No. 122549

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- JOSEPH GRIFFIN Defendant-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-14-3800. There on appeal from the Circuit Court of Cook County, Illinois, No. 12 CR 13428; 13 CR 12564 (01). Honorable Thaddeus L. Wilson, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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E-FILED
2/27/2018 11:39 AM
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NATURE OF THE CASE

Joseph Griffin, petitioner-appellant, appeals from a judgment dismissing his motion for mittimus correction.

No issue is raised concerning the sufficiency of this pleading.

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ISSUES PRESENTED FOR REVIEW

1. A final and appealable order resolves the parties' issues and establishes their rights; only an order leaving matters pending and undecided is nonfinal. The trial judge denied Joseph Griffin's mittimus-correction motion and took the case off call. Was his order final and appealable?

2. Revestment jurisdiction requires that the parties do three things: (1) actively participate in the proceedings, (2) make no objection to the proceedings, and (3) agree to alter the judgment. Here, both parties participated in the appellate proceedings, no party objected to the proceedings, and the State agreed to reduce Griffin's fines-and-fees assessment. Did jurisdiction revest?

3. Alternatively, should the appellate court have addressed Griffin's improper fees under its original jurisdiction?

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STATUTES AND RULES INVOLVED

725 ILCS 5/110-14 (2016) provides:

Credit for Incarceration on Bailable Offense.

(a) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.

(b) Subsection (a) does not apply to a person incarcerated for sexual assault as defined in paragraph (1) of subsection (a) of Section 5-9-1.7 of the Unified Code of Corrections.

Illinois Supreme Court Rule 604(d) (2016) provides, in relevant part:

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending. * * * *

The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

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STATEMENT OF FACTS

In case number 12 CR 13428-01, the State charged Joseph Griffin with weapons charges. (C. 38-42). On April 1, 2014, he entered a negotiated plea to unlawful possession of a weapon by a felon, receiving five years in prison. (C. 85; R.B. 6, 117). He was also assessed fines and fees. (C. 82-84). Griffin did not file a motion to withdraw the plea or reconsider sentence, nor did he file a notice of appeal from the plea or sentence.

In case number 13 CR 12564-01, the State charged Griffin with burglary. (C. 115). On April 17, 2014, he entered a negotiated plea to this charge and received six years in prison, concurrently. (C. 140). He was again assessed various fines and fees. (C. 137-39). Again, Griffin did not file a motion to withdraw the plea or reconsider sentence, nor did he file a notice of appeal.

On September 9, 2014, Griffin filed, in both cases, a motion for greater sentence credit. (C. 142). He argued that in both cases, he should have received time-served credit beginning on May 19, 2012, but in the burglary case, his credit began only on June 6, 2013. (C. 143-44). On October 21, 2014, the trial judge denied the motion. (C. 147). On November 6, 2014, Griffin filed a notice of appeal from that denial. (C. 151).

On appeal, Griffin did not address the mittimus. Rather, in both cases, he sought monetary time-served credit against "fees" which, he argued, were actually fines: a $50 court system assessment, a $15 Illinois State Police assessment, and a $190 filing assessment. (De. br. 6-8). The State defended the $190 charge, otherwise agreeing that Griffin should receive $65 more in

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credit. (St. br. 2-3, 3-6). Griffin also argued that he was assessed two improper $5 fees, one in both of his cases; the other, only in one. The State agreed to vacate these fees too. (De. br. 8-9; St. br. 3, 6-7). The State did not raise jurisdiction or waiver. (St. br. 2-7).

The appellate court then ordered supplemental briefing, as follows:

> In this case, defendant did not timely appeal his guilty pleas but instead filed, well over 30 days after his pleas and sentencing, a motion to correct the mittimus nunc pro tunc as to his pre-sentencing credit. On appeal from the denial of that motion, he has raised, for the first time, issues other than the correction of his credit against his prison sentence. Specifically, he challenges certain fines and fees and seeks credit against his fines.
>
> On appeal, the parties have addressed the merits of these claims without first addressing whether the claims are properly before this court in light of the procedural posture of this case and the supreme court decisions in *People v. Castleberry*, 2015 IL 116916, and *People v. Price*, 2016 IL 118613.
>
> IT IS HEREBY ORDERED THAT the parties submit supplemental briefs addressing the following issues:
>
> (1) whether the circuit court had ongoing jurisdiction to consider a motion to correct the mittimus as to pre-sentencing detention credit against a prison sentence;
>
> (2) whether the order denying such relief is a final and appealable order over which this court has jurisdiction upon a timely-filed notice of appeal;
>
> (3) whether defendant's notice of appeal from the denial of his motion to correct the mittimus encompasses the claims he raises in his brief; and
>
> (4) whether the abolition of the void sentence rule in *Castleberry*, as reiterated in *Price*, affects (a) the correction of pre-sentencing detention credit against fines at any time in any appeal properly before this court, and the modification or vacatur of erroneous (b) fines and (c) fees.

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People v. Griffin, 2017 IL App (1st) 143800, order of Jan. 20, 2017 (paragraph breaks added).

In his supplemental brief, Griffin argued, among other things, that his notice of appeal vested the appellate court with jurisdiction. Under this jurisdiction, he argued, the appellate court could address his monetary-credit claim. (De. supp. br. 2-6, *citing* 725 ILCS 5/110-14 (2002)). The State agreed. (St. supp. br. 7-8).

Griffin also argued that the appellate court could address his improper fees. He conceded an initial lack of appellate jurisdiction, as his notice of appeal did not address this fee. (De. supp. br. 4). He argued, however, that the appellate court could address his claims under its original jurisdiction. (De. supp. br. 5-6). Further, he argued that it could consider his uncontested claims under revestment jurisdiction. (De. supp. br. 6, 8-9). The State agreed that appellate jurisdiction was initially lacking, albeit on different grounds. (St. supp. br. 8-9). It agreed, however, that the appellate court should address Griffin's fee claims under revestment revestment jurisdiction. (St. supp. br. 8-12). It did not address original jurisdiction.

The appellate court dismissed the appeal. It found that it lacked appellate jurisdiction, as the trial court's order, denying mittimus relief, was not final and appealable. *Griffin,* ¶¶ 1, 13-19. It also found that it lacked revestment jurisdiction, even though the State had agreed to fines-and-fees relief, for two reasons. It reasoned that the revestment doctrine could not trump Supreme Court Rule Rule 604(d).*Griffin*, ¶ 20. It also reasoned that the State's appellate-court concessions could not create revestment; revestment, it held, must occur in the trial court. *Griffin*, ¶¶ 21-23.

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Griffin's petition for rehearing was denied on August 1, 2017. After this Court granted an extension of time, Griffin filed a timely petition for leave to appeal on September 18, 2017. This Court granted leave to appeal on November 22, 2017.

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ARGUMENT

I. The court below had appellate jurisdiction, so it should have resolved Joseph Griffin's monetary-credit claims.

As both sides agreed below, the appellate court had jurisdiction over Joseph Griffin's appeal. (De. supp. br. 3; St. supp. br. 6). Griffin filed a motion seeking additional days of time-served credit. It was denied. On appeal, he sought, among other things, monetary pretrial-custody credit against three fines, relief to which the State partially agreed. (De. br. 6-8; St. br. 2-6). The appellate court, however, dismissed his appeal, finding that it lacked jurisdiction. It gave two reasons. First, it found that Griffin had violated Supreme Court Rule 604(d). But he did no such thing, and even if he did, this rule does not govern collateral requests monetary-credit requests. Second, it found that the judge's order was not final and appealable. But it was: having denied Griffin's motion, the judge left nothing to resolve. Because the appellate court had jurisdiction, because Rule 604(d) does not apply, and because monetary-credit claims can be raised at any time and at any stage of proceedings, this Court should direct the appellate court to consider Griffin's monetary-credit claims.

A. Applicable law.

Appellate review requires appellate jurisdiction. *People v. Flowers*, 208 Ill. 2d 291, 307 (2003). Appellate jurisdiction requires a final and appealable order. Ill. Const. 1970, art. VI, § 6. A "final and appealable" order is one which resolves the parties' issues, ascertaining and fixing absolutely their rights. *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 119 (1978). Stated otherwise, "only an order which leaves the cause still pending and undecided is not a

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final order for purposes of appeal." *People v. Shinaul*, 2017 IL 120162, ¶ 10.

These definitions carry constitutional weight. "Appeals from final judgments of a Circuit Court are a matter of right * * *." Ill. Const. art. VI, § 6. An order can only be unappealable if, at some later point, it will become appealable. *See In re Marriage of Breslow*, 306 Ill. App. 3d 41, 51 (1st Dist. 1999) (finding *nunc pro tunc* order final and appealable, as "it would be manifestly unfair to allow a party no avenue in which to seek appellate review"); *Kjellberg v. Muno*, 340 Ill. App. 133, 137 (1st Dist. 1950) (finding appeal-dismissal order final and appealable, as "otherwise there could be no review").

As with other issues involving this Court's rules, jurisdiction is reviewed *de novo*. *People v. Marker*, 233 Ill. 2d 158, 162 (2009).

B. The appellate court denied Griffin his constitutional right to appeal.

As the appellate court understood, the trial court had jurisdiction over Griffin's mittimus-correction motion. "A trial court," it found, "retains jurisdiction to correct clerical errors or matters of form." *People v.* Griffin, 2017 IL App (1st) 143800, ¶ 12; *see also People v. Latona,* 14 Ill. 2d 260, 278 (1998) (finding that trial court can amend mittimus at any time);*Baker v. Dep't of Corr.*, 106 Ill. 2d 100, 106 (1985) (finding that trial court retains jurisdiction over mittimus issues).

As the appellate court misunderstood, however, the trial judge's order was final and appealable. In his order, the judge denied Griffin's motion, refusing him more days of time-served credit. (C. 143-44). His order resolved the issue which Griffin's pleading posed. (C. 147). *See Towns*, 73 Ill. 2d at 119

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(finding order final and appealable because it resolved issues presented by pleadings). And with the case taken off call (C. 149), the judge left nothing to resolve. *See Shinaul*, 2017 IL 120162, ¶ 10 (finding order final and appealable because it left nothing pending or undecided). Because the judge's order was final and appealable, the appellate court, in dismissing Griffin's appeal, denied him his constitutional right to appeal. Ill. Const. art. VI, § 6.

The appellate court, holding otherwise, made several mistakes. For example, it found that the judge had "left the original judgments in place," "merely affirm[ing] the correctness of an existing judgment," and leaving no "new judgment" or "new final order from which to appeal." *Griffin*, ¶¶ 13, 15. That makes no sense. Whenever a trial court denies a post-conviction petition, a mittimus-correction motion, or any collateral pleading, it "leaves" the conviction and sentence "in place." Under the appellate's court's logic, one could not appeal orders denying motions. That is not the law. *See Shinaul*, 2017 IL 120162, ¶ 10 (allowing State appeal from order denying its motion).

As another example, the appellate court found that Griffin's motion addressed only an "alleged clerical error," creating no "distinct proceeding" or "litigation to resolve." *Griffin*, ¶ 14-15, 17-19, *citing People v. Salgado*, 353 Ill. App. 3d 101, 106-07 (1st Dist. 2004). This case, however, is nothing like *Salgado*. In *Salgado*, the defendant requested free transcripts. 353 Ill. App. 3d at 106. He was, however, pursuing neither a direct appeal nor post-conviction relief, so his "random request for free transcripts" was without "any pending litigation or proceedings in the circuit court." *Id.* Thus, "not only was there no basis for defendant's petition, there is no basis for

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defendant's appeal." *Id.* Here, however, as the appellate court acknowledged elsewhere, Griffin's mittimus-correction motion had a basis; specifically, an allegation that the trial court had misstated his custody date. *Griffin*, ¶¶ 1-2, 12. Because his motion had a basis, so did his appeal.

Further, "alleged clerical errors" can create "litigation to resolve." *Griffin*, ¶ 12-14, 18. For example, *nunc pro tunc* orders are clerical. *See In re Bird's Estate*, 410 Ill. 390, 398 (1951) (explaining that these orders correct written record to reflect judge's decision). Yet they are final and appealable. *See Kooyenga v. Hertz Equip. Rentals, Inc.*, 79 Ill. App. 3d 1051, 1061 (1st Dist. 1979); *In re Young's Estate*, 346 Ill. App. 257, 266 (1st Dist. 1952), *aff'd,* 414 Ill. 525 (1953) (both so noting). The appellate court cites no contrary authority. *Griffin*, ¶¶ 9, 12-13, 18. Nor could it. Griffin's mittimus-correction motion was a perfectly legitimate pleading. *See Griffin*, ¶ 12 (noting trial court's "jurisdiction to correct clerical errors or matters of form"). The trial court's order resolved his pleading. *Towns*, 73 Ill. 2d at 119. Nothing remained to address. *Shinaul*, 2017 IL 120162, ¶ 10. This order, therefore, was final and appealable.

As a final example, the appellate court found that Griffin requested monetary credit for the first time on appeal. *Griffin*, ¶¶ 18, 19. Defendants, however, may do just that. *Caballero*, 228 Ill. 2d at 88, *citing* 725 ILCS 5/110-14 (2002). The appellate court tried to distinguish *Caballero* for two unpersuasive reasons. First, it reasoned that, in *Caballero*, neither party disputed appellate jurisdiction. *Griffin*, ¶ 25. But at least as to Griffin's monetary credit claim, neither party did here, either. (De. supp. br. 2-9; St.

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supp. br. 7-12).

Second, the appellate court reasoned that unlike in *Caballero*, which involved a "properly filed" appeal, here "the only judgment entered by the trial court is the one from which appeal is foreclosed." *Griffin*, ¶ 25. But Griffin's appeal was "properly filed," as his notice of appeal timely challenged the judge's ruling. (C. 140, 147). *See* Illinois Supreme Court Rule 606(a) (2016) ("No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional"). But as noted above, and as the appellate court conceded, the trial court had jurisdiction to consider Griffin's motion. *Griffin*, ¶ 12. Any challenge to this ruling, therefore, would have been "foreclosed" only in that it lacked merit. *See People v. Carlberg*, 181 Ill. App. 3d 819, 820-21 (1st Dist. 1989) (considering, on the merits, appeal from denial of mittimus-correction motion filed over 30 days after guilty plea). Therefore, under *Caballero*, Griffin's sentence-credit claim is properly considered. 228 Ill. 2d at 88, 91

In sum, Griffin filed a proper, and collateral, motion to correct his mittimus. It was properly denied, leaving nothing to resolve. He properly appealed this denial. This denial was therefore final and appealable. Because the appellate court had jurisdiction, its dismissal denied Griffin his constitutional right to appeal. Ill. Const., Art. VI, § 6. Further, in his appeal, Griffin had requested monetary-time served credit, a request permitted "at any time and at any stage of court proceedings." *Caballero*, 228 Ill. 2d at 88. This Court should remand for the appellate court to address this request.

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C. Nothing in Supreme Court Rule 604(d) affects this appeal.

The appellate court also dismissed Griffin's appeal because Griffin had not filed a "written motion to withdraw his plea of guilty or to reconsider his sentence." *Griffin*, ¶¶ 1, 11-12, 15, *citing Flowers*, 208 Ill. 2d at 300-01, and Illinois Supreme Court Rule 604(d) (2016). This rule, however, governs only post-plea motions, and ensuing direct appeals, seeking to withdraw pleas or reduce sentences. In his motion to correct the mittimus, Griffin did not seek to vacate his plea. Neither did he seek to reduce his sentence; rather, he sought only increased credit against an unchanged sentence. Alternatively, even if Griffin's motion had challenged his sentence, this challenge was collateral, another area Rule 604(d) does not govern. Again alternatively, even if Rule 604(d) did govern, its waiver bar would not reach Griffin's request for monetary time-served credit.

Rule 604(d) does not apply here. By its terms, it governs challenges to a "plea of guilty" and the ensuing "sentence." Griffin's motion, however, sought time-served credit. *Griffin*, ¶¶ 1-2. Time-served credit is not part of a sentence. *See People ex rel Gregory v. Pate*, 31 Ill. 2d 592, 595 (1964) (finding that sentence-credit statute did not undermine Governor's pardon power, finding that in granting increased credit, the "legislature has not attempted to change the duration of the sentence"). Rather, this credit ensures that inmates do not overstay their actual sentences. *See People v. Latona*, 184 Ill. 2d 260, 270 (1998). Rule 604(d) did not govern Griffin's mittimus-correction motion. Therefore, it does not bar his appeal.

Alternatively, Rule 604(d) does not apply here, even if Griffin's motion

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did challenge his plea or sentence, because his motion was collateral. By its terms, the rule only governs judgments from which stem direct appeals. *People v. Mingo*, 403 Ill. App. 3d 968, 971-72 (2nd Dist. 2010). Thus, it does not govern collateral pleadings. *See Flowers*, 208 Ill. 2d at 303 (explaining that Rule 604(d) barred post-plea motion, not post-conviction petition); *People v. Partee*, 125 Ill. 2d 24, 35 (1988) (finding that Rule 604(d) did not govern motion to vacate judgment *in absentia); In re Justin L.V.*, 377 Ill. App. 3d 1073, 1087-88 (4th Dist. 2007) (finding that Rule 604(d) did not govern motion to vacate delinquency-proceeding guardianship). Thus, this rule did not govern Griffin's mittimus-correction motion, and nothing in this rule bars his request for monetary credit. *See People v. White*, 357 Ill. App. 3d 1070, 1073 (3d Dist. 2005) (allowing monetary-credit claim on appeal, despite lack of 604(d) motion, because defendant had appealed from denial of motion to correct mittimus).

Further, even if Rule 604(d) did apply here, it would create, at most, waiver, not a jurisdictional bar. *See Flowers*, 208 Ill. 2d at 301 (finding Rule 604(d) non-jurisdictional); *In re William M.*, 206 Ill. 2d 595, 598, 600-01 (2003) (same, *citing People v. McKay*, 282 Ill. App. 3d 108, 111-12 (2nd Dist. 1996) (explaining why rule creates only waiver)). Ordinarily, Rule 604(d) waiver requires that an appeal be dismissed. *William M.*, 206 Ill. 2d at 600-01, *citing People v. Wilk*, 124 Ill. 2d 93, 107 (1988). Monetary claims, however, are an exception; they cannot be waived. *See People v. Woodard*, 175 Ill. 2d 435, 457 (1997) (exempting such claims from "normal rules of waiver"); *Caballero*, 228 Ill. 2d at 88 (allowing such claims "at any time and

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at any stage").

That is not to say that Rule 604(d) cannot cause jurisdictional problems. After pleading guilty, for example, defendants sometimes file late Rule 604(d) motions. *See, e.g., Flowers*, 208 Ill. 2d at 297 (discussing late sentence-reconsideration motion). As with other late post-judgment motions, judges lack jurisdiction to address them. *See id.* at 303, 306. But sometimes they mistakenly do address them; in that situation, reviewing courts also lack jurisdiction. *Id.* at 307. Here, as the court below conceded, the trial court had jurisdiction over Griffin's mittimus-correction motion. *Griffin*, ¶ 12. Upon its denial, Griffin timely filed a notice of appeal. (C. 140, 147). This notice vested the appellate court with jurisdiction. Supreme Court Rule 606(a). Nothing in Rule 604(d) suggests otherwise.

D. Summary.

Griffin timely appealed from his mittimus-correction motion. His notice of appeal created appellate jurisdiction. Rule 604(d) did not govern his motion, which did not challenge the sentence and which was collateral. Even if the rule governed, waiver would not apply, as only jurisdictional bars block monetary-credit claims. This Court should direct the appellate court to consider these claims.

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II. The court below had revestment jurisdiction, so it should have resolved Joseph Griffin's improper-fee claims, as well as his uncontested monetary-credit claims.

As both sides agreed, the appellate court had revestment jurisdiction over Joseph Griffin's appeal. (De. supp. br. 4, 6-9; St. supp. br. 9, 12) In this appeal, Griffin sought to vacate two improper fees. (De. br. 8-9). The State agreed. (St. br. 3, 6-7). In supplemental briefs, both sides also agreed, albeit for different reasons, that the appellate court had initially lacked jurisdiction over these fees. (De. supp. br. 4; St. supp. br. 8-9). But both sides also agreed that, given the State's concession, jurisdiction had revested. (De. supp. br. 6, 8-9; St. supp. br. 8-12). The appellate court disagreed. *People v. Griffin*, 2017 IL App (1st) 143800, ¶¶ 20-22. This case, however, satisfies all three revestment elements: mutual, active participation in the proceedings, mutual lack of objection to the proceedings, and mutual agreement to alter a judgment. The appellate court's findings otherwise – that Rule 604(d) precluded revestment, that revestment cannot occur in the appellate court, and that revestment is inherently arbitrary – are incorrect. This Court should direct the appellate court to address Griffin's fee claims. Further, should this Court not grant relief in Issue I, it should also direct the appellate court to address Griffin's claims regarding his uncontested[1] monetary-credit claims.

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[1]As discussed below, revestment jurisdiction only covers claims to which both parties agree. Here, the State conceded Griffin's improper-fine claims. It only agreed, however, to two of Griffin's three monetary-credit claims. It agreed to credit against his $50 court system and $15 State Police assessments. It did not agree, however, to credit against his $190 filing assessment. (St. br. 2-3, 3-6). Revestment, therefore, would not cover the latter claim.

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Again, as it involves this Court's rules, jurisdiction is reviewed *de novo*. *People v. Marker*, 233 Ill. 2d 158, 162 (2009).

A. Jurisdiction revested in the appellate court.

As a general rule, a trial court loses jurisdiction over a cause 30 days after final judgment. *People v. Bailey*, 2014 IL 115459, ¶ 14. The revestment doctrine is an exception to this rule. This doctrine rests on this Court's constitutional authority to authorize appeals from nonfinal judgments and to "provide by rule for expeditious and inexpensive appeals." *Bailey*, 2014 IL 115459, ¶ 11, *citing* Ill. Const. 1970, art. VI, §§ 6, 16. This doctrine acts as a safeguard, recognizing that finality, though important, must sometimes "take a backseat to other fundamental considerations." *Id.,* ¶ 12.

Revestment has three elements: (1) active participation by the parties; (2) without objection; (3) in proceedings inconsistent with the judgment's merits. *Bailey*, 2014 IL 115459, ¶ 19, *citing People v. Kaeding*, 98 Ill.2d 237, 241 (1983).

This case satisfies these elements. Both sides "active[ly] participate[d]" in appellate proceedings, offering briefs and oral argument. Neither side objected to these proceedings. (De. supp. br. 2-6; St. supp. br. 5-12). Finally, and most importantly, both parties urged the appellate court to alter a judgment, asking that Griffin's fines be vacated and that his assessments receive monetary credit. (De. br. 8-9; St. br. 3, 6-7). And although revestment typically occurs in trial proceedings, appellate proceedings are still "proceedings." *See Sill v. Sill*, 185 Ill. 594, 601 (1900) (finding that minor's guardian has power to appeal under statute requiring guarding to appear in

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"in all legal suits and proceedings"); *People ex rel. Barrett v. Bd. of Com'rs of Cook County*, 11 Ill. App. 3d 666, 669 (1st Dist. 1973) (finding that special state's attorney's duties extend to appeal under statute addressing "any cause or proceeding, civil or criminal"). The parties' participation, lack of objection, and agreement trigger the revestment doctrine.

This case satisfies these elements just as similar facts did in *People v. Buffkin*, 2016 IL App (2d) 140792. In *Buffkin*, the trial court dismissed the defendant's post-conviction petition. 2016 IL App (2d) 140792, ¶ 2. On appeal, the defendant, for the first time, challenged an improper DNA fee. *Buffkin*, ¶ 3. Normally, defendants cannot attack fees for the first time on collateral appeal. *Id.* However, the State had confessed error. *Id.,* ¶ 11. "Despite the finality of defendant's sentence," *Buffkin* held, "both parties have actively participated in this appeal; the State has failed to object to the untimeliness of defendant's attack on his sentence; and both parties have agreed to set aside the DNA analysis fee." *Id.*, ¶ 13. "Although generally the revestment doctrine is applied to a late attack in a trial court," *Buffkin* held, "we see no basis for holding that it cannot be applied to a late attack in this court." *Id.*, ¶ 12-13. Here, as in *Buffkin*, both sides participated in appellate proceedings, the State declined to object to Griffin's timing, and both sides agreed to set aside improper fees. (De. supp. br. 4-6, 8-9; St. supp. br. 9, 12). Jurisdiction therefore revested. *Id.*

Other appellate panels have followed *Buffkin*. *See People v. White*, 2016 IL App (2d) 140479, ¶ 42; *People v. Ramones*, 2016 IL App (3d) 140877, ¶ 12 (calling *Buffkin*'s analysis "insightful"). The court below, however,

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refused, for three reasons. *Griffin*, ¶¶ 20-22. Those reasons are wrong.

B. The appellate court incorrectly declined to consider revestment, incorrectly declined to find revestment, and incorrectly criticized revestment.

First, the appellate court declined to consider revestment. Griffin, it found, had "pleaded guilty and failed to file a timely Rule 604(d) motion." *Griffin*, ¶ 20, *citing People v. Haldorson*, 395 Ill. App. 3d 980, 984 (4th Dist. 2009), and *Flowers*, 208 Ill. 2d at 300-01 (2003). Even if it had jurisdiction, it found, "Griffin's failure to file a timely Rule 604(d) motion" precluded it "from considering the appeal on the merits." *Griffin*, ¶ 20. These findings were wrong for two reasons.

The appellate court erred because, as discussed on pages 13-14 above, Griffin's motion was collateral and did not challenge his plea or sentence; therefore, Rule 604(d) simply does not apply. Griffin's appellate request to vacate improper fees likewise does not trigger Rule 604(d); fees are not part of a sentence. *See People v. Graves*, 235 Ill. 2d 244, 250 (2009) (contrasting "fee," which compensates State's prosecution costs, with "fine," which is "part of a sentence"). In contrast, the defendants did challenge their sentences in *Flowers*, 208 Ill. 2d at 302-03 (finding that post-sentencing motion, filed over 30 days after sentencing, violated Rule 604(d)), and in *Haldorson*, 395 Ill. App. 3d at 981-82 (same).

The appellate court further erred because any Rule 604(d) violation would not preclude revestment. *See Griffin*, ¶ 20 (finding such preclusion). Rule 604(d) and revestment serve different purposes and can coexist. In *Bailey*, the State sought to abolish revestment. 2014 IL 115459, ¶¶ 12-16.

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The State argued, in part, that *Flowers* had undermined this doctrine's vitality. *Id.,* ¶ 13. It noted that *Flowers* had found that jurisdiction "cannot be cured through consent of the parties." It reasoned that *Flowers* had thereby undermined revestment, which requires consent. *Id.*, *citing People v. Bannister*, 236 Ill. 2d 1, 23 (2009) (Freeman, J., dissenting) (raising concerns regarding *Flowers'* consent language).

Bailey rejected the State's argument. Revestment, it observed, "was not even mentioned in *Flowers,*" and, further, the "general jurisdictional statements in *Flowers* may be reconciled with the [revestment] doctrine because the two address different matters." *Id.,* ¶ 16. Although *Bailey* agreed that revestment is applied narrowly, and not "expansively to incorporate conduct that we expressly rejected in *Flowers*[2]," it was "not persuaded" that "a direct conflict between the fundamental principles of jurisdiction stated in *Flowers* and the requirements for revestment in *Kaeding* necessitates the abandonment of the revestment doctrine." *Id.* In short, under *Flowers*, Rule 604(d) violations can lead to loss of jurisdiction. Under *Bailey*, jurisdiction can revest. There is no conflict. Any Rule 604(d) violation would not preclude revestment.

Second, the appellate court declined to find revestment. Applying

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[2]That "conduct" included the defendant filing a *pro se* notice of appeal without first filing a Rule 604(d) motion, and later withdrawing that appeal; the defendant filing a *pro se* post-conviction petition; and then appointed post-conviction counsel filing a year-late motion to reconsider sentence, for no apparent reason, while withdrawing the *pro se* post-conviction petition. *Flowers*, 208 Ill. 2d at 295-98.

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standard revestment law, it reasoned that jurisdiction could not revest on appeal, as appellate jurisdiction is "derivative of the trial court." *Griffin*, ¶ 21-22, *citing In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 344 (1st Dist. 2009). Then, applying plain-English analysis, it reasoned that jurisdiction lost in the trial court could not "revest" in the trial court. *Griffin*, ¶ 22. Its reasoning, however, ignores its earlier finding that the trial court did have jurisdiction. *Griffin*, ¶ 12. Its reasoning also ignores revestment's equitable purpose.

Gagliardo fails to support the appellate court's reasoning. *Gagliardo*, in fact, never mentions revestment. Rather, *Gagliardo* applies technical jurisdiction doctrine, construing defects in trial-court motions. 391 Ill. App. 3d at 346-49. Revestment in contrast, rests on equity. *Bailey*, 2014 IL 115459, ¶ 12 (finding that finality must sometimes times "take a back seat to other considerations"); *In re Marriage of Savas*, 139 Ill. App. 3d 68, 73 (1st Dist. 1985) (calling revestment a "useful and equitable safety net"). Here, the State and the defense agree: fairness outweighs finality. This is why revestment exists. *Bailey*, 2014 IL 115459, ¶ 12. Nothing in *Gagliardo* suggests otherwise.

The appellate court's plain-English analysis also fails to support its reasoning. "It tortures the concept of a reviewing court's jurisdiction," *Griffin* asserts, "to speak of revestment of jurisdiction on appeal to address issues never presented in the first instance to the trial court." *Griffin*, ¶ 22. But jurisdiction was never lost in the trial court. *Griffin*, ¶ 12. Further, the term *revestment* would torture any linguist; it is not plain English. Rather, it is a

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term of art, defined by its purpose, not its prefix. *Cf. People v. Smith*, 2013 IL App (2d) 121164, ¶ 11 (finding that even though a driver's license can literally be revoked only once, statutory term *revocation* is a term of art; therefore, Secretary of State may re-"revoke" license). Revestment's purpose, again, is to create a safety net, resolving uncontroversial but unreachable errors. *Bailey*, 2014 IL 115459, ¶ 12; *Marriage of Savas*, 139 Ill. App. 3d at 73. Excluding appellate proceedings would undermine this purpose: in appeals, errors are often found. Revestment lets courts address these errors. *Griffin* cites no authority excluding appeals from revestment. This Court should not so find.

Finally, the appellate court called revestment arbitrary. *Griffin*, ¶ 22. It compared this case (where the State has agreed to vacate improper fees) with *People v. Grigorov*; 2017 IL App (1st) 143274 (where the State declined). Seeking to avoid "inconsistent and unprincipled results," it "reject[ed] the notion" that "the State – on a case-by-case basis — dictates the limits of our review." *Griffin*, ¶ 22. Under *Bailey*, however, this "notion" is law: for revestment, both sides must agree to alter a judgment. 2014 IL 115459, ¶ 19. In criminal appeals, to deny the State this discretion would abolish this doctrine. This Court, however, has refused to abolished this doctrine. *Id.*, ¶ 12-16. In sum, this Court has sanctioned this case-by-case doctrine in the trial court. It should apply it also to appellate proceedings.

C. Summary.

Both sides participated in the proceedings, without objection, and agreed to vacate fees and credit fines. The parties' actions revested

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jurisdiction in the appellate court. Rule 604(d) does not bar this jurisdiction, and jurisdiction can revest in the appellate court. This Court should direct the appellate court to address Griffin's fee claims and his uncontested monetary-credit claims.

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III. Alternatively, the appellate court should have addressed Griffin's improper fees under its original jurisdiction.

Alternatively, if this Court finds that the appellate court should have addressed Griffin's monetary-credit claim (under either *Caballero* or revestment), it should direct the appellate court to address Griffin's improper-fee claims under the appellate court's original jurisdiction, as his fee claims are not controversial, and resolving both claims would completely determine the issues on review.

"The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review." Ill. Const. art. VI, § 6. Under this limited jurisdiction, the appellate court can, where necessary, correct ministerial errors and make uncontroversial record corrections. *See Matter of Peasley*, 189 Ill. App. 3d 865, 870 (4th Dist. 1989) (correcting trial record under original jurisdiction); *Farwell Const. Co. v. Ticktin*, 84 Ill. App. 3d 791, 806-07 (1st Dist. 1980) (addressing out-of-jurisdiction post-trial motion under original jurisdiction because case was already on second appeal and motion addressed uncontroversial damage calculations); *People v. Sirinsky*, 110 Ill. App. 2d 338, 341-42 (1st Dist. 1969), *aff'd,* 47 Ill. 2d 183 (1970) (letting State make non-controversial complaint amendment under original jurisdiction).

The State has agreed that Griffin has been assessed two improper $5 fees. There is nothing controversial about vacating traffic-court and conservation fees in a gun case. Exercising original jurisdiction would efficiently correct the record. As an alternative, this Court should order the trial court to do just that.

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IV. The appellate court's opinion undermines its stated goal.

Aside from failing to follow *Caballero*, failing to apply revestment, and failing to use its original jurisdiction, the appellate court's decision will fail to serve judicial economy. In a preamble, the appellate court decried the burden of fines-and fees appeals. *Griffin*, ¶ 5-9. It urged prosecutors, defense counsel, and judges to correctly assess fines and fees before appeal. *Id.* No one could argue with that.

But restricting fines-and-fees appeals will hinder judicial economy. *See People v. Gutierrez*, 2012 IL 111590, ¶ 14, n.1 ("As a policy matter," it "is obviously much more efficient for the appellate court to simply take care of the matter" – in *Gutierrez*, an improper public-defender fee – "than to have the defendant initiate a separate proceeding. Also, we do not believe that the ... illegal fee should further burden the defendant.")

If appellate counsel cannot address uncontroversial monetary mistakes, unrepresented defendants will address them in *pro se* filings. That is what the appellate court suggested Griffin do. *Griffin*, ¶ 26. But not all defendants can do that. And their filings will often be garbled, burdening trial judges and creating still more appeals. Few prosecutors and public defenders, no matter how conscientious, will routinely "review judgment orders upon entry to ensure that fines and fees are correctly assessed." *Griffin*, ¶ 7. That is what appellate lawyers do. Addressing these errors on appeal will further judicial economy.

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CONCLUSION

For the foregoing reasons, Joseph Griffin, defendant-appellant, respectfully requests that this Court direct the appellate court to consider Griffin's appeal on the merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Michael H. Orenstein, 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 26 pages.

/s/Michael H. Orenstein
MICHAEL H. ORENSTEIN
Assistant Appellate Defender

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APPENDIX TO THE BRIEF

Joseph Griffin No. 122549

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Carolyn Taft Grosboll
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Report of Proceedings ("R")

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2017 IL App (1st) 143800

SECOND DIVISION
June 27, 2017

No. 1-14-3800

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. 12 CR 13428
	)	13 CR 12564
	)	
JOSEPH GRIFFIN,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court, with opinion.
Presiding Justice Hyman and Justice Pierce concurred in the judgment and opinion.

OPINION

¶ 1 Pursuant to 2014 guilty pleas, defendant Joseph Griffin was convicted of burglary (in case No. 13 CR 12564) and unlawful use of a weapon by a felon (in case No. 12 CR 13428) and sentenced to concurrent prison terms of six and five years, respectively, with fines and fees. More than 30 days after sentencing in both cases, Griffin filed a *pro se* motion to correct the mittimus to reflect a different custody date for purposes of calculating presentence detention credit. On appeal from the denial of that motion, Griffin abandoned his claim regarding the date he was taken into custody but contends for the first time that certain fines and fees were erroneously assessed and that he is entitled to presentencing detention credit against his remaining assessments. We find that we may not reach the merits of his claims, since Griffin failed to file a motion pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) within 30 days of sentencing and, in any event, the trial court's denial of his motion was not a final and appealable order. Accordingly, we dismiss the appeal.

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¶ 2 Griffin entered a negotiated guilty plea and was sentenced in case No. 12 CR 13428 on April 1, 2014. He entered his negotiated guilty plea and was sentenced in case No. 13 CR 12564 on April 17. Griffin did not file a motion to withdraw his plea or reconsider his sentence, nor did he file a direct appeal in either case. On September 9, Griffin filed a *pro se* motion to correct the mittimus *nunc pro tunc* in both cases, asserting that the trial court inadvertently calculated his presentencing detention credit using an incorrect custody date.

¶ 3 Finding no mistake, the court denied Griffin's motion in case No. 12 CR 13428 on September 25 and in case No. 13 CR 12564 on October 8. The clerk of the court notified him of the rulings in an October 21 letter, and he filed a *pro se* notice of appeal by mail on November 6.

¶ 4 As noted, Griffin does not challenge here the trial court's denial of his motion. Instead, he raises several entirely new issues regarding the propriety of the fees and fines that were assessed against him. In particular, he claims that under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2014)), which governs presentence custody credit, he is entitled to a $5 *per diem* credit against certain assessments; he also contends that the trial court assessed him $15 in fees that are not applicable to his convictions.

¶ 5 This case is but one of hundreds of criminal appeals involving fines-and-fees issues that were overlooked at the trial court level and raised for the first time on appeal. A Westlaw search reveals that in 2016 alone, there were 137 cases in this court where a defendant challenged the imposition of fines and/or fees, and 83 cases in which a defendant asserted error in the application of *per diem* credit against his fines, all for the first time on appeal. Initially, we observe that many of these issues could easily be discovered and resolved at the trial court level with more diligent oversight by prosecutors and defense attorneys alike. For instance, one of the fines Griffin challenges here is a $5 court system fee that applies only in certain traffic cases

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(725 ILCS 5/5-1101(a) (West 2014))—obviously not something that pertains to his convictions for burglary and unlawful use of a weapon by a felon. But apparently nobody noticed this mistake below; it was only noticed when Griffin filed this *pro se* appeal and the State Appellate Defender was assigned to the case. This happens all too often and makes the appellate court the court of first resort for such issues.

¶ 6 We are aware of no other context in which an appellant may raise entirely new issues on appeal, unrelated to the order or judgment from which appeal is taken, and still obtain review on the merits. Yet this is routine in criminal appeals where fines-and-fees issues are raised for the first time in this court. In fact, it has become so routine that the parties in this case did not even address the question of our jurisdiction until we requested supplemental briefing on the matter.

¶ 7 The time has come to take a more serious look at this problem, both for the sake of preserving proper appellate jurisprudence and for the sake of judicial economy. Copious amounts of time, effort, and ink are spent resolving these issues at the appellate level when many of them are more appropriately resolved at the trial level through (i) routine review of judgment orders after their entry—a task that would take at most minutes—and (ii) cooperation between the parties to correct any later-discovered errors by means of agreed orders. See *In re Derrico G.*, 2014 IL 114463, ¶ 107 (State's Attorney has a duty to see that justice is done, not only for the public, but also for the defendant); see also *People v. Brown*, 388 Ill. App. 3d 104, 112 (2009) (State concedes that $5 court system fee was imposed in error and should be vacated). We encourage both the State's Attorney and the public defender to review judgment orders upon entry to ensure that fines and fees are correctly assessed. We further encourage an open line of communication between the public defender's office and the State's Attorney's office, so that when defense counsel discovers an obvious clerical error in the imposition of fines and fees, he

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or she can contact the State's Attorney, and the error can be corrected expeditiously at the trial level by means of an agreed order.

¶ 8 Without oversight and open communication at the trial level, the State Appellate Defender frequently brings these questions in the first instance to the appellate court, where the justification for addressing them on the merits is, at best, questionable.[1] Before our supreme court's decision in *People v. Castleberry*, 2015 IL 116916, defendants frequently argued that fines-and-fees errors raised for the first time on appeal were reviewable under the void judgment rule, which provided that a judgment not conforming to a statutory requirement was void and subject to challenge at any time. See, *e.g.*, *People v. Breeden*, 2014 IL App (4th) 121049, ¶ 56 (fine was void where it was below the statutory minimum), *vacated by* No. 118880 (Ill. Jan. 20, 2016) (supervisory order directing the appellate court to reconsider in light of *Castleberry*). But *Castleberry* abolished the void judgment rule, reasoning that "whether a circuit court complies with a statutory sentencing requirement in a criminal proceeding is irrelevant to the question of jurisdiction." *Castleberry*, 2015 IL 116916, ¶ 16; see *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13 ("Defendant asserts that his fees are void, and may therefore be challenged at any time [citation]. In light of *People v. Castleberry* [citation], this rule no longer applies.").

¶ 9 Nor is the plain error doctrine an appropriate vehicle for review in cases where the complained-of error does not stem from failure to provide a fair process for determining the fine or fee at issue, but a mere clerical mistake—which encompasses the majority of such cases. Ill. S. Ct. R. 615(a) ("Plain errors or defects *affecting substantial rights* may be noticed although they were not brought to the attention of the trial court." (Emphasis added.)); see *People v.*

[1]This is not a criticism of the State Appellate Defender's office. When its attorneys notice unresolved fines-and-fees errors, they do their best to obtain relief for their clients, as they should. But it is reflective of the problems within the system as a whole that the State Appellate Defender is so frequently the first to raise these errors.

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Taylor, 2016 IL App (1st) 141251, ¶ 28 (where defendant challenged the imposition of two $2 fees, court stated that it would be "hard-pressed" to consider the assessment an error affecting substantial rights, "given the insubstantial nature of the fees assessed"). Thus, in the wake of *Castleberry* and given the "narrow and limited" scope of plain error review (*People v. Herron*, 215 Ill. 2d 167, 177 (2005)), it is questionable whether appellate courts may or should address contentions of error regarding fines and fees that were never raised in the trial court.

¶ 10 We must consider whether we have jurisdiction to consider the merits of Griffin's contentions regarding his fines and fees. This issue entails a three-step analysis: (1) Did the trial court have jurisdiction to reach the merits of Griffin's motion to correct the mittimus, even though the motion was filed more than 30 days after sentencing? (2) If so, is Griffin's appeal from the denial of that motion properly before this court? (3) If so, can Griffin "piggyback" his fines-and-fees issues into this appeal, despite his failure to raise them before the trial court? For the reasons that follow, we answer the first question in the affirmative but the second question in the negative, and therefore, we need not proceed further with our analysis.

¶ 11 Ordinarily, a defendant who pleads guilty has 30 days from the date of sentencing to file a motion to withdraw the guilty plea and vacate the judgment or a motion to reconsider sentence. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). Griffin filed no such motion. Griffin's failure to file a timely Rule 604(d) motion precludes us from considering his appeal on the merits. As our supreme court has explained:

> "The filing of a Rule 604(d) motion is a condition precedent to an appeal from a judgment on a plea of guilty. [Citation.] The discovery that a defendant has failed to file a timely Rule 604(d) motion in the circuit court does not deprive the appellate court of jurisdiction over a subsequent appeal. [Citation.] As a general rule, however, the failure

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> to file a timely Rule 604(d) motion precludes the appellate court from considering the appeal on the merits. Where a defendant has failed to file a written motion to withdraw his plea of guilty or to reconsider his sentence, the appellate court must dismiss the appeal ***." *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003).

Accordingly, for this reason alone, we would be required to dismiss Griffin's appeal.

¶ 12 It is well established that a trial court retains jurisdiction to correct clerical errors or matters of form at any time after judgment, so as to make the record conform to the actual judgment entered by the court. *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991), *overruled on other grounds by Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 30-33 (2002); *People v. Nelson*, 2016 IL App (4th) 140168, ¶ 39. In his September 8 motion, Griffin asserted a clerical error by the trial court—the inadvertent use of the wrong custody date—so the trial court had jurisdiction to consider his motion notwithstanding his lack of compliance with Rule 604(d). That jurisdiction, though, does not automatically extend to this court.

¶ 13 The denial of Griffin's motion to correct the mittimus is not a final and appealable order over which we have jurisdiction. An order is final and appealable if it " 'determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment.' " *People v. Vari*, 2016 IL App (3d) 140278, ¶ 9 (quoting *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981)). In this case, the orders that determined the litigation on the merits were the judgments entered against Griffin on April 1 and April 14 pursuant to his guilty pleas. In denying Griffin's September 9 motion, the court found that it committed no clerical error in entering those judgments and, therefore, left the original judgments in place. The court did not enter any new judgment from which Griffin could appeal.

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¶ 14 In this regard, this case is analogous to *People v. Salgado*, 353 Ill. App. 3d 101 (2004). After Salgado was convicted, he filed a *pro se* petition for free transcripts of earlier proceedings. The circuit court denied his motion, he appealed, and this court dismissed his appeal, finding that the denial of the motion was not a final and appealable order. *Id.* at 106-07. The court reasoned that there was no pending litigation or proceedings in the trial court at the time of defendant's motion so denying the motion could not be said to have determined any litigation on its merits. *Id.* at 107. Likewise, there no longer was any pending litigation to resolve when Griffin filed his motion to correct the mittimus.

¶ 15 We recognize that a contrary result was reached by the court in *People v. White*, 357 Ill. App. 3d 1070 (2005), but we respectfully disagree with our colleagues's analysis of the jurisdictional issue. The operative facts of *White* are similar to the present case: defendant pled guilty and, after the time for filing a Rule 604(d) motion had passed, moved to correct the mittimus to obtain additional credit for presentence incarceration. *Id.* at 1072. When his motion was denied, he appealed, asserting the trial court erred in denying the motion. In considering the question of jurisdiction, *White* first noted, correctly, that the trial court retained jurisdiction to rule on defendant's motion. *Id.* at 1073. The court then concluded, without any further explanation or any citation of law, that it had jurisdiction over the appeal. *Id.* But it is axiomatic that not every denial of a motion gives rise to a right of appeal. See, *e.g.*, *Salgado*, 353 Ill. App. 3d at 106. Where, as here, a court does not enter or modify a judgment but merely affirms the correctness of an existing judgment, there is no new final order from which to appeal. But even if we agreed with *White*'s analysis, it would not change the result here since Griffin does not seek review of the issue over which the trial court had jurisdiction but instead raises entirely different issues never presented to the trial court.

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¶ 16 The remainder of the cases cited by Griffin on this issue are inapposite. In *People v. Whitmore*, 313 Ill. App. 3d 117 (2000), defendant filed a Rule 604(d) motion to withdraw his guilty plea. When the motion was denied, defendant filed a timely appeal, which this court heard on its merits. This situation is readily distinguishable from the present case because Rule 604(d) explicitly allows for appeals from the denial of a motion made pursuant to that rule. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). As noted, Griffin filed no such motion.

¶ 17 In *People v. Hockenberry*, 316 Ill. App. 3d 752 (2000), defendant was convicted of aggravated criminal sexual assault and home invasion in 1989. Ten years later, he moved for forensic DNA testing under section 116-3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-3 (West 1998)). He asserted that the DNA testing he sought was not performed by any Illinois laboratories in 1989 and would be relevant to his claim of actual innocence. *Hockenberry*, 316 Ill. App. 3d at 754. When the trial court denied his motion, he appealed. The *Hockenberry* court found it had jurisdiction over the appeal, explaining that a section 116-3 motion gives rise to a "distinct proceeding." *Id.* at 755. When the trial court denied defendant's motion, it resolved that distinct proceeding on the merits, thus giving rise to a right to appeal. *Id.*

¶ 18 By contrast, Griffin's motion did not involve a distinct proceeding; Griffin merely sought to correct an alleged clerical error in the court's written judgment for a proceeding that ended months earlier. And, unlike Griffin, the defendant in *Hockenberry* directly challenged the ruling from which he appealed.

¶ 19 Finally, in *People v. Scott*, 326 Ill. 327 (1927), defendant was convicted of murder and sentenced to death, but he received a stay of execution due to his insanity diagnosis after the entry of judgment. Later examinations determined that his sanity had been restored. After a hearing, the court entered an order setting a date for defendant's execution, and he appealed.

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Scott found jurisdiction existed to address the appeal, explaining: "The order of the court setting the date of the execution, although technically not a judgment, was a final determination of the cause." *Id.* at 352. This is similar to *Hockenberry*, in that it involved a proceeding distinct from the original judgment—in this case, a hearing on defendant's mental capacity—that could support an appeal independent of that original judgment. And, like *Hockenberry*, the defendant in *Scott* did not attempt to raise additional issues not presented to the trial court. Thus, we respectfully disagree with *White*, which, in any event, is distinguishable, and find none of the cases cited by Griffin determinative of the issue before us.

¶ 20 Griffin next argues that we may reach the merits of this appeal through the doctrine of revestment, a doctrine which permits the parties to revest a court with jurisdiction by actively participating, without objection, in proceedings that are inconsistent with the merits of the prior judgment. *People v. Bailey*, 2014 IL 115459, ¶ 9 (citing *People v. Kaeding*, 98 Ill. 2d 237, 241 (1983)). We need not reach the question of whether the prerequisites for revestment have been met in this case, because this court has made clear that revestment does not permit review of a defendant's claim on appeal where defendant pleaded guilty and failed to file a timely Rule 604(d) motion. *People v. Haldorson*, 395 Ill. App. 3d 980, 984 (2009). As discussed, even if an appellate court has jurisdiction, "the failure to file a timely Rule 604(d) motion precludes the appellate court from considering the appeal on the merits." *Flowers*, 208 Ill. 2d at 301. Our supreme court has never recognized an exception similar to revestment that would permit parties to bypass the requirements of Rule 604(d). *Haldorson*, 395 Ill. App. 3d at 984. Furthermore, the appellate court lacks authority to make exceptions to supreme court rules. *Id.* (citing *People v. Lyles*, 217 Ill. 2d 210, 216 (2005)). Thus, Griffin's lack of compliance with Rule 604(d) is fatal to this appeal.

¶ 21 Also, we reject the premise that parties may "revest" a reviewing court with jurisdiction over issues that were never raised in the trial court. An essential element of revestment is the participation, without objection, in the later proceedings in the trial court by the party benefited by the judgment. *Bailey*, 2014 IL 115459, ¶ 9. Our jurisdiction on appeal is derivative of the jurisdiction of the trial court. See *In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 349 (2009) (" 'Where the tribunal below has no jurisdiction an appeal can confer no jurisdiction on the reviewing court.' " (quoting *Citizens Utilities Co. of Illinois v. Pollution Control Board*, 265 Ill. App. 3d 773, 777 (1994))). Thus, when the trial court has plenary jurisdiction over a case before it, so do we, to the extent that we may consider grounds for affirmance supported by the record, but not argued by the parties. *In re Marriage of Holtorf*, 397 Ill. App. 3d 805, 811 (2010) (appellate court is not limited by the trial court's reasoning or by the parties' arguments but may affirm on any basis supported by the record). By the same token, when the trial court's jurisdiction is limited, those limitations carry over to jurisdiction on appeal. *Gagliardo*, 391 Ill. App. 3d at 349 (appellant's challenge to the trial court's jurisdiction was necessarily also a challenge to the appellate court's jurisdiction).

¶ 22 Accordingly, unless and until jurisdiction is revested in the trial court over otherwise nonappealable issues, we have no jurisdiction. It tortures the concept of a reviewing court's jurisdiction to speak of revestment of jurisdiction on appeal to address issues never presented in the first instance to the trial court. In this case, the State agrees to revest this court with jurisdiction. But in a case argued the same day, *People v. Grigorov*, 2017 IL App (1st) 143274, another case in which a defendant seeks to address fines and fees issues for the first time on appeal from an unrelated order, the State objects to consideration of the issues and so contests revestment. See *Bailey*, 2014 IL 115459, ¶ 9 (revestment requires party benefited by judgment to

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participate without objection). Both cases deal with the rights of criminal defendants, and we reject the notion that the State—on a case-by-case basis—dictates the limits of our review and may concede our jurisdiction in a case where, in the State's opinion, it is efficient and fair to do so, but reserves the right to contest our jurisdiction when the State unilaterally determines that those purposes will not be served. This *ad hoc* approach invites inconsistent and unprincipled results not guided by any reasoned standard. Fundamentally, parties cannot agree to jurisdiction on appeal where it would otherwise not exist (see *People v. Schram*, 283 Ill. App. 3d 1056, 1060 (1996) ("jurisdiction cannot be waived or stipulated to by the parties")), and so we find that the revestment doctrine does not apply here.

¶ 23 We recognize that there is a line of post-*Castleberry* cases allowing revestment at the appellate level for issues that were not raised below. See, *e.g.*, *People v. Buffkin*, 2016 IL App (2d) 140792, ¶¶ 11-13 (on appeal from the denial of his postconviction petition, defendant could raise new claim of error regarding DNA analysis fee where the parties agreed to revest the appellate court with jurisdiction); *People v. White*, 2016 IL App (2d) 140479, ¶ 42 (following *Buffkin*). For the reasons stated above, we disagree with *Buffkin* and its progeny on this issue. If the State is willing to concede error in the imposition of fines and fees, then it is welcome to do so—but the proper tribunal to revest with jurisdiction over such issues is the trial court.

¶ 24 Lastly, Griffin argues that, regardless of the foregoing arguments, he may raise his claims for monetary *per diem* credit before this court because the statute states that this credit shall be awarded "upon application of the defendant," with no stated time limit. 725 ILCS 5/110-14 (West 2014); see *People v. Woodard*, 175 Ill. 2d 435, 457 (1997) (due to the wording of the statute, a defendant may seek section 110-14 credit for the first time on appeal). In particular, he argues that the present case is analogous to *People v. Caballero*, 228 Ill. 2d 79, 82 (2008), in

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which defendant raised the issue of section 110-14 credit for the first time on appeal from the denial of his postconviction petition. *Caballero* held that defendant's section 110-14 claim was not cognizable under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2000)); nevertheless, since the statute allows an " 'application of the defendant' " to be made at any time, the court proceeded to the merits of defendant's claim and granted the relief requested. *Caballero*, 228 Ill.2d at 88, 91.

¶ 25 *Caballero* is distinguishable because it involved an appeal from a properly filed postconviction petition, and it was undisputed that defendant's appeal was properly before the court. *Caballero*, in essence, stands for the proposition that a defendant may "piggyback" a section 110-14 claim onto any properly filed appeal, even if the claim is unrelated to the grounds for that appeal. But in this case, this court lacks authority to hear Griffin's appeal in the first instance because the only judgment entered by the trial court is the one from which appeal is foreclosed. We decline to extend *Caballero* to permit appellate review of completely free-floating section 110-14 claims in situations where appellate jurisdiction otherwise does not lie. As the *Flowers* court stated, even a claim that may be raised at any time "must be raised in the context of a proceeding that is properly pending in the courts. If a court lacks jurisdiction, it cannot confer any relief ***. The reason is obvious. Absent jurisdiction, *** [the court's order] would itself be void and of no effect." *Flowers*, 208 Ill. 2d at 308.

¶ 26 Our decision does not leave Griffin entirely without recourse. As noted, trial courts retain jurisdiction to correct nonsubstantial matters of inadvertence or mistake; thus, to the extent that Griffin seeks relief for clerical errors, he may petition the trial court for the relief that he seeks. *Nelson*, 2016 IL App (4th) 140168, ¶ 39. And he may also file a motion pursuant to section 110-14 to secure his $5 *per diem* credit against fines. We express no view as to whether the

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assessments Griffin challenges fall into the category of clerical errors that a trial court retains jurisdiction to correct. But because the denial of Griffin's motion to correct the mittimus was not an appealable order under the facts of this case and because Griffin failed to file a motion in compliance with Rule 604(d), we must dismiss this appeal.

¶ 27 Appeal dismissed.

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Cook County, Illinois
(Or in the Circuit Court of Cook County).

14 NOV 21 AM 8:53

THE PEOPLE OF THE STATE OF ILLINOIS
CRIMINAL DIVISION CLERK

12CR1342801
No 13CR1256401

v.

Joseph Griffin
Defendant/Appellant

Notice of Appeal

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken: Cook County Circuit Court

(2) Name of appellant and address to which notices shall be sent:
Name: Joseph Griffin Reg# R22224
Address: Lawrence CC / 1301 Lawrence Rd / Sumner, Illinois 62466

(3) Name and address of appellant's attorney on appeal:
Name: PRO SE
Address:
If appellant is indigent and has no attorney, does he want one appointed?

(4) Date of judgment or order: October 21, 2014

(5) Offense of which convicted: Burglary + Unlawful Use of a Weapon By Felon

(6) Sentence: 6 years + 5 years Concurrently ran respectively

(7) If appeal is not from a conviction, nature of order appealed from: Corrected sentencing order Per Jail

Signed

(May be signed by appellant, attorney for appellant or clerk of circuit court)

Revised Jan 2002

FILED
CRIMINAL APPEALS
NOV 21 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

C 00152

A-16

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No. 122549

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- JOSEPH GRIFFIN Defendant-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-14-3800. There on appeal from the Circuit Court of Cook County, Illinois, No. 12 CR 13428; 13 CR 12564 (01). Honorable Thaddeus L. Wilson, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Joseph Griffin, Register No. R22224, Western Illinois Correctional Center, 2500 Rt. 99, Mt. Sterling, IL 62353

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 February 27, 2018, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-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 Brief and Argument to the Clerk of the above Court.

E-FILED
2/27/2018 11:39 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

/s/Kelly Kuhtic
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