THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT
No. 121483

IN THE

SUPREME COURT OF ILLINOIS

	)	Appeal from the Appellate Court
	)	of Illinois, No. 1-16-1180.
	)	
IN THE INTEREST OF	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois ,
	)	No. 15 JD 00085.
	)	
JARQUAN B.	)	Honorable
	)	Stuart F. Lubin,
Respondent-Appellant	)	Judge Presiding.
	)	

REPLY BRIEF FOR RESPONDENT-APPELLANT

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REPLY BRIEF FOR RESPONDENT-APPELLANT

Effective January 1, 2016, a circuit court can no longer commit a minor to the Department of Juvenile Justice (DJJ) for a misdemeanor. 705 ILCS 405/5-710(1)(b) (2016). Despite the clear language of the amended version of section 405/5-710(1)(b), a divided appellate court incorrectly held that the circuit court properly sentenced Jarquan, a minor, to the DJJ on a misdemeanor after the effective date of this statute.

The amended version of section 710(1)(b) clearly bars a court from sentencing a minor to the DJJ, effective January 1, 2016.

Jarquan's misdemeanor probation was revoked, and after January 1, 2016, he was improperly sentenced to the Department of Juvenile Justice (DJJ). The State concedes that the amended version of 705 ILCS 405/5-710(1)(b), which effective January 1, 2016, prohibits sentencing a juvenile to the DJJ for a misdemeanor, is clear and unambiguous. (St. br. at 14) According to the State, despite the "clarity" of the amended version of section 710(1)(b), it is "irrelevant." (St. br. at 14) The State reasons that this statute is irrelevant because "it does not govern sentencing

in probation revocation proceedings involving sentences of probation initially imposed before 2016." (St. br. at 14) However, nothing in the amended version of section 710(1)(b) limits its applicability in such a manner.

At issue here is the applicability and interpretation of the amended version of section 710(1)(b). On its face, effective January 1, 2016, this statute absolutely prohibits sentencing a minor to the DJJ for a misdemeanor. The State avoids the clear application of this statute to Jarquan, who was sentenced to the DJJ for a misdemeanor after January 1, 2016, by twisting this case into a case of statutory interpretation of another statute. That other statute, section 720(4), generally asserts that upon revoking probation, a judge may impose any sentence available at the time of the initial sentence. 705 ILCS 405/5-720(4) (2016). By changing the focus to interpreting 720(4) rather than 710(1)(b), the State blurs and confuses the issue. The statute at issue here is the amended version of section 710(1)(b), and on its face it applies to sentences on and after January 1, 2016, without limits. As Jarquan was sentenced after January 1, 2016, the court was barred from sentencing him to the DJJ and is not "irrelevant."

As was argued in Jarquan's original brief, the doctrine of *in pari materia* "provides that when two statutes address the same subject, they should be construed together." *People v. Payne*, 277 Ill. App.3d 1000, 1002 (2d Dist. 1996). However, "The doctrine of *in pari materia* applies *only if the statutory section is ambiguous*." *Id*. at 1003 (emphasis added). The State's concession that the amended version of section 710(1)(b) is clear should resolve the dispute before this court. That statute is clear, and it is improper to search out statutes such as section 720(4) to somehow

limit its application. The amended version of section 710(1)(b) does not indicate that it is inapplicable to sentences imposed upon revocation of probation. Thus, contrary to the State's argument, not only is the amended version of section 710(1)(b) relevant, the clear language of that statute indicates that it was improper to sentence Jarquan on a misdemeanor to the DJJ after January 1, 2016.

The State's brief details why it believes that section 720(4) allowed the judge to sentence Jarquan to the DJJ on a misdemeanor after January 1, 2016. The State reasons that because that statute allows a court to impose any sentence available under section 5-710 at the time of the original sentence, and because Jarquan was initially sentenced prior to January 1, 2016, the amended version of section 710(1)(b) is irrelevant. (St. br. at 9-14) As noted above, this Court should not even construe section 720(4) because the amended version of section 710(1)(b), the statute at issue here, is clear. But even if section 720(4) is to be construed in conjunction with the amended version of section 710(1)(b), the State's conclusion that the amended version of section 710(1)(b) is irrelevant is simply wrong.

Section 720(4) does not clearly trump the amended version of section 710(1)(b). The State cites no case where section 720(4) trumps subsequent legislation limiting a judge's sentencing options. The language in section 720(4), that the sentencing options upon revocation of probation are the same as were available at the initial sentence, serves as a general guide for a court regarding what options are available upon revocation of probation. For example, a juvenile cannot be sentenced to the DJJ upon revocation of probation if he was too young to be sentenced to the DJJ when he was initially sentenced. *In re Tucker,* 45 Ill. App.3d 728, 729-31 (3d Dist.

1976). For the parallel revocation of probation statute for adults, a full term of probation may be imposed upon revocation of probation, as that sentence was available when the defendant was initially sentenced. *People v. Rollins*, 166 Ill. App.3d 843, 844-45 (5th Dist. 1988). A defendant is not eligible for an extended-term upon revocation of probation if he was ineligible when he was initially placed on probation. *People v. Witte*, 317 Ill. App.3d 959, 964-65 (4th Dist. 2000). These types of cases demonstrate how the language that the sentencing options available upon revocation of probation are the same options available when the defendant was initially sentenced has been interpreted by courts. Courts typically use this language to help determine the limits of sentencing options on revocation of probation where the defendant's circumstances have changed, *not* where the legislature subsequently passed a statute which demonstrates a clear legislative intent to remove a sentencing option. The language of section 720(4) acts as a reset button which generally places a defendant being sentenced on a probation revocation in the same position he was in when he was initially sentenced. This does not, however, include forcing a court to impose (or a defendant to endure) a sentence that the legislature has since determined to be impermissible.

In discussing how section 720(4) somehow trumps the amended version of section 710(1)(b), the State discusses the need for "certainty regarding the consequences of violating probation" and the need to "prevent minors from strategically violating probation." (St. br. at 10, 12) Yet there is no certainty in a sentence when probation is revoked, as the judge has all sentencing options available as were available at the initial sentencing hearing *except* sending Jarquan

to the DJ for a misdemeanor. Removing one of numerous sentencing options does not create uncertainty. Further, the State cites no evidence that in enacting section 720(4) the legislature was concerned with preventing minors on probation for misdemeanors from gaming the system. Nor is there evidence that Jarquan avoided the justice system by waiting for January 1, 2016, to pass so that he could avoid the DJJ.

The State also string cites statutes and claims that the legislature left section 720(4) unchanged in the 15 times it amended section 710. (St. br. at 11) The State's point here is unclear, and the State does not connect the statutes it cites to this case. Regardless, the legislature had no reason to amend section720(4) here, as the amended version of section 710(1)(b) clearly indicates that effective January 1, 2016, it is illegal to sentence a minor to the DJJ for a misdemeanor.

As Jarquan noted in his original brief, there is a presumption that the legislature intended multiple statutes related to the same subject be read harmoniously. *1010 Lake Shore Ass'n v. Deutsche Bank Nat. Trust Co.*, 2015 IL 118372 ¶ 37. "Even when there is an apparent conflict between statutes, they must be construed in harmony if reasonably possible." *Id.* Here, the general authority of a court sentencing a juvenile defendant on a probation revocation to impose any sentence available when the defendant was initially sentenced as set forth in section 720(4) can be read harmoniously with the prohibition of sentencing juveniles to the DJJ for misdemeanors, as set forth in the amended version of section 710(1)(b). That is, effective January 1, 2016, a judge sentencing a juvenile on a revocation of probation may impose any sentence available during the initial

sentencing hearing, *except* where the probation is for a misdemeanor a judge may no longer impose a sentence to the DJJ. Thus, because section 720(4) and the amended version of section 710(1)(b) can be construed harmoniously, the State's argument that the amended version of section 710(1)(b) is irrelevant here must be rejected.

The State's assertion that Jarquan's interpretation renders "inoperative Section 5-720(4)'s provision allowing court's to" impose any sentence available at the initial sentencing hearing upon revocation of probation is false. (St. br. at 16) That provision remains intact and operable. It remains *completely* operable with respect to sentences imposed upon juveniles placed on probation for felonies who subsequently have their probation revoked. The only limit the amended version of section 710(1)(b) places on section 720(4) is that the legislature deemed it improper, effective January 1, 2016, to send minors to the DJJ for misdemeanors. Therefore, contrary to the State's argument, Jarquan's interpretation does not render section 720(4) inoperative.

The State claims that the statutes can be harmonized despite an alleged conflict by limiting the amended version of section 710(1)(b) to initial sentencing proceedings. (St. br. at 15) But this position makes no sense, as the State is reading a limitation into the amended version of section 710(1)(b), which the State concedes is clear and unambiguous, that does not exist. That statute clearly asserts that effective January 1, 2016, a court cannot sentence a minor to the DJJ for a misdemeanor. That statute is not limited to initial sentencing hearings. Moreover, "when two statutes appear to be in conflict, the one which was enacted later should

prevail, as a later expression of legislative intent." *Village of Chatham v. County of Sangamon*, 216 Ill.2d 402, 431 (2005). Because the amended version of section 710(1)(b) was enacted after section 720(4), that clear statute, which expresses a legislative intent to stop sending juveniles to the DJJ for misdemeanors effective January 1, 2016.

Further, the State's argument makes no sense and leads to absurd results. After juvenile probation is revoked, the minor is resentenced on the underlying offense. Here, Jarquan was resentenced on the misdemeanor offense of criminal trespass to motor vehicle that occurred on December 18, 2014. (C. 6) Under the State's theory, Jarquan was properly sentenced to the DJJ because he was initially sentenced before January 1, 2016. But if another defendant committed the exact same crime on December 31, 2015 and was sentenced on or after January 1, 2016, under the State's theory, this person could not be sentenced to the DJJ because there he was not initially sentenced before January 1, 2016. Therefore, in the opinion of the State, a defendant who committed a misdemeanor over a year ago may be sent to the DJJ, but a defendant who recently committed the same offense cannot. Likewise, if another defendant committed the same crime on the same date as Jarquan, but trial and sentencing were delayed so that the initial sentence occurred on or after January 1, 2016, under the State's theory, that person could not be sentenced to the DJJ, but Jarquan can be so sentenced.

These examples demonstrate that application of the State's theory leads to absurd results. A sentence upon revocation of probation is a sentence for the underlying offense, not a sentence for the conduct causing the probation to be

revoked. *People v. Turner*, 233 Ill. App.3d 449, 456 (4th Dist. 1992); *People v. Bouyer*, 329 Ill. App.3d 156, 161 (2d Dist. 2002). There is no discernable reason a legislature could possibly have for treating Jarquan differently than the two hypothetical defendants. There is no reason to punish a minor more severely for a crime more remote in time. Had Jarquan committed a less serious Class C misdemeanor, there is no rational reason that he should be subjected to a more severe sentence than the two hypothetical defendants merely because he was originally sentenced before January 1, 2016. This Court just reiterated that a statute cannot be interpreted to lead to absurd results. *People v. Fort*, 2017 IL 118966 ¶ 35; *People v. Johnson*, 2017 IL 120310 ¶ 15. "The process of statutory interpretation should not be divorced from consideration of real-world results, and in construing a statute, courts should presume that the legislature did not intend unjust consequences." *Fort*, 2017 IL 118966 ¶ 35.

Moreover, the State's theory leads to a process that would be very difficult to implement. Were this Court to adopt the State's theory, judges revoking probation would have to determine the date of the underlying offense and apply the sentencing law in effect at that time. A judge could have a call where he or she is to sentence six different minors on probation revocations where the underlying offenses occurred in six different years. In each instance, the judge would have to research and apply the law for the respective years. This is true not only for the amended version of 710(1)(b), but would also be necessary for any other changes to the juvenile sentencing statute. This Court must presume that the legislature did not intend the amendment of a statute to cause "inconvenience." *Fort*, 2017 IL 118966 ¶

20; *Johnson*, 2017 IL 120310 ¶ 15. Application of the State's theory would lead to inconvenience, and, thus, could not have been the intent of the legislature.

In sum, the amended version of section 710(1)(b) is (as the State concedes) unambiguous, and this court should not look to section 720(4) to help construe that statute, as the doctrine of *in pari materia* applies only if the statute being construed is ambiguous. Moreover, even if the statutes are construed together, they do not conflict and are harmonious; thus, the language of the amended version of section 710(1)(b) barring sentencing minors to the DJJ for misdemeanors must be given effect. Finally, the State's theory of statutory interpretation should be rejected because it leads to absurd results and would inconvenience trial courts.

Even if the amended version of section 710(1)(b) is ambiguous, the rules of statutory construction indicate a legislative intent to bar all juveniles from being sentenced to the DJJ for misdemeanors, effective January 1, 2016.

Assuming, *arguendo*, that the amended version of section 710(1)(b) is ambiguous when considered in conjunction with section 720(4), the amended version of 710(1)(b) still prohibits sentencing any minor to the DJJ for misdemeanors. Jarquan's initial brief details all of the reasons and rules of statutory construction that make this so, including ascertaining the legislative intent. (Def. br. at 11-20) These reasons will not all be repeated here. However, certain contentions by the State must be addressed.

In reviewing the legislative history, the State does not dispute a legislative intent to reduce the number of minors committed to the DJJ and to reduce the associated costs for the state. (St. br. at 16-17) The State's response to this is simply that the number of such sentences will still be reduced even if persons in Jarquan's

situation are still permitted to be committed to the DJJ. (St. br. at 17) But it cannot be disputed that allowing Jarquan and other similarly situated individuals to continue to be sentenced to the DJJ further increases crowding and costs, contrary to the legislative intent. Perhaps more importantly, just as adults convicted of misdemeanors do not belong in prison, the legislature determined that minors convicted of misdemeanors no longer belong in the DJJ. The State ignores the legislative history where Senator Raoul expressed an intent to "make[] certain that we no longer commit juvenile misdemeanants to the Department of Juvenile Justice." 99th Ill. Gen. Assem., Senate Proceedings, April 22, 2015, at 177-78 (statements of Senator Raoul). (Def. br. at 14) The legislature not only clearly intended to reduce the costs and crowding in the DJJ, but also to no longer commit minors to the DJJ for misdemeanors, effective January 1, 2016. Thus, Jarquan's commitment to the DJJ was improper.

As was pointed out in Jarquan's initial brief, one rule of statutory construction is that a specific provision governs over a general one. (Def. br. at 15-16) The amended version of section 710(1)(b) applies to a limited number of sentences. The provision at issue only applies to misdemeanor sentences, and only to misdemeanor sentences where a judge wishes to sentence a misdemeanant to the DJJ. Section 720(4) applies to all sentences on revocation of probation, including felonies, and broadly permits a court to impose any sentence available during the initial sentence to sentences for revocation of probation. Thus, upon revocation of probation, section 720(4) broadly allows a court to impose any sentence it could have originally imposed. The amended version of section 710(1)(b) applies a very

limited exception to this broad authority by removing the DJJ as a sentencing alternative when misdemeanor probation has been revoked.

Despite the obviously more limited applicability of the amended version of section 710(1)(b) as a subset of possible sentences to be imposed under section 720(4), the State insists that 720(4) is more specific and prevails over the clear language of the amended version of section 710(1)(b). (St. br. at 18) The State reasons that section 710 is not limited to probation revocation proceedings whereas section 720(4) is so limited. (St. br. at 18) But as noted above, 720(4) generally sets forth the authority of the sentencing judge upon revocation of juvenile probation, and the amended version of section 710(1)(b) specifically limits the authority of a sentencing judge by barring just one of many sentencing alternatives for juveniles who have been adjudicated delinquent on misdemeanors.

Moreover, the State's reference to *In Re Shelby R.*, 2013 IL 114994 as authority in support of its argument that 720(4) is the more specific statute is misplaced. In *Shelby R.*, this Court simply held that upon revocation of probation the trial court was limited to sentencing the minor on the underlying offense (underage drinking, which was not punishable by a sentence to the DJJ) and that the court was not authorized to sentence the minor to the DJJ for violating a probation order. This Court rejected the State's argument that 705 ILCS 405/1–4.1 is a broad sentencing provision that creates a new sentencing scheme, permitting incarceration when a minor violated probation upon probation revocation and overriding section 720(4). *Shelby R.*, 2013 IL 114994 ¶¶33-44. Here, Jarquan does not maintain that the amended version of section 710(1)(b) supercedes section

720(4); rather, Jarquan's argument is that the amended version of section 710(1)(b) merely limits one aspect of a judge's authority.

The State does not dispute that the amended version of section 710(1)(b) was enacted after section 720(4), or that there is a rule of statutory construction that the more recent statute prevails over an earlier enacted statute. Rather, the State argues that the rule of construction that the specific governs over the general prevails over the later enacted statute rule, because repeals by implication are disfavored. (St. br. at 19) Again, section 720(4) is not more specific and does not govern. Moreover, the amended version of section 710(1)(b) did not repeal by implication section 720(4). As is noted above, the amended version of section 710(1)(b) merely limits section 720(4) by taking away one sentencing options for juveniles convicted of misdemeanors. "[W]hen two statutes appear to be in conflict, the one which was enacted later should prevail, as a later expression of legislative intent." *Village of Chatham v. County of Sangamon*, 216 Ill.2d 402, 431 (2005). This rule favors Jarquan in general, and the State does not even dispute that it is applicable if the amended version of section 710(1)(b) is the more specific provision.

Additionally, the goal of statutory interpretation is to ascertain the intent of the legislature. In nearly every case, each side can cite to some rule of statutory construction to support its position. "[T]here are two opposing canons on almost every point." Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision & The Rules or Cannons about how Statutes are to be Construed*, 5 GREEN BAG 2d 297, 302 (Spring 2002). Here, every or virtually every canon of construction

leads to the conclusion that effective January 1, 2016, courts simply may no longer sentence minors to the DJJ for misdemeanors. Be it the plain meaning of the amended version of section 710(1)(b), harmonizing that statute with section 720(4), the rule of lenity, the specific controls over the general, the most recently enacted statute prevails, or simply ascertaining the intent of the legislature by reviewing the legislative debates, the intent of the legislature in passing the amended version of section 710(1)(b) was to ban sentencing minors to the DJJ for misdemeanors effective January 1, 2016.

In addition to the rules of statutory construction favoring Jarquan, application of the Statute on Statutes also leads to the conclusion that Jarquan's sentence to the DJJ was improper. The State does not dispute that the amended version of section 710(1)(b) mitigates punishment of juveniles sentenced on misdemeanors by eliminating the DJJ as a sentencing alternative. Nor does the State dispute that where an amendment to a statute merely mitigates punishment, a defendant has the right to consent to be sentenced under the amended version of that statute per the Statute on Statutes. *People v. Jackson*, 99 Ill.2d 476, 480-81(1984). (Def. br. at 17) Rather, according to the State, the Statute on Statutes is inapplicable here, because "the plain language of Section 5-720(4) clearly indicates the General Assembly's intent that statutes enacted subsequently to a juvenile probationer's initial sentence to probation not limit the sentences available in revocation proceedings, and the 2016 version of Section 5-710(1)(b) does not expressly state that it nonetheless applies." (St. br. at 20-21)

Again, the State confuses the issue by acting as if section 720(4), rather

than the amended version of section 710(1)(b), is the statute to be interpreted. Without limits, the amended version of section 710(1)(b) indicates that effective January 1, 2016, courts may no longer sentence a juvenile to the DJJ for a misdemeanor. The temporal reach of this statute is the effective date. Prior to January 1, 2016, a juvenile could have been sentenced to the DJJ for a misdemeanor, whereas on or after that date, such sentences are impermissible. The State cites *Doe A. v. Diocese of Dallas*, 234 Ill.2d 393, 406 (2009), for the proposition that the Statute on Statutes is inapplicable "where the General Assembly has clearly stated its reach." (St. br. at 20) The clear statement of the reach of the amended version of section 710(1)(b) indicates Jarquan was improperly sentenced to the DJJ, as he was sentenced after January 1, 2016, on a misdemeanor. The State tries to avoid this result by referring to the reach of section 720(4). But *Diocese of Dallas* itself undermines the State's position. "[T]he legislature will always have clearly indicated the *temporal reach of an amended statute*, either expressly *in the new legislative enactment* or by default in section 4 of the Statute on Statutes." *Diocese of Dallas*, 234 Ill.2d at 406 (emphasis added). Here, it is the express language of the *amended* statute (the amended version of section 710(1)(b)) that controls, not the language of another statute a party seeks out to help construe the meaning of the amended statute (section 720(4)). If the amended version of section 710(1)(b) does not clearly express its temporal reach, then this Court must look to section 4 of the Statute on Statutes. Either way, it was improper to sentence Jarquan to the DJJ on a misdemeanor.

The State claims that *People v. Reyes*, 2016 IL 119271 and *People v. Ward*,

32 Ill. App.3d 781 (4th Dist. 1975) are distinguishable from the instant case. The State complains that *Reyes* did not involve revocation of a juvenile's probation, and that *Ward* involved adult probation. (St. br. at 21)Yet the State cites not a single case refusing to apply section 4 of the Statute on Statutes to juvenile probation cases. The State's argument is predicated on the false narrative that juvenile probation cases are special and that section 720(4) should be the focal point of this case. The fact is the amended version of section 710(1)(b) mitigated punishment, and Jarquan had the right to elect to be sentenced under that statute, assuming it is ambiguous. For the reasons asserted in his original brief, Jarquan continues to assert that *Reyes* and *Ward* provide guidance on this point, and reasserts that *Ward* applied the Statute on Statutes to revocation of probation proceedings.

Finally, it is notable that the State does not defend the holding of the majority of the appellate court that section 720(4) somehow conflicts with section 4 of the Statute on Statutes. *Jarquan B.*, 2016 IL App (1st) 161180 ¶ 25, 27. The State agrees with Jarquan that the Statute on Statutes sets forth rules of statutory construction that must be applied absent a clear legislative intent. (Def. br. at 18; St. br. at 20) Thus, this Court should reject the finding by the appellate court that the Statute on Statutes can conflict with any statute, and hold that the Statute on Statutes provides rules of statutory construction to be observed in the absence of a clear legislative intent.

This case is properly before this Court under the public interest exception to the mootness doctrine.

The State agrees with Jarquan and with the appellate court that this matter may be considered under the public interest exception to the mootness doctrine.

Jarquan B., 2016 IL App (1st) 161180 ¶¶ 12-14. (St. br. at 22-23; Def. br. at 20-24) For the reasons set forth by the parties and the appellate court, Jarquan continues to assert that this matter is properly before this Court.

CONCLUSION

For the foregoing reasons, Jarquan B. respectfully requests that this Court reverse the judgment of the appellate court and terminate his juvenile case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Darren E. Miller, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 17 pages.

/s/Darren E. Miller
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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. An electronic copy of the Reply Brief in the above-entitled cause was submitted to the Clerk of the above Court for filing on March 30, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel, and mailed one copy to the respondent-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Reply Brief will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Joseph Tucker
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