No. 128824

IN THE

SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Appellate Court of Illinois, No. 4-20-0371. |
| Respondent-Appellee, | ) | There on appeal from the Circuit Court of the Sixth Judicial Circuit, |
| -vs- | ) | Champaign County, Illinois, No. 15-CF-648. |
| JEAN FUKAMA-KABIKA, | ) | Honorable Thomas J. Difanis, |
| Petitioner-Appellant. | ) | Judge Presiding. |

# REPLY BRIEF FOR PETITIONER-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

KATHRYN L. OBERER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-APPELLANT

E-FILED
6/8/2023 9:59 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

## ARGUMENT

### Illinois Supreme Court Rule 472 does not give a circuit court jurisdiction to change a mandatory supervised release term at any time.

The circuit court ordered Jean Fukama-Kabika to serve "3 years" of mandatory supervised release (MSR). (C. 394) Over 30 days later, the circuit court changed his MSR term to "3 years–natural life." (C. 442) Illinois Supreme Court Rule 472 did not give the court jurisdiction to change his MSR term because this change is not among the Rule's sentencing errors subject to correction, as the First District Appellate Court concluded in *People v. Lake*, 2020 IL App (1st) 170309, nor is this change a "clerical error" as defined under the Rule (Op. Br. 6-21).

The State disagrees (St. Br. 6-23), as did the Fourth District Appellate Court, *People v. Fukama-Kabika*, 2022 IL App (4th) 200371-U. But the State's argument relies on the inapplicable case of *Round v. Lamb*, 2017 IL 122271, and disregards several legal principles. Thus, this Court should reject the State's interpretation of Rule 472, conclude that the circuit court lacked jurisdiction to enter the March 1, 2019 order increasing Fukama-Kabika's MSR term, and vacate that order.

#### A. Applicable law

An order entered by a court that lacks jurisdiction is void and can be challenged at any time. *People v. Castleberry*, 2015 IL 116916, ¶ 11.

The State agrees that the principles of statutory construction apply to interpretation of Supreme Court Rules, like Rule 472, and agrees that the standard of review here is *de novo*. (Op. Br. 7-8; St. Br. 5, 7)

#### B. By its plain language, Rule 472 does not give a circuit court jurisdiction to change an MSR term at any time.

The general rule is that a circuit court loses subject-matter jurisdiction

to modify a sentence 30 days after it enters that final judgment. (Op. Br. 8-9, citing *People v. Abdullah*, 2019 IL 123492, ¶ 19; *People v. Bailey*, 2014 IL 115459, ¶¶ 8, 14). Illinois Supreme Court Rule 472 provides exceptions, stating:

> (a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:
>
> (1) Errors in the imposition or calculation of fines, fees, assessments, or costs;
>
> (2) Errors in the application of *per diem* credit against fines;
>
> (3) Errors in the calculation of presentence custody credit; and
>
> (4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

Ill. S. Ct. Rule 472. The State does not dispute that changing an MSR term is not among Rule 472's list of sentencing errors that may be corrected at any time.

Fukama-Kabika maintains that Rule 472's omission of any reference to MSR should be understood as an exclusion. (Op. Br. 8-9) This is how the First District Appellate Court interpreted Rule 472 in *Lake*, 2020 IL App (1st) 170309, ¶¶ 20, writing that "the correction of an erroneous MSR term is not one of the specified sentencing errors." Thus, the appellate court in *Lake* concluded that Rule 472 did not give a circuit court jurisdiction to enter an order in 2016 that changed an MSR term ordered in 2011. *Id*. ¶¶ 1, 5-6, 15-16, 20. This Court should likewise interpret Rule 472 to conclude that it did not give the circuit court jurisdiction to enter an order on March 1, 2019 that changed Fukama-Kabika's MSR term to "3 years–natural life" (C. 442) from the "3 years" of MSR the court had ordered on October 27, 2017 (C. 394).

The State asks this Court to disregard *Lake* because neither party in *Lake* addressed the application of Rule 472. (St. Br. 15) This, however, is not a basis to discount *Lake*'s analysis. *Lake*'s conclusion that Rule 472 did not govern the changing of an MSR term because "the correction of an erroneous MSR term is not one of the specified sentencing errors" was based upon a principle of statutory interpretation articulated by this Court that the omission of an item should be understood as an exclusion. *Lake*, 2020 IL App (1st) 170309, ¶ 20; (see also Op. Br. 8-9, citing *People v. O'Connell*, 227 Ill. 2d 31, 37 (2007)). *Lake*'s analysis is correct, thus, the State's decision not to argue in *Lake* that Rule 472 permitted a change to an MSR term was likewise correct, and this Court should adopt the *Lake* Court's interpretation of Rule 472.

The State's other arguments here challenging this interpretation of Rule 472 fail. It repeatedly asserts that the circuit court committed no error when entering its March 1, 2019 order because it did not change the original MSR term the court ordered. In doing so, the State writes about the "omission" of an MSR term from the October 27, 2017 order. (St. Br. 6, 9, 11) These statements are misleading. The circuit court's October 27, 2017 Judgment did not omit an MSR term; rather, it specifically included an MSR term of "3 years." (C. 394; see also Op. Br. A-7) Because the circuit court did order an MSR term on October 27, 2017, the State's comparison of that sentence to the sentence the circuit court ordered in *Round v. Lamb*, 2017 IL 122271, fails. (St. Br. 12-13) In *Round*, 2017 IL 122271, ¶ 3, "no term of MSR" was mentioned "in the written sentencing order." No MSR term was ordered "during the sentencing hearing" either. *Id*. Because the circuit court did not order an MSR term in *Round*, that case is distinguishable and does not

control the question presented here: whether Rule 472 gave a circuit court jurisdiction to enter an order changing a previously-imposed MSR term. (Op. Br. 11)

The State further argues that Rule 472 gave the circuit court jurisdiction to enter the March 1, 2019 order because the Rule gave it jurisdiction to correct "Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court." Ill. S. Ct. Rule 472(a)(4). According to the State, the "actual judgment of the court" in Fukama-Kabika's case was *neither* the "3 years" of MSR written on the circuit court's signed, original order (C. 394), *nor* the MSR term the circuit court orally ordered at sentencing (because there was none) (St. Br. 9). No, the "actual judgment," the State maintains, was an MSR term listed in 730 ILCS 5/5-8-1, citing *Round*, 2017 IL 122271. (St. Br. 6-22)

Practically, the State's argument is unworkable. If the "actual" MSR term is a term that was *unspoken* and *different* from the term written down on the order signed by the judge, how would anyone ever know what the "actual" sentence is?

More importantly, the State's argument is also legally wrong. Again, *Round* does not control the interpretation of Rule 472. The Court in *Round*, 2017 IL 122271, ¶¶ 1-3, considered what a person's MSR term was when no MSR term was mentioned "during the sentencing hearing, or in the written sentencing order" when weighing whether it should enter an order for *habeas corpus* or *mandamus*. The issue here is whether Rule 472 gave a circuit court jurisdiction to enter a March 1, 2019 order changing Fukama-Kabika's MSR term to "3 years–natural life" (C. 442) from the "3 years" of MSR in the written October 27, 2017 "Judgment–Sentence to Illinois

Department of Corrections" (C. 394). (Op. Br. 6-21)

To support its argument that the "actual judgment of the court" was something other than what was written down and signed by the judge, the State argues that this written sentencing order "has no independent legal effect." (St. Br. 11) This is wrong.

Effective January 1, 2012, the circuit court is required to put an MSR term in its written sentencing order. 730 ILCS 5/5-8-1(d) (the "mandatory supervised release term shall be written as part of the sentencing order"); Pub. Act. 97-531, § 5 (eff. Jan. 1, 2012) (amending Section 5-8-1(d) to remove the phrase that all sentences shall include an MSR term "as though written therein" and replace it with language that an MSR term "shall be written as part of the sentencing order"). The written sentencing order is the actual judgment of the court. (C. 394); 730 ILCS 5/5-1-19 (defining a sentence as "the disposition imposed by the court"); 730 ILCS 5/5-1-12 (defining a judgment as "the sentence pronounced by the court"); *Black's Law Dictionary* (11th ed. 2019) (defining "pronounce" as "[t]o announce formally <pronounce judgment>"). Even if the order was drafted by someone else, as the State suggests here, without citing any evidence in the record that someone else drafted the order at issue here (St. Br. 8), this Court's rules require that the court–the sentencing judge–enter the order. Illinois Supreme Court Rule 452 states, "[a]t the time of the sentencing in a criminal case, the court shall enter a written order imposing the sentence." The court did so here on October 27, 2017, as the written sentencing order for a three-year MSR term states "Entered: Thomas J. Difanis, Sixth Judicial Circuit Judge," including the judge's signature. (C. 394)

The State's related argument that the October 27, 2017 "Judgment" is not

the actual judgment of the court, but rather, is merely evidence of the sentence, citing *People v. Allen*, 71 Ill. 2d 378 (1978), is also wrong. (St. Br. 8) When this Court wrote in *Allen* that "[t]he entry of the judgment order is a ministerial act and is merely evidence of the sentence," citing *People v. Moran*, 342 Ill. 478 (1930), it was trying to determine the due date for a notice of appeal where the court orally sentenced and entered a written order on one date, July 7, 1976, but that order was file stamped on another date, July 20, 1976. The issue was whether the court's action or the clerk's action controlled the due date for a notice of appeal. The complete rule needed to answer this question, as articulated by this Court in *Moran*, 342 Ill. at 480, is that "[t]he rendition of a judgment and pronouncing sentence of the law are judicial acts, while the entry of the judgment by the clerk is a ministerial act." See also *People v. Vara*, 2018 IL 121823, ¶¶ 1, 13-14, 21 (writing that "[t]he rendition of a judgment is a judicial act, performed by the court at the time it makes its pronouncement" and that "[t]he circuit court's judgment is reflected by *** the written sentencing order signed by the trial judge," which is distinct from a "clerk of the circuit court" "data entr[y]" "in the electronic accounts receivable record"). Therefore, this language the State cites from *Allen* about the entry of a judgment being a ministerial act refers to the clerk's entry of a court's judgment into the file by file stamping the order of the court. It does not stand for the proposition that the written "Judgment" entered and signed by the sentencing judge here on October 27, 2017 (C. 394), was not the actual judgment of the court.

Nor is the original judgment order simply a separate mittimus used to communicate some other actual judgment to the Illinois Department of Corrections (IDOC), as the State argues. (St. Br. 11) As noted in the opening brief, Illinois

no longer has separate mittimuses, sent to IDOC, on which the court's actual judgment is transcribed. (Op. Br. 12, citing *People v. Scheurich*, 2019 IL App (4th) 160441, ¶¶ 16-27 (writing that "[t]oday courts rely on the sentencing judgment to not only document the terms of the defendant's sentence but also to convey the terms of the sentence to the penal institution that is receiving the defendant for incarceration")). Since 1985, the mittimus and the actual judgment are one and the same. A photocopy of the court's actual judgment is sent to IDOC, as the mittimus. 735 ILCS 5/2-1801 (stating that "[i]n all cases, including criminal, *** when a person is imprisoned *** by virtue of a judgment or order which is signed by a judge, a copy of such judgment or order shall in each case, constitute the mittimus and no separate mittimus need be issued").

In sum, the State's argument that Rule 472 gave the circuit court here jurisdiction to enter the March 1, 2019 order requiring Fukama-Kabika to serve an MSR term of "3 years-natural life" because this was the "actual judgment of the court" fails. The "actual judgment of the court" when it sentenced Fukama-Kabika back on October 27, 2017 was that he must serve "3 years" of MSR, as stated in the written "Judgment–Sentence to Illinois Department of Corrections," signed by the sentencing circuit court judge. (C. 394)

As detailed in the opening brief, this Court should not interpret subsection (a)(4) of Rule 472 as allowing the circuit court to enter the March 1, 2019 order because it was not "correct[ing]" a "[c]lerical error[] in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court." (Op. Br. 10-12) There was no "discrepancy between the record and the actual judgment of the court" to correct. On October 27, 2017,

the circuit court ordered Fukama-Kabika to serve "3 years" MSR. (C. 394) On March 1, 2019, the court changed that MSR term to "3 years–natural life." (C. 442) Nor did the circuit court commit a "clerical error," according to the popularly understood or settled legal meaning of the phrase. *Black's Law Dictionary* (11th ed. 2019) (defining a clerical error as "[a]n error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination"); *People v. Melchor*, 226 Ill. 2d 24, 32-33 (2007) (defining a clerical error when evaluating the scope of a *nunc pro tunc* order as something that was "actually previously done by the court but inadvertently omitted by a clerical error," but not a "judicial error[ ]").

By its plain language, Rule 472 does not give a circuit court jurisdiction to change an MSR term at any time.

### C. Interpreting Rule 472 to allow a change to an MSR term at any time cannot be what the drafters of the Rule intended, because such an interpretation is inconsistent with this Court's precedent and several statutes.

The Fourth District's interpretation of Illinois Supreme Court Rule 472 to the contrary, which the State advances here, cannot be correct because such an interpretation would be inconsistent with our Constitution, this Court's precedent, and several statutes. (Op. Br. 12-20)

#### 1. Interpreting Rule 472 to allow a change to an MSR term at any time is inconsistent with this Court's precedent abolishing the void sentencing rule.

The State's interpretation of Rule 472 here (St. Br. 19-20), is an about-face from its position in *Castleberry*, 2015 IL 116916. Illinois used to have a void sentence rule, which provided that a sentence ordered by a court that did not conform to a "statutory requirement" was subject to challenge at any time. *Id.* ¶ 1. In *Castleberry*, this Court was presented with a sentence that did not comply with

a statutory requirement: the circuit court's sentence did not contain a 15-year firearm enhancement. *Id*. ¶¶ 3-6. The State "fully embrace[d]" the position that the void sentence rule "can no longer be considered valid" because the rule was "at odds with" "our state constitution," and this Court abolished the rule. *Id*. ¶¶ 14-17. But here, contrary to that position, the State now argues that a court's "actual judgment" is what is "statutorily mandated"–not what the sentencing circuit court judge entered and signed in its "written sentencing order," and, thus, Rule 472 allows a circuit court to change an ordered MSR term at any time, so that it conforms to a statutory requirement. (St. Br. 19-20) This cannot be what the drafters of Rule 472 intended because it is contrary to this Court's unanimous holding in *Castleberry* abolishing the void sentencing rule. (Op. Br. 13-14)

Nothing about the (post-*Castleberry*) decision of *People ex rel. Berlin v. Bakalis* 2018 IL 122435, changes this. The State asserts in a parenthetical that in *Bakalis*, this Court referred a proposal to allow a circuit court to correct erroneous MSR terms to the rules committee. (St. Br. 21) This parenthetical is imprecise. *Bakalis* specified that the State proposed that this Court "create a rule allowing a *statutorily unauthorized* sentence[] to be corrected at any time by motion in the circuit court" and that this Court referred the State's proposal to the rules committee. *Bakalis*, 2018 IL 122435, ¶¶ 24-26 (emphasis added). Rule 472 did not adopt that proposal. Not only does the Rule say nothing about an MSR term (*supra* § 1.B.), but it also does not refer to a "statutorily unauthorized sentence" or give any indication that it intended to alter the unanimous decision by this Court in *Castleberry* to abolish the void sentence rule.

Another reason this Court articulated for abolishing the void sentence rule was that permitting a party to challenge a sentence in perpetuity contradicted

the goal of preserving the finality of judgments. *Castleberry*, 2015 IL 116916, ¶ 15. Interpreting Rule 472 to allow a court to change an MSR term at any time, as the State asks here (St. Br. 19-20), would undercut that goal.

This Court should not interpret Rule 472 in a way that characterizes a judicially-imposed, albeit erroneous, MSR term as a "clerical error" because such an interpretation would revive the void sentencing rule. (Op. Br. 13-14)

**2. Interpreting Rule 472 to allow a change–and, here, an increase–to an MSR term at any time is inconsistent with this Court's precedent and statutes prohibiting a circuit court from increasing a sentence.**

Fukama-Kabika maintains that this Court should not interpret Rule 472 to allow a circuit court to increase a person's MSR term because our legislature and this Court have long prohibited a circuit court from increasing a person's sentence. (Op. Br. 14-16, *People v. Moore*, 177 Ill. 2d 421, 422-24 (1997); 730 ILCS 5/5-4.5-50(d) (2014); 730 ILCS 5/5-5-4(a)(2015)). The State does not dispute that an MSR term is part of a person's sentence or that a circuit court is prohibited from increasing a person's sentence. Its only response is to again argue that the circuit court's March 1, 2019 order did not "increase" Fukama-Kabika's MSR sentence, because the MSR term contained in that March 1, 2019 order was "statutorily mandated," and, thus, was included in the court's original October 27, 2017 sentence. (St. Br. 20-21, citing *People v. McChriston*, 2014 IL 115310, ¶¶ 16, 31; *Round*, 2017 IL 122271, ¶ 16) As discussed throughout, this argument is legally and factually incorrect. (C. 394)

The record confirms that the circuit court *did* increase Fukama-Kabika's MSR sentence, from "3 years" (C. 394) to "3 years–natural life" (C. 442). Interpreting this increase of an MSR term, to what can be a *lifetime* of liberty deprivations

as something akin to a "clerical error" is an absurd and unjust result that the drafters of Rule 472 could not have intended, where our legislature and this Court have long prohibited circuit courts from increasing a sentence. (Op. Br. 14-16)

**3. Interpreting Rule 472 to allow any party to move to change–and increase–an MSR term is inconsistent with this Court's precedent and rules prohibiting State appeals.**

Another reason that the State's interpretation of Rule 472 is incorrect is because it would run afoul of Illinois Supreme Court Rule 604(a), which prohibits State appeals of sentencing orders. Rule 472 allows "any party," including the State, to move to correct the sentencing errors listed therein. So allowing the State to file a motion to increase a person's MSR term would violate Rule 604(a), an absurd result the drafters of Rule 472 could not have intended. (Op. Br. 16-18)

The State responds that allowing it to file such a motion under Rule 472 would not violate Rule 604(a) because such a motion "involves no appeal." (St. Br. 22) This argument is legally wrong, and this Court unanimously rejected this State argument in *Abdullah*, 2019 IL 123492. In *Abdullah*, the State had filed a "motion seeking a sentence increase," wanting the circuit court to add a firearm enhancement to a person's sentence. 2019 IL 123492, ¶¶ 6, 11, 15. The State argued that its motion was proper. But this Court disagreed, writing that Rule 604(a) "does not authorize the State to appeal sentencing orders" and, thus, "[t]he State may not file motions seeking unauthorized relief from orders it cannot appeal." *Id*. ¶¶ 30, 33. Likewise, this Court should not interpret Rule 472 to allow the State to file a motion to increase an ordered MSR sentence when court rules prohibit the State from appealing that same order.

The State also argues that allowing it to file such a motion pursuant to

Rule 472 would provide the State "an efficient means" to challenge a person's MSR term. (St. Br. 21) But the State is not supposed to have "an efficient means" to increase a person's sentence. Unlike a defendant who has the constitutional right to directly appeal a sentencing order, Ill. Const. 1970, art. VI, § 6, the State has no right to appeal a sentencing order, Ill. S. Ct. Rule 604(a); *Castleberry*, 2015 IL 116916, ¶ 21; *Abdullah*, 2019 IL 123492, ¶ 30. This Court has long held that a State decision to request an increase to a person's sentence must be done via a writ of *mandamus*, an "extraordinary" request. See, e.g., *Castleberry*, 2015 IL 116916, ¶ 26.[1] This Court should reject the State's request to interpret Rule 472 in a way that make what has long been an extraordinary request, ordinary.

**4. Interpreting Rule 472 to allow the IDOC to direct a court to reassess and increase a person's sentence at any time would be an absurd result that the drafters could not have intended because it would contradict the IDOC's role.**

An interpretation of Rule 472 to allow IDOC–an administrative non-party–to direct a court to reassess and increase a person's sentence, as occurred here (C. 433), would be an absurd and incorrect result because that would be an unwarranted expansion of the IDOC's role. (Op. Br. 18-20) The State disagrees, writing that the IDOC "simply prompted the circuit court to correct a clerical error so that the written sentencing order would match the MSR term that was included in the sentence as a matter of law and that DOC was already authorized to enforce."

---

[1]Fukama-Kabika only suggests that a writ of *mandamus* would be the proper vehicle for the State to seek to change the MSR term the circuit court ordered on October 27, 2017. (Op. Br. 17-18); *Abdullah*, 2019 IL 123492, ¶ 30 (writing that "the State may seek the remedy of *mandamus* to challenge criminal sentencing orders when it alleges the trial court violated a mandatory sentencing requirement"). He does not concede here that this Court would grant such a request. (Contra St. Br. 22)

(St. Br. 22-23) Again, the State is wrong.

IDOC does not determine sentences. The circuit court judge does that. See, e.g., 730 ILCS 5/5-1-19 (defining a sentence as "the disposition imposed by the court"); *Moran*, 342 Ill. at 480 (observing that "[t]he rendition of a judgment and pronouncing sentence of the law are judicial acts"); *Vara*, 2018 IL 121823, ¶ 13 (writing that "[t]he rendition of a judgment is a judicial act, performed by the court at the time it makes its pronouncement"). This includes ordering an MSR term in a written sentencing order. Ill. S. Ct. Rule 452 (ruling that "[a]t the time of the sentencing in a criminal case, the court shall enter a written order imposing the sentence"); *Vara*, 2018 IL 121823, ¶ 21 (writing that "[t]he circuit court's judgment is reflected by *** the written sentencing order signed by the trial judge"); 730 ILCS 5/5-8-1(d) (the "mandatory supervised release term shall be written as part of the sentencing order"). The circuit court did so here, ordering Fukama-Kabika to serve "3 years" MSR on October 27, 2017. (C. 394)

IDOC then must act pursuant to that court order. IDOC's powers and duties are to "accept persons committed to it by the courts of this State." 730 ILCS 5/3-2-2(1)(a). It does so pursuant to written court orders. See, e.g., 735 ILCS 5/2-1801(a) ("[i]n all cases *** when a person is imprisoned *** by virtue of a judgment or order which is signed by a judge, a copy of such judgment or order shall, in each case, constitute the mittimus"); 730 ILCS 5/3-8-1(a) ("[i]n the execution of the mittimus or order for the commitment ***of a person to the Department, the sheriff shall deliver such person to the nearest receiving station of the Department"); 20 Ill. Adm. Code 107.20(a)(1)(A) ("[w]hen an offender is delivered to the custody of the Department, the following information must be included with the items delivered: Pursuant to Section[s] 3-8-1 *** [t]he sentence imposed").

It is not the IDOC's role to direct a court to reassess the MSR term it ordered. (Op. Br. 19) "All orders are presumed valid." *Beasley v. Hanrahan*, 29 Ill. App. 3d 508, 510-11 (1st Dist. 1975). This Court has chastised the IDOC for refusing to comply with a court order. For example, in *People v. Latona*, 184 Ill. 2d 260, 274, 279-80 (1998), the circuit court ordered a defendant to receive a specific amount of sentencing credit. But IDOC personnel, including records officers, refused to comply with the order and filed a writ of *mandamus*, challenging the circuit court's order because, it believed, "the trial court's orders were not in conformance with statutory requirements." *Latona*, 184 Ill. 2d at 274-76. This Court called the IDOC's position"untenable" and "troubling." *Id.* at 279-80. This Court explained, "Judgments and mittimuses are prepared every day directing the Department to confine persons in correctional facilities and specifying the sentence credit due to them. Surely the Department does not seriously suggest that it is free of any duty to confine those committed and grant them the credit specified." *Id.* The IDOC "cannot actually contend that the records officers at each of its facilities may routinely question the judicial interpretations inherent in every sentence." *Id*. Likewise here, this Court should reject the State's argument that it interpret Rule 472 in a way that allows the IDOC to determine an MSR term, and then prompt a court to change (and increase) a court ordered MSR term. This would be an absurd interpretation. (Op. Br. 18-20)

Finally, Fukama-Kabika notes that, if this Court finds Rule 472 ambiguous, it must apply the rule of lenity and construe it in his favor to prohibit the circuit court from increasing his MSR sentence. (Op. Br. 20, citing *People ex rel. Gibson v. Cannon*, 65 Ill. 2d 366, 370-71 (1976); *People v. Woodard*, 175 Ill. 2d 435, 444 (1997); *People v. Davis*, 199 Ill. 2d 130, 135, 140-41 (2002)) The State does not

dispute that, if Rule 472 is ambiguous, the rule of lenity applies.

The State's argument that Rule 472 gives a circuit court jurisdiction to change–and even increase–an MSR term at any time, cannot be correct.

### D. Remedy: Because Rule 472 does not give a circuit court jurisdiction to change a mandatory supervised release term, the court lacked jurisdiction to enter the March 1, 2019 order which did so here, and this Court should vacate that order.

Therefore, the Fourth District Appellate Court's conclusion here that Rule 472 gave the circuit court jurisdiction to change Fukama-Kabika's MSR term was incorrect. (Op. Br. 20-21, citing *Fukama-Kabika*, 2022 IL App (4th) 200371-U)

The circuit court did not even invoke Rule 472 to change his MSR term. Rather, it concluded that it had jurisdiction to change the MSR term *nunc pro tunc*. (C. 442) Fukama-Kabika notes that this conclusion was wrong (Op. Br. 20-21, citing *Melchor*, 226 Ill. 2d at 32-33), and the State does not dispute this or argue here that the circuit court could enter the March 1, 2019 order *nunc pro tunc*.

Thus, the general rules regarding jurisdiction apply: the circuit court lost jurisdiction to modify the final judgment 30 days after entering it back on October 27, 2017. *Bailey*, 2014 IL 115459, ¶¶ 8, 14. This Court should conclude that the March 1, 2019 order is void, vacate it, and reinstate the October 27, 2017 final judgment. The State does not dispute that, if the circuit court lacked jurisdiction to enter the March 1, 2019 order, this is the appropriate remedy.

## CONCLUSION

For the foregoing reasons, Jean A. Fukama-Kabika, petitioner-appellant, respectfully requests that this Court conclude that Illinois Supreme Court Rule 472 did not give the circuit court jurisdiction to change his mandatory supervised release term. Because the circuit court lacked jurisdiction to enter the March 1, 2019 order changing his MSR term, this Court should further conclude that the order is void, vacate it, and reinstate the October 27, 2017 final judgment.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

KATHRYN L. OBERER
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR PETITIONER-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 16 pages.

/s/Kathryn L. Oberer
KATHRYN L. OBERER
Assistant Appellate Defender

No. 128824

IN THE

SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Respondent-Appellee,<br><br>-vs-<br><br>JEAN FUKAMA-KABIKA,<br><br>Petitioner-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Appellate Court of Illinois, No. 4-20-0371.<br><br>There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 15-CF-648.<br><br>Honorable Thomas J. Difanis, Judge Presiding. |

**NOTICE AND PROOF OF SERVICE**

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

Mr. David J. Robinson, Deputy Director, State's Attorney Appellate Prosecutor, 725 South Second Street, Springfield, IL 62704, 4thdistrict@ilsaap.org;

Julia R. Rietz, Champaign County State's Attorney, 101 E. Main St., 2nd Floor, Urbana, IL 61801-2731, statesatty@co.champaign.il.us;

Mr. Jean A. Fukama-Kabika, Register No. Y25555, Illinois River Correctional Center, P.O. Box 999, Canton, IL 61520

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 June 8, 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 petitioner-appellant 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 Reply Brief to the Clerk of the above Court.

/s/Alicia Corona
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us