

No. 130082
IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of Illinois, No. 3-22-0112. |
| |) | |
| Plaintiff-Appellant, |) | There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, Bureau County, Illinois, No. 17 CF 61. |
| -vs- |) | |
| |) | |
| ROBERT D. DYAS, |) | Honorable |
| |) | Honorable James Andreoni, |
| Defendant-Appellee. |) | Judge Presiding. |

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ISSUES PRESENTED FOR REVIEW

1. Whether Robert Dyas was denied his constitutional right to counsel for his post-plea proceedings where 1) the court discharged counsel and Dyas made no request to waive counsel, let alone a clear and unequivocal request to waive counsel, 2) the court failed to admonish him under Supreme Court Rule 401(a), and 3) the court denied and ignored Dyas' multiple requests for counsel to be appointed;
2. Whether, jurisdiction properly vests before this Court where Robert Dyas timely appealed the denial of his motion to vacate plea, and where his subsequent notice of appeal should be construed as a properly perfected appeal.

STATUTES AND RULES INVOLVED

Rule 401. Waiver of Counsel

(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

IL R S CT Rule 401(a).

STATEMENT OF FACTS

Robert Dyas pled guilty to unlawful possession with intent to deliver more than 900 grams of methamphetamine in exchange for a sentence of 18 years in the Department of Corrections. (R. 587-95; C. 65) Dyas appealed the denial of his motion to reconsider the denial of his motion to vacate his plea. The appellate court reversed the denial of Dyas' motion to vacate plea, holding that Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea, and where Rule 401 had not been complied with here, a remand for new post-plea proceedings was required. *People v. Dyas*, 2023 IL App (3d) 220112, ¶¶19, 24. Finding no substantial compliance with Rule 401, the court held that it was well settled that "Rule 401(a) admonishments must be provided at the time the court learns that a defendant chooses to waive counsel, so that the defendant can consider the ramifications of such a decision." *Id.* at ¶19. Consequently, the appellate court remanded the cause for new post-plea proceedings. *Id.* at ¶ 24. This Court granted the State's petition for leave to appeal.

Background

Robert Dyas was charged, along with three codefendants, with one count of unlawful possession with the intent to deliver more than 900 grams of methamphetamine. (C. 24) On July 28, the court appointed a member of the Bureau County Public Defender's Office, Michael Henneberry, as Dyas' counsel. (R. 4-27)

Motion to Suppress

On August 11, 2017, LaSalle County Public Defender Timothy Cappellini stood in for Henneberry, because Henneberry was having a medical procedure

performed (R. 38) Henneberry filed and subsequently argued an unsuccessful joint motion to suppress evidence that was primarily litigated by codefendant's counsel. (C. 45-46; R. 101-420). Before that hearing began, Dyas indicated he was considering "firing" Henneberry. (R. 101-08) Following the hearing, the court denied the motion to suppress. (R. 111-334)

On October 24, 2017, Dyas asked the court to represent himself and to have Henneberry appointed as standby counsel. (R. 455-56) The court admonished Dyas and appointed Henneberry as standby counsel. (R. 459-98) At the pre-trial hearing one month later, the court again advised Dyas to seek the appointment of an attorney. (R. 504-46)

Guilty Plea

On November 29, 2017, Dyas announced that he was ready to accept a negotiated plea with the State. (R. 550-51) The court re-appointed Henneberry as full counsel and a 20 minute recess was held so that Dyas and Henneberry could confer about the plea. (R. 555-560) After the recess, Dyas agreed that Henneberry was his counsel. (R. 561-63) The agreement was that Dyas would plead to the charge for 18 years DOC to be served at 75%, and that the court would marry him and one of his co-defendants Mary Brown. (R. 563-64) The marriage was not a condition precedent of the plea deal. (R. 563-64) The trial court agreed to marry Dyas and Brown. (R. 564) The court admonished Dyas as to the nature of the charge, the penalty range of 15-to-60 years in prison plus three years' mandatory supervised release and a fine of up to \$400,000, plus potential employment and housing collateral consequences, the rights that Dyas was waiving

(jury or bench trial, cross-examination, presentation of witnesses or reliance on the presumption of innocence and the State's burden), a factual basis was read, and Dyas agreed to the factual basis. (R. 569-82) Dyas' criminal history (a prior robbery and two prior possession of controlled substance convictions) was read to the court and Dyas waived a pre-sentence investigation report being prepared. (R. 583-85) Dyas said that he had no complaints with Henneberry's services. (R. 578-80) The court accepted the plea, and Dyas reiterated he understood the sentence would be served at 75%. (R. 587-95) Judgment was entered. (C. 65)

Post-Plea Proceedings

Just over two weeks later, on December 14, 2017, Dyas filed a document stating that he was exercising his right to appeal and complaining about the traffic stop being extended to conduct a dog sniff, about Attorney Henneberry not asking for an appellate attorney, and about not receiving discovery. (C. 73-78) The court treated this motion as a timely motion to withdraw guilty plea. (C. 80) Since Dyas made claims against Henneberry, and, according to the court, everyone from the Bureau County Public Defender had a conflict, the court appointed the LaSalle County Public Defender to represent Dyas. (R. 600-603)

At the next appearance, Attorney Cappellini appeared for Dyas; Dyas told the court that Cappellini was racist and he wanted another attorney appointed. (R. 613-618) The court refused to appoint another attorney, discharged Cappellini, and left Dyas to represent himself. (R. 619-22) Dyas complained that it was wrong that he was being forced to represent himself. (R. 622)

Dyas filed a motion for a change of venue and for a substitution of judge,

both of which were denied. (R. 627-84) On the next court date, May 7, 2018, Dyas again complained about being forced to represent himself (R. 665-66) and asked for another public defender to be appointed. (R. 687-88) The court again appointed the LaSalle Public Defender and Cappellini again stated he would be handling the case. (R. 694, 699) On July 17, 2018, Cappellini reported that Dyas refused to cooperate with him. (R. 720) Dyas alleged a conflict of interest related to Cappellini not doing what Dyas wanted and not taking enough interest and again requested another attorney, stating “I refuse his help. I need some other legal help that is going to be on my side. He is totally against what I’m doing, so I’ll refuse to proceed with him.” (R. 720) The court then discharged the LaSalle County Public Defender without any admonishments and Dyas was again left to represent himself. (R. 724-25)

Post-Conviction Petition

On September 10, 2018, Dyas filed a *pro se* post-conviction petition. (C. 144-81) It alleged that he was denied the effective assistance of counsel and that the court erred by failing to appoint other counsel and in its ruling at the motion to suppress hearing. (C. 150)

Hearing on Dyas’ Motion to Withdraw Plea

On October 18, 2018, the court held a hearing on the motion to withdraw his guilty plea. Proceeding *pro se*, Dyas called Attorney Henneberry to the stand. (R. 749-50) Dyas asked Henneberry questions related to the motion to suppress hearing, and Dyas’ concerns that the videos had been altered. (R. 751-753, 789) Henneberry stated that he met with Dyas on multiple locations, showed videos

to Dyas, and discussed the plea negotiation and an appeal with Dyas. (R. 751-763) Henneberry testified that “we had discussed the possibility of the stipulated bench trial so we could preserve issues for appeal, and the day that you said you wanted to plead guilty, you went ahead and pled guilty.” (R. 794) Dyas stated that he did not recall that conversation. (R. 795) Jessica Stowe, a legal assistant with the Bureau County Public Defender’s office testified that Dyas had called her and that he wanted to watch the videos in discovery. (R. 798-802)

Dyas argued that Henneberry did not do an adequate job at the motion to suppress hearing. (R. 803-04) Dyas also claimed Henneberry was trying to “mislead” him into taking a plea in exchange for 20 years in the Department of Corrections. (R. 804)

Following argument, the court denied Dyas’ motion to withdraw guilty plea. (R. 827)

On November 2, 2018, Dyas sent a timely motion to reconsider the denial of his motion to withdraw guilty plea. (C. 183-87) Dyas certified that he mailed the motion on November 2, 2018, with the clerk file stamping the motion on November 16. (C. 183, 187) On November 14, 2018, Dyas mailed a notice of appeal that the clerk filed stamped on November 19, 2018. (C. 189) On November 19, the court struck Dyas’ November 2 motion to reconsider stating it had no jurisdiction because of the notice of appeal. (C. 190)

Dismissal of Dyas’ Post-Conviction Petition

On December 7, 2018, (88 days after the post-conviction petition was filed), the trial court summarily dismissed Dyas’ post-conviction petition as frivolous

and without merit. (C. 199-203) The court stated that nothing in the petition or the record demonstrated that the video was altered, the motion to suppress was fully litigated, Dyas himself filed a notice of appeal, and that there was nothing in the petition or record that demonstrated a “conflict of interest” with his plea counsel that forced Dyas to go to a suppression hearing.

On January 4, 2019, Dyas mailed a motion to reconsider the court’s dismissal of his post-conviction petition. (C. 213-217) The motion was not file stamped until January 17, 2019. (C. 213).

On October 16, 2019, Dyas mailed a motion asking for “final disposition” on his motion to reconsider the dismissal of his post-conviction petition, with the motion being file stamped on October 28, 2019. (C. 220-21) On October 30, 2019, the court issued an order stating that it did not have jurisdiction to hear the motion to reconsider because it was filed more than 30 days after the dismissal of the PC petition. (C. 222-25)

On November 25, 2019, Dyas filed a notice of appeal challenging the October 30, 2019, order denying his motion to reconsider the dismissal of his post-conviction petition. (C. 226) Dyas’ motion to reconsider the denial of his motion to withdraw his guilty plea was then still pending in the circuit court. The appeal from the dismissal of his post-conviction petition was docketed under appellate court number 3-18-0648.

Appeal # 3-18-0684

On April 6, 2020, the appellate court granted Dyas’ motion to dismiss the appeal of his post-conviction petition, appellate court number 3-18-0684, as

premature, to which the State did not object. The appellate court remanded the matter to the circuit court to proceed on Dyas' timely-filed motion to reconsider the denial of his motion to withdraw his guilty plea and vacate the judgment and sentence. (C. 235)

Proceedings on Remand

On remand, the circuit court ordered, on March 29, 2021, that Dyas' post-conviction petition be stricken for being prematurely filed and continued the case for further proceedings on Dyas' motion to reconsider the order denying Dyas' motion to withdraw guilty plea. (C. 245) On May 17, 2021, the court appointed Timothy Gatza, Assistant Public Defender of Bureau County, to represent Dyas. (C. 301)

On September 27, 2021, appointed counsel filed an amended motion to reconsider the denial of Dyas' motion to withdraw guilty plea. (C. 310-313) The "basic thrust" of the motion was that Dyas "did not fully comprehend his ability or lack thereof to challenge the denial of his motion to suppress by pleading guilty." (C. 311)

On December 2, 2021, the State filed a response asserting that the guilty plea transcripts do not disclose any indication that Dyas wanted to appeal the ruling on the motion to suppress or that there would be grounds for such an appeal. (C. 314-315)

On December 16, 2021, Attorney Gatza filed a certificate pursuant to Illinois Supreme Court Rule 604(d), stating that counsel consulted with Dyas to ascertain his contentions of error in the entry of the plea of guilty and of the sentence;

examined the trial court file and report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing; and made any amendments to the motion necessary for the adequate presentation of any defects in those proceedings. (C. 322-323)

On February 22, 2022, Dyas, through Gatzka, filed a second amended motion to reconsider the denial of the motion to vacate plea arguing that Dyas was never admonished that he was giving up his right to appeal the motion to suppress and that Dyas spoke of filing an appeal at the time he pled guilty on the suppression issue. (C. 326-329) Counsel filed another 604(d) certificate on March 25, 2022. (C. 331-332)

On March 25, 2022, the court, following argument, denied Dyas' motion to reconsider the denial of his motion to vacate plea. (C. 330; R. 963)

Notice of appeal was filed March 28, 2022. (C. 333) The cause was docketed under appellate court number 3-22-0112.

The appellate court vacated the circuit court's denial of Dyas' motion to vacate plea, finding that Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea, and where Rule 401 had not been complied with here, a remand for new post-plea proceedings was required. *Dyas*, 2023 IL App (3d) 220112, ¶¶19, 24 .

On March 27, 2024, this Court granted the State's petition for leave to appeal.

ARGUMENT

- I. Robert Dyas was denied his constitutional right to counsel for his post-plea proceedings where 1) there was no clear and unequivocal request to waive counsel, 2) the court failed to admonish him under Supreme Court Rule 401(a), and 3) the court denied and ignored Dyas' multiple requests for counsel to be appointed.**

Robert Dyas was forced to represent himself during his post-plea proceedings, a critical stage of his case even though he never made a clear request to proceed *pro se*, was not admonished in compliance with Supreme Court Rule 401(a) when he was forced to proceed *pro se*, and was denied his right to counsel after he made numerous requests to have an attorney appointed.

The appellate court appropriately held that Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea, and where Rule 401 had not been complied with, a remand for new post-plea proceedings was required. *People v. Dyas*, 2023 IL App (3d) 220112, ¶ 1 (J. McDade specially concurring). The appellate court concluded that “Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea.” *Id.* at ¶17. Finding no substantial compliance at the time Dyas purportedly waived counsel, the court held that it was well settled that “Rule 401(a) admonishments must be provided at the time the court learns that a defendant chooses to waive counsel, so that the defendant can consider the ramifications of such a decision.” *Id.* at ¶19. Consequently, the lower court remanded the cause for new post-plea

proceedings. *Id.* at ¶24.

Dyas respectfully requests that this Court affirm the appellate court's decision, vacate the circuit court's denial of his motion to withdraw his guilty plea, and remand this cause for further post-plea proceedings with the assistance of counsel.

Standard of Review

The State asserts that a trial court's ruling on a defendant's decision to represent himself at trial may be reversed if the trial court abused its discretion, citing *People v. Baez*, 241 Ill. 2d 44, 116 (2011), which held that a determination of whether there has been an intelligent waiver of the right to counsel is reviewed for abuse of discretion. (St. Br. 34) However, more recent Illinois Supreme Court authority holds that whether the trial court violated Dyas' constitutional right to counsel and whether the trial court complied with Rules 401(a) and 604(d) are questions of law, reviewed *de novo*. *People v. Lesley*, 2018 IL 122100 (2018), ¶ 30; See also *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 13. In addition, reviewing courts must "indulge in every reasonable presumption against waiver of the right to counsel." *People v. Burton*, 184 Ill. 2d 1, 23 (1998). Here, Dyas did not want to proceed *pro se* for post-plea proceedings and the trial court failed to admonish Dyas in compliance with Supreme Court Rule 401, thus denying him his constitutional right to the assistance of counsel. Thus this Court should affirm the appellate court's decision and remand for further proceedings.

Analysis

Every criminal defendant "requires the guiding hand of counsel at every step in the proceedings against him." *Gideon v. Wainwright*, 372 U.S. 335, 345

(1963); U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. 1 § 8. The Sixth Amendment guarantees a defendant facing incarceration “the right to counsel at all critical stages of the criminal process.” *Iowa v. Tovar*, 541 U.S. 77, 80-81 (2004). This Court has held that the right to counsel extends to post-judgment proceedings. *People v. Baker*, 92 Ill. 2d 85, 90 (1982); *People v. Johnson*, 119 Ill. 2d 119, 146 (1987). The preparation and presentation of post-trial motions in a criminal case are considered critical stages at which the defendant has a right to counsel. *People v. Hughes*, 315 Ill. App. 3d 86, 94 (1st Dist. 2000).

A defendant may waive his right to counsel and proceed *pro se* but only if he voluntarily and intelligently chooses to do so. *Id.* at 91. “It is ‘well settled’ that waiver of counsel must be clear and unequivocal, not ambiguous.” *Baez*, 241 Ill. 2d at 116. To determine whether a defendant’s statement to proceed *pro se* is clear and unequivocal, “a court must determine whether the defendant truly desires to represent himself and has definitively invoked his right of self-representation.” *Id.* In determining whether an intelligent waiver has occurred, the reviewing court must consider the facts and circumstances of the case, including the accused’s background, experience, and conduct. *Id.* This Court also considers the basis given for the defendant’s expressed wish to represent himself. *People v. Wright*, 2017 IL 119561, ¶ 55.

Supreme Court Rule 604(d) implements constitutional protections at the post-plea stage, particularly when a defendant files a *pro se* post-plea motion. Ill. S. Ct. Rule 604(d). Such a filing automatically triggers certain procedures and protections. *People v. Edwards*, 197 Ill.2d 239, 256 (2001). Rule 604(d) gives a

defendant who wishes to withdraw his plea the right to consult with and have the aid of an attorney in presenting his motion to the court. *People v. Lindsay*, 239 Ill. 2d 522, 527-530 (2011); *People v. Smith*, 365 Ill.App.3d 356, 360-61 (1st Dist. 2006); *People v. Valasco*, 197 Ill.App.3d 589, 591 (2d Dist. 1990); *People v. Pegues*, 277 Ill.App.3d 884, 888 (1st Dist. 1996). A hearing on a post-plea motion to challenge a sentence is a critical stage of the proceedings. *People v. Brasseaux*, 254 Ill. App. 3d 283, 288 (2nd Dist. 1996). Such a motion is a condition precedent to exercising the right to appeal. Ill. Sup. Ct. Rule 605(b). Critically, Robert Dyas was denied counsel at the critical stage of presenting his post-plea motion.

The trial court is obligated to inquire into a *pro se* defendant's desire for counsel and appoint counsel "even without a specific request from the defendant, unless the trial court finds that the defendant knowingly waived the right to appointed counsel." *People v. Ledbetter*, 174 Ill.App.3d 234, 237 (4th Dist. 2005); *Smith*, 365 Ill.App.3d at 359. As this Court recognized in *Edwards*, "Once a *pro se* defendant notifies the circuit court that he wishes to withdraw his guilty plea and appeal, the protections offered by Rule 604(d), *i.e.*, the appointment of counsel and the attorney certificate, are *automatically triggered*." *Edwards*, 197 Ill.2d at 256 (emphasis added.)

Specifically, Rule 604(d) provides that, when a motion to withdraw guilty plea is filed, it should be presented promptly to the judge who accepted the plea and sentenced the defendant. Ill. S. Ct. Rule 604(d). The judge "shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel." *Id.* Illinois Courts have

recognized that “[b]ecause of the strict waiver requirements of Rule 604(d), fundamental fairness requires that a defendant be afforded a full opportunity to explain his allegations and that he have assistance of counsel in preparing the motion.” *Smith*, 365 Ill.App.3d at 359. Therefore, regardless of whether the defendant requests counsel, a trial court must appoint counsel for an indigent *pro se* defendant in post-plea proceedings, unless the defendant knowingly waives his right to counsel at this stage. *Id.* Here, the trial court failed to appoint counsel for Dyas or ascertain a knowing waiver of counsel.

The dictates of Supreme Court Rule 604(d) must be followed by both the court and counsel. *People v. Wilk*, 124 Ill.2d 93, 108 (1988). Strict, rather than substantial, compliance with the rule is required, thus eliminating any controversy surrounding whether there has been compliance with the rule. *People v. Janes*, 158 Ill.2d 27, 35 (1994); *see also People v. Willis*, 313 Ill.App.3d 553, 556 (1st Dist. 2000) (stressing that the Illinois Supreme Court has made “emphatically clear” that strict compliance with Rule 604(d) is required). The remedy for the failure to strictly comply with Rule 604(d) is a remand for the filing of a new motion, appointment of counsel if the defendant is indigent, and a new hearing on the motion. *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011).

Illinois courts have consistently held the right to counsel is so fundamental that they will review as second-prong plain error a claim there was no effective waiver of counsel although the issue was not raised in the trial court. *See People v. Reese*, 2017 IL 120011, ¶ 60; *People v. Robertson*, 181 Ill.App.3d 760, 763 (4th Dist. 1989); *People v. Langley*, 226 Ill.App.3d 742, 749 (4th Dist. 1992); *People*

v. Stoops, 313 Ill.App.3d 269, 273, 245 (4th Dist. 2000); *People v. Jiles*, 364 Ill.App.3d 320, 328 (2nd Dist. 2006). Robert Dyas was denied his right to counsel at the hearing on his motion to vacate guilty plea. Although this error was not preserved below, this Court should nevertheless review it as second-prong plain error because the right to counsel is fundamental. Ill. Sup. Ct. Rule 615.

Dyas Did Not Want to Proceed Pro Se.

Although Dyas had voiced complaints and concerns regarding his prior counsel, the relevant issue is whether Dyas made an unambiguous request to proceed *pro se* after he filed the document interpreted by the court as a motion to vacate guilty plea. The record is clear; he did not. (R. 613-18, 622, 665-66, 687-88) Dyas was left without counsel, including the hearing on Dyas' *pro se* post-plea motion, resulting in a violation of his constitutional right to counsel at this critical stage of the proceedings. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. 1 § 8. In fact, as the State acknowledges, while proceeding *pro se*, Dyas was tasked with having to cross-examine his plea counsel, Attorney Michael Hennerberry. (St. Br. 16)

When viewed as a whole, the record demonstrates that Dyas wanted counsel, that he believed his current counsel, Attorney Cappellini, had a conflict of interest, and that he wanted other counsel appointed. Consequently, this Court should find that Robert Dyas never expressed a desire to waive all counsel for post-plea proceedings and remand for further post-plea proceedings that include counsel.

Following his plea, on December 14, 2017, Dyas filed a document, which the court treated as a motion to vacate plea, stating that he was exercising his

right to appeal and complaining about the traffic stop being extended to conduct a dog sniff, about prior counsel Michael Henneberry not asking for an appellate attorney, and about not receiving discovery. (C. 73-80) Since Dyas made claims against Henneberry, and, according to the court, everyone from the Bureau County Public Defender had a conflict, the court appointed the LaSalle County Public Defender to represent Dyas. (R. 600- 03)

At the next appearance, April 3, 2018, Timothy Cappellini of the Public Defender of LaSalle County appeared for Dyas; Dyas told the court that Cappellini was racist and he wanted another attorney appointed. (R. 613-18) The court refused to appoint another attorney. Rather, the court, with no admonitions, discharged Cappellini and left Dyas to represent himself. (R. 619-22) Dyas complained that it was wrong that he was being forced to represent himself. (R. 622)

On the next court date, May 7, 2018, Dyas again complained about being forced to represent himself (R. 665-66) and asked for another public defender to be appointed. (R. 687-88) The court again appointed the LaSalle Public Defender, and Cappellini again stated he would be handling the case. (R. 694, 699) On July 17, 2018, Cappellini reported that Dyas refused to cooperate with him. (R. 720) Dyas alleged a conflict of interest related to Cappellini not doing what Dyas wanted and not taking enough interest and again requested another attorney, stating “I refuse his help. I need some other legal help that is going to be on my side. He is totally against what I’m doing, so I’ll refuse to proceed with him.” (R. 720)

The court, with no admonishments to Dyas, again discharged the LaSalle County Public Defender and left Dyas to represent himself. (R. 724-25) Although

Dyas wanted counsel, Dyas was improperly left to represent himself in the circuit court from July 17, 2018, to May 17, 2021, when the court, following remand from the appellate court, appointed Timothy Gatza, Assistant Public Defender of Bureau County, to represent Dyas on his motion to reconsider the denial of his motion to vacate plea. (C. 301)

No Rule 401 admonitions were given post-plea.

At the time of his motion to vacate plea, the trial court left Dyas to represent himself without questioning Dyas as to whether he understood his right to counsel and was unequivocally choosing to waive that right. Illinois Supreme Court Rule 401 enshrines certain minimum admonitions that ensure one's waiver of counsel is knowing and intelligent. Ill. S. Ct. Rule 401(a). The rule requires that the trial court determine that the defendant understands:

- (1) the nature of the charge;
- (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
- (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

Ill. S. Ct. Rule 401(a). Rule 401 requires proper admonitions, and the “admonishments must be provided *at the time the court learns that a defendant chooses to waive counsel*, so that the defendant can consider the ramifications of such a decision.” *Jiles*, 364 Ill. App. 3d at 329 (emphasis added); *People v. Haynes*, 174 Ill. 2d 204, 241 (1996) (finding relevant admonitions given at the time “when the defendant had indicated a desire to waive counsel.”). This Court has recognized the seriousness of a defendant's choice to act as his own attorney:

Self-representation is fraught with dangers. Any defendant may choose to proceed *pro se*. However, it is the obligation of the court to see that the choice is an informed one.

Baker, 94 Ill. 2d at 136. In Dyas' case, it is beyond dispute that the trial court entirely failed to comply with Rule 401 at the time Dyas made the relevant complaint about the counsel representing him in post-plea proceedings, and the court then left Dyas to represent himself at the post-plea proceedings including the post-plea evidentiary hearing.

Rule 401(a) Applies to Post-Judgment Proceedings in the Circuit Court

The State argues that, contrary to the holding of the appellate court, Rule 401(a) does not apply to Dyas because his case was at the post-judgment stage in the circuit court. (St. Br. 25) According to the State, the plain language of Rule 401(a) applies only to a person who is "accused of an offense" and therefore does not apply to a defendant who has subsequently been sentenced and waives counsel during post-judgment proceedings. (St. Br. 25) This Court should reject the State's semantic analysis. The plain language of the rule only speaks to when the right to counsel attaches, not when it ends. The State's analysis depends not on the plain language, but, rather, the State's distorted interpretation based on its observation that a convicted defendant is no longer merely and solely accused. (St. Br. 25) However, following conviction and sentencing, the accusation against the convicted defendant is not been retracted and the convicted defendant is thus still one who has been accused. Moreover, as the appellate court, below, recognized,

had defendant discharged appointed counsel and prevailed in his motion to withdraw his guilty plea, he *would not only remain "accused" of the charged offense* but also would face up to 60 years' imprisonment at 75%. Impressing upon defendant the possibility of up to 60 years' imprisonment, as opposed

to the 18-year agreed sentence he sought to vacate, cannot be deemed “useless” . . . Indeed, *the prophylactic purpose of the Rule 401(a) admonishments seem particularly applicable* where a self-representing defendant might otherwise ‘succeed’ in his motion to withdraw his plea, only to face the possibility of a substantially longer sentence.

Dyas, 2023 IL App (3d) 220112, ¶17 (Emphasis added).

Notably, Rule 401 admonitions are still required at the time of sentencing, and during a hearing on a post-trial motion to reconsider the verdict, even though the defendant has been found guilty by either a judge or jury. *People v. Langley*, 226 Ill. App. 3d 742, 751 (1992) (sentencing); *People v. Cleveland*, 393 Ill. App. 3d 700, 704-708 (2009) (post-trial motion to reconsider). Further, as this Court has recognized, Rule 401 admonitions are also required during probation revocation proceedings even though the defendant has been found guilty. *People v. Barker*, 62 Ill. 2d 57, 58-59 (1975). Consequently, the State’s interpretation of “accused” fails.

A hearing on a post-plea motion to challenge sentence is a critical stage of the proceedings. *Brasseaux*, 254 Ill. App. 3d at 288. Such a motion is a condition precedent to exercising the right to appeal. Ill. Sup. Ct. Rule 605(b).

In *People v. Thomas*, 335 Ill. App. 3d 261 (2nd Dist. 2002), the Second District appellate court concluded that Rule 401(a) applied to post-plea, post-sentencing proceedings. *Thomas*, 335 Ill. App. 3d at 263-65. In *People v. Young*, 341 Ill. App. 3d 379 (4th Dist. 2003) (Appleton, J., dissenting), a majority in the Fourth District found to the contrary. *Young*, 341 Ill. App. 3d at 387. In *Young*, the appellate court held that Rule 401 admonitions were only required at the initial appointment stage of the proceedings, not after sentencing. *Young*, 341 Ill. App. 3d at 387. Clearly,

Young is at odds with authority from this Court in which Rule 401 admonitions are required at probation revocation hearings. *Barker*, 62 Ill. 2d at 58-59. Consistent with *Thomas*, the appellate court properly concluded that “Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea.” *Dyas*, 2023 IL App (3d) 220112, ¶ 17.

The State nevertheless contends that “a different rule, Rule 605, provides the admonitions a defendant must receive after sentencing.” (St. Br. 25) Elsewhere, the State asserts, “this Court promulgated Rules 604(d) and Rule 605 to address post-judgment admonitions.” (St. Br 27) However, these rules do not address the knowing and intelligent waiver of counsel, which applies to both trials and guilty pleas, and the State’s suggestion that these rules negate or override Rule 401(a) is not supported by any language in the rules themselves, other than the State’s efforts to source such a conclusion from the previously addressed word “accused.”.

The State alternatively contends that, “[t]here is no need to ensure that such defendants understand “the nature of the charge” against them – Rule 401(a)’s first admonition—when they have already been convicted.” (St. Br. 29) The State’s position is without support. Where *Dyas* stood, if successful on his post-judgment motion, to face a sentence much greater than the one for which he pled guilty, as discussed above, *Dyas* maintains that a knowledge and understanding of the nature of the charges and the concomitant range of sentences is still every bit as relevant to post-judgment proceedings as it is to those preceding them.

Asserting that “Rule 401(a) does not require that its admonitions be given to a defendant who chooses to waive this right and proceed *pro se* on appeal,” the

State contends without support that “post-judgment proceedings are more akin to appeals than to pre-judgment proceedings.” (St. Br. 32) However, this Court has made it clear that a post-plea motion is a condition precedent to appeal. *People v. Dominguez*, 2012 IL 111336, ¶ 12. The State acknowledges that “a post-judgment defendant who succeeds in his motion to withdraw his plea . . . faces the possibility of a substantially longer sentence’ when the case returns to the pre-judgment stage, the same is true for a defendant who succeeds in returning his case to the pre-judgment stage on appeal.” (quotation marks omitted) (St. Br. 33) Unlike on appeal, there is no final judgment until the post-plea motion is resolved. Notwithstanding the State’s arguments to the contrary, logically, the same standard for waiver of counsel, as assured by Rule 401(a), should apply for all proceedings in the circuit court prior to the filing of the actual appeal.

Indeed, the State’s proposed limitation of Rule 401(a) is wholly inconsistent with this Court’s own prior interpretation of the rule. This Court previously held that the admonition requirement set forth in Rule 401(a) applies after sentencing to probation revocation proceedings and that the admonitions required before a waiver of counsel in such proceedings must include “the minimum and maximum sentence which may be imposed if the probation is revoked.” *Barker*, 62 Ill. 2d 57, 58-59; *People v. Khan*, 2021 IL App (1st) 190051, ¶ 45 (recognizing that *Barker* set forth requirements largely paralleling the requirements of Rule 401(a) for probation revocation proceedings). The State has failed to provide any compelling reasons why this Court’s decision in *Barker* is no longer workable or in conflict with legal precedent. In probation revocation proceedings, the defendant would

likewise already know the range of potential sentences, but yet this Court in *Barker* found that such admonitions were nevertheless required. *Id.* No reasonable basis exists for giving guilty plea defendants less protections than probation revocation defendants.

The *stare decisis* doctrine expresses the policy of the courts to stand by precedents and not to disturb settled points. *Karbin v. Karbin ex rel. Hibler*, 2012 IL 112815, ¶ 28. One of the tenets of *stare decisis* is that the law will not change erratically but will develop in a principled, intelligent manner. *Id.* Thus, a question once deliberately examined and decided should be closed to further argument, ensuring that the law will develop in a principled, intelligent fashion, immune from erratic changes. *People v. Clemons*, 2012 IL 107821, ¶ 9. *Stare decisis* enables the people and the bar “to rely upon our decisions with assurance that they will not be lightly overruled.” *Moehle v. Chrysler Motors Corp.*, 93 Ill. 2d 299, 304 (1982). Any departure from *stare decisis* “demands special justification.” *Chicago Bar Ass’n v. Illinois State Board of Elections*, 161 Ill. 2d 502, 510 (1994) (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)). “[P]rior decisions should not be overruled absent good cause or compelling reasons.” *People v. Colon*, 225 Ill. 2d 125, 146 (2007)(internal citations omitted). “In general, a settled rule of law that does not contravene a statute or constitutional principle should be followed unless doing so is likely to result in serious detriment prejudicial to public interests.” *Colon*, 225 Ill. 2d at 146.

Here, the State has given this Court no “good cause” or “compelling reasons” to overrule *Barker*. Consistent with the logic, considerations, and holding of *Barker*,

this Court should hold that Rule 401(a) admonitions, including the nature of the charges and the potential penalties, must be given prior to the acceptance of a waiver of counsel in post-judgment proceedings on a motion to withdraw a guilty plea.

There is no basis for any change in the law or circumstances that would call for a reduction in the level of care that is taken prior to allowing a guilty plea defendant to waive their right to counsel and proceed *pro se*. And the State has failed to show otherwise.

Here, Dyas' post-plea motion and hearing was a critical stage of the proceedings. See *Brasseaux*, 254 Ill. App. 3d at 288. Moreover, if successful, the case would go all the way back to the pre-plea stage. It takes only a few seconds for a court to comply with Rule 401(a). Where the circuit court failed to give Rule 401(a) admonitions before forcing Dyas to forego counsel at this critical stage, this Court should affirm the appellate court's reversal and remand.

The Circuit Court erred by denying Dyas counsel.

Dyas wanted an attorney and asked multiple times for counsel during post-plea proceedings. (R. 613-618, 622, 665-666, 687-688) The court's decision to deny Dyas his right to counsel for post-plea proceedings was not an appropriate response to Dyas' substantive complaints about counsel's performance. Depriving a defendant of his constitutional right to counsel in response to the defendant's complaints about counsel's performance was a procedure condemned in *Hughes*, 315 Ill. App. 3d at 89. In *Hughes*, the defendant threw a chair at his counsel during trial. *Hughes*, 315 Ill. App. 3d at 89. After his conviction, Hughes' attorney moved to withdraw

and attached letters that Hughes had written to the attorney's employer, the ARDC, and the media, and counsel attached evidence of a civil suit Hughes had filed. *Id.* In the letters and lawsuit, Hughes accused his attorney of sexually assaulting him and promising him competent representation only if he submitted to counsel's sexual advances. *Id.* Counsel referred to Hughes' conduct as a "campaign of filth," and in his motion to withdraw, counsel argued that Hughes' conduct "forfeited his right to counsel and [that] [he] has elected to go *pro se.*" *Id.*

Although the trial court recognized that Hughes had a constitutional right to counsel, the trial court found that he had waived that right with his conduct. *Id.* at 89-90. The court found that Hughes' conduct made it "almost impossible" for the court to deny counsel's motion to withdraw, that it had to protect the people who appear before the court, including counsel, and that to appoint another lawyer would signal to Hughes that "a continuation of abuse on the lawyers, [] will simply result in that lawyer being given leave to withdraw[.]" *Id.* at 90. Hughes then proceeded to represent himself on his post-trial motion. *Id.*

On review, the appellate court in *Hughes* held that trial counsel was properly allowed to withdraw but that new counsel should have been appointed. *Id.* at 94. The court stressed that Hughes did not appear to be delaying the case, and the court held that Hughes' conflicts with counsel were not a basis to find a waiver of the right to counsel. *Id.* at 94-95. The appellate court concluded that the trial court "struggled to balance the defendant's right to counsel with his obligation to administer justice[.]" *Id.* at 95. However, the appellate court disapproved of the trial court's comments that it would not subject further attorneys to "the

viciousness of Mr. Hughes,” and the appellate court observed that, while there was frequent discussion about whether Hughes would represent himself or seek other counsel, Hughes had only had one attorney before the current one. *Id.* at 95-96. The court held that Hughes’ conduct had not frustrated or delayed resolution of the proceedings or otherwise undermined the administration of justice so as to constitute a waiver of the right to counsel, and the court remanded the case for further post-trial proceedings. *Id.* at 96.

Here, the record gives no indication that Dyas was trying to delay the case or frustrate the administration of justice where his comments indicated specific complaints about his appointed counsel. (R. 613-618, 720) Waiver of counsel must be clear and unequivocal, not ambiguous, so that a defendant waives his right to self-representation unless he articulately and unmistakably demands to proceed *pro se*. *Baez*, 241 Ill.2d at 115-16. Dyas never made a clear and unambiguous request to proceed *pro se* for proceedings on his post-plea motion. Dyas’ complaints show that he firmly believed his attorney had a conflict and that he wanted conflict-free counsel. Where courts must indulge in every reasonable presumption against waiver of the right to counsel, the trial court, after explaining that there was no conflict based on Dyas’ complaints, should have asked Dyas whether he wished to have counsel continue representing him or whether he was unequivocally asking to proceed *pro se*. It failed to do so, and as a result, Dyas was forced to represent himself at a critical stage. Notably, the record demonstrates that there was no confusion as to whether Dyas wanted counsel to represent him at those proceedings. Dyas wanted counsel and did not want to proceed *pro se*. (R. 613-622; 720)

Although the court appointed other counsel for Dyas' motion to reconsider the denial of his post-plea motion, Assistant Bureau County Public Defender Timothy Gatza, Dyas was without counsel for the critical proceedings on his initial motion to vacate plea. (C. 301) Moreover, the fact that another attorney was appointed to represent Dyas on the motion to reconsider, and that Dyas did not complain about this attorney's representation, further demonstrates that Dyas did not want to represent himself on the initial motion but had earnest complaints about the specific attorney previously appointed to represent him. (C. 301) There was no reason that the court could not have appointed Assistant Public Defender Gatza for the initial proceedings on Dyas' post-plea motion. The court's failure to do so, or to appoint other counsel, violated Dyas' right to counsel at the critical stage of hearing evidence and argument on the motion to vacate plea.

The State nevertheless argues that the trial court did not err in finding that Dyas knowingly and intelligently waived his right to post-judgment counsel. (St. Br. 34) The State additionally maintains that "the special concurrence below was incorrect in asserting that defendant did not waive counsel despite rejecting [appointed counsel] Cappellini's representation because he expressed a desire for another attorney." (St. Br. 34) The State's position is without merit.

According to the State, Dyas "was repeatedly admonished about his right to appointed counsel and the dangers of self-representation," at various other points in the proceedings. (St. Br. 35) The State recounts in its brief the details of numerous proceedings that occurred *prior* to the proceedings at issue in the instant appeal, dating back to July 28, 2017. (St. Br. 35-36, citing to pre-plea proceedings) The

significant proceedings in this appeal involve those where Dyas was improperly left to represent himself in the circuit court, post-plea, from July 17, 2018, to May 17, 2021, after the court appointed Timothy Gatza, Assistant Public Defender of Bureau County, on remand, to represent Dyas. (C. 301) The State’s conclusion that “the record establishes that defendant understood that he had the right to appointed counsel when he chose to represent himself at post-judgment proceedings” is thus both unfounded and insufficient. (St. Br. 36)

In order to excuse the circuit court’s failure to give *any* Rule 401 admonitions post-plea, the State asserts that “the record shows that defendant understood the ramifications of withdrawing his guilty plea.” (St. Br. 36) In support of this assertion, the State notes that Dyas had completed high school and had prior experience with the criminal justice system, which the State declares “confirms that he understood his current possession charge and that his waiver was knowing and intelligent.” (St. Br. 37) The State further argues, “[t]hat defendant waived counsel because he wanted a different appointed attorney does not invalidate his waiver.” (St. Br. 38) The State concludes that Dyas’ words, including but not limited to those at proceedings prior to those where he argues he was improperly denied counsel, and his actions, demonstrate a knowing and understanding waiver of counsel at that time. (St. Br. 29-36) The State bases this argument on the court telling him that he would be left to represent himself if he did not agree to cooperate with Cappellini, with whom Dyas had voiced complaints. (St. Br. 38) The State, however, cites to no case in which substantial compliance with Rule 401 had been found under these facts. Here, as in *Langley* and *Barker*, there was a complete

absence of compliance with Rule 401, and thus Dyas did not knowingly and voluntarily waive his right to counsel.

Although Dyas had voiced complaints and concerns regarding appointed counsel Cappellini, the relevant issue is whether Dyas made an unambiguous request to proceed *pro se* after he filed the document interpreted by the court as a motion to vacate guilty plea. (C. 73-78, 80) The record reflects no such request. The State's detailed rendition of the record before and after the filing of this document fails to obscure the fact that Dyas did not at the time of the proceedings on the motion itself want to proceed *pro se*. (St. Br. 35) In the absence of Rule 401(a) compliance, Dyas was left without counsel, including at the hearing on Dyas' *pro se* post-plea motion, resulting in a violation of his constitutional right to counsel at this critical stage of the proceedings. In fact, as the State acknowledges, while proceeding *pro se*, Dyas was tasked with having to cross-examine his plea counsel, Michael Hennerberry. (St. Br. 16)

When viewed as a whole, the record demonstrates that Dyas wanted counsel, that he believed his current counsel had a conflict of interest, and that he wanted other counsel appointed. At no point in the post-plea proceedings did Dyas voluntarily and knowingly want to be without an attorney. And notably, the court subsequently appointed other counsel, Attorney Gatza, with whom Dyas had no complaints. (C. 301)

The State likens this case to *People v. Lesley*, 2018 IL 122100, ¶46, where this Court held that where a defendant is offered a choice between appointed counsel, hired counsel, and self-representation, and the defendant explicitly rejects the

first two, but is silent as to the latter, an affirmative response as to that choice can be inferred. (St. Br. 39) However, *Lesley* is inapposite. *Lesley* involved a post-conviction proceeding where there was no constitutional right to counsel. *People v. Suarez*, 224 Ill.2d 37, 42 (2007) (holding that there is no constitutional right to counsel in post-conviction proceedings). *Lesley* is also factually distinguishable. In *Lesley*, the court offered a choice between appointed counsel, hired counsel, and self-representation, and the defendant explicitly rejected the first two. *Lesley*, 2018 IL 122100, ¶46. This is not what occurred here, nor should a similar conclusion be reached here. Consistent with the appellate court's conclusion below, Rule 401(a) admonishments are required even after a defendant is sentenced following a guilty plea, and where Rule 401 has not been complied with here, a remand for new post-plea proceedings was required. *Dyas*, 2023 IL App (3d) 220112, ¶ 17.

In sum, the circuit court gave no Rule 401(a) admonitions at the time Dyas expressed his complaints with appointed counsel and the court forced him to forego counsel and proceed *pro se*. Robert Dyas never made a clear and unambiguous request to represent himself at post-plea proceedings, was denied his repeated requests to have counsel appointed, and was forced to represent himself against his wishes at a critical stage of the proceedings against him. Because of this, the trial court's order denying Dyas' motion to withdraw his guilty plea must be vacated and the case remanded for further post-plea proceedings with assistance from counsel.

II. This Court has jurisdiction where Robert Dyas timely appealed the denial of his motion to vacate plea and this Court should find that his subsequent notice of appeal was a properly perfected appeal.

In addition to the substantive question raised in the appellate court, the State now has argued for the first time before this Court that the appellate court did not have jurisdiction because the notice of appeal in this case was filed more than 30 days after the denial of Dyas' motion to withdraw guilty plea, although it was filed within 30 days from the denial of the motion to reconsider the motion to vacate plea. (St. Br. 20-24) The State, however, does not dispute that this Court has jurisdiction. (St. Br. 1)

Contrary to the State's contention, the appellate court properly had jurisdiction. Moreover, if there is any doubt, Dyas asks that this Court exercise its supervisory authority and treat the March 28, 2022, notice of appeal as a properly perfected notice of appeal from the denial of defendant's motion to reconsider the denial of his motion to withdraw his guilty plea. Thus, under any circumstances, this Court can reach the merits of argument I.

Procedural history demonstrating jurisdiction

On December 14, 2017, Dyas filed a timely motion, construed as a motion to withdraw guilty plea, which the court denied following a hearing on October 18, 2018. (C. 73-38, 80; R. 827) On November 2, 2018, Dyas mailed a timely motion to reconsider the denial of his motion to withdraw guilty plea. (C. 183-87) Before the circuit court ruled on the motion, on November 14, 2018, Dyas mailed a notice of appeal, which was file stamped on November 19, 2018. (C. 189) The notice of

appeal was given appellate court number 3-18-0684. On November 19, the court struck Dyas' November 2 motion to reconsider the denial of his motion to vacate, stating it had no jurisdiction because of the notice of appeal. (C. 190)

On April 6, 2020, the appellate court granted Dyas' motion to dismiss his appeal number 3-18-0684 as premature, which the State did not contest, and remanded the matter to the circuit court to proceed on Dyas' timely-filed motion to reconsider the denial of his motion to withdraw his guilty plea and vacate the judgment and sentence. (C. 235)

On remand, the circuit court ordered, on March 29, 2021, that a post-conviction petition filed by Dyas be stricken for being prematurely filed and continued the case for further proceedings on Dyas' motion to reconsider the order denying Dyas' motion to withdraw guilty plea. (C. 245) On May 17, 2021, the court appointed counsel to represent Dyas. (C. 301)

On March 25, 2022, the court, following argument, denied Dyas' amended motion to reconsider the denial of his motion to vacate plea. (C. 330; R. 963))

On appeal, Dyas asserted that the appellate court properly had jurisdiction.. (Def. App. Ct. Br., 3) The State did not dispute Dyas' assertion. In remanding for new post-plea proceedings, the appellate court "conclude[d] that Rule 401(a) admonishments are required [before waiver of counsel] even after a defendant is sentenced following a guilty plea." *People v. Dyas*, 2023 IL App (3d) 220112, ¶ 17. Consequently, because Dyas had not been admonished during proceedings on his post-judgment motion, the appellate court vacated the trial court's order denying that motion. *Id.* at ¶ 24. (S.R. 43)

Before this Court, the State now claims for the first time that, while the appellate court had proper jurisdiction when it ordered a remand for a ruling on Dyas' motion to reconsider the denial of his post-judgment motion, the appellate court then "lost jurisdiction" that could not again later be regained – even following the filing of a timely notice of appeal in the circuit court. (St. Br. 23)

Relying on this Court's decisions in *Walls* and *Shunick*, the State maintains that "Subsequent proceedings in the trial court on defendant's motion to reconsider the denial of his 604(d) post-judgment motion did not toll the time to file the notice of appeal, for a successive postjudgment motion to reconsider the denial of a Rule 604(d) motion does not toll the time for filing an appeal." (St. Br. 23-24, citing *People v. Walls*, 2022 IL 127965, and *People v. Shunick*, 2024 IL 129244, ¶26)

The State's reliance on *Walls* and *Shunick* is misplaced. (St. Br. 20-24) Both are inapposite as neither *Walls* nor *Shunick* involved an initial timely-filed notice of appeal. *Walls*, 2022 IL 127965 ¶¶8, 14; *Shunick*, 2024 IL 129244, ¶12. Moreover, neither involved a time period extended by a prior appeal, appointment of appellate counsel, ruling on appeal, remand, appointment of counsel on remand, supplementary filings on remand, and a ruling on remand, prior to the subsequent appeal, nor do they involve jurisdictional challenge raised after the appellate court already decided the appeal.

In *Walls*, the defendant, who had pleaded guilty to two counts of second-degree murder and one count of aggravated battery with a firearm, moved to reconsider the imposition of a 45-year aggregate sentence. *Walls*, 2022 IL 127965 ¶¶3, 4. After approximately 15 years had passed, during which time defendant had made

motions to vacate or redress his allegedly void sentence, the circuit court struck the collateral proceedings and denied the motion for rehearing. *Id.* at ¶¶5-8 Defendant then filed a notice of appeal. *Id.* at ¶9. This Court held that the 30-day period in which defendant could file his notice of appeal began to run after the trial court denied his motion for reconsideration of his sentence, and a successive postjudgment motion to reconsider a sentence imposed after a guilty plea does not toll the time for filing an appeal; overruling precedent to the contrary. *Id.* at ¶26.

The instant case, unlike *Walls*, involves an initially timely filed notice of appeal. Additionally, unlike *Walls*, here Dyas did not file a successive post-judgment motion, but instead filed a motion to reconsider the denial of his motion to vacate.

Moreover, to the extent that *Walls* overturned prior valid law on which Dyas, prior counsel, and the appellate court previously reasonably relied, rendering inappropriate and unjust any application of *Walls* to the instant case at this time. Under *People v. Feldman*, Dyas had not yet been “convicted” as his motion to reconsider the denial of his motion to withdraw his guilty plea was still pending before the Circuit Court of Bureau County. *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (5th Dist. 2011) (a motion to reconsider the denial of a motion to withdraw a guilty plea provides the trial court with the opportunity to correct any errors that might have resulted from the denial of the original motion to withdraw the guilty plea). Thus, the timely filing of a motion to reconsider the denial of a motion to withdraw a guilty plea tolled the deadline for filing a notice of direct appeal until there is a ruling on the motion to reconsider. *Id.* Where it

was impossible for Dyas or prior counsel to have anticipated the overruling of *Feldman*, this Court should decline the State's invitation to deny Dyas his right to appeal based on *Walls*. To agree with the State would deny Dyas due process. U.S. Const., amend XIV; Ill. Const. 1970, art. VI, § 6.

Similarly, the State's reliance on *Shunick* is misplaced. (St. Br. 23) In *Shunick*, the appellate court found that the post-conviction petitioner's certificate of service in his motion for reconsideration of the summary dismissal of his petition failed to comply with section 1-109 or Rule 12(b)(6) by failing to include the certification language or state the complete address to which the document was to be delivered. *Shunick*, 2024 IL 129244, ¶¶ 19-21. Due to deficient service, the motion to reconsider the post-conviction petition's dismissal failed to toll the period for filing a notice of appeal and the appellate court thus lacked jurisdiction. *Id.* Insofar as the instant case does not involve a claim of a any procedural service defects, *Shunick* does not apply. Moreover, at no point did the State contend that Dyas' November 25, 2019, notice of appeal was deficient for any procedural irregularities. The State conceded that Dyas complied with the requirement that a notice of appeal be filed within 30 days from the date of the judgment being appealed when he filed a notice of appeal on November 14, 2018, after the October 18, 2018, denial of his motion to vacate his guilty plea. (St. Br. 23) In fact, the State did not contest the appellate court's remand order directing the circuit court to proceed on Dyas' timely-filed motion to reconsider the denial of his motion to withdraw his guilty plea.

Under the State's interpretation, a defendant who is successful in obtaining a remand on appeal would then forever lose his right to appeal again should he

fail to prevail in the circuit court. That position would not only fly in the face of defendant's due process right to appeal but also in defiance of Illinois' constitutional guarantee that for every wrong there is a remedy. Ill. Const. 1970, art. I, § 12. Also, the State's position would be contrary to well-established case law that the courts have remanded cases multiple times for failing to comply with Rule 604 by having filed a non-compliant 604(d) certificate. See *People v. Lindsay*, 239 Ill. 2d 522, 523-525 (2011). In *Lindsay*, there was no compliance with Rule 604(d), and the appellate court remanded, after which another appeal followed. *Lindsay*, 239 Ill. 2d at 523-525. There was no issue concerning the appellate court regaining jurisdiction following a new notice of appeal, even though more than 30 days had elapsed from the original post-plea judgment.

Moreover, the State's interpretation would render the time for him to file a post-conviction petition expired. 725 ILCS 5/122-1(c), foreclosing his opportunity to raise a constitutional challenge under the Post-Conviction Hearing Act. Such a ruling would present an unprecedented diminishment of the right to appeal. The Illinois Constitution guarantees an appeal as of right from all final judgments in the circuit court. See Ill. Const. 1970, art. VI, § 6; *People v. Abdullah*, 2019 IL 123492, ¶ 19. This Court, as did the appellate court, has proper jurisdiction over this appeal.

In the event that there is a question of whether the appellate court in 2022 had jurisdiction to order relief, Dyas requests that this Court find that the notice of appeal filed March 28, 2022, is a properly-perfected appeal from the March 25, 2022, denial of Dyas motion to reconsider the October 18, 2018, denial of his

motion to withdraw his guilty plea and vacate the judgment and sentence, and that this Court thus has jurisdiction over this appeal.

The State did not contest jurisdiction while this case was pending in the appellate court. If it had done so, Dyas could have obtained a supervisory ruling from this Court then. See *People v. Salem*, 2016 IL 118693 ¶ 23-25 (exercising supervisory authority, Court allows defendant to appeal criminal conviction where, through no fault of his own, motion directed against judgment was not timely filed and thus notice of appeal was not timely filed).

This Court's general supervisory authority over the entire Illinois court system "is a broad and unusual power, which is unlimited in extent, undefined in character, and grants jurisdiction without pretending to intimate its instruments or agencies." *People v. Lyles*, 217 Ill. 2d 210, 217-18 (2005). To effectuate the right to an appeal from all final judgments in the circuit court guaranteed by the Illinois Constitution, this Court has previously granted supervisory relief when a criminal defendant "has not been afforded adequate relief by the normal appellate process through no fault of his own." *Salem*, 2016 IL 118693, ¶ 23. Thus, when defendants have lost their right to appeal through no fault of their own, this Court has reinstated those appeals. See *Salem*, 2016 IL 118693, ¶¶ 22-23 (reinstating direct appeal lost due to confusion about deadlines for filing post-judgment motions in trial court); *Lyles*, 217 Ill. 2d at 217-18 (reinstating post-conviction appeal dismissed for want of prosecution); *People v. Jacobs*, 61 Ill. 2d 590, 592-93 (1975) (reinstating direct appeal lost when counsel failed to prosecute appeal due to illness).

In sum, jurisdiction is proper over this appeal where Dyas filed a timely

notice of appeal, which vested the appellate court with jurisdiction and then filed a subsequent timely notice of appeal, after the appellate court remanded for further proceedings in which Dyas was denied relief. Alternatively, should this Court have concerns about jurisdiction, Dyas asks that this Court utilize its supervisory authority and find that the notice of appeal filed March 28, 2022, is a properly-perfected appeal from the March 25, 2022, denial of Dyas motion to reconsider the October 18, 2018, denial of his motion to withdraw his guilty plea and vacate the judgment and sentence, and that this Court thus has jurisdiction over this appeal.

CONCLUSION

For the foregoing reasons, Robert D. Dyas, defendant-appellee, respectfully requests that this Court affirm the appellate court's decision, vacate the circuit court's denial of Dyas' motion to withdraw his guilty plea, and remand this cause with instructions to permit him to amend and argue his motion anew, with the assistance of counsel.

Respectfully submitted,

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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 or words contained in 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, and those matters to be appended to the brief under Rule 342, is 39 pages.

/s/Stephen L. Gentry
STEPHEN L. GENTRY
Assistant Appellate Defender

No. 130082

IN THE

SUPREME COURT OF ILLINOIS

| | | |
|----------------------------------|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Appellate Court of Illinois, No. 3-22-0112. |
| |) | |
| Plaintiff-Appellant, |) | There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, Bureau County, Illinois, No. 17 CF 61. |
| -vs- |) | |
| |) | |
| ROBERT D. DYAS, |) | Honorable |
| |) | Honorable James Andreoni, |
| Defendant-Appellee. |) | 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 November 12, 2024, the Brief and Argument 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-appellee in an envelope deposited in a U.S. mail box 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 Brief and Argument to the Clerk of the above Court.

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