No. 129356

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- EARL E. RATLIFF, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 3-21-0194. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 19 CF 134. Honorable Cynthia M. Raccuglia, H. Chris Ryan, Jr., Judges Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

SANTIAGO A. DURANGO
Deputy Defender

ANNE R. BRENNER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

E-FILED
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CYNTHIA A. GRANT
SUPREME COURT CLERK

ARGUMENT

The trial court committed reversible error when it failed to properly admonish Earl Ratliff pursuant to Supreme Court Rule 401(a) at the time it accepted Ratliff's waiver of counsel.

Because he was not properly admonished in accordance with Rule 401(a), Earl Ratliff did not validly waive his right to counsel prior to proceeding *pro se*. Ill. S. Ct. Rule 401(a) (eff. July 1, 1984). The trial court failed to admonish Ratliff pursuant to the Rule at the time Ratliff indicated his wish to proceed *pro se*. The State argues that Ratliff's waiver was nonetheless knowing and voluntary, because Ratliff was apprised of the requirements of Rule 401(a) nearly three months prior to his election to proceed *pro se* (State's Br. at 20). But caselaw makes clear that Rule 401(a) admonishments must occur at the time a defendant expresses the desire to proceed without counsel. *People v. Dyas*, 2023 IL App (3d) 220112, ¶ 21; *People v. Jiles*, 364 Ill. App. 3d 320, 330 (2d Dist. 2006); *People v. Koch*, 232 Ill. App. 3d 923, 927-28 (4th Dist. 1992); *People v. Langley*, 226 Ill. App. 3d 742, 749–50 (4th Dist. 1992); *People v. Stoops*, 313 Ill. App. 3d 269, 275 (4th Dist. 2000). As a consequence, Ratliff's guilty plea was compromised. Ratliff respectfully asks this Court to vacate his guilty plea and remand for proceedings consistent with its opinion.

The appellate court's majority opinion in this case was contrary to well-established precedent, which made clear that missing Rule 401(a) admonishments concerning the right to counsel may not be substituted by admonishments given several months earlier. *Dyas*, 2023 IL App (3d) 220112, ¶ 14 ("Importantly, '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.' " (Emphasis in original) quoting *Jiles*, 364 Ill. App. 3d at 330 ("[d]efendant cannot be expected to rely on admonishments given months earlier, when he was not requesting to waive counsel"); *Koch*, 232 Ill. App. 3d at 927-28 ("the court must give the correct sentence admonitions anew and *then* permit defendant to decide whether he still wishes to waive counsel" (emphasis in original); *Langley*, 226 Ill. App. 3d at 749–50; *Stoops*, 313 Ill. App. 3d at 275. Further, the claim of the majority opinion that any deficiency in the circuit court's admonitions was harmless rested squarely on *People v. Roberts*, 27 Ill. App. 3d 489 (3d Dist. 1975), a case that is inapposite, as it involves a prior version of Rule 401 that pertained to waiver of indictment rather than waiver of counsel. Thus, the State is wrong when it argues that the trial court substantially complied with Rule 401(a).

Here, the State focuses on the fact that Ratliff was admonished in accordance with Rule 401(a) by the Honorable Judge Cynthia Raccuglia at arraignment, but this occurred at a time when he was not contemplating proceeding *pro se* (State's Br. at 20). Ten weeks later, Ratliff informed the Honorable Judge H. Chris Ryan, Jr., that he was "forced" to proceed without the aid of counsel because the assistant public defender he had been appointed had "threatened" him with a sentence of 22 years, and appointed counsel was unwilling to present a defense on Ratliff's behalf (R10, 13-14). In response, as the dissenting justice noted in the court below, Judge Ryan "admonished [Ratliff] about everything except what is required by Supreme Court Rule 401 - the crime with which he was charged, the applicable sentencing range, and the practical consequences of an unsuccessful defense." *People v. Ratliff*, 2022 IL App (3d) 210194-U, ¶ 21 (McDade, J., dissenting). Thus, the court failed to even substantially comply with Rule 401(a) at the time Ratliff

expressly waived his right to counsel and, according to sound caselaw, most needed 401(a) admonishments. This is reversible second-prong plain error.

The State, like the appellate court majority, posits that Judge Raccuglia's Rule 401(a) admonishments - given nearly three months before Ratliff elected to represent himself - was sufficient pursuant to *People v Haynes*, 174 Ill. 2d 204 (1996) (State's Br. at 24). But in *Haynes*, this Court held that contemporaneous admonishments are "preferable," while rejecting any rule that "the failure of a trial judge to admonish a defendant contemporaneously with his waiver is *always* fatal to the validity of a waiver of counsel." *Haynes*, 174 Ill. 2d at 242 (emphasis added). Additionally, as illustrated in Ratliff's opening brief, defendant Haynes was admonished in accordance with Rule 401(a) at the time he informed the court he wished to proceed *pro se*. *Id*., at 238-39 (Def.'s Br. at 14). The issue for this Court on review was whether, after a fitness evaluation finding Haynes fit, the trial court was required to renew the Rule 401(a) admonishments. *Haynes*, 174 Ill. 2d at 240. Thus, defendant Haynes was provided Rule 401(a) admonitions at the time he elected to proceed *pro se*, and the *Haynes* Court's findings are not dispositive of Ratliff's claim.

Nonetheless, the State misconstrues *Haynes* to assert that in Ratliff's case, "there was 'a sufficient basis for concluding that the defendant knew and understood his rights' and that Rule 401(a)'s driving purpose was 'not frustrated.'" (State's Br. at 26). Taken to its logical extreme, the State would have this Court hold that anytime a defendant is admonished about the nature of the charge and potential punishments at arraignment, Rule 401(a) admonishments would never be necessary. But the State reaches this determination without providing any supportive evidence

that Ratliff knew or understood his rights. The record reflects that Ratliff believed his appointed counsel threatened him with a prison sentence of more than two decades, was unwilling to listen to Ratliff with regard to the incident for which he had been charged, and lacked the willingness to present a defense on Ratliff's behalf (R13-14). Obviously Ratliff lacked both knowledge and understanding of the role defense counsel had been appointed to serve on Ratliff's behalf, and as a result Ratliff believed he had no choice but to proceed without the aid of counsel (R13). Critically, the circuit court failed to ensure that Ratliff was explicitly waiving his right knowingly, intelligently, and voluntarily.

Conversely, the State claims these statements of Ratliff's were indicative of his knowledge that he was subject to Class X sentencing, and "that he risked a sentence of more than 22 years if he opted to proceed to trial." (State's Br. at 28). But Ratliff did not understand his appointed counsel's communication regarding 22 years as a plea offer, he perceived it as a threat (R13). And nothing in Ratliff's statement to the court indicated he understood he could be sentenced to more than 22 years if he opted to proceed to trial. The maximum Ratliff faced was actually 60 years (R191).

The State asserts that there was evidence in Ratliff's subsequent filings that his waiver of counsel was both knowing and voluntary, where Ratliff identified the charge he was facing as "Robbery (Class 2 Felony)." (State's Br. at 27). Less than two weeks later, as the State recognizes, Ratliff mischaracterized the offense with which he was charged as "strong robbery (Class 2)." (C53) (State's Br. at 6). The State refers here to a filing in which Ratliff argued he was being subjected to an eighth amendment violation because he neither caused "danger" nor bodily

harm to the victim and that he only took her iPhone and not her purse (C50-51). The Robbery statute Ratliff was charged with violating states, "A person commits robbery when he or she knowingly takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (2020). Thus, in the pre-trial pleading the State looks to as proof that Ratliff knowingly and intelligently waived counsel, Ratlilff admitted to one element of the charge; argued the State could not prove bodily harm, which was not an element of the offense; advanced a pre-trial argument that the State failed to prove he stole a purse from the victim; argued the State was withholding evidence; and claimed a violation of his eighth amendment right based on "cumulative punishment which increase[s] in severity when a person is convicted of the same offense more than one time," while providing neither context nor support for the claim (C50-51). Ratliff's pleading is not evidence of Ratliff's knowledge, intelligence, or willingness to waive counsel.

Without citation to any authority, the State claims that because Ratliff had initially been appointed counsel, Ratliff therefore knew he had a constitutionally protected right to the appointment of counsel (State's Br. at 27). If this were true, there would be no need to include the right to counsel in Rule 401(a) admonishments. Indeed, under the State's logic here, Section 113-3(b) of the Code of Criminal Procedure of 1963, which guarantees an indigent defendant appointed counsel in all cases involving potential incarceration, renders Rule 401(a)(3) moot for the duration of an indigent defendant's case. 725 ILCS 5/1113-3 (2020). The State is essentially arguing that the court need merely *appoint* an indigent defendant counsel without ever *informing* the defendant of his right to counsel. By the same

logic, Section 113-1 of the same Code, requiring, in pertinent part, that a defendant be informed in open court of the charge(s) against him, would render Rule 401(a)(1) moot. 725 ILCS 5/113-1 (2020). That is, by the State's logic, once the defendant is apprised at arraignment of the charges he is facing, the court need not reenforce the charge(s) at the time the defendant expresses his wish to proceed without counsel. This is not what the law requires.

Rather, this Court has explained that while Section 113-3(b) establishes a defendant's right to counsel, Rule 401(a) both establishes a defendant's right to be informed of his right to counsel and requires an express waiver of that right. *People v. Campbell*, 224 Ill. 2d 80, 85-86 (2006), citing *People v. Hall*, 114 Ill. 2d 376 (1986). Similarly, while Section 113-3(b) establishes a defendant's right to be informed of the charges against him or her, Rule 401(a)(1) establishes the defendant's right to be informed of those charges at the time he expressly waives the aid of counsel.

Finally, the State finds a knowing and intelligent waiver of counsel in Ratliff's criminal history, arguing that his experience in the criminal justice system rendered him an experienced litigator (State's Br. at 28). The argument that Ratliff's experience with appointed counsel "left him well equipped to understand the charges, punishment, and rights at issue in his proceedings" is belied by the record in this case (State's Br. at 29). To review, Ratliff repeatedly filed untimely pre-trial motions challenging the State's evidence against him (C50-51, 53-55, 81-83, 91-93); approached the State at the close of *voir dire* with an offer to plead guilty as charged (C107; R190); renewed his challenges to the State's evidence after pleading guilty (C118-121); argued in pre-plea pleadings he had been denied access to both closed

circuit camera video from the gas station where the incident occurred and the victim's medical records related to the incident without ever attempting to subpoena either (C54, 82, 91-93, 118; R53); consistently argued that his right to a speedy trial had been violated at each hearing on his numerous frivolous motions (C63-64, 65-66, 71-74, 82, 92); and repeatedly attempted to negotiate a guilty plea with the judge, rather than the State, after entering a blind plea (C107, 112-113, 115-116, 117, 118, 124-125, 126-127, 132-133). The record is clear that Ratliff's criminal history did not provide him a modicum of understanding with respect to the charges, punishment, and rights at issue.

The State counters that when a defendant elects to proceed *pro se*, that defendant's success in the endeavor has no bearing on the validity of his waiver of counsel, citing *People v. Redd*, 173 Ill. 2d 1 (1996) (State's Br. at 30). But the question for this Court in *Redd* was whether the defendant was *competent* to waive counsel, which, this Court determined, is considered under the same standard as competency to stand trial: a *bona fide* doubt as to fitness. *Redd*, 173 Ill. 2d at 23-24. Ratliff is not arguing before this Court that he was incompetent to stand trial and incompetent to waive counsel. Instead, Ratliff asks this Court to find second-prong plain error where the trial court failed to admonish him in accordance with Rule 401(a) at the time he expressly waived the benefit of counsel. Whether Ratliff's waiver of counsel was knowing, intelligent, and voluntary was a determination to be made by the trial court at the time he waived his right to counsel via this Court's explicit instructions in Rule 401(a). Ill. S. Ct. Rule 401(a) (eff. July 1, 1984); *Jiles*, 364 Ill. App. at 329-30; *Stoops*, 313 Ill. App. 3d at 275. Before this Court, the State argues that Ratliff's waiver was nonetheless knowing,

intelligent, and voluntary, but that is not a determination for reviewing courts to make absent proper Rule 401(a) admonitions contemporaneous with the defendant's waiver of his right to counsel. Such a determination is to be made by the trial court at the time the defendant waives counsel. Indeed, that is the purpose of Rule 401(a). *Haynes*, 174 Ill. 2d 204, 241 (1996).

The trial court's failure to comply with Rule 401(a) at the time Ratliff expressly waived counsel rendered Ratliff's waiver of counsel invalid. *Dyas*, 2023 IL App (3d) 220112, ¶ 21; *Jiles,* 364 Ill. App. 3d at 329-30; *Stoops*, 313 Ill. App. 3d at 275; *Langley*, 226 Ill. App. 3d at 749–50. This amounted to second-prong plain error. *People v. Brzowksi*, 2015 IL App (3d) 120376, ¶ 42; *People v. Ratliff*, 2022 IL App (3d) 210194-U, ¶ 11. Therefore, Ratliff respectfully requests that this Court reverse the decision of the Appellate Court, hold that the trial court committed plain error when it failed to substantially comply with Rule 401(a), vacate Ratliff's guilty plea, and remand this case for a new trial.

There are several additional claims in the State's responsive brief that lack relevancy to a claim of second-prong plain error and thus, lack immediate relevance for this Court: that Ratliff forfeited his Rule 401(a) claim by failing to comply with Rule 604(d); that Ratliff is unable to prove first-prong plain error; that Rule 401(a) is merely a prophylactic Rule; and that as a prophylactic rule, Rule 401(a) compliance is discretionary, so that failure to comply with the Rule is mere harmless error (State's Br. at 12, 20, 27, 31, 39, and 48). Nonetheless, it is necessary to respond to the State's claims below.

Rule 604(d), Waiver, and Forfeiture Are Irrelevant

The State raises a new issue in its responsive brief before this Court which was not before the court below in this case, arguing that Ratliff failed to comply

with Rule 604(d), and thus "waived, or at a minimum, forfeited" his claim pursuant to Rule 401(a) (State's Br. at 12-18). The State itself forfeited its 604(d) claim by failing to raise it in the court below. *People v. Collins*, 2022 IL 127584, ¶ 21. See also *People v. Lucas*, 231 Ill. 2d 169, 175 (2008) ("The doctrine of forfeiture applies to the State as well as to the defendant and the State may forfeit an argument that the defendant forfeited an issue by not properly preserving it for review"); *People v. Salamon*, 2022 IL 125722, ¶¶ 70-71 (noting the defendant's issue was preserved where both the State failed to bring the defendant's forfeiture to the appellate court's attention, and the appellate court addressed defendant's issue on the merits); and *People v. Whitfield*, 217 Ill. 2d 177, 188 (2005) ("it would be incongruous to hold that defendant forfeited the right to bring a post-conviction claim because he did not object to the circuit court's failure to admonish him.")

Additionally, the State asserts that Ratliff waived his claim that he was not admonished in accordance with Rule 401(a) by intentionally relinquishing the right to substantial 401(a) admonishments (State's Br. at 16). As noted in Ratliff's opening brief, the Appellate Court, First District, recently considered the absurdity of this argument in *People v. Stewart*, 2023 IL App. (1st) 210912, ¶ 40. ("We think it would be absurd to require a defendant to preserve the denial of his right to counsel by objecting to the absence of admonishments meant to safeguard that same right.") Again, Ratliff respectfully asks this Court to review the insufficient 401(a) admonishments in his case under a second-prong plain error analysis (Def.'s Br. at 19-20).

Ratliff Does Not Claim First-Prong Plain Error

The State responds to Ratliff's claim before this Court with argument that Ratliff cannot show prejudice sufficient to demonstrate first-prong plain error

(State's Br. at 20-31). As noted in the State's responsive brief, plain error involves two alternate prongs, the first of which involves evidence so closely balanced the verdict may have resulted from a clear or obvious error and not the evidence, and the second of which involves a clear or obvious error so serious that it affects the fairness of defendant's trial and the integrity of the judicial process (State's Br. at 19-20). In the latter instance, prejudice to the defendant is presumed because of the importance of the right involved, regardless of the strength of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The State recognizes that Ratliff has not claimed first-prong plain error (State's Br. at 20). Thus, the issue of prejudice is irrelevant.

The court below recognized that the issue Ratliff raises before this Court is "subject to plain error review because the right to counsel is so fundamental that the failure to properly issue Rule 401(a) admonishments amounts to a reversible second-prong plain error," citing *People v. Brzowksi*, 2015 IL App (3d) 120376, ¶ 42. *People v. Ratliff*, 2022 IL App (3d) 210194-U, ¶ 11. This is consistent with appellate court precedent. *People v. Herring*, 327 Ill. App. 3d 259, 261 (4th Dist. 2002). Moreover, as noted in his opening brief, Ratliff cannot have been expected to lodge a contemporaneous objection to the absence of admonishments meant to safeguard his right to counsel in order to preserve a Rule 401(a) claim (Def.'s Br. at 20).

Ratliff Has Established Second-Prong Plain Error

With respect to second-prong plain error, the State posits that Ratliff is unable to establish error because "the failure to substantially comply with Rule 401(a) is not a constitutional error, much less a structural error." (State's Br. at 32). In support of this argument, the State argues that a trial court's failure to

comply with Rule 401(a) is a mere "prophylactic rule that is one means of safeguarding a defendant's right to counsel." (State's Br. at 34). But the State does not explain how it determined that Rule 401(a) is quantifiable, hence not structural, nor does it explain how it determined that failure to comply with Rule 401(a) is not equivalent to the violation of a protected constitutional right because "Rule 401(a) is but one means of protecting that right." (State's Br. at 34).

Instead, the State cites two cases involving non-structural errors, *People v. Jackson*, 2022 IL 127256 (failure to properly poll the jury); and *People v. Stoecker*, 2020 IL 124807 (failure to allow a reasonable opportunity to respond to a dispositive motion in a collateral civil proceeding and lack of notice before it was dismissed as a matter of law). But this Court has already recognized that denial of a defendant's right to counsel of his choice is a structural error. *People v. Moon*, 2022 IL 125959, ¶ 65. The error is structural because, "It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceeding," and, "Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe." *Id.* citing *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006).

Here, too, it is impossible to know the different choices appointed counsel would have made on Ratliff's behalf and the impact of those different choices on the outcome of the proceeding. Indeed, the only quantitative analysis one could conduct here would be which choices Ratliff made that would most certainly not have been made by appointed counsel, and, while there are plenty, it remains a speculative inquiry into an alternate universe to portend to know exactly how appointed counsel would have conducted Ratliff's case. Thus, the State's conclusion,

unsupported by application of the law to the record, that Ratliff's "attempt to show second-prong plain error fails out the gate" is incorrect (State's Br. at 34).

In its structural error analysis, the *Jackson* Court recognized that, while not an exhaustive list, the U.S. Supreme Court has identified certain structural errors as "a complete denial of counsel" and "denial of self-representation at trial," both of which are implicated in Ratliff's case. *Jackson*, 2022 IL 127256, ¶ 29. The *Jackson* Court further reasoned that, "[t]he commonality of these [structural] errors is that they affect the framework within which the trial proceeds rather than mere errors in the trial process itself." *Id.* After noting that this Court will often look to the types of errors the U.S. Supreme Court has identified as structural in determining whether an error is structural for second-prong plain error analysis, the *Jackson* Court found that an error in polling the jury is a trial error, not a structural defect. *Id.*, at ¶¶ 30, 35. It does not follow that failure to adequately admonish Ratliff under Rule 401(a) at the time he informed the trial court he intended to proceed *pro se* is a trial error and not a structural defect, as set forth above.

Furthermore, as recognized in *Jackson*, this Court has not limited the second prong of Illinois' plain error rule to only those types of errors identified as structural by the U.S. Supreme Court. *Jackson*, at ¶ 30. See also *People v. Clark*, 2016 IL 11845, ¶ 45 ("although our decisions in *Glasper* and *Thompson* equated second-prong plain error with structural error, we did not restrict plain error to the types of structural error that have been recognized by the [U.S.] Supreme Court"). While it found that incomplete jury polling was not a structural defect, the *Jackson* Court recognized it does not follow that all jury issues amount to mere trial errors. *Jackson*, 2022 IL 127256, ¶ 47, citing *People v. Thompson*, 238 Ill. 2d 598, 610 (2010)

(recognizing that a verdict lacking juror unanimity is structural error subject to automatic reversal). Indeed, the Appellate Court, Third District, has found second-prong plain error where jury verdict forms made it impossible to reasonably ascertain whether the jury unanimously decided if either offense charged was actually committed by the defendant. *People v. Filipiak*, 2023 IL App (3d) 220024, ¶¶ 18-20.

The *Stoecker* Court reasoned that while the circuit court erred in holding a hearing outside the presence of either the defendant or defendant's counsel, at which the State's motion to dismiss was granted, the error did "not necessarily render the proceedings automatically unfair or unreliable," particularly where "procedural corrective safeguards [were] in place to protect against erroneous rulings." *Stoecker*, 2020 IL 124807, ¶ 25. Here, the procedural corrective safeguard which this Court instituted was abandoned by the circuit court when Ratliff was not properly admonished in accordance with Supreme Court Rule 401(a) at the time he expressly waived his right to counsel.

The error Ratliff asserts here strikes at the heart of his fundamental right to representation of counsel. See *Koch*, 232 Ill. App. 3d at 928 ("The constitutional right to counsel is too important a right to permit of any other ruling.") At the time Ratliff invoked his right to proceed *pro se*, he informed the court that he believed he was forced to proceed *pro se* based on his appointed counsel's communications (R13). Rather than ensure that Ratliff understood the full ramification of proceeding *pro se* with the admonishments required by this Court, the trial court instead inquired about Ratliff's education level and experience with the legal system before allowing him to proceed in a manner he believed was forced upon him due to his mistaken conception of the criminal process (R11). This is an error affecting a right so fundamental to Ratliff's fair trial with the guarantee

of adequate representation that it amounts to second-prong plain error, as established by the appellate court. *Stewart*, 2023 IL App (1st) 210912, ¶ 40; *Brzowksi*, 2015 IL App (3d) 120376, ¶ 42; *Herring*, 327 Ill. App. 3d at 261.

Prophylactic Rules and Harmless Error are Irrelevant

The State next turns to an argument that Rule 401(a) is merely a prophylactic rule that may protect against constitutional violations but does not itself confer constitutionally mandated protections (State's Br. at 39). In support, the State quotes *People v. Flores*, 2021 IL App (1st) 192219, ¶ 16, which describes prophylactic rules as those "designed to protect fundamental rights where failure to have perfect compliance with the safeguard does not amount to a violation of the fundamental right itself." (State's Br. at 35). Here again, the State turns to a case involving the incomplete polling of the defendant's jury, which this Court had already determined was neither first- nor second-prong plain error. See *People v. McDonald,* 168 Ill. 2d 832, 850 (1995) *("*We do not find the evidence at the second stage of defendant's sentencing hearing closely balanced. Nor do we find the alleged error so egregious as to have deprived defendant of his right to a fair sentencing hearing. We therefore reject defendant's contention that the purportedly improper polling of a juror amounted to plain error.")

The State presents another prophylactic rule, Rule 11(c)(1) of the Federal Rules of Criminal Procedure (FRCP), which governs a judge's participation in plea negotiations (State's Br. at 36). The U.S. Supreme Court found the rule prophylactic as it was "not one impelled by the Due Process Clause or any other constitutional requirement." *United States v. Davila*, 569 U.S. 597, 610 (1984). In contrast, here, Ratliff's constitutional right to adequate representation by counsel is implicated by the trial court's failure to admonish Ratliff in accordance with

Rule 401(a). The Rule is not a mere prophylactic measure. Indeed, the State cites no authority indicating Rule 401(a) is merely prophylactic. Rather, our appellate court has held that the Rule protects a right so fundamental that failure to abide by it amounts to plain error. See *Herring*, 327 Ill. App. At 261; *People v. Black*, 2011 IL App (5th) 080089, ¶ 26; *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 11; and *Brzowski*, 2015 IL App (3d) 120376, ¶ 42.

The State then turns to a case involving incomplete jury polling pursuant to Rule 431(b) in *People v. Glasper*, 234 Ill. 2d 173 (2009), to reinforce its prophylactic rule argument (State's Br. at 38). The *Glasper* Court held that the trial court's refusal to ask potential jurors whether they understood and accepted the principle that defendant's exercise of his right not to testify could not be held against him was subject to harmless error analysis. *Id.*, at 200. The court based its reasoning in part on the fact that the evidence of the defendant's guilt was overwhelming, while also noting that at the time, Rule 431(b) merely made the right to *Zehr* questioning permissive, a structuring of the rule the *Glasper* Court found intentional. *Glasper*, 234 Ill. 2d at 200. Of course, Rule 431(b) has since been amended so that *Zehr* questioning is no longer permissive. Rule 431(b) (eff. March 1, 2007). And this Court has since held that a Rule 431(b) violation is reversible error under the first prong of plain error analysis. *People v. Sebby*, 2017 IL 119556, ¶ 78.

In *People v. Thompson*, 238 Ill. 2d 598 (2010), the Supreme Court addressed imperfect compliance with the amended Rule 431(b), where the trial court failed entirely to address the third principle of the Rule, that the defendant is not required to offer any evidence on his or her own behalf. *Thompson*, 238 Ill. 2d at 606. There, the Supreme Court determined that while trial before a biased jury is structural error subject to automatic reversal, failure to comply with Rule 431(b) does not

necessarily result in a biased jury. *Id.*, at 610-11. Crucially, the *Thompson* Court did not draw a bright line between structural errors and mere prophylactic rules designed to ensure constitutional rights which nonetheless may be bent or broken, as the State implies (State's Br. at 37-8). Instead, the court reasoned that had the trial court's failure to comply with Rule 431(b) resulted in defendant Thompson being tried before a biased jury, reversal would have been required. *Thompson*, 238 Ill. 2d at 610-11.

Here, as a direct result of the trial court's failure to properly admonish Ratliff in accordance with Rule 401(a) at the time he expressed his desire to proceed without the aid of counsel, Ratliff believed he was forced into navigating the criminal court proceedings on his own. Ratliff's ensuing self-representation was rife with critical errors that consistently sabotaged his evident trial strategy. Most importantly, Ratliff had a clear strategy for challenging the State's evidence against him, but was unable to comprehend the appropriate methods to successfully lodge his challenges. Frustrated and overwhelmed, Ratliff entered a blind plea at the close of *voir dire*, only to attempt to negotiate a guilty plea with the trial court in several subsequent pleadings. Thus, the court's failure to comply with Rule 401(a) in this case resulted in a guilty plea that was fundamentally unfair and an unreliable means of determining guilt or innocence.

The State is unable to show that an insufficient Rule 401(a) admonishment at the time Ratliff expressed his desire to proceed *pro se* is not such a clear or obvious error so serious that it affected the fairness of Ratliff's trial and the integrity of the judicial process. The State's reference to prophylactic rules and harmless error has no bearing on Ratliff's claim before this Court. Neither failure to thoroughly poll a jury nor failure to provide complete *Zehr* principles under an outdated,

permissive rule are analogous to the fundamental right implicated here. See *Black*, 2011 IL App (5th) 080089; *Brzowski*, 2015 IL App (3d) 120376*; Herring*, 327 Ill. App. 259 (4th Dist. 2002); *Stewart*, 2023 IL App (1st) 210912; and *Ratliff*, 2022 IL App (3d) 210194-U

This Court has held that where a trial court fails to comply with Rule 401(a), the validity of the defendant's conviction is called into question. *People v. Campbell*, 224 Ill. 2d 80, 83-84 (2006). On appeal from the Third District Appellate Court's order vacating defendant Campbell's conviction, the State argued that the error was harmless because defendant Campbell's sixth amendment right to counsel did not attach where Campbell was not subject to imprisonment. *Id.*, at 85. This Court disagreed, reasoning that Illinois provides a right to counsel that is broader than the sixth amendment right to counsel, as Section 113-3(b) of the Code of Criminal Procedure of 1963 states that, "[i]n all cases, except where the penalty is fine only, if the court determines that the defendant is indigent and desires counsel, the Public Defender shall be appointed as counsel," citing 725 ILCS 5/113-3(b) (2020). *Campbell*, 224 Ill. 2d at 85. The *Campbell* Court further reasoned, "this court has confirmed that Rule 401(a) is wholly unconcerned with the source from which the right to counsel derives." *Id.*, at 86, citing *People v. Dupree*, 42 Ill. 2d 249, 252 (1969). After noting that *Dupree* established that the plain language of the Rule, and not the source of the Rule, is what determined whether Rule 401(a) applied, the Court concluded that "[t]he rules of this court are not suggestions; rather they have the force of law, and the presumption must be that they will be obeyed and enforced as written," and affirmed the court below. *Campbell*, 224 Ill. 2d at 87-88.

Thus, Ratliff's right to counsel was implicated by the trial court's failure

to admonish him in accordance with Rule 401(a) at the time he elected to proceed *pro se*. That some of this Court's rules have been labeled prophylactic and thus subject to harmless error review does not alter precedent holding that failure to comply with Rule 401(a) triggers plain error review. The right to counsel is fundamental and cannot be waived lightly. *Langley*, 226 Ill. App. 3d at 749; *Haynes*, 174 Ill. 2d at 235.

Finally, the State closes with the assertion that the "ultimate question" here is whether Ratlliff knowingly and intelligently waived his right to counsel, arguing that he was aware counsel was available to him because he was briefly appointed the Public Defender (State's Br. at 27, 49). This echoes the appellate court majority opinion's reasoning that Ratliff's post-trial request for counsel demonstrates his knowledge, intelligence, and willingness to explicitly waive his right to counsel. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. But this misses the point, which is that the purpose of Rule 401(a) is that at the time a defendant waives his right to counsel, the court ensures that he is doing so knowingly, intelligently, and voluntarily. Thus, Ratliff's actions post-plea have no bearing on the sufficiency of the trial court's Rule 401(a) admonishments.

Furthermore, the appellate court's reference to Ratliff's invocation of his right to counsel post-plea lacks crucial context which has direct bearing on his knowledge, intelligence, and willingness to waive his right. At a post-sentencing status hearing on Ratliff's motion to withdraw his guilty plea, Ratliff earnestly informed the court he would like a speedy trial and would like time to hire a private attorney for that purpose (R244). When asked how much time he thought he would need to hire private counsel, Ratliff considered the calendar and his ability to post a $10,000 bond, despite the fact that his bond had been revoked at sentencing

(R244-45). The court asked Ratliff again how long he needed to hire private counsel and he replied, "Right now I don't need them." (R246). After scheduling the next hearing on Ratliff's motion, the court informed him, "Now, Mr. Ratliff, if you wanted an attorney appointed, I would appoint one for you, okay?" (R247). Thus, the fact that Ratliff subsequently invoked his right to counsel has no direct bearing on his understanding of his right to counsel at the time he informed the court, pre-plea, that he believed he was "forced" to proceed without counsel because his appointed counsel had "threatened" him and was unwilling to prepare his defense (R13). Moreover, where the trial court does not substantially comply with Rule 401(a), the reviewing court need not determine whether the defendant's waiver of counsel was knowing and intelligent. *People v. Baker*, 94 Ill. 2d 129, 137 (1983).

The issue Ratliff presents to this Court is whether the trial court committed reversible error when it failed to properly admonish Ratliff pursuant to Rule 401(a) at the time the court accepted Ratliff's waiver of counsel (Def.'s Br. at 1). The State acknowledges that the court below recognized insufficient Rule 401(a) admonishments as second-prong plain error (State's Br. at 9). The appellate court erred in holding that any deficiency in the court's admonition was harmless, citing *Roberts*. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. Not only was the *Roberts* Court considering a different rule, pertaining to waiver of indictment, that rule has since been abolished with a 1975 amendment to the Code of Criminal Procedure of 1963. Thus, the majority's reasoning in the court below is critically flawed.

Nonetheless, Ratliff's waiver was neither knowing nor intelligent. Ratliff has a 9th grade education, has suffered from significant alcohol and drug dependence throughout his adult life, and repeatedly submitted untimely pleadings and superfluous arguments during the course of pre-trial proceedings, at the blind

plea hearing, and post-plea (C50-51, 53-55, 63-65, 80-83, 91, 112, 115, 117, 118, 119, 124, 126, 132, 167, 168, 169, 175, 180, 182, 187; R25-34, 38-9, 62-74, 243-44). His pleadings evince a trial strategy incongruent with his behavior throughout the course of proceedings. Further, at no time prior to Ratliff's entry of a blind plea did the trial court cure its failure to comply with Rule 401(a). This means the true purpose of Rule 401(a) - to ensure that the defendant's express waiver of counsel was knowing, intelligent, and voluntary - was not served, in that the trial court failed to determine whether Ratliff recognized the gravity of his decision at the time he expressly waived his right to counsel.

For the reasons stated herein and the argument detailed in his opening brief, Earl Ratliff respectfully requests that this Court reverse the decision of the Appellate Court, hold that the trial court committed plain error when it failed to substantially comply with Rule 401(a), vacate Ratliff's guilty plea, and remand this case for proceedings consistent with its opinion.

Respectfully submitted,

SANTIAGO A. DURANGO
Deputy Defender

ANNE R. BRENNER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

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

/s/Anne R. Brenner
ANNE R. BRENNER
Assistant Appellate Defender

No. 129356

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- EARL E. RATLIFF, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 3-21-0194. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 19 CF 134. Honorable Cynthia M. Raccuglia, H. Chris Ryan, Jr., Judges Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Joseph Navarro, LaSalle County State's Attorney, 707 Etna Road, Room 251, Ottawa, IL 61350;

Mr. Earl E. Ratliff, Register No. N51737, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

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 7, 2023, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mailbox in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Kaitlyn Doyle
LEGAL SECRETARY
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us