2026 IL App (2d) 250407
No. 2-25-0407
Opinion filed November 12, 2026

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant,

v.

TYNELL DIXON, Defendant-Appellee.

Appeal from the Circuit Court of Kane County.
Honorable Salvatore LoPiccolo Jr., Judge, Presiding.
No. 08-CF-1067

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Presiding Justice Kennedy concurred in the judgment and opinion.
Justice Schostok specially concurred, with opinion.

OPINION

¶ 1 The State appeals a judgment, entered after an evidentiary hearing, granting the petition of defendant, Tynell Dixon, for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2024)). The postconviction court determined that the trial court violated defendant's constitutional right to counsel of his choice when it denied his request to substitute counsel three weeks before trial. We affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Overview

¶ 4 After a jury trial in 2012, defendant was convicted of eight counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006)) and three counts of aggravated criminal sexual abuse (*id.* § 12-16(c)(1)(i)). He was sentenced to eight concurrent mandatory

prison terms of natural life for predatory criminal sexual assault of a child, to be served concurrently with three concurrent discretionary five-year terms for aggravated criminal sexual abuse. On direct appeal, we affirmed. *People v. Dixon*, 2013 IL App (2d) 120986-U (*Dixon I*).

¶ 5 In 2014, defendant filed a *pro se* petition under the Act. The postconviction court appointed counsel, who later filed a second amended petition. Defendant contended that, in his underlying criminal case, the trial court denied him his constitutional right to the counsel of his choice and that his counsel on direct appeal was ineffective for failing to raise this claim of error. The second amended petition was ultimately dismissed, but we reversed the dismissal and remanded for an evidentiary hearing (*People v. Dixon*, 2024 IL App (2d) 220399-U, ¶ 44) (*Dixon II*). Following the hearing, the postconviction court granted the petition and ordered a new trial.

¶ 6 B. The Underlying Proceedings

¶ 7 1. Pretrial and Trial Proceedings

¶ 8 At the outset, we note that there are significant gaps in the pretrial portion of the record in this appeal. To obtain the fullest picture of the pretrial proceedings, we take judicial notice of the record in the previous postconviction appeal, No. 2-22-0399, which contains reports of proceedings missing from the record in the present appeal. See *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 3 n.1 (proper to take judicial notice of record in related appeal). Even considering both records, gaps remain. They consist mostly of missing reports of proceedings, but at least two orders are missing. For instance, although the case was charged in April 2008, there are no reports of proceedings before April 2010. The next reports of proceedings are for dates in December 2010, February 2011, April 2011, and May 2011. No reports of proceedings exist between May 2011 and May 2012.

¶ 9 That noted, we relate the relevant pretrial proceedings based on the record as it exists. On April 23, 2008, the State charged defendant. On July 23, 2008, the trial court appointed Assistant Public Defender Thomas McCulloch to represent defendant. On August 11, 2008, defendant was released on bond. He remained out of custody until his trial ended.

¶ 10 Between August 2008 and November 2011, the case was continued multiple times. The orders granting these continuances expressly stated that they were by agreement, the sole exception being an order granting a continuance from May 8, 2009, to May 27, 2009 (but even that order did not reflect a State objection). On April 27, 2011, the trial court set the case for pretrial on July 29, 2011, and for trial on August 8, 2011.[1] On July 22, 2011, the court struck the August 8, 2011, trial date.[2] On July 29, 2011, the trial court set the case for pretrial on December 9, 2011, and for trial on December 12, 2011.[3] Effective November 1, 2011, McCulloch retired and was replaced by Assistant Public Defender Beth Peccarelli. On November 22, 2011, Peccarelli moved for a continuance. Peccarelli explained that, before being assigned to defendant's case, she had scheduled December 5, 2011, for a prescreen for a medical procedure and anticipated that the procedure would occur on December 12, 2011, or immediately thereafter. She requested a continuance because she anticipated being unavailable and needed access to transcripts of proceedings in which McCulloch had represented defendant. On December 2, 2011, the trial court entered an *agreed* order granting the continuance. The court noted that the State had answered

[1]There is a transcript from April 27, 2011, but the only order from that date is an exhibit sheet relating to a hearing held on that date.

[2]The order from July 22, 2011, does not indicate why the August 8 date was stricken. There is no report of proceedings for July 22, 2011.

[3]As noted, there are no reports of proceedings for July 2011.

ready for a December 12 jury trial but did not object to the continuance. The court continued the cause to January 26, 2012, to "reset" the jury trial.

¶ 11 Although, as noted, the State had answered ready for trial in December 2011, on March 9, 2012, it moved for leave to admit other-crimes evidence against defendant. On March 15, 2012, the parties agreed to continue the cause to April 19, 2012.

¶ 12 The common-law record contains an order from April 19, 2012, stating that the parties appeared before the trial court and that the case was continued by agreement to May 9, 2012. The official reports of proceedings contain no transcript or other report of the April 19, 2012, hearing (see Ill. S. Ct. R. 323(a) (eff. July 1, 2017)). Defendant's original and amended postconviction petitions included uncertified excerpts from a purported transcript of the April 19, 2012, proceeding. Later, when the amended petition reached an evidentiary hearing, the full certified transcript was supplied. Because our review of the trial court's decision at the evidentiary hearing is based on that full transcript, we reproduce all relevant portions here.

¶ 13 At the April 19, 2012, hearing, after the parties clarified for the trial court that the hearing was for the purpose of resolving pretrial motions, defense counsel remarked, "We do have one issue prior to starting." The following exchange occurred:

> "MS. PECCARELLI: [Defendant] came in early this *** afternoon to talk to me. He and his family have hired a private attorney, Brian Dosch, ***, out of Chicago. Mr. Dosch was unable to be here today, but he is available to—he has set aside the whole day May 9th and can come to court. I am letting [t]he [c]ourt know that, and I have got Mr. Dosch's card that I have Xeroxed.

THE COURT: Until Mr. Dosch decides to come here and until he decides that he wants to take this case on without any further continuances, we are going to keep forging ahead, because we are getting close to half a decade. It's four years old next week.

So if Mr. Dosch wants to come in and represent you, *I will not give him a continuance*. So you better tell him that, because if he thinks he can come in here two or three days before we start the jury trial and tell me, 'oh, I am just coming into this case, Judge, I know nothing about it,' then you get a lawyer on trial who knows nothing about your case, because *I am not going to grant a continuance*.

***

So, Ms. Peccarelli *** is coming in after another lawyer has been able to take the case up to four years old. I am not letting a third lawyer come into the case and tell me 'I am just coming into this case and I think I need another four or five years to get ready.' Okay?

[DEFENDANT]: Okay.

THE COURT: Do you understand that?

[DEFENDANT]: I understand that.

THE COURT: Tell him how serious I am about this. If he wants to come in and he wants to file an appearance, then *** I am happy to have him do that, but then you are set for trial in less than a month.

[DEFENDANT]: I understand that, Your Honor.

THE COURT: He is going to have to shut down his law office and go through all the discovery and look at all the interviews and *be ready to go when I call your case on May 11th*.[4]

Now, what's next?" (Emphases added.)

¶ 14 At the end of the hearing, the trial court admonished defendant that, if he failed to appear for trial, the State could "go forward and try [him] in [his] absence."[5] The court added:

"Now, the next thing I want to remind you [of] is that when you leave the courtroom today, you should call [Dosch] and you should tell [Dosch] that *no matter what we are going to trial in May*. If he wants to come in and he feels he can gear up and go and effectively represent you, I welcome him here.

He may choose not to, because the time is late now. We have used up four years of different lawyers coming in and going out. He may choose that he doesn't think he can gear up and be ready to proceed and defend you. He may not file an appearance. It's your obligation to tell him it's set for trial, and *I told you I would not continue*." (Emphases added.)

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[4]Although the trial court's order of December 2, 2011, states that the court intended to reset the trial date at the next hearing on January 26, 2012, the appellate record contains no report of proceedings or order from January 26, 2012, or any formal resetting of the trial date between the December 2, 2011, and April 19, 2012, hearings. However, the trial court and the parties appeared to assume at the April 19, 2012, hearing that the case was previously set for trial in May 2012. According to Peccarelli's testimony at the third-stage hearing, a trial date of May 14, 2012, was set on January 26, 2012.

[5]The trial court's remarks at the end of the hearing were not included in the partial transcript submitted with the original and amended postconviction petitions.

¶ 15 The hearing concluded:

"MS. PECCARELLI: Could we get May 9th? *** Wednesday at 9:00 to see whether or not Mr. Dosch does in fact—because he has let [defendant] know that that's a date that he has the full day and come in [*sic*]. And either he will show up and file his appearance or he won't, and we will be ready on the 11th to deal with whatever pretrial matters there are.

THE COURT: We could use May 9th. If Mr. Dosch is planning to come in, [defendant] should call him today.

MS. PECCARELLI: He will.

THE COURT: He is probably going to need your discovery before May 9th. He needs to know that *I am not inclined to grant any more continuances*." (Emphasis added.)

The court's order indicated that the matter was continued to two dates: May 9, 2012, and May 11, 2012. The May 11 date was for pretrial. The May 9 date was, per the above colloquy, for the court to determine whether Dosch would substitute as defendant's attorney.

¶ 16 On May 9, 2012, the trial court heard two State motions relating to testimony by minors and evidence of the prior convictions of defendant and a defense witness. The court remarked that it was unavailable on May 11, 2012, for pretrial and would postpone some pretrial matters until May 14, 2012, the day of trial. The State noted that it was ready for trial. The following exchange ensued between Peccarelli and the trial court:

"MS. PECCARELLI: *** Judge, we did talk to the private attorney and he indicated that without a guarantee that he would get a continuance to prepare, he would not be able to come in. And [defendant] has informed me last night that he did not believe that

his attorney was planning to appear because of the inability to have assurances that he would get a new date.

THE COURT: Well, last month we passed four years on this case so I think it's due for a resolution.

Are you prepared then, Ms. Peccarelli?

MS. PECCARELLI: Yes, Judge, I anticipate we will be ready. ***."

¶ 17 On May 14, 2012, defendant's jury trial began. On May 17, 2012, the jury found him guilty of all 11 charges. Defendant filed a posttrial motion contending, *inter alia*, that the trial court had denied him his constitutional right to counsel of his choice. Defendant then obtained new counsel, who filed a supplemental posttrial motion incorporating all the contentions in the original motion. The trial court denied the supplemental motion, sentenced defendant to concurrent prison terms of natural life on the counts of predatory criminal sexual assault of a child and five years on the counts of criminal sexual abuse. The court denied defendant's motion to reconsider the sentences.

¶ 18 2. Direct Appeal (*Dixon I*)

¶ 19 On direct appeal, defendant was represented by the same counsel who filed the supplemental posttrial motion. Defendant contended that (1) the evidence was insufficient as to one charge, (2) the trial court abused its discretion in admitting expert testimony on child sexual abuse and disclosure, and (3) the statute mandating life sentences for predatory criminal sexual assault of a child was unconstitutional. *Dixon I*, 2013 IL App (2d) 120986-U, ¶ 2. Appellate counsel did not raise the counsel-of-choice issue. We affirmed. *Id.*

¶ 20 C. Postconviction Proceedings

¶ 21 1. Second-Stage Postconviction Proceedings

¶ 22 On October 24, 2014, defendant filed a *pro se* petition under the Act, contending that the trial court denied him his constitutional right to counsel of his choice and that appellate counsel was ineffective for failing to raise this claim. The postconviction court advanced the petition to the second stage under the Act and appointed counsel for defendant. In his second amended petition, defendant reasserted that appellate counsel was ineffective for failing to contend that the trial court denied defendant his right to counsel of his choice.[6] Defendant alleged that, after Peccarelli had spent only about five months as his attorney, he decided he wanted Dosch instead. Further, although Dosch would need a continuance, the trial court stated flatly that it would not grant one.

¶ 23 The second amended petition attached affidavits from defendant, Peccarelli, and Dosch. These affidavits were created only after defendant's direct appeal.

¶ 24 The second amended petition also attached correspondence between defendant and appellate counsel to support defendant's allegation that appellate counsel was ineffective for failing to obtain a complete transcript of the hearing of April 19, 2012. In a letter dated April 18, 2014, appellate counsel wrote to defendant, "You don't need all the transcripts to do a [postconviction petition]. The facts are thoroughly stated in the Briefs and Appellate Court decision. The original transcripts are with the Clerk of the Circuit Court ***. I don't have copies. ***." In a letter dated May 16, 2014, defendant acknowledged receipt of "partial transcripts" from appellate counsel. Defendant disagreed with appellate counsel's advice that defendant did not need all the transcripts to support his postconviction claim that he was denied his right to counsel of his choice. Defendant

[6]The second amended petition also contended that trial counsel was ineffective for failing to subject the State's case to meaningful adversarial testing. Defendant does not now raise any issue as to this claim.

stated that he particularly needed the transcript that "show[ed] how the trial judge stated he would not allow the attorney [whom defendant] retained time to prepare for trial." Also, defendant recalled that, in 2012, appellate counsel told him that he would need $1,500 to purchase "the trial transcripts/record on appeal." Defendant noted that he had paid the $1,500 and, thus, wondered why appellate counsel had not purchased the April 19, 2012, transcript. Defendant "renew[ed] [his] request" to counsel for "all [the] transcripts/record on appeal." In a letter dated June 7, 2014, appellate counsel responded that he had obtained the "trial transcripts" but that defendant was now requesting transcripts for "a date prior to trial." Appellate counsel "never ordered that." He told defendant to contact the court reporters and order copies of the transcripts he wanted.

¶ 25 The State moved to dismiss the second amended petition. Responding to the counsel-of-choice claim, the State argued that, when defendant sought to discharge Peccarelli and hire Dosch, his case had been pending for almost four years and he had been out on bond for nearly as long. Dosch never appeared in court, and the record did not show that defendant was dissatisfied with Peccarelli's representation. Moreover, when defendant first told the trial court that he intended to hire Dosch, Peccarelli was ready for trial. Finally, defendant had not moved in writing to continue the trial, as required by statute (see 725 ILCS 5/114-4(a) (West 2012)). The State concluded that there was no merit to the claim that the trial court denied defendant his right to counsel of his choice, and, therefore, appellate counsel was not ineffective for not raising that claim.

¶ 26 The postconviction court dismissed the second amended petition. On the counsel-of-choice claim, the court noted that a defendant's right to counsel of choice is not absolute but may be denied when exercising that right would unduly interfere with the judicial process. See *People v. Montgomery,* 2023 IL App (3d) 200389, ¶ 19. The court noted further that Dosch never filed an appearance, a motion for substitution of counsel, or a motion to continue the case. He did not

appear in court on either April 19, 2012, or May 9, 2012. Peccarelli also failed to move to continue the case. Moreover, defendant had been out of custody from August 2008 through his trial and failed to exercise due diligence in obtaining new counsel. Defendant never expressed dissatisfaction with Peccarelli's representation or articulated why he wanted new counsel. Also, nothing in the record showed that defendant had any difficulty cooperating with Peccarelli, who had represented him for about six months when she first told the trial court that defendant wanted Dosch to represent him.

¶ 27 2. Postconviction Appeal (*Dixon II*)

¶ 28 On appeal from the dismissal of the second amended petition, this court, over a dissent, reversed the dismissal and remanded the cause for third-stage proceedings. *Dixon II*, 2024 IL App (2d) 220399-U, ¶ 44.

¶ 29 3. Third-Stage Postconviction Hearing

¶ 30 On remand, at the evidentiary hearing, the postconviction court considered both documentary evidence and testimony. Of primary importance as to the documentary evidence, the court admitted the full certified transcript of the April 19, 2012, hearing and the correspondence between defendant and appellate counsel regarding obtaining transcripts of that hearing and the May 9, 2012, hearing. Also, the court admitted a copy of Dosch's death certificate to establish why Dosch was not testifying at the hearing.

¶ 31 The postconviction court also admitted the affidavits of defendant, Peccarelli, and Dosch, but because these were not in the record on direct appeal, they do not directly support a claim that appellate counsel was ineffective.

¶ 32 We turn to the testimony at the hearing. Peccarelli testified as follows. When she first appeared in the case on November 22, 2011, she was not prepared to go to trial on the current trial

date set for the following month. She explained that the discovery was voluminous, that she had to request transcripts, and that she had to review the case file and become familiar with the facts and witnesses. Further, she had a medical procedure scheduled soon. On November 22, 2011, Peccarelli filed a motion to continue the cause. The State did not oppose the motion, and the trial court continued the cause to January 26, 2012. On that date, the court set the matter for pretrial and trial in May 2012.[7] On March 15, 2012, the court heard argument on the State's motion *in limine*. Peccarelli appeared in court with defendant only three times before the case was set for trial.

¶ 33 Asked about her attorney-client relationship with defendant, Peccarelli testified that their conversations were usually in the hallway outside the courtroom. The conversations were "brief because on any given day [Peccarelli] had five or six other courtrooms [she] had to be in at the same time." "Pretty much every time [they] spoke," defendant told Peccarelli that he wanted to hire private counsel.

¶ 34 Peccarelli testified that, on April 19, 2012, defendant visited her office with two or more companions. Defendant and the others "gave [Peccarelli] the impression that they had retained" private counsel for defendant.

¶ 35 At this point, the State made a continuing objection to any testimony about the conversations between Peccarelli and defendant, on the ground that the conversations were off the record and thus irrelevant to whether appellate counsel was ineffective. The postconviction court overruled the objection.

¶ 36 Peccarelli testified about the proceedings in court on April 19, 2012. Her testimony was consistent with the transcript of the proceeding. She related that, after the hearing, she told Dosch

[7]As noted, the record contains no report of proceedings or order from January 26, 2012.

what the trial court had said. Dosch told her he would not file an appearance if he could not be "guaranteed a continuance."

¶ 37 On cross-examination, Peccarelli testified that she spoke to Dosch about two days before the April 19, 2012, hearing. On May 9, 2012, she appeared in court, but Dosch did not. Dosch never filed an appearance or a formal motion to continue the trial past the set date of May 14, 2012. Peccarelli reiterated that Dosch would not file an appearance without being "guaranteed a continuance."

¶ 38 Defendant testified about the circumstances preceding and following the trial. The State made a continuing objection to the admission of evidence that was not of record when appellate counsel represented defendant. The postconviction court sustained the objection.

¶ 39 Defendant then testified that, through his family, he retained Dosch "a little bit before" March 9, 2012. Before April 19, 2012, defendant met with Dosch and personally paid him the $5,000 cash retainer that defendant had raised. Dosch told defendant that he could not appear in court on defendant's case until May 9, 2012. His family paid the $15,000 balance on Dosch's bill sometime before April 19, 2012. When defendant paid Dosch the retainer, defendant did not know that the trial was scheduled for May 14, 2012. He hired Dosch because Dosch had shown "interest" in the case.

¶ 40 The postconviction court denied the State's motion for a directed finding. The State then called appellate counsel, who testified as follows. He had practiced law for 44 years, exclusively as a criminal defense lawyer. At some point after the trial, defendant hired him. Appellate counsel reviewed the pending posttrial motion and filed a supplemental posttrial motion, which specifically adopted all the arguments in the original motion, including that the trial court denied defendant his

constitutional right to the counsel of his choice. On appeal, counsel chose not to raise this claim of error. Asked why he so chose, counsel testified:

> "Well, no lawyer, and I know Brian Dosch, he never appeared on a motion before the trial court *** to substitute counsel, so the Judge didn't deny anything.
>
> The only information that I had was the colloquy between [Peccarelli] and [the trial court] that Mr. Dosch called her, said he would like to come in, and [the trial court] replied, 'He's not getting a continuance, but if he's ready, he can proceed.'
>
> So the—there's no motion to substitute, there's no ruling by the judge, and whatever circumstances those are are [*sic*] outside of the record and, perhaps, someone could raise them in post-conviction proceedings. But in my legal opinion, *** there's no facts to raise on direct appeal."

¶ 41 Appellate counsel testified that, to his knowledge, asserting the right to substitute counsel of one's choice "requires a lawyer to appear and be presently ready and available to try a case or to appear in a case." In this case, Dosch did not appear. Further, in the exercise of his professional judgment, appellate counsel decided that the three issues he did raise all had more likelihood of success than did the counsel-of-choice issue. He did not want to "dilute *** what [he] thought was meritorious."

¶ 42 On cross-examination, appellate counsel testified that defendant paid him $1,500 to obtain the transcripts of the trial. Asked whether he ordered the transcript of the April 19, 2012, pretrial hearing, appellate counsel testified, "I don't recall what I ordered, but I ordered whatever was needed for the direct appeal." Asked whether he had been aware of the trial court's duty of inquiry when a defendant asks to substitute counsel of his choice, appellate counsel testified, "Yes. He's supposed to. But I don't see a motion for substitution of counsel and there was no proceeding."

¶ 43 After hearing arguments, the postconviction court issued a written opinion and order granting defendant's petition. The opinion made the following findings of fact. Sometime before April 19, 2012, defendant hired Dosch to represent him in this case. Defendant and his family paid Dosch $20,000 for this representation. Dosch told defendant that he would need time to prepare for trial. At the April 19, 2012, hearing, Peccarelli presented Dosch's business card to the trial court.

¶ 44 The postconviction court further found, based on the transcript of the April 19, 2012, hearing, that the trial court "did not inquire of the defendant *** as to his reason for wanting new counsel [or] inquire as to defendant's cooperation with his current counsel." Dosch did not appear at the May 9, 2012, hearing. The postconviction court found that "due to [the trial court's] statements to Attorney *** Peccarelli and the defendant *** on April 19, 2012, to tell his attorney that he would not grant a continuance to Attorney Dosch if he entered an appearance in this case, Attorney Dosch did not enter an appearance in this case."

¶ 45 The postconviction court noted as follows:

> "The State argued [here] that Attorney Dosch never filed an appearance, never filed a motion for substitution of attorney, never filed a motion for a continuance, and never actually appeared. The State argued that Attorney Dosch was not ready, willing, [and] able to appear on defendant's case. While some of these statements are true, the State's argument ignores the fact that Attorney Peccarelli and the defendant had informed [the trial court] that Attorney Dosch had agreed to represent the defendant in this case and he would need a continuance to be able to be prepared for trial."

The postconviction court recounted, *inter alia*, the trial court's remark that, if Dosch were to ask for additional time because he "kn[ew] nothing about" defendant's case, then defendant would

"get a lawyer on trial who kn[ew] nothing about [the] case," because the trial court did not intend to grant Dosch a continuance.

¶ 46 The postconviction court rejected the State's argument that, before the end of the April 19, 2012, hearing, the trial court had softened its position on whether to grant defendant another continuance. The postconviction court noted that, before telling defendant that he was " 'not inclined' " to grant any more continuances, the trial court stated repeatedly that it would flatly refuse to grant any continuances. The postconviction court also noted Peccarelli's explanation on May 9, 2012, as to why Dosch did not appear that day. The postconviction court concluded that the reason Dosch did not appear on May 9, 2012, or enter an appearance was that the trial court "had told the defendant to tell his attorney that he was not going to grant a continuance."

¶ 47 The postconviction court continued:

> "With these facts in mind, the trial court was required to do a balancing test to determine if the defendant's hiring of a private attorney was a delaying tactic. In order to conduct this balancing test, the trial court needed to make inquiries [of] the defendant to determine if in fact this was solely a delaying tactic. The trial court emphatically told the defendant he [*sic*] was not going to grant a continuance for his private attorney to be prepared for trial because the case was 4 and ½ years old at that time. The trial court made assumptions that the private attorney would need another 4 and ½ years to be ready for trial, without making inquiries. Attorney Peccarelli was able to be ready to try the case within five months of the trial date being set.
>
> Without the proper inquiries of the defendant by the trial court, as required by [*People v. Segoviano*, 189 Ill. 2d 228 (2000),] and [*People v. Ramsey*, 2018 IL App (2d) 151071,] as well as the trial court repeatedly telling the defendant that he [*sic*] would not

> grant Attorney Dosch a continuance to allow Attorney Dosch to prepare for trial, there is evidence that the trial court abused its discretion when [it] effectively denied the defendant his Sixth Amendment right to counsel of his choice, which was Attorney *** Dosch. The review of the common law record and the transcripts of the proceedings of April 19, 2012[,] and May 9, 2012, by [appellate counsel] would have provided [him] with a meritorious issue on direct appeal that the trial court had abused its discretion when it failed to inquire into the circumstances surrounding his request to be represented by Attorney Dosch. Had [appellate counsel] reviewed the common law record as well as the transcripts of [the] proceedings from April 19, 2012[,] and May 9, 2012, and asserted on direct appeal a claim of a violation of the defendant's Sixth Amendment right to counsel of choice as requested by the defendant, it is probable that the Second District Appellate Court would have granted *** the defendant a new trial."

¶ 48 The postconviction court granted defendant a new trial. The State timely appealed.

¶ 49 II. ANALYSIS

¶ 50 A. Introduction–Governing Principles

¶ 51 On appeal, the State argues that the postconviction court erred in finding that defendant satisfied the test for ineffective assistance of appellate counsel. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶ 52 We begin with our standard of review. At a third-stage evidentiary hearing under the Act, the defendant "must show by a preponderance of the evidence that there was a substantial violation of a constitutional right during his trial proceedings." *People v. McCoy*, 2026 IL 131565, ¶ 50. In general, if a postconviction court grants relief after a third-stage evidentiary hearing under the Act, we will not disturb that judgment unless it is manifestly erroneous. *People v. English*, 2013 IL

112890, ¶ 23. However, this deferential standard applies only insofar as the judgment rests on the postconviction court's exercise of its fact-finding prerogative. *Id.* Insofar as a judgment is based on evidence that " 'consists of depositions, transcripts, or evidence otherwise documentary in nature, a reviewing court is not bound by the [postconviction] court's findings and may review the record *de novo*.' " *People v. Morgan*, 2025 IL 130626, ¶ 51 (quoting *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009)). Also, where, as here, the judge presiding over the third-stage hearing did not preside over the defendant's trial, the postconviction court has no particular familiarity with, or expertise in, the case to which we must accord special deference. See *English*, 2013 IL 112890, ¶¶ 23-24. Thus, to the extent that the evidence here is documentary, our review is *de novo*. *Id.* ¶ 24. Therefore, based on the foregoing authority, we shall apply deferential review only to findings based on live testimony.

¶ 53 Here, the postconviction court received both documentary evidence and testimony. However, we agree with the State's argument below that most of the testimony and documents were not relevant to the claim. Counsel's performance on direct appeal cannot be attacked based on nonrecord information that existed when he briefed the appeal, much less nonrecord information that was created well afterward. Therefore, we disregard the affidavits and testimony of Dosch, Peccarelli, and defendant, with an important exception to be noted. *Infra* ¶ 85. However, because appellate counsel testified to matters within his personal knowledge that were relevant to his performance, we do consider his testimony. Insofar as the postconviction court's factual findings drawn from that testimony affect our analysis, we defer to those findings unless they are manifestly erroneous.

¶ 54 We move to the substantive principles governing this case. To establish ineffective assistance of counsel, a defendant must show that (1) counsel's performance was objectively

unreasonable and (2) it is reasonably probable that absent counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88; *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). *Strickland* applies to both appellate and trial counsel. *People v. Petrenko*, 237 Ill. 2d 490, 497 (2010). "A [defendant] who contends that appellate counsel rendered ineffective assistance of counsel must show that the failure to raise an issue on direct appeal was objectively unreasonable and that the decision prejudiced [the defendant]." *People v. Childress*, 191 Ill. 2d 168, 175 (2000). "Unless the underlying issue is meritorious, [the defendant] suffered no prejudice from counsel's failure to raise it on direct appeal." *Id.*

¶ 55 A defendant has the constitutional right to counsel of his choice. *People v. Curry*, 2013 IL App (4th) 120724, ¶ 48. The right derives from the sixth amendment (*People v. Holmes*, 141 Ill. 2d 204, 217 (1990)) and is fundamental yet limited (*People v. Burrell*, 228 Ill. App. 3d 133, 141-42 (1992)). The defendant may not use the right as a weapon to thwart the administration of justice. *Curry*, 2013 IL App (4th) 120724, ¶ 48. The trial court has discretion to determine whether the defendant's right to select counsel would unduly interfere with the orderly process of judicial administration. *Burrell*, 228 Ill. App. 3d at 142. Indeed, "[i]n balancing the judicial interest of trying the case with due diligence and the defendant's constitutional right to counsel of choice, the court *must inquire* into the actual request to determine whether it is being used merely as a delaying tactic." (Emphasis added.) *Id.* The factors that bear on whether a request for new counsel is a mere delaying tactic include (1) whether the defendant articulates an acceptable reason for wanting new counsel, (2) whether the defendant has continuously been in custody, (3) whether the defendant informs the trial court of his efforts to obtain counsel, (4) whether the defendant has cooperated with his current counsel, and (5) how long current counsel has represented the defendant. *People v. Ramsey*, 2018 IL App (2d) 151071, ¶ 24. The trial court's denial of the right to select counsel

will not be overturned on appeal absent an abuse of discretion. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000).

¶ 56 B. Ineffective Assistance of Appellate Counsel

¶ 57 In *Dixon II*, we held, based on the partial transcript of the April 19, 2012, hearing and other documentary evidence, that defendant made a substantial showing that his appellate counsel was ineffective for failing to argue that the trial court denied him his right to counsel of his choice. *Dixon II*, 2024 IL App (2d) 220399-U, ¶ 23. We had two bases for this conclusion: (1) "the trial court did not inquire sufficiently into defendant's request to be represented by the identified counsel of his choice [Dosch]," and (2) "based on the limited record defendant could make because of the trial court's summary rejection, defendant's request for leave to obtain counsel of his choice was not a delaying tactic and would not have unduly interfered with the administration of justice." *Id.* Now, after a third-stage evidentiary hearing on the ineffectiveness claim, we reach the same conclusions again but amplify our reasons as follows.

¶ 58 1. Performance Prong

¶ 59 The State contends first that defendant failed to prove that appellate counsel's performance met the first prong of the *Strickland* test, unreasonable performance. The State argues on two grounds that appellate counsel could reasonably conclude that the counsel-of-choice claim would fail. First, the State contends that, although the trial court did not inquire into the circumstances and purposes of defendant's request to substitute Dosch for Peccarelli, the court had no duty to inquire where (1) Dosch did not come to court or file an appearance and (2) no motion for a continuance or for substitution of counsel had been filed. Second, the State argues that defendant's substitution request was not proper where Dosch was not "ready, willing, and able to enter an *unconditional* appearance" for defendant. (Emphasis added.) In what follows, we address these

points in turn and find fatal flaws in each. As we explain, defendant adequately raised the substitution issue and so triggered the trial court's duty to inquire into the circumstances and purposes of defendant's request to substitute Dosch for Peccarelli. We also disagree in two respects with the State's interpretation of case law holding that a defendant seeking substitution of counsel must identify an attorney who is "ready, willing, and able" to enter an appearance for the defendant. (Internal quotation marks omitted.) See, *e.g.*, *Curry*, 2013 IL App (4th) 120724, ¶ 51. First, even where a defendant cannot identify an attorney who is ready, willing, and able to enter an appearance, the trial court must still inquire into the substitution request, and the failure to do so is, in itself, reversible error. Second, "ready, willing, and able" does not mean *unconditionally* so. Rather, an attorney may be ready, willing, and able to appear with *reasonable* conditions. Applying these principles, we must affirm the postconviction court because the trial court did not inquire into the circumstances and purposes of the substitution request. We do so regardless of whether Dosch was ready, willing, and able to enter an appearance for defendant. Alternatively, Dosch *was indeed* ready, willing, and able to enter an appearance for defendant; his condition for entering an appearance—a continuance for trial preparation—was reasonable under the circumstances. We elaborate below.

¶ 60 a. Duty to Inquire

¶ 61 As noted, "[i]n balancing the judicial interest of trying the case with due diligence and the defendant's constitutional right to counsel of choice, the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic." *Burrell*, 228 Ill. App. 3d at 142. The State, however, contends that "[i]t is not the [trial] court's job to *sua sponte* investigate the factual basis of [a] defendant's request for new counsel and the need for a continuance, in the absence of substitute counsel or any pending motion." We disagree. No *sua sponte* action was

needed when the issue was clearly before the trial court on April 19, 2012. Peccarelli informed the court that defendant's family had hired Dosch, who was unable to appear that day. Although defendant filed no motion to continue, we accept the postconviction court's factual finding that defendant's request for substitution implied a request for a continuance. The trial court evidently understood defendant as seeking a continuance, because it immediately emphasized that it would not grant one. Indeed, with trial only three weeks away, it was obvious that defendant would need additional time if Dosch took over the case. The court recognized this when it mentioned that, if defendant changed lawyers but was not given a continuance, he would be proceeding to trial with a lawyer who "kn[ew] nothing about [his] case." Although the State emphasizes the absence of a formal motion for a continuance or substitution, the trial court itself certainly did not view that lack of formality as a bar to its emphatic pronouncements on its unwillingness to grant a continuance. With a substitution request (and associated continuance request) clearly before it, the court erred by ruling without making a proper inquiry into the circumstances and purposes of the substitution request.

¶ 62 The trial court repeated the error when it revisited the substitution issue on May 9, 2012. Dosch did not appear that day. Peccarelli explained that Dosch was absent because he did not want to take the case if a continuance were not guaranteed. Here we accept the postconviction court's factual finding that Dosch neither appeared nor filed an appearance because the court repeatedly and unequivocally told defendant at the April 19, 2012, hearing that there would be no continuance and that, if Dosch wished to replace Peccarelli, he would have less than a month to prepare. The same also explains why no motion for a continuance or substitution was filed after the April 19, 2012, hearing. Presumably, Dosch knew that words have meaning, especially when repeated by an authority figure with sole control over the decision. With trial less than a month away, substitution

required a continuance, but a motion for a continuance would have been futile given the court's stern and clear admonishments on April 19, 2012. Filing an appearance without the possibility of a continuance—and with trial looming—would have been imprudent, if not unethical, because an appearance would have obligated Dosch to continue with the case until he was allowed to withdraw (see Ill. S. Ct. R. 13(c)(1)-(2) (eff. Feb. 16, 2011)), and he could not be certain he would be permitted to withdraw if not granted a continuance.

¶ 63 We hold that, despite the absence of a formal motion for a continuance or substitution, and even despite the absence of Dosch himself, the trial court had a duty to inquire into the circumstances and purposes of defendant's substitution request. We reached this conclusion in *Dixon II* without a full transcript of the April 19, 2012, hearing—which appellate counsel never obtained before briefing on direct appeal—and held that appellate counsel would have had a meritorious argument that the trial court abused its discretion in failing to make a proper inquiry into defendant's substitution request. *Dixon II*, 2024 IL App (2d) 220399-U, ¶¶ 23, 27-28. As we noted, the inadequate inquiry—which neglected such areas as defendant's reasons for seeking to change counsel, his level of satisfaction with current counsel, and how much more time Dosch would need to prepare—was evident from the record that appellate counsel had or should have obtained in 2012. *Id.*

¶ 64 Case authority shows that the failure to inquire was an *independent* ground for granting defendant's amended petition. We revisit here the authorities we cited in *Dixon II*. See *id.* ¶¶ 24-26.

¶ 65 We begin with *People v. Bingham*, 364 Ill. App. 3d 642, 643 (2006), where the defendant was charged with traffic offenses. Two weeks later, the trial court appointed the public defender to represent him. *Id.* Three months after the charges were filed, the court called the case for jury trial.

Id. At that hearing, the defendant's attorney told the court that the defendant wanted a continuance because he desired to switch to a private attorney already representing him in other proceedings. *Id.* at 644. The private attorney was not present in court. *Id.* The trial court asked for the State's response, and it objected, noting that it was ready for trial and that, at a prior status hearing, the defendant also had answered ready for trial. *Id.* The State further commented that, " '[d]espite [its] best efforts to bring [the private attorney] to the table [on the other cases] ***, [the attorney] always had something else to do.' " *Id.* With no further inquiry, the trial court denied the defendant's motion. *Id.* The defendant was convicted and sentenced. *Id.*

¶ 66 The appellate court reversed. *Id.* at 650. It laid out the governing principles:

> "In ruling on a motion to continue to substitute counsel, the trial court must balance [a] defendant's right to choose his counsel against the efficient and effective administration of justice. [Citation.] 'This balancing, of necessity, requires a review of the diligence shown by the defendant [citation] *and an inquiry into the actual request to see if the request is being used merely as a delaying tactic*.' [Citation.] The determination of a motion to continue depends upon the circumstances of each case, and the trial court's denial of a defendant's request for a continuance will not be overturned absent an abuse of discretion." (Emphasis added.) *Id.* at 645.

¶ 67 The appellate court held that, given the importance for criminal defendants of the right to counsel of one's choice, the trial court abused its discretion in denying, "without further inquiry," the defendant's request for a continuance. *Id.* The court noted that the private attorney whom the defendant wanted was already representing him in other cases; the attorney had contacted the State the day before the trial date; the case had been progressing rapidly and was only three months old; no prior continuances had been granted; the defendant had engaged in no prior dilatory tactics; and

there was no indication that his motion had a dilatory purpose. *Id.* Therefore, the trial court "should have conducted an inquiry into the circumstances and the purposes of the motion before making its ruling." *Id.*

¶ 68 *People v. Adams*, 2016 IL App (1st) 141135, ¶ 4, involved a similar procedural failure. There, the defendant was charged with a drug offense. At his arraignment, the trial court appointed the public defender to represent him. *Id.* Seventy days later, on the date scheduled for his bench trial, the defendant requested a continuance to hire a private attorney, explaining that his public defender " 'didn't let [him] know anything.' " *Id.* The defendant did not identify the attorney. *Id.* Without inquiring further, the court denied the request because it was made on the day of trial and the State's two witnesses (police officers) were present. *Id.*

¶ 69 The appellate court reversed (*id.* ¶ 29), explaining:

> "Generally, a trial court will not be found to have abused its discretion in denying a motion for substitution of counsel in the absence of ready and willing substitute counsel. [Citation.] But, even where new counsel is not identified, reversal of a trial court's denial of a continuance is warranted where the trial court fails to inquire into whether [a] defendant is using the request as a delaying tactic." *Id.* ¶ 15.

The appellate court noted that the trial court "focused on only two circumstances in denying [the defendant's] request—that it was made on the day of trial and the presence in court of the State's two witnesses, both police officers." *Id.* ¶ 16. The court "made no inquiry at all into either [the defendant's] reasons for wanting new counsel or any efforts [the defendant] may have made toward that end"—factors that pertained to whether the defendant was using the request as a delaying tactic. *Id.* ¶ 17. Although the court proceeded to discuss whether the record as developed suggested

the request was a delaying tactic, it clarified that the failure to inquire was an independent and sufficient ground for reversal. *Id.*

¶ 70 *People v. Tucker*, 382 Ill. App. 3d 916 (2008), also supports our conclusion. The defendant in *Tucker* was charged with sex offenses. *Id.* at 917. On the day set for trial, the defendant's privately retained attorney told the court that he had lost contact with the defendant during the three months since the last court date, that the defendant no longer wanted his services, and that the defendant had hired a new attorney. *Id.* at 918. The court addressed the defendant, who confirmed that he had retained another attorney. *Id.* The defendant named the new attorney and said he had spoken with him on the phone but had not seen him in person. *Id.* at 919. The new attorney told the defendant to call him back after court that day. *Id.* The new attorney did not appear in court that day, and the defendant had not paid him. *Id.* The court noted that the case had been set for trial twice before. *Id.* With no further inquiry, the court denied the defendant's motion for new counsel and immediately started the jury trial. *Id.* at 918-19.

¶ 71 After his conviction, the defendant appealed, arguing that the trial court had denied him his constitutional right to the counsel of his choice. *Id.* at 918. The appellate court agreed, reversed the judgment, and remanded the cause. *Id.* at 924. The court cited the general proposition that "[t]he court does not abuse its discretion in denying a motion if new counsel is not specifically identified or does not 'stand ready, willing, and able' to make an appearance on [the] defendant's behalf." *Id.* at 920 (quoting *Burrell*, 228 Ill. App. 3d at 142). However, the court did not decide whether the attorney whom the defendant wanted as his new counsel was "ready, willing, and able" to make an appearance. Rather, the court "focus[ed] on the trial court's failure to inquire more thoroughly into [the] defendant's request" to substitute counsel. *Id.* at 923. The court noted that, " '[i]n balancing the judicial interest of trying the case with due diligence and the defendant's

constitutional right to counsel of choice, *the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic*.' " (Emphasis added.) *Id.* at 920 (quoting *Burrell*, 228 Ill. App. 3d at 142). Citing *Bingham* and *People v. Little*, 207 Ill. App. 3d 720 (1990), the court noted, "Several decisions have held [that] a trial court erroneously denied the defendant's motion for a continuance to substitute counsel by failing to conduct an adequate inquiry into the request." *Tucker*, 382 Ill. App. 3d at 921.

¶ 72 Turning to the facts of the case, the appellate court found the trial court's inquiry into the substitution request was inadequate because the court did not (1) ask the defendant why he wanted a different lawyer; (2) ask him what he meant when he said he had " 'hired' " the attorney or ask whether he could afford to hire him; (3) ask family members, who were present in court, about arrangements to hire the attorney; (4) made no attempt to contact the attorney to learn whether he was able and willing to represent the defendant; or (5) ask the current attorney how he had lost contact with the defendant during a time when he was in custody. *Id.* at 923.

¶ 73 As in this case, the defendants in *Adams*, *Tucker*, and *Bingham* made only oral requests for a continuance or substitution and their prospective new attorneys neither filed appearances nor came to court. Nonetheless, the appellate courts in those cases held that the trial court had a duty to inquire into the circumstances and purposes of the requests, to determine if they were merely a delaying tactic.

¶ 74 Based on those authorities, we hold that defendant made a substantial showing that (1) the duty to inquire arose, (2) the trial court abused its discretion by failing to inquire into the circumstances and purposes of defendant's request to be represented by Dosch, and (3) even on the record that was limited due to the summary denial of the request, the balance of the relevant

factors favored granting the request. Thus, defendant made a substantial showing that appellate counsel was ineffective in forgoing the counsel-of-choice issue.

¶ 75 First, the duty to inquire arose because defendant made a request to substitute counsel and placed the issue squarely before the trial court. Second, the court's inquiry was inadequate. Instead of seeking further details about the request—particularly why defendant wanted to discharge Peccarelli and hire Dosch—the court relied on the facts that the case had been pending for four years and was set for trial within a month. Although a request for continuance was implied, the court did not inquire into how much time would be needed. Instead of attempting to ascertain defendant's reasons for wanting to incur the expense of private representation, the court summarily denied the request based solely on the time factor.

¶ 76 Third, the balance of the factors favors defendant. See *Ramsey*, 2018 IL App (2d) 151071, ¶ 24 (specifying the factors). Factor (1), whether defendant articulated an acceptable reason for wanting new counsel, surely cannot be held against him, since the trial court's summary rejection of his request prevented him from explaining it. See *id.* Factor (2), time spent in custody, does arguably cut against defendant, as he had been out of custody since early in the case. See *id.* Even here, however, fewer than six months had passed since McCulloch retired and was replaced by Peccarelli, the attorney defendant wished to discharge. Factor (3), whether defendant informed the trial court of his efforts to obtain counsel, does not support the trial court's decision. See *id.* Defendant identified Dosch as the attorney he wanted, stated that he had actually hired Dosch, and provided the court with Dosch's business card. Factor (4), whether defendant had cooperated with his current counsel, is similar to factor (1): by preventing defendant from explaining or supporting his request, the court made it impossible for him to address this factor. See *id.* We also note that nothing in the record suggests defendant did not cooperate with McCulloch or Peccarelli. Finally,

factor (5), how long defendant had been represented by his current counsel (about six months), does not clearly support the trial court's decision. See *id.*

¶ 77 We acknowledge that the case was pending for about four years as of April 19, 2012. However, the numerous continuances were almost all by agreed motion. Of the two on defendant's motion, the first was for 19 days. The second was for less than two months and was generated by Peccarelli due to *her* pending medical procedure, *her* recent assignment to defendant's case, and *her* need to review the case. The motion was granted with the full acquiescence of the State. Finally, defendant made his substitution request 22 days before the scheduled trial date. In *Adams*, *Tucker*, and *Bingham*, the defendant brought the substitution request *on the day of trial*, yet the appellate court still held that the trial court was obligated to inquire into the circumstances and purposes of the request. See *Adams*, 2016 IL App (1st) 141135, ¶ 4; *Tucker*, 382 Ill. App. 3d at 918; *Bingham*, 364 Ill. App. 3d at 643-44.

¶ 78 As against the nebulous evidence of either a dilatory intent or the likelihood that changing counsel would cause unreasonable delay, the following facts clearly supported defendant's request. Despite the extra cost of private counsel, defendant unequivocally expressed his strong desire for a new attorney. He identified the attorney, Dosch, and told the court that Dosch had been informed of the nature of the charges against defendant. Although Dosch would have been defendant's third attorney in the case, the other two had been assigned to him, and Peccarelli's entry into the case was occasioned solely by the happenstance of McCulloch's retirement. Finally, cutting against an inference of dilatory intent was the fact that, in four years, his request to substitute Dosch for Peccarelli was the first time that defendant expressed dissatisfaction with his current attorney. There was no evidence of any dilatory intent in defendant's previous dealings with the court.

¶ 79 Further, the consequences of granting the request, even with a continuance, would not have been so onerous as the trial court apparently assumed. The court assigned Peccarelli to the case in November 2011. On May 9, 2012, she stated that she would be ready for trial two days later. The trial was held on May 14, 2012, approximately half a year after Peccarelli took the case. This was far less than the "four or five years" that the trial court expected Dosch to say he needed. There was no reason to believe that he would need more time than Peccarelli.

¶ 80 We add that defendant faced charges that made him eligible for life in prison—indeed, he ultimately received that sentence. As he faced this dire prospect and clearly believed that he needed new counsel to address it, an extra half-year to prepare as he saw fit was not an onerous burden on the criminal justice system. Notably, the defendants in *Adams* and *Bingham* faced far less serious charges (see *Adams*, 2016 IL App (1st) 141135, ¶ 4; *Bingham*, 364 Ill. App. 3d at 643) yet were held to be entitled to at least an inquiry into their substitution requests.

¶ 81 In sum, nothing in the appellate record, especially as supplemented by the April 19, 2012, transcript that appellate counsel inexplicably failed to obtain, suggests that defendant's request to substitute counsel of his choice was dilatory and not in good faith.

¶ 82 In contending otherwise, the State relies on our nonprecedential order in *People v. Fleming*, 2023 IL App (2d) 200745-U. *Fleming*, however, is easily distinguishable. There, on May 20, 2013, after several continuances, the trial court told the defendant and his public defender that the trial would start on July 15, 2013, and that this date was "a 'set in stone trial date.' " *Id.* ¶ 4. On July 11, 2013, at the final pretrial conference, the defendant and his attorney first told the court that the defendant wanted a continuance to hire private counsel. *Id.* ¶ 5. The defendant told the court that he and his family were "deciding between two attorneys." *Id.* The court denied the request. *Id.* On appeal, we affirmed, pointing out that (1) the defendant made his request only four days before the

trial date, which the defendant had been told eight weeks earlier was " 'set in stone,' " and (2) the defendant had yet to even identify substitute counsel. *Id.* ¶ 42.

¶ 83 This case contrasts with *Fleming* in several respects. The defendant in *Fleming* did not challenge the adequacy of the trial court's inquiry. The timing and presentation of the substitution requests also differ. Here, defendant made his request three weeks before the scheduled trial date, and only after that request did the court inform him that the trial date was inflexible. Defendant not only identified the specific attorney he wanted to hire but had already met with him, agreed to hiring terms, and paid him a substantial retainer. *Fleming* does not help the State.

¶ 84 We conclude that appellate counsel performed deficiently by failing to argue that the trial court abused its discretion in denying defendant's request for substitute counsel and its implied request for a continuance. The court clearly failed to make the requisite inquiry into defendant's substitution request. The court should have asked defendant, *inter alia*, why he wished to replace Peccarelli and how much time Dosch would need to prepare for trial. We stress that the failure to adequately inquire is an independent and sufficient ground for reversal. We *alternatively* hold that the relevant factors indicate that the substitution request was not a delaying tactic.

¶ 85 As we indicated, the testimony and affidavits of Dosch, Peccarelli, and defendant are not relevant to assessing appellate counsel's performance. However, Peccarelli's testimony at the third-stage hearing suggests pertinent information the trial court would have learned if it had made the requisite inquiry into defendant's substitution request. Peccarelli testified that "[p]retty much every time" that she and defendant spoke, he told her that he wanted to hire private counsel. Peccarelli's testimony also suggested that she had had little time to confer with defendant because of her caseload. This could help to explain why defendant became dissatisfied with her. Again, these facts cannot be considered in evaluating defendant's claim that appellate counsel was

ineffective. However, they demonstrate that, had the trial court made the required inquiry, it would have had even more reason to conclude that defendant's request to switch counsel was not a dilatory tactic.

¶ 86 b. Ready, Willing, and Able Substitute Counsel

¶ 87 We turn to the State's second main argument—that the denial of defendant's substitution request was proper because Dosch was not "ready, willing, and able to enter an unconditional appearance" for defendant. The State contends that *Bingham* and *Adams*[8] are unsound because they contradict the governing standard represented in a nonprecedential order, *People v. Ibeh*, 2026 IL App (1st) 240472-U, ¶ 23, where the court cited *Segoviano*, 189 Ill. 2d at 245, and *Curry*, 2013 IL App (4th) 120724, ¶ 51, and stated: "[T]he prerequisite for the granting of a continuance to procure substitute counsel is that the substitute counsel is ready, willing, and able to make an immediate, unconditional entry of appearance" (emphasis omitted). The State also relies on similar language in *Segoviano*, *Curry*, and *Ramsey*. See *Segoviano*, 189 Ill. 2d at 245 ("[I]t is well established that a trial court will not be found to have abused its discretion in denying a motion for substitution of counsel in the absence of ready and willing substitute counsel."); *Ramsey*, 2018 IL App (2d) 151071, ¶ 25 (new counsel must be "specifically identified and stand[ ] ready, willing, and able to enter an unconditional appearance"); *Curry*, 2013 IL App (4th) 120724, ¶ 49 ("A trial court does not abuse its discretion by denying a motion for substitution of counsel where new counsel is unidentified or does not stand ready, willing, and able to make an unconditional entry of appearance on defendant's behalf." (Internal quotation marks omitted.)). According to the State, because Dosch refused to enter an appearance in the case without being granted a continuance, he

[8]The State's criticism would also apply to *Tucker*, though the State does not criticize that case.

was not "ready, willing, and able," and, therefore, defendant's substitution request was properly denied.

¶ 88 The State's position is flawed in two respects. First, the State wrongly suggests that the "ready, willing, and able" requirement is a *per se* requirement such that, where it is not met, the trial court need not inquire into the substitution request. In other words, a reviewing court cannot reverse the trial court for failing to make an adequate inquiry if an attorney does not stand "ready, willing, and able" to substitute as counsel. The case law on which the State relies does not support its position.

¶ 89 In *Segoviano,* the defendant never contended that the trial court did not conduct an adequate inquiry into his request to substitute counsel of his choice. See generally *Segoviano*, 189 Ill. 2d 228. The supreme court was not asked to—and did not—consider the effect of a failure to inquire. Nothing in that opinion, or the opinion of the appellate court (*People v. Segoviano*, 297 Ill. App. 3d 860 (1998)), indicates that an inquiry issue was ever raised or discussed.

¶ 90 *Ramsey* and *Curry* also do not support the State's stance, as the courts in those decisions held that the required inquiry was made. *Ramsey*, 2018 IL App (2d) 151071, ¶¶ 27-28, 30 (relying on *Curry*, 2013 IL App (4th) 120724, ¶¶ 50-52, which had distinguished its facts from cases "in which no inquiry at all was made into the request to substitute counsel"); *Curry*, 2013 IL App (4th) 120724, ¶¶ 52-53. Thus, there was no occasion in either case to determine whether reversal would have been warranted if—as here—the inquiry was inadequate.

¶ 91 Nor does *Ibeh* persuade us that a reviewing court cannot reverse for lack of a proper inquiry where an attorney does not stand "ready, willing, and able" to substitute as counsel. The *Ibeh* court criticized *Adams*, where the defendant requested time to find a private attorney but did not identify the attorney; nonetheless, the *Adams* court reversed the denial of the continuance request because

the court did not properly inquire into the request. See *Adams*, 2016 IL App (1st) 141135, ¶ 15 ("[E]ven where new counsel is not identified, reversal of a trial court's denial of a continuance is warranted where the trial court fails to inquire into whether [the] defendant is using the request as a delaying tactic."). *Ibeh* claimed that *Adams* conflicted with *Segoviano*, which *Ibeh* construed as "ma[king] clear *** that the trial court does not abuse its discretion in denying a motion for a continuance to secure substitute counsel where its inquiry into the motion reveals that no counsel stands ready to make an unconditional appearance without delay." *Ibeh*, 2026 IL App (1st) 240472-U, ¶ 26. However, as we explained, *Segoviano* did not address whether the lack of an adequate preliminary inquiry may justify reversal regardless of whether an attorney stands ready, willing, and able to substitute as counsel. Moreover, in stating that *Ramsey* "not[ed] that *Adams* failed to adhere to *Segoviano*" (*id.*), the *Ibeh* court ignored that *Ramsey* specifically held that the trial court conducted a proper preliminary inquiry; thus, the question of whether the failure to do so could be reversible error never arose in *Ramsey* (see *Ramsey*, 2018 IL App (2d) 151071, ¶ 30).

¶ 92 We adhere to our holding in *Dixon II* that the failure to conduct the needed inquiry is, in itself, a ground for reversal and that appellate counsel performed unreasonably in failing to obtain the transcript of the April 19, 2012, hearing, which would have alerted appellate counsel to the strength of the issue, and in ultimately failing to raise the claim.

¶ 93 This discussion of *Ibeh* leads us to the State's second error; the State misapprehends "ready, willing, and able" to substitute as counsel as *unconditionally* "ready, willing, and able" to substitute as counsel. We decline to follow the statement in *Ibeh*—and, as we shall note, similar statements in *Curry* and numerous other appellate court decisions—that the trial court "does not abuse its discretion in denying a motion for a continuance to secure substitute counsel where its inquiry into the motion reveals that no counsel stands *ready to make an unconditional appearance without*

delay." (Emphasis added.) *Ibeh*, 2026 IL App (1st) 240472-U, ¶ 26. *Ibeh* relied principally on *Segoviano*, but the supreme court there stated only that a trial court does not abuse its discretion in denying a motion for substitution of counsel in the absence of "*ready and willing* substitute counsel." (Emphasis added.) *Segoviano*, 189 Ill. 2d at 245. This language does not suggest that counsel must appear immediately and unconditionally.

¶ 94 Opinions issued both before and after *Segoviano*, most notably *Curry*, *do* contain language identical to, or substantively indistinguishable from, the language from *Ibeh* that we emphasized. See *Curry*, 2013 IL App (4th) 120724, ¶¶ 49, 51 (post-*Segoviano*); *People v. Hardin*, 299 Ill. App. 3d 33, 37 (1998); *People v. Childress*, 276 Ill. App. 3d 402, 411 (1995); *People v. Jones*, 269 Ill. App. 3d 925, 932 (1995); *People v. Langley*, 226 Ill. App. 3d 742, 747 (1992); *People v. Young*, 207 Ill. App. 3d 130, 134 (1990); *People v. Lewis*, 165 Ill. App. 3d 97, 103 (1988); *People v. Koss*, 52 Ill. App. 3d 605, 607-08 (1977) (all pre-*Segoviano*). However, the authority on which these statements rest is unsound.

¶ 95 In support of the language at issue, *Curry* and *Hardin* cited *only Koss*. *Curry*, 2013 IL App (4th) 120724, ¶ 51; *Hardin*, 299 Ill. App. 3d at 37. *Childress* cited only *Jones* (*Childress*, 276 Ill. App. 3d at 411), which, in turn, cited *Langley*, *Young*, and *Lewis* (*Jones*, 269 Ill. App. 3d at 932). In turn, *Langley*, 226 Ill. App. 3d at 747, cited only *People v. Free*, 112 Ill. App. 3d 449, 454 (1983), which, in turn, cited only *Koss*. *Young*, too, cited only *Koss*. *Young*, 207 Ill. App. 3d at 134. *Lewis* cited *Koss* (*Lewis*, 165 Ill. App. 3d at 103) and two other opinions, *People v. Elder*, 73 Ill. App. 3d 192, 198 (1979), and *People v. Williams*, 94 Ill. App. 3d 241, 255 (1981), both of which cited only *Koss*. But the basis for *Koss*'s creation of this requirement is nil.

¶ 96 In *Koss*, on the day set for trial, the defendant appeared in court with the public defender and moved for a continuance so that he could obtain private counsel, whom he named. *Koss*, 52

Ill. App. 3d at 607. The defendant told the trial court that, in about a week or less, he could raise enough money to retain the attorney. *Id.* The State objected to a continuance, as it was ready for trial. *Id.* "With patient forbearance, the court engaged in extended colloquy with the defendant on the subject and finally denied the motion as untimely." *Id.* The defendant was tried, convicted, and sentenced. *Id.*

¶ 97 On appeal, the defendant contended that the trial court abused its discretion in denying him a continuance to obtain private counsel. *Id.* at 606. The appellate court initially held that the defendant had forfeited the issue by failing to raise it in a posttrial motion. *Id.* at 607. It continued:

> "However, assuming for the moment that the defendant has not waived the point concerning counsel, the facts of the case still militate against [the] defendant.
>
> Undoubtedly, counsel of one's choice is a fundamental constitutional right, but like all constitutional rights, it is not without limits. In *People v. Solomon*, [24 Ill. 2d 586, 590 (1962)], the supreme court said, 'While an accused in a criminal case does indeed have the constitutional right to be represented by counsel of his own choosing, it is likewise true that such right may not be employed as a weapon to indefinitely thwart the administration of justice, or to otherwise embarrass the effective prosecution of crime.' *** The limitation on the right is the discretion of the trial judge.
>
> It is extremely difficult, if not impossible, to lay down any general rule ***. However, *an analysis of recent cases leads to the conclusion that if new counsel, specifically identified, stands ready, willing and able to make an unconditional entry of appearance instanter, a motion for continuance should be allowed. If any one of these requirements be lacking, the decisions indicate that a denial of the motion is not an abuse of discretion*." (Emphasis added.) *Id.* at 607-08.

¶ 98 The "recent cases" that the court identified in support of its "conclusion" were *People v. Solomon*, 24 Ill. 2d. 586 (1962), *People v. Hart*, 10 Ill. App. 3d 857 (1973) (*per curiam*), and *People v. Boston*, 89 Ill. App. 2d 49 (1967). See *Koss*, 52 Ill. App. 3d at 608. But these opinions hardly compel the conclusion, if, indeed, they support it at all.

¶ 99 In *Solomon*, the defendant was arraigned on robbery and armed robbery charges, the public defender was appointed, and the case was set for trial about two weeks later. *Solomon*, 24 Ill. 2d at 588-89. One day before trial, the defendant's attorney moved for a continuance so that the defendant, who had refused to cooperate in his defense, could have an opportunity to obtain counsel of his choice. *Id.* at 589. Counsel explained that the defendant had unsuccessfully appealed to his "religious sect" to provide counsel. *Id.* The trial court denied the motion, noting that the cause had been set for trial about two weeks earlier. *Id.* The trial proceeded, and the defendant was convicted. *Id.* The supreme court held that the trial court did not abuse its discretion in denying the motion for a continuance. *Id.* at 590. The court began by citing the principles guiding the review of decisions on requests for a continuance:

> "The granting of a continuance to permit preparation for a case, or for the substitution of counsel, necessarily depends upon the particular facts and circumstances surrounding the request, and is a matter resting within the sound judicial discretion of the trial court. [Citation.] Before a judgment of conviction will be reversed because of the denial of such a motion, it must appear that the refusal of additional time in some manner embarrassed the accused in preparing his defense and prejudiced his rights." *Id.* at 589-90.

The court remarked that, because the defendant refused to cooperate with counsel, the defendant "[could not] now be heard to complain that the denial of the motion for continuance embarrassed his defense or prejudiced his rights." *Id.* at 590. The court then acknowledged that a criminal

defendant has a constitutional right to counsel of choice. *Id.* The court added that the exercise of that right may not be used to delay or obstruct the administration of justice. *Id.* The court noted that the defendant could not locate or identify private counsel after having had a reasonable opportunity to do so. *Id.* at 590-91. Specifically, the court said:

> "[W]hen the motion for continuance was denied, [the] defendant's appeal to his religious group for aid had gone unheeded despite the passage of a reasonable length of time. It should be observed also that help was promised 'if' [the] defendant proved to be a member of the religious sect and 'if' there was a counsel available. Again considering that a reasonable time to make these determinations had been given, we cannot say that delay in the administration of justice should be permitted to rest on so speculative a basis." *Id.* at 591.

¶ 100 Nothing in *Solomon* justified the *Koss* court's use of it to lay down a rule that the right to counsel of one's choice requires that new counsel must be "ready, willing and able to make an *unconditional* entry of appearance *instanter*." (Emphases added.) *Koss*, 52 Ill. App. 3d at 607-08. *Solomon* does not use language remotely resembling the *Koss* rule. In fact, *Solomon* does not express any general requirement about the availability, preparedness, or willingness of substitute counsel. The case appears to have been decided on its own particular facts: when the defendant moved for a continuance, he had already had a reasonable opportunity to obtain counsel from his "religious sect" and his prospects of so obtaining counsel were vague. *Solomon*, 24 Ill. 2d at 589. Even if we presumed that *Solomon* meant to tacitly establish a general principle, we will not infer a principle that was broader than necessary to decide the case—especially if that means a greater restriction on a constitutional right. The defendant in *Solomon* had not found *any* potential substitute attorney. Thus, the broadest principle we could infer is that a defendant must identify a

ready, willing, and able substitute attorney. We cannot infer a requirement of *unconditional* and *immediate* availability because, in *Solomon*, no attorney was identified whose availability could be assessed. We conclude that *Koss* unwarrantedly added barriers to the exercise of the right to counsel of choice.

¶ 101 In *Hart*, the trial court initially appointed the public defender to represent the defendant. *Hart*, 10 Ill. App. 3d at 858. On the day set for trial, just over a month later, a private attorney moved for leave to substitute counsel, contingent on the grant of a 30-day continuance. *Id.* at 858-59. The trial court denied the motion because it was conditioned on the 30-day continuance. *Id.* at 859. The appellate court affirmed. *Id.* at 860. The court recited that "[a] granting of a continuance for substitution of counsel is a matter resting within the sound judicial discretion of the trial court." *Id.* at 859. The court then cited *Solomon* for the principle that "[a] conviction will not be reversed because of the denial of such motion unless it appears that the refusal of additional time in some manner embarrassed the accused in preparing his defense and prejudiced his rights."[9] *Id.* The court then reasoned:

> "Nothing in the record indicates that [the] defendant was prejudiced in any manner by the refusal to allow the continuance for the substitution of counsel. [The] [d]efendant never expressed dissatisfaction with the public defender. The public defender announced he was ready on the date set for trial and demonstrated his preparedness by conducting the defendant's defense very adequately." *Id.*

[9]It is now established that the denial of the right to counsel of one's choice is structural error that requires reversal regardless of whether it affected the result of the trial. *People v. Baez*, 241 Ill. 2d 44, 105 (2011).

¶ 102 Like *Solomon*, *Hart* lent no support to *Koss*'s rule. *Hart*'s language did not resemble the critical language in *Koss*. Critically, *Hart* cited *Solomon* (see *id.*) *without* mentioning the constitutional right to counsel of choice or addressing whether the defendant was exercising that right to thwart the administration of justice. Instead, the court addressed only whether the denial of the continuance prejudiced the defendant. Essentially, the court treated the appeal as involving a generic continuance issue.

¶ 103 Finally, in *Boston*, on the day set for trial, the prosecutor and the public defender both answered ready, but the defendant told the trial court for the first time "that he was going to get a lawyer; that he did not want to be represented by the lawyer assigned to him; that his auntie, who was not present, was going to get a lawyer for him." *Boston*, 89 Ill. App. 2d at 51. The trial court declined to allow the defendant to obtain new counsel. *Id.* The case went to trial, and the defendant was convicted and sentenced. *Id.* at 50-51.

¶ 104 The appellate court affirmed, rejecting the defendant's argument that he was denied his right to the counsel of his choice. *Id.* at 51-52. The court explained that, when the defendant asked for a time to get a new lawyer, there was "no substantial reason to believe that any arrangements for private counsel had been or would have been made through [the] defendant's auntie." *Id.* at 52. Moreover, there was no showing that the defendant was prejudiced by the public defender's representation of him. *Id.*

¶ 105 *Boston* cited *Solomon* (see *id.*(citing *Solomon*, 24 Ill. 2d 586)) but, like *Solomon*, did not express a general principle about the availability, preparedness, or willingness of substitute counsel. Also, as with *Solomon*, the broadest principle that can be inferred from *Boston* is that substitute counsel must be ready, willing, and able to enter an appearance. A requirement of *unconditional or immediate* availability cannot be inferred from *Boston*.

¶ 106 We conclude: there is no sound basis to hold that the trial court may deny a request to substitute counsel of choice merely because substitute counsel is not ready, willing, and able to enter an *unconditional* appearance *immediately*. *Segoviano* does not so hold. To the extent that *Curry* and other appellate court opinions do so hold, we do not follow them. To preclude an otherwise ready, willing, and able attorney from placing any conditions on appearing would unduly curtail the sixth amendment right to counsel. While the right to counsel of choice must not be used to thwart the administration of justice (*Solomon*, 24 Ill. 2d at 590), not all conditions will have such impact. Some conditions are eminently reasonable, such as the request for a continuance here, where defendant contributed minimally to the four-year delay and there was no reason to believe that Dosch would require more than the six months Peccarelli required for trial preparation.

¶ 107 To summarize our conclusions on appellate counsel's performance, we hold that, when counsel filed the direct appeal in this case, *Bingham*, *Adams*, and *Tucker* were all well-established precedents that, in conjunction with the April 19, 2012, proceedings (and the rest of the record on appeal) provided strong, alternative bases for claiming that that the trial court violated defendant's right to the counsel of his choice. First, the trial court failed to adequately inquire into the circumstances and purposes of defendant's request to substitute counsel to determine whether the request was merely a delaying tactic. We again stress that this is an independent and sufficient ground for relief. Second, *even if* it were permissible for the trial court to neglect an inquiry into defendant's substitution request if substitute counsel was not ready, willing, and able to enter an appearance for defendant, the trial court nonetheless erred here because Dosch was indeed ready, willing, and able, albeit on the reasonable condition that he be granted a continuance. Therefore, the postconviction court correctly concluded that appellate counsel's failure to challenge the denial of defendant's substitution request was unreasonable under *Strickland*'s performance prong.

¶ 108 We turn to *Strickland*'s prejudice prong.

¶ 109 2. Prejudice Prong

¶ 110 Having concluded that appellate counsel was unreasonable for failing to argue that the trial court denied defendant's right to counsel of his choice, we can readily conclude that counsel's unreasonable performance prejudiced defendant. The denial of the right to counsel of one's choice is structural error that requires reversal regardless of whether it affected the result of the trial. *People v. Baez*, 241 Ill. 2d 44, 105 (2011). Therefore, a reasonable probability exists that, if counsel had raised the issue on direct appeal, the appellate court would have reversed defendant's conviction. The postconviction court correctly concluded that defendant satisfied *Strickland*'s prejudice prong.

¶ 111 3. Argument Dilution

¶ 112 Finally, the State argues that appellate counsel exercised his reasonable professional judgment in deciding not to dilute his other claims by raising the counsel-of-choice claim. "Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983). Based on this piece of practical wisdom, the United States Supreme Court held that appellate counsel appointed to represent a criminal defendant has no "constitutional duty to raise every nonfrivolous issue requested by the defendant." *Id.* at 746, 754. While courts are to avoid "the distorting effects of hindsight" in applying the *Strickland* standard (*Strickland*, 466 U.S. at 689), appellate counsel's dilution assertion is not above critical evaluation. As our analysis of the facts and case law makes plain, the counsel-of-choice issue was not just a "nonfrivolous issue" but an issue with demonstrable merit, which appellate counsel would have realized if he had obtained the transcript

of the April 19, 2012, proceeding and researched the case law. The State does not attempt to persuade us that appellate counsel, in planning the appeal, could have reasonably determined that the counsel-of-choice issue was "weaker" than the arguments ultimately raised such that dilution was a credible possibility.

¶ 113 C. Closing Reflections

¶ 114 We close by stressing what our review of the case law on counsel-of-choice claims has revealed: many appellate decisions, misreading our supreme court's precedent, have erroneously curtailed the right to counsel of choice in two respects. First, these cases hold that the trial court need not inquire into the circumstances and purposes of a substitution request if substitute counsel is not ready, willing, and able to enter an appearance. Second, these cases hold that substitute counsel cannot be deemed ready, willing, and able to enter an appearance unless counsel is willing to enter the appearance immediately and without any conditions. Again, these restrictions misread the relevant authority and improperly curtail the right to counsel of choice. Courts should be mindful that neither restriction is appropriate.

¶ 115 The postconviction court properly held that defendant's appellate counsel rendered ineffective assistance. Therefore, we must affirm its judgment.

¶ 116 III. CONCLUSION

¶ 117 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 118 Affirmed.

¶ 119 JUSTICE SCHOSTOK, specially concurring:

¶ 120 Although I concur in the judgment, I write separately to express concern about the absence of a formal motion for the trial court to consider, and to emphasize that, although we conclude that

appellate counsel's performance was objectively unreasonable, counsel's position was supported by substantial authority at the time.

¶ 121 Here, the trial court was never presented with a formal motion. Although trial counsel informed the trial court on April 19, 2012, that defendant had retained Dosch, who would be unavailable until May 9, neither defendant, trial counsel, nor Dosch filed a motion to continue the trial. Trial counsel continued preparing for trial and did not seek to withdraw. This procedural posture distinguishes this case from several of the cases relied upon in our analysis. See, *e.g.*, *Adams*, 2016 IL App (1st) 141135, ¶ 4 (motion to continue); *Tucker*, 382 Ill. App. 3d at 919 (motion to withdraw); *Bingham*, 364 Ill. App. 3d at 644 (motion to continue).

¶ 122 We conclude that Dosch did not appear or request a continuance because doing so would have been futile in light of the trial court's statements that it would not, or was not inclined to, grant a continuance. Dosch's failure to appear may be understandable in light of those statements. Nonetheless, the trial court's final statement on the subject was that it was not "inclined to" grant a continuance, and the court expressly invited Dosch to appear on May 9. The record therefore does not establish that a properly presented request would necessarily have been denied. Had Dosch appeared and requested a reasonable continuance, the trial court might have granted the request after considering Dosch's preparedness, the length of the requested continuance, and the age of the case. Nor is it clear that the trial court would have required Dosch to proceed to trial unprepared rather than permit him to withdraw and allow defendant to proceed with existing trial counsel.

¶ 123 Nevertheless, because the trial court was informed that defendant had retained Dosch and that Dosch was available to appear on a specified date, I agree that the exchange should be construed as an implicit request for additional time to obtain substitute counsel. The better practice,

however, would have been for defendant, trial counsel, or Dosch to file a written or oral motion for a continuance; for trial counsel to move to withdraw; or for Dosch to enter an appearance accompanied by a specific request for additional time. A formal request would have required the trial court to address the issue on a developed record and would have provided a clearer basis for appellate review.

¶ 124 Finally, although our analysis requires us to hold that appellate counsel performed unreasonably, counsel's position was supported by existing authority. Appellate counsel testified that he believed the claim was unlikely to succeed because the record contained no motion for substitution, no motion for a continuance, no appearance by Dosch, and no trial court ruling denying either request. He also believed that a defendant seeking to exercise the right to counsel of one's choice was required to have substitute counsel that was ready to make an immediate and unconditional appearance. As explained in our disposition, several appellate dispositions supported that understanding. Although we decline to follow that authority here, its existence nonetheless supported appellate counsel's assessment of the claim. See *Strickland*, 466 U.S. at 689 (requiring courts to eliminate the distorting effects of hindsight and to presume that counsel's conduct falls within the wide range of reasonable professional assistance). The constitutional right at issue must ultimately control over appellate authority that is inconsistent with that right. But the existence of contrary authority still remains relevant to whether appellate counsel's performance was objectively unreasonable. Accordingly, although I concur in the judgment, I write separately to emphasize that the conclusion that appellate counsel performed unreasonably is a close one, particularly because counsel's position was supported by substantial authority existing at the time.

Decision Under Review:	Appeal from the Circuit Court of Kane County, No. 08-CF-1067; the Hon. Salvatore LoPiccolo Jr., Judge, presiding.
Attorneys for Appellant:	Jamie L. Mosser, State's Attorney, of St. Charles (Patrick Delfino, Edward R. Psenicka, and Pamela S. Wells, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	James E. Chadd, Christopher McCoy, and Fletcher P. Hamill, of State Appellate Defender's Office, of Elgin, for appellee.