions as an assurance of veracity." *Badoud*, 122 Ill. 2d at 55-57.

Certainly, the Court could have chosen other methods of proof — *e.g.*, a sworn affidavit, as it previously had. *Compare* Ill. S. Ct. R. 12(b)(3) (eff. Jan. 4, 2013) (general rule for proof of service by mail (now Rule 12(b)(5)), requiring non-attorneys to file affidavits), *and People v. Blalock*, 2012 IL App

(4th) 110041, ¶¶ 8-11 (incarcerated *pro se* litigant could not invoke mailbox rule because they failed to file a sworn and notarized affidavit, as Rule 12(b)(3) then required) (citing *People v. Tlatenchi*, 391 Ill. App. 3d 705, 710, 716 (1st Dist. 2009)); *with* Ill. S. Ct. R. 12(b)(4) (eff. Sept. 14, 2014) (first version of rule for proof of mailing by incarcerated *pro se* litigants specifically (now Rule 12(b)(6)), requiring proof "by affidavit, or by certification as provided in section 1-109"). But the Court instead made clear that "[p]roof of mailing *shall* be as provided in Rule 12," Ill. S. Ct. R. 373 (emphasis added), which requires "certification under section 1-109," Ill. S. Ct. R. 12(b)(6). *See English*, 2023 IL 128077, ¶¶ 2, 18 ("litigants cannot supply proof of mailing in ways other than those expressly listed in Rules 373 and 12"); *Secura*, 232 Ill. 2d at 215-16 ("a party can only take advantage of Rule 373 if it files proper proof of mailing as required by Rule 12[]").

Accordingly, as in *English* and *Secura*, the Court should reject petitioner's request to disregard his failure to follow Rule 12(b)(6) and find sufficient proof of mailing because he filed a document that included "the date of mailing, [his] signature, and other factual representations designed to establish the remaining requirements of Rule 12(b)(6)." Pet. Br. 13, 24. *Secura* held that an attorney's signed and dated cover letter was insufficient to prove timely mailing under Rule 12(b)(3) because it "d[id] not contain an affidavit or a certificate and nothing [was] *certified or sworn to*." 232 Ill. 2d at 216 (emphasis in original). Similarly, *English* held that an incarcerated

petitioner's "'Notice of Mailing/Filing'" was insufficient under Rule 12(b)(6) because it lacked a § 1-109 certification, even though other available evidence indisputably proved that he timely mailed it. 2023 IL 128077, ¶¶ 7, 25, 27-29. As *English* explained, the sole method for proving "time of mailing" under Rule 12(b)(6) is the filing of "a certification under section 1-109." *Id.* ¶¶ 2, 29, 33, 36. Petitioner's certificate did not comply with § 1-109's essential requirement that it be made under penalty of perjury. Thus, it was not "a certification under section 1-109," either in form or substance, and accordingly did not prove "time of mailing" under Rule 12(b)(6).

2. Petitioner's certificate failed to comply with Rule 12(b)(6)'s requirement that it state the complete address to which the motion to reconsider was to be delivered.

Petitioner's certificate also did not prove timely mailing because it failed to state the "complete address to which the [post-judgment motion] was to be delivered," Ill. S. Ct. R 12(b)(6), *i.e.*, the address of the Knox County Circuit Court clerk's office, *see* Ill. S. Ct. R. 606(b) (notice of appeal must be timely "filed with the clerk of the circuit court"). Indeed, petitioner's certificate provided no address for delivery and merely stated that he mailed it to the clerk. C174. Accordingly, as the appellate court correctly concluded, petitioner's "'failure to include *any* address" rendered petitioner's certificate insufficient to prove that he timely mailed it to the appropriate place. A18, ¶ 20 (emphasis in original).

Petitioner concedes that he included no address in his certificate but argues that compliance with Rule 12(b)(6) may be inferred from "competent circumstantial evidence that the document was mailed to the correct address." Pet. Br. 21, 23-26 (citing *People v. Hansen*, 2011 IL App (2d) 081226, *People v. Humphrey*, 2020 IL App (1st) 172837, and other appellate court cases relying on postmark evidence to prove compliance with the mailbox rule). That is incorrect. Indeed, in *English*, this Court expressly disagreed with the line of appellate court precedent on which petitioner relies because it is inconsistent with the Court's "clear and unambiguous rules." 2023 IL 128077, ¶¶ 28-31. Rule 373 plainly requires that "[p]roof of mailing *shall be as provided* in Rule 12," Ill. S. Ct. R. 373 (emphasis added), and does not allow timely mailing to be proven by other evidence, *Secura*, 232 Ill. 2d at 213, even if that evidence may establish timely mailing with certainty, *English*, 2023 IL 128077, ¶¶ 25, 27-30 (holding that "postmark or postage meter stamp" cannot prove time of mailing under Rules 373 and 12(b)(6)).[4]

Moreover, petitioner's argument reads the "complete address" requirement out of Rule 12(b)(6) entirely. If, as petitioner argues, a litigant could satisfy Rule 12(b)(6)'s requirement that he "stat[e] . . . the complete address to which the document was to be delivered," Ill. S. Ct. R. 12(b)(6), by

[4] Further, as *English* explained, the Court amended Rule 373 to require proof of mailing by certification "to remove reliance on postmarks because of 'problems with the legibility of post marks' and 'delay in affixing them in some cases.'" 2023 IL 128077, ¶ 32 (quoting Ill. S. Ct. R. 373, Committee Comments (rev. July 1, 1985)); *see also* Ill. S. Ct. R. 373 (eff. Feb. 1, 1981).

simply pointing to the fact of delivery, then this language serves no purpose. But this Court presumes that each part of the rule has meaning and avoids a construction that renders its language superfluous or meaningless. *People v. Johnson*, 2019 IL 122956, ¶ 41; *Salem*, 2016 IL 118693, ¶ 16. Thus, the Court should reject petitioner's request to nullify Rule 12(b)(6)'s address requirement.

Petitioner's argument also disregards that the address requirement is consistent with the Court's intent to "provide incarcerated litigants with a guaranteed method to prove that their documents are timely placed in the institutional mail." *English*, 2023 IL 128077, ¶ 32. Rule 12(b)(6) provides "a certain form of proof reliant only on the litigant," avoids "uncertain form[s] of proof reliant on a third party," and seeks to ensure that the circuit court receives the documents necessary to determine jurisdiction without delay. *Id.* Indeed, as petitioner recognizes when he argues that the circuit court's address was readily available on the internet, Pet. Br. 24-25, the lack of any address on his certificate may have required prison officials to ascertain the correct address, which created the potential for both delay and third-party error. And even if petitioner provided prison officials an address to which they should send his motion to reconsider, his failure to certify what address, if any, he provided, means that the certificate cannot rule out the possibility that he directed his motion to the wrong address. After all, that a clerk eventually receives a pleading in the mail at the correct address does not

necessary mean that the litigant directed it to that address; sometimes documents are addressed to the wrong location only to be forwarded to the correct one after sometimes considerable delay. Consequently, although petitioner is correct that the clerk's address would be subject to judicial notice, Pet. Br. 24-25, knowing the mailing address to which he should have directed his motion does not show that he in fact mailed it to that address, or cure his noncompliance with Rule 12(b)(6)'s requirement that he certify the mailing address. Thus, as petitioner's certificate did not state any address to which the motion to reconsider was to be delivered, he failed to substantially comply with Rule 12(b)(6). *See People v. Liner*, 2015 IL App (3d) 140167, ¶ 17 (prisoner failed to substantially comply with mailbox rule when he "[m]erely nam[ed] the court in which the document was to be filed").

Finally, as in *English*, the Court should reject petitioner's remaining arguments, which attempt to rewrite Rules 373 and 12(b)(6) based on his perception that a straightforward application of the Court's clear and unambiguous rules leads to harsh or unfair results. *See* Pet. Br. 26-29. As *English* explained, Rule 12(b)(6) is designed to provide incarcerated *pro se* litigants a reliable method to prove timely filing. 2023 IL 128077, ¶ 32. Contrary to petitioner's assertions, Pet. Br. 26-29, filing a compliant certificate of service is not particularly difficult. Indeed, the record demonstrates that petitioner knew how to file a certificate with the circuit court's address and compliant § 1-109 certification language, because he did

so with his postconviction petition. *See* C160. Moreover, before adopting the rule, the Court presumably considered the burden it would place on incarcerated *pro se* litigants who lack the legal sophistication of attorneys and concluded that it did not impose an unreasonable burden. And the Court provided additional safety valves to ameliorate any difficulties *pro se* litigants might encounter, as well as any perceived harshness in the Court's jurisdictional rules. *See id.* ¶ 33 (discussing Ill. S. Ct. R. 606(c), which establishes criteria for litigants to seek leave to file a late notice of appeal from the appellate court).

In sum, because petitioner's certificate of service contained material omissions, it failed to prove that he timely mailed his motion to reconsider in the manner provided in Rule 12(b)(6), and he cannot invoke the mailbox rule. Accordingly, that untimely motion did not toll the time to appeal, petitioner's notices of appeal were late, and the appellate court correctly concluded that it lacked appellate jurisdiction.

II. The Appellate Court Lacked Jurisdiction to Remand to Allow Petitioner to Cure the Jurisdictional Defects He Caused by Failing to Comply with This Court's Rules.

The appellate court properly found that it lacked jurisdiction to remand to allow petitioner to file a new certificate of service.

The untimeliness of petitioner's motion to reconsider had two consequences: First, it meant that the appellate court lacked jurisdiction to consider the merits of his appeal because the time for filing a notice of appeal was not tolled, and petitioner's subsequent notices of appeal were untimely.

See Part I, *supra*. Second, it meant that the circuit court's order denying the untimely motion to reconsider was void because the court issued that ruling after it had lost jurisdiction. *See People v. Bailey*, 2014 IL 115459, ¶¶ 26, 29; *People v. Flowers*, 208 Ill. 2d 291, 306-07 (2003); *Sears v. Sears*, 85 Ill. 2d 253, 257-60 (1981). As the appellate court recognized, *Bailey* holds that the appellate court's jurisdiction in these circumstances is "limited to considering the issue of jurisdiction below" — *i.e.*, the circuit court's jurisdiction — and vacating any judgment or order that the circuit court entered without jurisdiction. 2014 IL 115459, ¶ 29. Accordingly, the appellate court properly (1) rejected petitioner's request that it remand to allow him an opportunity to correct the jurisdictional defect by filing a new certificate of service; (2) considered only whether the circuit court had jurisdiction to rule on petitioner's motion to reconsider; and (3) vacated the circuit court's order denying the untimely motion. *See* A16, 20, ¶¶ 16, 24.

Petitioner's contrary arguments rest on the erroneous premise that the appellate court had authority under Rule 615(b) to order the requested remand. *See* Pet. Br. 31-32. To be sure, an appellate court has authority to order a remand under Rule 615(b) in criminal appeals and under Rule 366(a) in civil appeals. *See People v. Joseph Young*, 124 Ill. 2d 147, 152 (1988); *see also* Ill. S. Ct. R. 651(d) ("the procedure for an appeal in a postconviction proceeding shall be in accordance with the rules governing criminal appeals"). But the appellate court must "first have jurisdiction to exercise

[these] powers." *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 970 (1st Dist. 2010) (discussing Rule 366); *see Creek v. Clark*, 88 Ill. 2d 54, 58 (1981) (Rule 366 "assumes that the [appellate] court properly has jurisdiction over the case before it"); *cf. People v. Nelson Young*, 2018 IL 122598, ¶ 28 ("The authority granted by Rule 615(b) presumes that the issue underlying the requested relief is properly before the reviewing court."); *People v. Bingham*, 2018 IL 122008, ¶¶ 16-18 (Rule 615(b) does not authorize appellate court to bypass limits on "the scope of appellate review" imposed by this Court's other rules).

Indeed, this Court's "jurisdictional standards" are "strict," *Bailey*, 2014 IL 115459, ¶¶ 9-10, and "[t]he appellate court's power 'attaches only upon compliance with the rules governing appeals,'" *Salem*, 2016 IL 118693, ¶ 19 (quoting *Lyles*, 217 Ill. 2d at 217). So, just as a "'notice of appeal confers jurisdiction on the appellate court to consider only *the judgments or parts of judgments* specified in the notice,'" and an appellate court's powers under Rule 615(b) are subject to that jurisdictional limitation, *Bingham*, 2018 IL 122008, ¶¶ 16-18 (emphasis in original), the appellate court also cannot order a remand under Rule 615(b) where no notice of appeal confers appellate jurisdiction, *see Joseph Young*, 124 Ill. 2d at 152-53; *Creek*, 88 Ill. 2d at 58; *see also*, *e.g.*, *In re J.T.*, 221 Ill. 2d 338, 346-47, 353 (2006) (appellate court cannot remand when a defendant fails to file a timely notice of appeal, even if circuit court failed to inform defendant of appellate rights). And unless the

"limited" exception allowing the appellate court to vacate the circuit court's void orders applies, *see Bailey*, 2014 IL 115459, ¶ 29, "[i]f there is no properly filed notice of appeal, the reviewing court lacks jurisdiction and must dismiss the appeal," *People v. Patrick*, 2011 IL 111666, ¶ 20. Accordingly, the appellate court correctly declined to remand for further proceedings.

For these reasons, petitioner's analogy to Rule 651(c), Pet. Br. 36-37, is inapt. Even if the appellate court has authority — *after* obtaining jurisdiction over a postconviction appeal — to allow supplementation of the record on appeal with an attorney's Rule 651(c) certificate or affidavit, *see*, *e.g.*, *People v. Johnson*, 154 Ill. 2d 227, 243 (1993); *People v. Harris*, 50 Ill. 2d 31, 33-34 (1971); *but see People v. Perkins*, 229 Ill. 2d 34, 51-52 (2007), the appellate court would have no such authority if it lacked jurisdiction, *see Joseph Young*, 124 Ill. 2d at 152-53; *Creek*, 88 Ill. 2d at 58. And here, the appellate court lacked jurisdiction, so it lacked the power to even "consider the issue of whether the cause should be remanded." *J.T.*, 221 Ill. 2d at 346-47, 353; *see also Salem*, 2016 IL 118693, ¶¶ 15, 19; *Creek*, 88 Ill. 2d at 58. Whatever authority the appellate court may have to allow supplementation of the record on appeal after it has obtained jurisdiction, the appellate court lacks jurisdiction to issue an order that "excuse[s] the filing requirements of [this Court's] rules governing appeals." *Secura*, 232 Ill. 2d at 217-18.

But even setting aside the appellate court's lack of jurisdiction to order a remand, this Court's rules precluded the appellate court from granting

petitioner's request. To start, petitioner's contention that he may belatedly show compliance with the Court's rules disregards several well-established principles. It is axiomatic that "[c]ourts of review . . . are just that, and should review the case in light of the record made in the trial court." *Joseph Young*, 124 Ill. 2d at 152. Thus, even where the appellate court *has* jurisdiction, "[t]he nature of judicial proceedings does not contemplate that a case be sent back to the trial court for one side or the other to bolster its position by further presentations, and in the interest of the finality of judgments, such remandments should not be made." *Id.*

Where, as here, the appellant failed to take "[t]he only jurisdictional step" necessary to confer appellate jurisdiction, *Walls*, 2022 IL 127965, ¶ 26, his remedy lies in the safety nets provided by this Court's rules. *See English*, 2023 IL 128077, ¶¶ 33-34 (discussing Ill. S. Ct. R. 606(c)). Rule 606(c) (and its cognate in civil appeals, *see* Ill. S. Ct. R. 303(d); *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 149 (1994)), are the only rules allowing an appellate court to excuse an appellant's failure to timely file a notice of appeal within the normal deadlines, and where an appellant fails to meet Rule 606(c)'s requirements, an "appellate court ha[s] no discretion to forgive [the] defendant's failure to" timely file a notice of appeal, *Salem*, 2016 IL 118693, ¶¶ 18-19.

Moreover, this Court's rules require proof of mailing to be on file in the record, *see English*, 2023 IL 128077, ¶ 18; *Secura*, 232 Ill. 2d at 215-16, so

that the appellate court can fulfill its "obligat[ion] to ascertain its jurisdiction *before* proceeding in a cause of action," *Vara*, 2018 IL 121823, ¶ 12 (emphasis added). Indeed, the appellate court *must* ascertain its own jurisdiction "when beginning review of a case" and be "certain of it[] prior to proceeding." *People v. Smith*, 228 Ill. 2d 95, 106 (2008). Petitioner's contrary position disregards the bright-line rule this Court enacted to allow courts to be certain of their jurisdiction. *See English*, 2023 IL 128077, ¶ 30 (rejecting petitioner's request for an adjustment of the rules "to 'fit the exigencies of the moment'") (quoting *Roth*, 202 Ill. 2d at 494-95).

Petitioner is likewise incorrect that it is not yet "definite that [his] motion [to reconsider] was untimely." Pet. Br. 36-39. When a litigant fails to file proper proof of mailing, the Court's rules dictate that the document cannot be deemed filed when it was mailed, such that it is filed on the date that the circuit court received it. *See supra* pp. 8-9. As the Court has long admonished, this Court's rules "'are not aspirational.'" *Roth*, 202 Ill. 2d at 494 (quoting *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995)). Rather, "[t]hey have the force of law, and the presumption must be that they will be obeyed and enforced as written.'" *Id.* Thus, the appellate court correctly refused petitioner's invitation to "read[] into [the rules] exceptions, limitations, or conditions the [C]ourt did not express," or "add provisions not found in the rule[s]." *English*, 2023 IL 128077, ¶ 13 (cleaned up).

Petitioner's cases concerning the circuit court's authority to hear evidence on issues of personal jurisdiction, Pet. Br. 36, are inapposite. That the circuit court — already vested with subject matter jurisdiction — may engage in "fact-finding" to determine whether a plaintiff has established personal jurisdiction over a defendant, *see Russell v. SNFA*, 2013 IL 113909, ¶ 28; *Knaus v. Guidry*, 389 Ill. App. 3d 804, 813 (1st Dist. 2009), has no bearing on whether the appellate court has jurisdiction to forgive petitioner's failure to comply with the Court's rules necessary for appellate jurisdiction to attach and order a remand for a belated attempt to comply with those rules.

Finally, the appellate court correctly refused to follow *People v. Cooper*, in which the First District purported to exercise authority under Rule 615(b) and order a limited remand for the circuit court to ask the defendant when he mailed his post-judgment motion. 2021 IL App (1st) 190022, ¶¶ 21-24. *Cooper* rested on the First District's faulty premise that it had jurisdiction over the appeal. *See id.* ¶ 8 (determining that notice of appeal was timely because it was filed within 30 days of denial of Cooper's Rule 604(d) motion). A Rule 604(d) motion is a post-judgment motion, *Walls*, 2022 IL 127965, ¶¶ 19-23, and, as such, it tolls the deadline to file a notice of appeal only if it is timely filed, *id.* ¶ 19; *see also People v. Lighthart*, 2023 IL 128398, ¶¶ 16, 70. Cooper's Rule 604(d) motion was untimely, and could not toll the deadline to appeal, because it was received after it was due without proper proof of mailing as required by Rule 12. *Cooper*, 2021 IL App (1st) 190022,

¶¶ 5, 18. As such, Cooper's notice of appeal was untimely, the appellate court lacked jurisdiction over the merits of Cooper's appeal, and it was limited to vacating the circuit court's void order denying his post-judgment motion. *See Bailey*, 2014 IL 115459, ¶ 29. Thus, *Cooper*'s "remand[] for compliance w[as] contrary to *Bailey*'s directive." *People v. Arriaga*, 2023 IL App (5th) 220076, ¶ 20.

Cooper also wrongly faulted the circuit court for not determining — at a hearing held months after the notice-of-appeal deadline had passed — whether Cooper could supplement his motion with a compliant certificate of service. 2021 IL App (1st) 190022, ¶ 20. But the circuit court had already lost jurisdiction by that time, and "[t]he only continuing power the circuit court possessed over the case was limited to enforcement of the judgment or correction of clerical errors or matters of form so that the record conformed to the judgment actually rendered." *Flowers*, 208 Ill. 2d at 307-08. These limited powers did not allow the court to "cure a jurisdictional defect." *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991), *overruled on other grounds by Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 30-33 (2002).

In sum, the appellate court properly declined to follow *Cooper* and correctly found that it lacked jurisdiction to remand to give petitioner an opportunity to correct the jurisdictional defect he created by failing to comply with this Court's rules.

III. The Court Should Deny Petitioner's Request for Supervisory Relief.

Finally, petitioner fails to show the extraordinary circumstances necessary to justify the Court exercising its supervisory authority to reinstate his untimely appeal. The Court's supervisory authority is "'an extraordinary power.'" *People v. Mayfield*, 2023 IL 128092, ¶ 29 (quoting *McDunn v. Williams*, 156 Ill. 288, 301-02 (1993)). "[S]upervisory orders are disfavored," and the Court grants them "only in limited circumstances." *Abdullah*, 2019 IL 123492, ¶ 36. Generally, it will do so "'only if the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority.'" *Salem*, 2016 IL 118693, ¶ 21 (quoting *J.T.*, 221 Ill. 2d at 347).

Petitioner has not shown extraordinary circumstances. He failed to follow the Court's clear and unambiguous rules with respect to certificates of service. And he could have sought, but did not seek, leave to file a late notice of appeal under Rule 606(c). Petitioner's appellate counsel was appointed on January 6, 2022, C191, nearly four months before Rule 606(c)'s six-month deadline to seek leave to file a late notice of appeal expired on April 30, 2022. But counsel did not pursue this remedy. *See English*, 2023 IL 128077, ¶¶ 33-34 (appellate counsel could have sought relief through Rule 606(c) for untimely appeal resulting from incarcerated *pro se* petitioner's failure to file proper proof of mailing). Thus, petitioner fails to show that the normal appellate process would not have provided adequate relief. *See J.T.*, 221 Ill.

2d at 348 (appellants' failure to avail themselves of normal appellate process does not make process ineffective).

Nor does petitioner show that the dispute involves a matter important to the administration of justice. In seeking supervisory relief, petitioner argues only that the circuit court wrongly believed that his claims were barred by his direct appeal waiver, Pet. Br. 41-42, and he makes no argument that his postconviction challenge to his arrest and search — the only claim he raised on appeal, *see* Pet. App. Ct. Br. 17-26 — was not frivolous or patently without merit. Thus, petitioner fails to argue that the circuit court's judgment was incorrect, such that he could claim that the issue was important to the administration of justice. *See People v. Johnson*, 208 Ill. 2d 118, 128 (2003) (courts of review ultimately review "the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached").

And contrary to petitioner's suggestion, Pet Br. 42-43, the mere fact that a postconviction petitioner whose appeal is dismissed for lack of jurisdiction does not receive appellate review of his postconviction claims does not warrant supervisory relief; indeed that is the normal result whenever a postconviction appeal is dismissed for lack of jurisdiction. Similarly, that petitioner would have to clear the statutory successive petition bar to raise his claims again in a subsequent petition, Pet. Br. 42-43, is likewise the expected result of a postconviction petition being dismissed,

and is neither extraordinary, nor does it involve a matter of importance to the administration of justice, such that supervisory relief is warranted.

CONCLUSION

This Court should affirm the judgment of the appellate court.

November 24, 2023

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

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

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

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 24, 2023, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which served the person below at this registered email address, and the undersigned also served a copy of the foregoing brief at that same email address on November 24, 2023:

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E-FILED
11/27/2023 9:54
CYNTHIA A. GRANT
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