

No. 124337

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate
)	Court of Illinois, No. 3-17-0450.
Petitioner-Appellant,)	
)	There on appeal from the
-vs-)	Circuit Court of the Tenth
)	Judicial Circuit, Tazewell
)	County, Illinois, No. 13-CF-613.
PHOUVONE V. SOPHANAVONG)	
)	Honorable
Respondent-Appellee)	Michael Brandt,
)	Judge Presiding.

BRIEF AND ARGUMENT FOR RESPONDENT-APPELLEE

JAMES E. CHADD
State Appellate Defender

PETER A. CARUSONA
Deputy Defender

SANTIAGO A. DURANGO
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 RESPONDENT-APPELLEE

ORAL ARGUMENT REQUESTED

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SUPREME COURT CLERK

POINT AND AUTHORITIES

Under the plain language of the Unified Code of Corrections, and as a matter of due process and the judicial power to reject unconscionable guilty pleas, a section 5-3-1 error may be reviewed on appeal even if not preserved because such error is not subject to forfeiture.

730 ILCS 5/5-3-1 (2012)	2, 7
730 ILCS 5/5-4.5-50(d) (2012)	8
Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)	3, 8
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012)	7, 8
<i>United States v. Tucker</i> , 404 U.S. 443 (1972)	9
<i>Santobello v. New York</i> , 404 U.S. 257 (1971)	3, 7
<i>United States v. Rone</i> , 743 F.2d 1169 (7th Cir. 1984)	9
<i>People v. Johnson</i> , 2019 IL 122956	3
<i>People v. White</i> , 2011 IL 109616	8
<i>People v. Henderson</i> , 211 Ill. 2d 90 (2004)	3
<i>People v. Reed</i> , 177 Ill. 2d 389 (1997)	8
<i>People v. Evans</i> , 174 Ill. 2d 320, 332 (1996)	3
<i>People v. Harris</i> , 105 Ill. 2d 290 (1985)	2
<i>People v. Youngbey</i> , 82 Ill. 2d 556 (1980)	2, 4, 5, 6, 7, 8, 9
<i>People v. Bryant</i> , 2016 IL App (5th) 140334	2, 4, 5, 6, 7, 9
<i>People v. Haywood</i> , 2016 IL App (1st) 133201	2, 3, 6
<i>People v. Walton</i> , 357 Ill. App. 3d 819 (2d Dist. 2005)	6, 9
<i>People v. Peterson</i> , 311 Ill. App. 3d 38 (1st Dist. 1999)	3
<i>People v. Evans</i> , 273 Ill. App 3d 252 (5th Dist. 1994).	2, 4, 5, 6, 7, 9

STATEMENT OF FACTS

The Statement of Facts set forth by the State adequately relates the applicable facts of this case except in its description of the issue raised on direct review by defendant. The State describes the issue raised by defendant on direct review as being “that his sentence should be vacated and the case remanded for a new sentencing hearing because the circuit court failed to strictly comply with section 5-3-1 of the Code.” (State’s Br. at 4). However, the issue raised by defendant on direct review, as set out in his opening brief, was “whether the trial court erred in accepting the parties’ agreement to a sentence of 55 years where the record did not include a presentence investigation report or any information or findings as to the dispositions in defendant’s prior convictions.”

ARGUMENT

Under the plain language of the Unified Code of Corrections, and as a matter of due process and the judicial power to reject unconscionable guilty pleas, a section 5-3-1 error may be reviewed on appeal even if not preserved because such error is not subject to forfeiture.

The State asks this Court to resolve a conflict in the appellate court as to whether unpreserved section 5-3-1 errors may be raised for the first ^{TIME} in appeals from fully negotiated guilty pleas under the theory they are not subject to forfeiture. 730 ILCS 5/5-3-1 (2012). The conflict involves, on one hand, the decisions in *People v. Evans*, 273 Ill. App 3d 252 (5th Dist. 1994) (*Evans I*), *People v. Bryant*, 2016 IL App (5th) 140334, and this case, where the appellate court corrected unpreserved section 5-3-1 errors in appeals from fully negotiated guilty pleas under the premise the errors were not subject to forfeiture. On the other hand, in *People v. Haywood*, 2016 IL App (1st) 133201, the appellate court, without mentioning this Court's seminal decision in *People v. Youngbey*, 82 Ill. 2d 556 (1980), or distinguishing the *Evans I* and *Bryant* decisions, declined to consider an unpreserved section 5-3-1 error under the rationale that the defendant forfeited the claim by not including it in his trial court motion to withdraw his negotiated guilty plea. *Haywood*, 2016 IL App (1st) 133201, ¶ 41.

In its opening brief, the State agrees that section 5-3-1 requires strict compliance, and that there was no strict compliance with the section in this case (State's Br. at 8-9) (citing *People v. Harris*, 105 Ill. 2d 290, 302-03 (1985)). The State also agrees that section 5-3-1 applies to negotiated guilty pleas because a correction on review of the failure to strictly comply with that section will not offend contract principles since the parties will either be held to the terms of their

agreement or returned to the status quo as it existed prior to acceptance of the plea (State's Br. at 11) (citing *People v. Johnson*, 2019 IL 122956, ¶ 47).

The State posits, however, that a section 5-3-1 claim that is raised for the first time on appeal is tantamount to an untimely "challenge to the sentencing court's acceptance of [the defendant's] negotiated guilty plea." (State's Br. at 11). Therefore, according to the State, under Supreme Court Rule 604(d), a section 5-3-1 claim involving a negotiated guilty plea must be preserved in a motion to withdraw guilty plea in order to avoid forfeiture of the claim on review (State's Br. at 12-15). *People v. Evans*, 174 Ill. 2d 320, 332 (1996) (*Evans II*); Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). In essence, although the State asserts the *Haywood* decision was not correctly reasoned because it purportedly viewed section 5-3-1 claims as being excessive sentence claims instead of challenges to the validity of the negotiated guilty plea (State's Br. at 10), the State adopts the *Haywood* court's conclusion that a defendant forfeits review of a section 5-3-1 claim if he does not first include the claim in a motion filed in the trial court to withdraw the negotiated guilty plea. *Haywood*, 2016 IL App (1st) 133201, ¶ 41. See State's brief at 14 ("[defendant] forfeited the claim by failing to include it in the motion to withdraw his plea and vacate his conviction.").

Defendant must disagree with the State's argument because it fails to recognize that the primary purpose of section 5-3-1 is to ensure the circuit court will have all of the information it will need to accept or reject a plea in the exercise of its sound judicial discretion. *Santobello v. New York*, 404 U.S. 257, 262-63 (1971); *People v. Henderson*, 211 Ill. 2d 90, 103 (2004); *People v. Peterson*, 311 Ill. App. 3d 38, 45-46 (1st Dist. 1999). Thus, where the court is unaware of the defendant's

complete record of criminality, “the question remains as to whether the court would have accepted the negotiated plea ***.” *Evans I*, 273 Ill. App. 3d at 256. Accordingly, the State’s argument should be rejected by this Court because acceptance of its theory will profoundly undermine the judicial power to reject unconscionable negotiated guilty pleas.

The decisions in *Youngbey*, *Evans I*, and *Bryant* support defendant’s position that the State has misapprehended the purpose of section 5-3-1. For example, in *Youngbey*, where this Court first interpreted the current version of section 5-3-1, the defendants were found guilty of unlawful use of weapons following a bench trial. *Youngbey*, 82 Ill. 2d at 558-59. There was no agreed sentence yet, contrary to the strict requirements of section 5-3-1, the defendants and the State waived the presentence investigation report. *Id.* The trial court found that it was not bound by section 5-3-1 under the reasoning that it was, purportedly, an unconstitutional “invasion of the sentencing powers of the judiciary ***.” *Id.* at 559. On review of the constitutionality of section 5-3-1, this Court reversed, holding that under section 5-3-1 “the presentence investigation and report is a mandatory legislative requirement *which cannot be waived* except in accordance with the exception in the statute.” (Emphasis added.) *Id.* at 561.

This Court explained that the legislative debates made it “apparent that the purpose of the requirement of a presentence investigation report is to insure that the trial judge will have all necessary information concerning the defendant before sentence is imposed, including the defendant’s criminal history.” *Id.* at 564. Importantly, this Court rejected the State’s contention that the requirements of section 5-3-1 could be waived by the defendant, explaining that the defendant

cannot do so because “[t]he presentence report *** is [also] for the enlightenment of the court *** [since it cannot be said] that a trial judge will be sufficiently apprised of the defendant’s criminal record in the absence of the mandatory presentence investigation and report.” *Id.* at 565. This Court therefore concluded that “section 5-3-1 sets forth a *mandatory*, reasonable legislative requirement which, *not being a personal right of the defendant, cannot be waived.*” (Emphases added.) *Id.* at 565. Thus, *Youngbey* supports defendant’s position that strict compliance with section 5-3-1 is not subject to forfeiture.

In *Evans I*, in a fully negotiated guilty plea case like this one, the court explained that at the sentencing hearing in that case:

“the sentencing judge was not determining the sentence to be imposed. *The court was deciding whether to accept the plea negotiation by the parties with the agreed-to sentence. ****”

* * *

We repeat once again that the sentencing judge should be made aware of the history of defendant’s delinquency and criminality before the judge accepts a negotiated plea. There is absolutely no valid reason for the State to hide defendant’s criminal history from the court, so that a bad negotiated plea can be slipped by the unknowing judge. We are not holding that the negotiated plea in this particular case was bad. That decision lies within the discretion of the sentencing judge, and we will have no complaint as long as the judge is apprised of the defendant’s history of criminality. All that we are interested in is that the sentencing court is made aware of the kind of defendant it is sentencing.” (Emphases added.) *Evans I*, 273 Ill. App. 3d at 257-58.

Notably, the *Evans I* court also rejected the possibility of forfeiture, stating that “we decline to apply the waiver rule by defendant’s acquiescence in the procedure or his failure to raise it in his Supreme Court Rule 604(d) motion to withdraw his guilty plea.” *Id.* Thus, *Evans I* also persuasively supports defendant’s

position that strict compliance with section 5-3-1 is mandatory and not subject to forfeiture.

Similarly, the defendant in *Bryant* entered a fully negotiated plea of guilty to first-degree murder with a 28-year sentence. *Bryant*, 2016 IL App (5th) 140334, ¶14. An unpreserved section 5-3-1 error was raised on review, and the appellate court concurred with the parties' agreement that the cause had to be remanded for a hearing "whereby the sentencing judge is to be informed of the history of the delinquency and criminality of defendant." *Id.* ¶ 50 (quoting *Evans I*, 273 Ill. App. 3d at 259). The appellate court explained that if on remand the circuit court did not concur with the negotiated 28-year sentence after considering the defendant's prior criminal history, then the defendant should be allowed to withdraw his guilty plea. *Id.* ¶ 52 (citing *People v. Walton*, 357 Ill. App. 3d 819, 824 (2d Dist. 2005)). Thus, *Bryant* also supports defendant's position that strict compliance with section 5-3-1 is not subject to forfeiture because the power to correct forfeited section 5-3-1 errors is necessary to ensure the circuit court will have, in guilty plea cases, all of the information it will need to accept or reject a plea in the exercise of its sound judicial discretion and, in cases that go to trial or arise from open guilty pleas, all of the information it will need to conduct a sentencing hearing that comports with due process.

The split in the appellate court on the issue raised in this appeal arises from the decision by a First District panel in *Haywood*, where the court decided that a section 5-3-1 error, in a fully negotiated guilty plea case, can be forfeited. *Haywood*, 2016 IL App (1st) 133201, ¶ 41. Yet, as previously noted, the *Haywood* panel failed to analyze or even mention this Court's reasoning in *Youngbey*, and

also failed to acknowledge the well reasoned opinions by the *Evans I* and *Bryant* panels in those fully negotiated guilty plea cases. *Id.*

More importantly, *Youngbey*, *Evans I*, and *Bryant* show that the State's theory that a section 5-3-1 claim on appeal is tantamount to an untimely "challenge to the sentencing court's acceptance of [the defendant's] negotiated guilty plea" is wrong (State's Br. at 11). To the contrary, in the context of negotiated guilty plea proceedings, a section 5-3-1 claim is best characterized as a legislatively authorized (stand-alone) claim intended to ensure that the guilty plea proceeding comports with due process by requiring that the sentencing judge be made fully aware of the history of the defendant's criminality in assessing whether to accept or reject the negotiated plea. Phrased differently, a section 5-3-1 claim is a means provided by the legislature to prevent the State from hiding the "defendant's criminal history from the court, so that a bad negotiated plea can be slipped by the unknowing judge." *Evans I*, 273 Ill. App. 3d at 258. For this reason, a section 5-3-1 claim is one that cannot be forfeited since the circuit court's power to ensure that a negotiated guilty plea is not unconscionable is "not *** a personal right of the defendant." *Youngbey*, 82 Ill. 2d at 565.

A section 5-3-1 claim should also not be subject to forfeiture when it comes to negotiated guilty pleas due to the duty entrusted to the judiciary of protecting the integrity of the guilty plea process, a process which is integral to our system of justice. *Santobello*, 404 U.S. at 262-63; 730 ILCS 5/5-3-1 (2012). As noted by the Supreme Court of the United States in *Missouri v. Frye*, 566 U.S. 134 (2012), "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Frye*, 566 U.S. at 143. The Court observed

that “[t]he reality is that plea bargains have become *** central to the administration of the criminal justice system ***.” *Frye*, 566 U.S. at 143.

This Court had previously made the same observation in *People v. White*, 2011 IL 109616, where this Court noted that plea bargaining is, “perhaps, the central component of our criminal justice system.” *White*, 2011 IL 109616, ¶ 35 (Theis, J., concurring). This Court noted that “[i]n 2009, more than 85% of all criminal convictions in Illinois resulted from guilty pleas.” *Id.* That percentage has increased to the point where, in 2017, 97% of Illinois convictions resulted from guilty pleas (42,573 out of 43,697 convictions) (2017 Annual Report of the Illinois Courts, Statistical Summary at 63). In short, there can be no doubt of the importance of fair guilty plea proceedings to the administration of justice. Therefore, section 5-3-1 claims should not be subject to forfeiture because section 5-3-1 ensures that the proceeding which has become “the central component of our criminal justice system” comports with due process. *White*, 2011 IL 109616, ¶ 35.

Further, the State’s theory that a section 5-3-1 claim cannot be raised on appeal unless the claim was preserved is overly broad and, if adopted by this Court, would logically, and contrary to *Youngbey*, also apply to unpreserved section 5-3-1 claims arising from trial and non-negotiated guilty plea proceedings. *People v. Reed*, 177 Ill. 2d 389, 393 (1997); 730 ILCS 5/5-4.5-50(d) (2012); Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). However, if forfeited section 5-3-1 errors cannot be corrected on review, the goal of section 5-3-1 of ensuring “that the trial judge will have all necessary information concerning the defendant before sentence is imposed” will be frustrated. *Youngbey*, 82 Ill. 2d at 561, 564-65. This is not a trifling concern that can be overlooked. Criminal defendants “have a due process right to a fair

sentencing procedure which includes the right to be sentenced on the basis of accurate information.” *United States v. Rone*, 743 F.2d 1169, 1171 (7th Cir. 1984) (citing *United States v. Tucker*, 404 U.S. 443, 447 (1972)). Accordingly, the constitutional rights to a fair sentencing hearing, and to a negotiated guilty plea that comports with due process, also counsel against adoption of the State’s request to limit correction of section 5-3-1 errors to only the narrow group of cases where the claim is preserved.

In sum, this Court should reject the State’s argument that a section 5-3-1 claim involving a fully negotiated guilty plea must be preserved because the State’s argument is contrary to the plain language of the statute, contrary to this Court’s reasoning in *Youngbey*, and contrary to the due process right to a fair sentencing hearing. Further, it would profoundly undermine the judicial power to reject unconscionable fully negotiated guilty pleas. Therefore, defendant respectfully requests that this Honorable Court affirm the appellate court’s well reasoned opinion. Accordingly, defendant’s sentence should be vacated and the cause remanded to the circuit court for a new sentencing hearing, at which time the court should consider the defendant’s criminal history, or lack thereof, before determining whether the negotiated sentence is appropriate. *Bryant*, 2016 IL App (5th) 140334, ¶¶ 50, 52; *Walton*, 357 Ill. App 3d at 824; *Evans I*, 273 Ill. App. 3d at 257. If, upon remand, the circuit court determines that the negotiated sentence was not appropriate, then it should allow defendant to withdraw his guilty plea. *Bryant*, 2016 IL App (5th) 140334, ¶ 50; *Walton*, 357 Ill. App 3d at 824.

CONCLUSION

For the foregoing reasons, Phouvone Sophanavong respectfully requests that this Court affirm the judgment of the appellate court.

Respectfully submitted,

PETER A. CARUSONA
Deputy Defender

SANTIAGO A. DURANGO
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 RESPONDENT-APPELLEE

CERTIFICATE OF COMPLIANCE

I, Santiago A. Durango, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 10 pages.

/s/Santiago A. Durango
SANTIAGO A. DURANGO
Assistant Appellate Defender

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NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Nicholas Moeller, Assistant Attorney General, Attorney General's Office, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. Phouvone Sophanavong, Register No. M44773, Stateville Correctional Center, P.O. Box 112, Joliet, IL 60434

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 October 16, 2019, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the respondent-appellee 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 Brief and Argument to the Clerk of the above Court.

/s/Esmeralda Martinez

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