No. 123505

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-15-0748
Plaintiff-Appellee,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois, No. 14 C 4685
LANARD GAYDEN,	)	The Honorable Kenneth J. Wadas,
Defendant-Appellant,	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
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POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant appeals the appellate court's judgment affirming his conviction for unlawful use of a weapon (UUW). No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant can meet his burden to prove ineffective assistance of counsel for failing to file a motion to suppress absent a factual record supporting the filing of such a motion.

2. Whether defendant forfeited his request to remand for an evidentiary hearing on his ineffective assistance claim, or whether, in contravention of established precedent, the Court should exercise its supervisory authority to provide defendant with yet another opportunity to raise his claim.

STATEMENT OF FACTS

In February 2014, police arrested defendant in his Chicago apartment. C6; R.P5-6, 9-10.[1] Defendant initially was held on criminal complaints alleging UUW, theft, and aggravated assault with a deadly weapon. C11-14.

[1] Citations to the reports of proceeding appear as "R.__"; the common law record as "C_;" defendant's brief and appendix as "Def. Br. __," and "A__," respectively; and defendant's appellate brief and petition for rehearing as "Def. App. Br. _" & "Def. Pet. Reh'g _," respectively. The People have requested certified copies of the appellate briefs pursuant to Rule 318(c), and will transmit them to this Court as soon as they are received from the First District Appellate Court.

The aggravated assault complaint alleged that defendant had threatened his girlfriend, Sierra Keys, with a shotgun, "telling her to pack up her belongings or she would be put in the trunk of [defendant's] car." C14. In March 2014, a grand jury returned an indictment charging defendant with a single count of UUW for possessing a shotgun with a barrel less than eighteen inches. C27.

Defendant's Trial

The case proceeded to a bench trial in January 2015. R.P1. Officer Patrick Glinski testified that around 12:40 p.m. on February 15, 2014, he responded to a report of a "man with a shotgun." R.P5-6. Glinski and his partner, Officer Mark O'Hara, arrived at the three-flat building, knocked on an exterior door, entered, and climbed the stairs to the third floor. R.P6-7.

As Glinski reached the third floor, he saw defendant standing "[r]ight in the threshold of the doorway" to his apartment, holding a shotgun. R.P7-8. Defendant was "no more than five feet" away. *Id.* Defendant looked in Glinski's direction, threw the shotgun on the ground, and slammed the door to his apartment. R.P8. Glinski first knocked on the door, then forced his way into the apartment. R.P8-9. Defendant was standing "right on the other side of the door . . . probably five or six feet away," and the gun lay nearby on the floor "where [defendant] threw it." R.P9. Other officers at the scene arrested defendant. R.P9-10.

Officer John Schaffer testified that he was dispatched to the building following a report of a person with a shotgun. R.P16. Schaffer entered

through a side door and proceeded to the third floor. R.P16. Other officers were already on the scene. *Id.* Once inside defendant's apartment, Schaffer unloaded and secured the shotgun, a "Remington 12-gauge" with "three live cartridges." R.P17. Schaffer transported the gun back to the police station, where he examined and inventoried it. *Id.* Schaffer measured the length of the shotgun's barrel as 17.5 inches, and he noted that the barrel had been "manipulated." R.P18. The gun was "uneven" and "gritty," and appeared "as if it was either sawed off or somehow manipulated from it's [*sic*] original state." *Id.*

Defendant's friend Shavonnetay Carpenter testified on his behalf. R.P22. Carpenter was in defendant's living room on the evening of February 15, 2014, with defendant, his children, Keys, and three other people.[2] R.P22-23. Carpenter did not observe any weapons. R.P25. Thirty or forty minutes after Carpenter arrived at defendant's apartment, three police officers entered without announcing themselves. R.P24-25. According to Carpenter, "[t]hey came in, they had guns in their hands aimed at [defendant], they had him on the ground, called him all types of names." R.P25-26. As police were arresting defendant, Carpenter left with the children; she did not observe any guns. R.P26-27.

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[2] The police officers testified that they arrived at the apartment in the early afternoon, around 12:50 p.m. R.P5, 15-16. The police report reflects the same arrest time. C6. However, Carpenter and defendant both testified that the encounter occurred at night, around 10:00 p.m. R.P22-23, 33. The record does not appear to shed any more light on this discrepancy.

Defendant testified that he, Carpenter, Keys, and others were gathered in his front room on the evening of February 15, 2014. R.P33. He heard a commotion in the hallway and walked over to the front door, which was closed but unlocked. R.P34. Defendant saw the doorknob turn, and the door begin to open; he tried to push the door closed, but he saw "a hand sticking out, blue sleeve color and a gun waving." *Id.* Defendant backed away from the door, and three officers entered. *Id.* One officer arrested defendant and escorted him out to a squad car a few minutes later. R.P36-37. Defendant testified that he neither possessed nor observed a gun that night. R.P34-35.

After hearing this testimony, the trial judge found that the police officers had given consistent and credible testimony, and he "did not believe the defense version of the case." R.P47-48. Accordingly, the judge found defendant guilty of UUW. *Id.* At a February 2015 hearing, the judge sentenced defendant to the minimum sentence of two years in prison and one year of mandatory supervised release, with credit for 356 days of pre-trial custody. R.Q7-8; C91.

Defendant's Appeal

Defendant appealed and, in a counseled brief filed in December 2016, he argued, among other things, that trial counsel was ineffective for failing to file a motion to quash arrest and suppress evidence (the shotgun) because no record evidence established probable cause or exigent circumstances

permitting the police to enter defendant's apartment. Def. App. Br. 12-28. Defendant requested a new trial or a remand for a suppression hearing, *id.* at 28, but did not request a hearing on his ineffective assistance of counsel claim or inform the court that he had already completely discharged his sentence (including MSR) in February 2016.

The appellate court affirmed. A18-31. Citing *People v. Veach*, 2017 IL 120649, and *People v. Bew*, 228 Ill. 2d 122 (2008), the appellate court held that "[t]he record in this case is devoid of information" needed to address defendant's ineffective assistance claim, and that the claim therefore must be raised in a postconviction proceeding. A25-27. Defendant then filed a petition for rehearing, in which he informed the court for the first time that he had discharged his sentence and argued that because he thus lacked standing to file a postconviction petition, the court had a "constitutional duty" to review the claim on the trial record. Pet. Reh'g 4-5. In a modified opinion upon denial of rehearing, the court held that because defendant had not informed the court that he was released from custody in his initial filings, it would not consider his new argument on rehearing. A13.

STANDARD OF REVIEW

This Court reviews de novo the questions of law raised on this appeal. *People v. Bew*, 228 Ill. 2d 122, 127 (2008).

ARGUMENT

The appellate court correctly held that defendant cannot meet his burden to prove ineffective assistance of counsel on this record. A11-13. He

points to no evidence that counsel performed deficiently or that a motion to suppress would have been meritorious. And his alternative argument — that the Court remand for an evidentiary hearing or exercise its supervisory authority to amend the Post-Conviction Hearing Act — is both forfeited and foreclosed by precedent.

I. Defendant Cannot Meet His Burden to Show Ineffective Assistance of Counsel Based on the Trial Record.

To establish ineffective assistance of counsel, defendant bears the burden of proving that (1) his attorney's performance fell below an objective standard of reasonableness, and (2) counsel's errors resulted in prejudice. *People v. Bailey*, 232 Ill. 2d 285, 289 (2009) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). In reviewing counsel's conduct, the Court must make "every effort . . . to eliminate the distorting effects of hindsight" and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. And to establish prejudice, where, as here, a defendant argues that counsel was ineffective for failing to seek suppression of evidence, he must show that a motion to suppress would have been meritorious and that there is a reasonable probability that, without the excluded evidence, the verdict would have been different. *Bailey*, 232 Ill. 2d at 289.

The record fails to support defendant's argument on either *Strickland* prong. *See Bew*, 228 Ill. 2d at 134-35 (denying ineffective assistance claim because defendant failed to meet burden of proof on direct appeal record).

First, nothing in the record suggests that his counsel, an experienced public defender, performed deficiently by failing to investigate a potential motion to suppress. To the contrary, on the day she was appointed, trial counsel made a motion for discovery. R.A2. The People filed a written discovery answer, representing that they would provide, among other things, documents showing the "process used to seize evidence." C30. And before proceeding to trial, defense counsel sought continuances to review additional discovery and speak to one of the People's witnesses. R.D2, F2. Defendant's argument that his counsel failed to investigate the admissibility of the People's key evidence thus is both contrary to the record and asks this Court to impermissibly flip *Strickland*'s presumption of reasonable professional assistance on its head.

Second, defendant cannot show prejudice because the record does not establish that a motion to suppress would have been meritorious. To prevail on a motion to suppress the gun evidence, defendant would have borne the burden of proving that it was obtained in an illegal search or seizure. *People v. Cregan*, 2014 IL 113600, ¶ 23. But at trial, the parties did not develop the record to explore Officer Glinski's reasons for entering the apartment, effectuating the arrest, and seizing the gun. The sole issue at defendant's trial was whether he knowingly possessed a shotgun with a barrel less than eighteen inches in length. C27 (citing 720 ILCS 5/24-1(a)(7)(ii)). To that end, prosecutors presented Glinski's testimony that he saw defendant holding a shotgun, and the gun was recovered from defendant's home moments later. A

second officer, Schaffer, testified that the barrel of the shotgun measured 17.5 inches.

The People had no reason to present evidence bearing on a suppression inquiry that defendant did not raise. Thus, to the extent that the record is undeveloped, any doubts must be construed against defendant. *People v. Hunt*, 234 Ill. 2d 49, 58 (2009) ("The appellant bears the burden of presenting an adequate record to support its claim of error. Any doubts stemming from an inadequate record will be construed against the appellant.") (internal citation omitted); *see also People v. Burnett*, 2019 IL App (1st) 163018, ¶¶ 14-15 (rejecting defendant's "attempt[ ] to spin the lack of probable cause into a conclusion that *there was* no probable cause") (emphasis in original). And to the extent that the record contains evidence bearing on a suppression inquiry, it tends to disprove rather than prove defendant's ineffective assistance claim. The available facts suggest that either the hot pursuit exception to the warrant requirement or exigent circumstances justified defendant's arrest and the police officers' entry into his apartment, meaning that any motion to suppress would have lacked merit.

First, the evidence suggests that a warrantless arrest would have been permissible under the "hot pursuit" exception outlined in *United States v. Santana*, 427 U.S. 38 (1976). In that case, the police had probable cause to arrest Santana for distribution of heroin as she was "standing in the doorway" of her home. *Id.* at 40, 42. When Santana "retreated into the

vestibule," the officers were justified in pursuing her so that the "act of retreating into her house could [not] thwart an otherwise proper arrest." *Id.* Here, as in *Santana*, Glinski observed defendant standing "[r]ight in the threshold of the doorway" of his apartment before retreating into his home. R.P7-8. Defendant appears to concede for purposes of this appeal that Glinski was lawfully present in the hallway of the apartment building. Def. Br. 19-20. Thus, under *Santana*, the only question is whether Glinski had probable cause for arrest while defendant stood in the doorway. The record suggests that he did, for UUW or even other crimes.

"Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Love*, 199 Ill. 2d 269, 279 (2002). The probable cause analysis is not "technical"; rather, it is governed by "'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Id.* (quoting *Brinegar v. United States,* 338 U.S. 160, 175 (1949)). When Glinski arrived outside defendant's apartment, he "saw the whole shotgun," and Schaffer testified that the barrel appeared to have been "sawed off or somehow manipulated." R.P8, 18. Illinois law forbids sawed-off shotguns with a barrel less than eighteen inches or a total length less than twenty-six inches. 720 ILCS 5/24-1(a)(7)(ii); *see also People v. Ross Williams*, 394 Ill. App. 3d 286, 292 (1st Dist. 2009) (sawed-off shotguns "deemed to be contraband *per se,*

having no legitimate purpose") (Theis, J.). Other courts have recognized that "the incriminating nature of a saw-off shotgun is 'immediately apparent.'" *United States v. Carmack*, 426 F. App'x 378, 383 (6th Cir. 2011) (collecting cases). *See also Texas v. Brown*, 460 U.S. 730, 742 (1983) (Probable cause requires only a reasonable belief "that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false.") (internal citation omitted). In addition, the fact that defendant fled into his apartment upon seeing Glinski provides additional support for a finding of probable cause. *See People v. Jones*, 196 Ill. App. 3d 937, 956 (1st Dist. 1990) ("It is well established that a defendant's flight from police can be considered as an additional factor in determining probable cause.").

Defendant speculates that police lacked probable cause for arrest on the UUW charge because "Glinski did not know, before he arrived on the scene, that [defendant's] shotgun was half-an-inch shorter than the law allowed, and could not have discerned this fact from his vantage point." Def. Br. 13. But Glinski was never asked what he observed or knew about the shotgun when he saw defendant. Glinski may have known facts that were not elicited at trial — indeed, the record supports such an inference. The officers testified only that they were responding to "a call of a man with a shotgun" in front of defendant's apartment building. R.P6, 16. But Glinski knew to enter the building and proceed to the third floor. R.P6-7. Perhaps

the dispatcher relayed additional information, or perhaps Glinski spoke with other witnesses on the scene. Once again, because defendant did not raise a suppression issue at trial, there was no reason for the People to develop evidence establishing probable cause for arrest. But the evidence that was developed pointed toward rather than against the existence of probable cause.

Morover, the records suggests that Glinski had probable cause to arrest defendant for other crimes as well. For example, defendant's girlfriend Sierra Keys signed a complaint alleging that defendant committed an aggravated assault by threatening her with the shotgun. C14; *see also* C8 (police report). Because defendant was not tried for assault, there was no reason for the People to present testimony about it. But there also is no reason to believe that the police lacked probable cause to arrest defendant for assault. Indeed, if the police were dispatched in response to a call from Keys, Glinski may have been told about the alleged assault, providing probable cause to arrest for that crime as well.

Further, beyond suggesting that the "hot pursuit" exception would apply here, the record also suggests that Glinski's entry into the apartment was justified by exigent circumstances. *Kentucky v. King*, 563 U.S. 452, 460 (2011) ("One well-recognized exception applies when 'the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.'")

(quoting *Mincey v. Arizona,* 437 U.S. 385, 394 (1978)). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). If, for example, Glinski believed that defendant had threatened Keys with the shotgun, he would have been justified in entering the apartment to protect her. But because defendant did not raise a suppression issue at trial, there was no reason to develop the record to explore Glinski's reasons for entering the apartment. The evidence that was developed nevertheless is consistent with application of the exigent circumstances exception to the warrant requirement.

Given all of the unanswered questions in the record and the presumption that counsel performed competently, defendant cannot meet his burden to establish that a motion to suppress the shotgun would have been meritorious. Accordingly, the appellate court correctly declined to address defendant's ineffective assistance claim and affirmed the conviction.[3]

II. Defendant Is Not Entitled to Additional Opportunities to Raise His Meritless Ineffective Assistance Claim.

Having failed to establish ineffective assistance of counsel on the current record — and without pointing to any potential source of new evidence outside the record — defendant asks the Court to provide him

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[3] Defendant asks, in the alternative, that the case be remanded to the appellate court to decide his claim on the merits. Def. Br. 22-23. But no remand is necessary. Because defendant bears the burden of proving ineffective assistance, *Bailey*, 232 Ill. 2d at 289, his failure to meet that burden on direct appeal precludes relief, *Bew*, 228 Ill. 2d at 134-35.

another opportunity to develop his claim. Defendant requests that this Court either (1) exercise its supervisory authority to amend the Post-Conviction Hearing Act to allow him to seek postconviction relief; or (2) remand his case to the circuit court for an evidentiary hearing. The Court should reject both requests.

A. The Court May Not Use Its Supervisory Power to Circumvent the Terms of the Post-Conviction Hearing Act.

Defendant's first argument is foreclosed by *People v. Carrera*, 239 Ill. 2d 241 (2010), in which this Court held that its supervisory power cannot be used to "expand the remedy set forth in the [Post-Conviction Hearing] Act." *Id*. at 258-59. This case is indistinguishable from *Carrera*. Carrera alleged that his trial counsel had been ineffective for failing to advise him about the immigration consequences of pleading guilty and that he learned of the error only when the Immigration and Naturalization Service later detained him. *Id.* at 243-44. But because Carrera had already discharged his sentence and was not imprisoned within the meaning of the Act, he no longer had standing to file a postconviction petition. *Id.* at 253. Although "sympathetic to [the] defendant's plight," this Court refused to exercise its supervisory authority, emphasizing that "defendant has a remedy to challenge his conviction, so long as the challenge is made while defendant is serving the sentence imposed on that conviction." *Id.* at 258-59.[4]

[4] Defendant cites *People v. Warr*, 54 Ill. 2d 487 (1973), for the proposition that this Court can "modify" the protections of the Post-Conviction Hearing

Like Carrera, defendant had available avenues to raise his ineffective assistance claim. He could have raised the issue and developed the record in the circuit court in advance of his direct appeal. *See People v. Robin Williams*, 215 Ill. App. 3d 800, 812 (1st Dist. 1991) (defendant may file post-trial motion seeking evidentiary hearing on ineffective assistance claim based on extra-record evidence); *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003) (in *Krankel* proceeding, circuit court may appoint new counsel to present ineffective assistance claim at hearing); *see also Crutchfield v. Dennison*, 910 F.3d 968, 976-78 (7th Cir. 2018) (describing Illinois's "flexible" procedure that permits defendants to raise ineffective assistance claims on direct appeal). Or he could have pursued postconviction relief while he was in custody, and while his direct appeal was pending. *People v. Charles Harris*, 224 Ill. 2d 115, 126-27 (2007).

For his part, defendant incorrectly argues that he was required to wait to file a postconviction petition until the appellate court decided on direct appeal that the record was inadequate. Def. Br. 24-25. He offers no support for this argument, and *Charles Harris* holds just the opposite. 224 Ill. 2d at 127 ("[P]ostconviction petitions must sometimes be filed before the termination of proceedings on direct appeal."). A defendant is free to raise

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Act. Def. Br. 33. But *Warr* held only that misdemeanants could not be completely denied a remedy for constitutional violations. *See Carrera*, 239 Ill. 2d at 258-59 (distinguishing *Warr*). Here, because the Act already provides a remedy, the Court cannot consistent with *Carrera* extend the time to file after a defendant discharges his sentence. *Id.*

the same ineffective assistance claim on direct appeal and in a postconviction petition, as long as the collateral attack is supported by new evidence outside the trial record. *People v. James Harris*, 206 Ill. 2d 1, 15 (2002). And defendant — not the appellate court — is in the best position to know whether extra-record evidence exists to support such a claim. Thus, contrary to defendant's claim, Def. Br. 25, no "hole" in Illinois procedure barred him from obtaining relief. Defendant simply failed to raise his ineffective assistance claim while he had the opportunities to do so, and under *Carrera*, he is not entitled to supervisory relief to remedy this failure of his own making.

Nor does defendant offer any compelling reason to overrule *Carrera*.[5] *See People v. Espinoza*, 2015 IL 118218, ¶ 30 ("Any departure from *stare decisis* must be specially justified, and prior decisions should not be overruled absent good cause or compelling reasons."); *People v. Clemons*, 2012 IL 107821, ¶ 9 ("[A] question once deliberately examined and decided should be closed to further argument, ensuring that the law will develop in a 'principled, intelligent fashion,' immune from erratic changes."). Defendant suggests that he was denied a meaningful opportunity to raise his claim because his appointed appellate counsel "was never in a position to provide

[5] *Carrera* presented a far more sympathetic case because Carrera faced deportation because of his counsel's alleged error. 239 Ill. 2d at 243-44. Defendant has finished serving his sentence and does not allege any similar collateral consequence of his conviction.

[him] with timely advice regarding the advisability of filing a petition for postconviction relief." Def. Br. 27-28. But defendant had the same access to counsel as any other prisoner. In drafting the Post-Conviction Hearing Act, "the legislature recognized that most postconviction petitions would be filed by pro se prisoners who lacked the assistance of counsel in framing their petitions." *People v. Suarez*, 224 Ill. 2d 37, 46 (2007) (citing *People v. Slaughter*, 39 Ill. 2d 278, 285 (1968)). An indigent defendant need only file a petition stating the "gist" of a constitutional claim, and counsel is appointed to investigate and properly present his claims. *People v. Hodges*, 234 Ill. 2d 1, 9-10 (2009); *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006).[6]

B. No Grounds Exist for Remanding the Case for an Evidentiary Hearing, and in Any Event, Defendant Forfeited Any Right to Such a Hearing.

The Court should reject defendant's request to remand his case for an evidentiary hearing. Def. Br. 30-32. First, defendant has never demonstrated that he is entitled to such a hearing. A court should permit additional record development on an ineffective assistance claim only after a defendant comes forward with new evidence and makes a "substantial showing that [his] constitutional rights have been violated." *People v.*

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[6] Because the Act provides for postconviction counsel, any backlog in processing direct appeals at the Office of the State Appellate Defender (OSAD) is irrelevant to this case. The potential legal issues raised by a backlog are properly addressed in litigation challenging the backlog itself, *see* Def. Br. 27 n.4 (describing litigation over OSAD backlog), rather than through case-by-case modifications to the Act, especially where, as here, the Court has not had the benefit of any record development on this topic.

Barrow, 195 Ill. 2d 506, 519 (2001). But both before this Court and in the appellate court, defendant has insisted that his ineffective assistance claim be decided based solely on the trial record. He has never suggested that he stands ready to present extra-record evidence that counsel acted unreasonably. And as explained above in Part I, nothing in the record overcomes the presumption that counsel provided constitutionally adequate representation, much less supports an inference that counsel performed deficiently.

Defendant cites *People v. Garrett*, 139 Ill. 2d 189 (1990), for the proposition that an "appellate court is empowered under [Illinois Supreme Court] Rule 615(b) to remand a cause for a hearing on a particular matter while retaining jurisdiction." Def. Br. 30. But he ignores *Garrett*'s central holding that no remand is warranted where the defendant failed to make the necessary *prima facie* showing in the inferior court. 139 Ill. 2d at 204-05 (denying request to remand for *Batson* hearing where defendant "failed to establish a *prima facie* case of purposeful State racial discrimination").

And this Court should overrule the appellate court's decision in *People v. Fellers*, 2016 IL App (4th) 140486, in which the appellate court remanded for an evidentiary hearing on an ineffective assistance claim because the defendant had discharged his sentence and postconviction relief was therefore unavailable to him. *Id.* at ¶¶ 35-36. The Fourth District's remedy impermissibly provides an end-run around the rule in *Carrera*. And in

contravention of the Post-Conviction Hearing Act, it gives defendants who have discharged their sentences *greater* rights than defendants who remain imprisoned because *Fellers* does not require that such defendants present new evidence or make a substantial showing of a constitutional violation. *See Barrow*, 195 Ill. 2d at 519 (no postconviction hearing absent "substantial showing" of constitutional violation); *People v. Steidl*, 177 Ill. 2d 239, 250-51 (1997) (no postconviction hearing on allegation of ineffective assistance absent presentation of extra-record evidence).

But even if *Fellers* were correctly decided, defendant is not entitled to a remand for a second reason: he forfeited any right to such a remedy by failing to request it in the appellate court. Defendant completely discharged his sentence in February 2016. When he filed his opening appellate brief ten months later, in December 2016, he made no mention of the fact that he was out of custody. *See* Def. App. Br. Nor did he cite *Fellers* in support of a request to remand for further factual development. *Id.* Rather, defendant argued, based only on the trial record, that the appellate court "should find counsel to have performed deficiently," reverse the conviction, and remand for a new trial. *Id.* at 28. To be sure, he also included an undeveloped request that, "[i]n the alternative, this Court should remand this cause for a hearing on a motion to suppress." *Id.* (citing Ill. S. Ct. R. 615). But to properly preserve an argument, a party must do more than make a vague and unsupported request for relief. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70

(2010); *see also People v. Nere*, 2018 IL 122566, ¶25 (citing Ill. S. Ct. R. 341(h)(7)) (denying undeveloped, one-sentence argument as forfeited).

After the appellate court declined to address the merits of defendant's ineffective assistance claim on the inadequate record before it (in compliance with this Court's decisions in *Veach*, 2017 IL 120649, and *Bew*, 228 Ill. 2d 122), defendant filed a petition for rehearing, in which he informed the appellate court for the first time that he had discharged his sentence. Pet. Reh'g 4. But even the rehearing petition failed to develop an argument for remanding the case. Defendant argued instead that the appellate court "has a constitutional duty to consider the suppression issue on the merits" in his direct appeal because postconviction relief was unavailable. *Id.* at 5. The court appropriately declined to consider this new argument on rehearing. A13.[7] *See* Ill. S. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.").

Defendant presented a developed argument for remand for the first time in his petition for leave to appeal to this Court. But "[i]t is well settled that arguments raised for the first time in this court are forfeited." *People v.*

[7] Defendant again made a perfunctory request, in the alternative, that the appellate court "retain jurisdiction and remand the matter for a suppression hearing." Pet. Reh'g 6. But he offered no further argument or authority to support his request.

Cherry, 2016 IL 118728, ¶ 30. Accordingly, the Court should decline defendant's request for a remand.

* * * *

Defendant's UUW conviction should be affirmed because he does not meet his burden to prove ineffective assistance of counsel. No evidence in this record suggests that his attorney acted unreasonably or that a suppression motion would have been meritorious. And defendant should not be permitted additional opportunities to raise his unsupported claim.

CONCLUSION

This Court should affirm the judgment of the appellate court.

June 14, 2019

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages contained in 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 twenty pages.

/s/ Jason F. Krigel
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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 14, 2019, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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