No. 129356

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- EARL E. RATLIFF, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 3-21-0194. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 19 CF 134. Honorable Cynthia M. Raccuglia, H. Chris Ryan, Jr., Judges Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

SANTIAGO A. DURANGO
Deputy Defender

ANNE R. BRENNER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE CASE

Earl E. Ratliff pled guilty to the offense of robbery and was sentenced to 15 years in the Department of Corrections.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether the trial court committed reversible error when it failed to properly admonish Earl Ratliff pursuant to Supreme Court Rule 401(a) at the time it accepted Ratliff's waiver of counsel.

STATEMENT OF FACTS

On April 23, 2019, Earl Ratliff was indicted on the offense of robbery, in violation of 720 ILCS 5/18-1(a), a Class 2 felony (C25). The indictment alleged that Ratliff "knowingly took property, being a purse containing a necklace, watch, two wallets, an Apple iPhone, United States Currency, and other miscellaneous items, from the person of Samantha Leone, by the use of force." (C25). The next day, the Honorable Cynthia M. Raccuglia presided over the defendant's arraignment (R3-7). The court noted that Ratliff had been charged with robbery, advised him that he had the right to counsel, and appointed the public defender to represent him "in these proceedings" after reviewing Ratliff's affidavit of assets and liabilities. (R4-5). The State noted its belief that Ratliff was eligible for Class X sentencing based on his prior criminal record (R4-5). The court told Ratliff that "probation is not an option as a Class X sentencing, and you could be sentenced between six and 30 years in the Department of Corrections with a mandatory supervised release period of three years." (R5).

On July 11, 2019, Ratliff appeared before the Honorable H. Chris Ryan, Jr., with counsel (R10). Defense counsel informed the court that Ratliff wished to proceed *pro se* and Ratliff confirmed this for the court (R10). The court inquired about Ratliff's age, education level, and whether he suffered from "any mental disabilities or incapacities" (R11). Ratliff reported that he went to school through 9th grade (R11). When Ratliff indicated that he was bipolar, the court clarified that it was asking about a "diagnosis of any type of mental illness that can incapacitate you, have you ever had that done?" (R11). Ratliff replied, "No." (R11). Asked whether he had ever been involved in the legal system, Ratliff replied, "No."

(R11). The court then explained to Ratliff that all pre-trial matters were his responsibility and that he would not be granted any special consideration by the court by virtue of being a *pro se* defendant (R10-12).

The court then asked Ratliff if he was being forced to represent himself (R13). Ratliff responded that he was forced because, "My attorney came and threaten[ed] me with 22 years." (R13). Defense counsel, Tim Cappellini, explained that it was his duty to convey to his client any offers received from the State (R13). When asked if he had any other reason to feel threatened, Ratliff responded, "They [are] not willing to hear my side of my story or be willing to defend me in my defense." (R13-14). The court determined that Ratliff was not being forced to proceed *pro se*, and informed Ratliff that he had an absolute right to proceed without counsel (R14).

Shortly thereafter, Ratliff filed a *pro se* Eighth Amendment challenge (R50-51). He conceded that he stole Leone's iPhone, but stated there was no evidence he took her purse or anything else contained in the purse (C50). As such, he argued that his punishment (or potential punishment) was "torturous" and "disproportionate to the crime in question" (C50-51).

Two weeks later, Ratliff filed a *pro se* motion to suppress (C53-56). He argued that there should have been surveillance footage of the incident in question because it occurred outside of a gas station, but no such footage had been produced (C53-54). As a result, Ratliff requested that the court enter an order quashing his arrest for lack of evidence (C55). Shortly thereafter, Ratliff sent a letter to Judge Ryan requesting that his case be stricken because 120 days had passed and Ratliff believed his speedy trial rights had been violated (C65-66). A day later, Ratliff wrote Judge Ryan another letter arguing the same (C63-64).

At a hearing on Ratliff's motion to suppress and speedy trial demand, the court found that Ratliff was essentially asking for evidence to be produced and that he was inappropriately using the motion to argue his innocence (R31). The court also found that any delay in proceedings could be attributed to Ratliff, and, therefore, Ratliff's right to a speedy trial had not been violated (R31-32). The court denied both motions (C67; R32).

One week later, Ratliff filed a *pro se* pleading indicating he disagreed with Judge Ryan's denial of his motion, and requesting that Judge Ryan "review the transcript of his case records" (C72). The next day, Ratliff wrote a letter to Judge Ryan asking about 120 days passing and his right to a speedy trial (C75-76). Less than one week later, Ratliff filed, *pro se*, a pleading entitled, "Motion of the State's Attorney Criminal Conflict of Authority," alleging that the prosecutor had threatened him, and naming Deputy Green as a witness (C77-79). As a result, Ratliff requested that his case be dismissed (C78).

The next day, Ratliff filed a *pro se* "Motion of Affirmative Dismissal," in which he alleged that the State's Attorney's Office was discriminating against him based on his race and that the State had acted unprofessionally (C80-83). At the hearing on his motion, Ratliff further alleged that: (1) Leone lied when she said he committed the offense; (2) he had paid Leone for the stolen iPhone; (3) there were no witnesses to the alleged offense; (4) there was no surveillance footage that recorded the event; (5) the court was wrong when it found that his speedy trial right had not been violated; and (6) the State had made threats towards him (R62-65). Thus, Ratliff requested that the court quash the robbery charge and release him (C83).

At the same hearing, the State informed Judge Ryan that it had shared with Ratliff a video of his interrogation at Mendota Police Department with certain portions involving Ratliff's criminal history redacted (R37). The court confirmed with Ratliff that he had received the video (R38). Additionally, the State indicated it had issued subpoenas on behalf of Ratliff for the victim's medical records from the ambulance service and the hospital where the victim sought treatment (R38). The matter was continued to October 3, 2019 (R42).

When the hearing resumed, the State informed the court it was still awaiting a response from the hospital on the victim's medical records and the identity of the victim's primary care physician (R52). Ratliff objected to the delay in the return of the victim's medical records (R52). The court explained to Ratliff that the delay was out of the court's hands and reminded him that the State had volunteered to assist him in acquiring the medical records (R53). On this same date, Ratliff filed a *pro se* petition arguing that there was no evidence against him, that the victim lied, that there were no witnesses, that there was no surveillance video from the gas station, that his speedy trial rights had been violated, that he paid the victim $50 in cash for the iPhone, and that his arrest had been malicious because the victim was lying (C91-93).

A hearing was held two weeks later to address Ratliff's five pending pleadings (R62). When asked to argue his first motion, Ratliff argued his innocence and requested that the court quash his arrest and dismiss the case (R61). The State responded that Ratliff was essentially providing a closing argument, which was inappropriate (R61). Ratliff responded with an argument that his speedy trial rights were violated and that he disagreed with the court's denial of his motion

to dismiss as a result (R62). Next, Ratliff argued that the State threatened him and Deputy Green witnessed the threat (R63). With regard to the allegedly stolen iPhone, Ratliff argued that he paid the victim $50 after she chose to sell the phone for gambling money, and Ratliff sold the phone in Freeport, Illinois, the following day (R63-64). Ratliff noted that there was a witness from the gas station who could testify as to his whereabouts on the date of the incident, citing his Tenth and Sixth Amendment rights (R64). Finally, Ratliff argued that he was being subjected to cruel and unusual punishment and requested that the judge quash his arrest and release him (R66).

The State suggested Ratliff call Deputy Green as a witness and Green was summoned (R67). Green testified that he vaguely recalled the prosecutor's statement to which Ratliff referred, but he did not understand the statement to be a threat, nor did he recall Ratliff saying he felt he had been threatened (R70-71). Asked if he had further argument, Ratliff commented that the victim was a lying criminal (R72).

The court reiterated that the speedy trial issue had been addressed, and that with each of Ratliff's filings the trial would continue to be delayed, and this delay was attributable to Ratliff (R73-74). The court found Ratliff had not been threatened by the State, and that there was no basis at this point to dismiss the charges (R74). The court denied Ratliff's motion to dismiss based on either speedy trial or other violations and subsequently denied Ratliff's motion to dismiss (C95-96).

On November 18, 2019, Ratliff's jury trial commenced with the parties completing *voir dire* (R83-187). The next day, Ratliff indicated that he wished to plead guilty to the underlying charge via a blind plea (R190). The court explained to Ratliff that he was charged with Class 2 felony robbery, but because of his

criminal history, he was to be sentenced as a Class X offender (R191). The court further conveyed to Ratliff that he faced a minimum term of imprisonment of 6 years and a maximum of 30 years (R191).

The State provided the factual basis (R194). Samantha Leone was in the video slot room at the Road Ranger gas station in Mendota, Illinois, at the same time as Ratliff (R194-95). Leone left and Ratliff followed her to her car (R194). Ratliff initially asked for a ride, and then he indicated that it was a holdup (R194). He then struck Leone in the face and attempted to remove her purse from her body (R194). Leone went to the ground and Ratliff continued to forcibly attempt to pull the purse, eventually getting it from her (R194-95). He then ran to his vehicle and drove away (R195). The next day, Ratliff sold Leone's cell phone at a place in Freeport (R195). When arrested, he gave a statement to police admitting that he had stolen Leone's possessions because of his drug addiction (R195). Ratliff entered, and the trial court accepted, his plea of guilty (C108; R197).

At a sentencing hearing held more than 30 days later, the court weighed factors in aggravation and mitigation (R214, 223-27). The court found that Ratliff's mental health and substance abuse were the underlying causes of the offense (R226). Ratliff was sentenced to a term of 15 years' imprisonment (C137; R227).

One week later, Ratliff filed a *pro se* motion to withdraw guilty plea (C144). Therein, he asserted: (1) the trial court failed to admonish him pursuant to Supreme Court Rule 604; (2) the trial court erred when it took into consideration other-crimes evidence and prior convictions; and (3) the trial court erred in not taking into consideration that Ratliff was not capable of representing himself, nor fit for trial, due to his mental health disorders, which he listed as: (a) bipolar disorder; (b) anxiety-depression; (c) suicidal; (d) hearing voices; (e) substance abuse; and (f) "incompetency" (C145-46).

The next month, a hearing was held to address Ratliff's post-sentencing motion (R241, 255). Ratliff essentially argued that the State's factual basis was not sufficient to sustain a conviction (R243-44), and the court determined to consider the motion to withdraw guilty plea as a motion to reconsider sentence based on what was being alleged (R245). Ratliff requested a continuance so he could hire private counsel to help him file appropriate post-plea motions (R244). Asked how long he would need to hire private counsel, Ratliff began contemplating bonding out before the court stopped him and informed him he could not bond out at this point (R245). Ratliff responded that he did not wish to hire counsel and the matter was continued to April 23 (R246).

Ratliff filed *pro se*, as post-trial motions, a motion to suppress evidence and a motion for a change of venue (C167-70). The trial judge (H. Chris Ryan, Jr.) recused himself from further participation in the case, and Judge Michael C. Jansz was assigned to preside over Ratliff's motion to change venue or substitute judge (C192). Judge Jansz addressed Ratliff's motion for a change of venue (R259-268). Ratliff argued that the State's Attorney had threatened him and that Judge Ryan had deprived him of a fair trial (R262). Judge Jansz denied Ratliff's motion for a change of venue (substitution of judge) on the basis that Ratliff did not present any evidence of prejudice on the part of Judge Ryan (R265).

Attorney Cappellini was reassigned to represent Ratliff at Ratliff's request (C204; R271). On October 30, 2020, Ratliff, through Cappellini, indicated that he did not wish to vacate his guilty plea, but requested that Judge Ryan reconsider his sentence (R284). Cappellini filed a motion to reconsider sentence (C218-19), which was heard and denied on May 7, 2021 (C221; R303-04). That same day, Ratliff filed a timely notice of appeal (C222). On November 12, 2021, an amended notice of appeal was filed (A-9).

On direct appeal, Ratliff argued, among other things, that he did not validly waive his right to counsel because Judge Ryan failed to admonish him pursuant to Illinois Supreme Court Rule 401(a), prior to accepting his waiver of counsel. The Appellate Court, Third District, with one justice dissenting, affirmed (A-10). Conceding that "immediately before accepting the defendant's waiver," the circuit court "failed to advise the defendant of the nature of the charge, the possible sentencing range, and that he had a right to counsel, including appointed counsel if he was indigent," the majority nonetheless held that the trial court's admonishments substantially complied with Rule 401(a). *People v. Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. The majority of the court went on to state:

> Despite these omissions, the record shows that the court stated the potential minimum and maximum sentencing range for the offense less than three months before the plea. The defendant also cannot claim that he was unaware of the nature of the charge, as he demonstrated through his motions that he knew what the charge against him was for. Any deficiency in the court's admonition regarding the nature of the offense and sentencing was therefore harmless. See *People v. Roberts*, 27 Ill. App. 3d 489, 493 (1975).

Ratliff, 2022 IL App (3d) 210194-U, ¶ 14. The court further found that because it could not find that Ratliff's waiver was rendered unknowing or unintelligent by the court's failure to provide an adequate Rule 401(a) admonishment, the circuit court's admonishment did not amount to plain error. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 15.

The dissenting justice observed that Judge Ryan "made admirable efforts to dissuade defendant from the unwise decision to represent himself" but that "the court admonished defendant about *everything except what is required by Supreme Court Rule 401*–the crime with which he was charged, the applicable sentencing range, and the practical consequences of an unsuccessful defense." *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 21 (McDade, J., dissenting) (emphasis added).

Ratliff filed a petition for rehearing on December 23, 2022. In the petition, Ratliff argued the majority's opinion was contrary to well-established precedent establishing that missing Rule 401(a) admonishments concerning the right to counsel may not be supplied by admonishments given several months earlier, and because *Roberts*, 27 Ill. App. 3d 489 (1975), upon which the majority relied to support its finding - that any deficiency in the circuit court's admonitions regarding the nature of the offense and sentencing was harmless – involved a prior verison of Rule 401 that pertained to waiver of indictment rather than waiver of counsel. The appellate court denied the petition for rehearing on January 18, 2023 (A-17). Ratliff filed a petition for leave to appeal in this Court on January 31, 2023. This Court granted leave to appeal on March 29, 2023.

The trial court committed reversible error when it failed to properly admonish Earl Ratliff pursuant to Supreme Court Rule 401(a) at the time it accepted Ratliff's waiver of counsel.

STANDARD OF REVIEW

Whether the trial court complied with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) is to be reviewed *de novo*. *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 13.

ARGUMENT

The United States Constitution guarantees criminal defendants the right to assistance of counsel " 'at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected.' " *People v. Baker*, 92 Ill. 2d 85, 90 (1982) (quoting *Mempa v. Rhay*, 389 U.S. 128, 134 (1967)). This right applies to all critical stages of the prosecution, including pretrial, trial, and sentencing. *People v. Allen*, 220 Ill. App. 3d 772, 781 (1st Dist. 1991) (citing *U.S. v. Gouveia*, 467 U.S. 180 (1984)).

A defendant also has the corresponding right to self-representation and may proceed *pro se*, provided he knowingly and intelligently waives counsel. *Faretta v. California*, 422 U.S. 806, 819, 835 (1975). The right to counsel, however, is fundamental and cannot be waived lightly. *People v. Langley*, 226 Ill. App. 3d 742, 749 (4th Dist. 1992); *People v. Haynes*, 174 Ill. 2d 204, 235 (1996). Waiver of counsel must be "clear and unequivocal, not ambiguous." *People v. Burton*, 184 Ill. 2d 1, 21 (1998). If a trial court accepts a defendant's waiver of counsel that is not knowing and intelligent, the trial court denies the defendant a substantial right and commits reversible error. *People v. Jiles*, 364 Ill. App. 3d 320, 330 (2d Dist. 2006).

Because the trial court failed to admonish Ratliff pursuant to Illinois Supreme Court Rule 401(a), prior to accepting Ratliff's waiver of counsel, Earl Ratliff did not validly waive his right to counsel. As a consequence, the validity of Ratliff's guilty plea was compromised. Therefore, this Court should vacate Ratliff's guilty plea and remand this matter for further proceedings.

Compliance with Rule 401(a)

Illinois Supreme Court Rule 401(a) sets forth the proper procedure for a trial court to follow in accepting a defendant's waiver of counsel. In Rule 401(a), this Court created a simple bright line requirement: before a defendant can effectively waive his right to counsel and proceed *pro se*, a trial court must inform the defendant, in open court, of: (1) the nature of the charges; (2) the minimum and maximum sentences he faces if convicted including any enhanced penalties; and (3) his right to have counsel appointed for him if he is indigent. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). "Compliance with Rule 401(a) is *required* for an effective waiver of counsel." *People v. Campbell*, 224 Ill. 2d 80, 84 (2006) (Emphasis added); *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Supreme Court rules are not mere suggestions; "they have the force of law, and the presumption must be that they will be obeyed and enforced as written." *Campbell*, 224 Ill. 2d at 87.

Reviewing courts must "indulge in every reasonable presumption against waiver of the right to counsel." *People v. Burton*, 184 Ill. 2d 1, 23 (1998), *quoting Brewer v. Williams*, 430 U.S. 387, 404 (1977); *see also People v. Langley*, 226 Ill. App. 3d 742, 749 (4th Dist. 1992) (the right to counsel is "so fundamental it should not be lightly deemed waived"). When an indigent defendant expresses a desire to proceed without counsel, he is entitled to be advised of his right to counsel, and the other information dictated by Supreme Court Rule 401(a). *People v.*

Campbell, 224 Ill. 2d 80, 87 (2006). The purpose of this rule is to ensure that a waiver of counsel is knowingly and intelligently made. *Campbell*, 224 Ill. 2d at 84.

Substantial compliance with Rule 401(a) is sufficient if the record shows that the defendant knowingly and intelligently waived counsel. *People v. Coleman*, 129 Ill. 2d 321, 333 (1989). But in *Coleman*, the imperfect 401(a) admonishment involved the circuit court misstating the minimum sentence defendant Coleman faced as 20 years' imprisonment, when a prior murder conviction subjected Coleman to a minimum of natural life. *Coleman*, 129 Ill. 2d at 331-32. Here, the Appellate Court reasoned that substantial compliance with Rule 401(a) occurred where the trial court stated the potential minimum and maximum sentencing range for the offense nearly three months before Ratliff chose to proceed *pro se*. *People v. Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. Citing *People v. Roberts*, 27 Ill. App. 3d 489, 493 (3d Dist. 1975), the Appellate Court found that any deficiency in the court's admonitions regarding the nature of the offense and sentencing was harmless. *Ratliff*, 2022 IL App (3d) 210194-U. Further, the Appellate Court reasoned that Ratliff's exercise of his right to counsel post-trial established that Ratliff was aware of and willing to assert his right to counsel. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. To be clear, Ratliff indicated at a post-trial status hearing that he would like additional time so that he could bond out and hire private counsel to assist him with post-conviction pleadings despite the fact that his bond had been revoked and he had been committed to the custody of the Department of Corrections (R244-245). Ratliff's grave misunderstanding of court procedure here is consistent with the deficient level of self-representation he maintained throughout his case.

The Appellate Court was wrong to rely on *Roberts* both because that case did not relate to waiver of counsel and because caselaw since then has established that admonishments must be given at the time the court learns a defendant wishes to waive counsel, when the risks involved are fresh in that defendant's mind, and not several months before. *Jiles*, 364 Ill. .App. 3d at 329. Therefore, Ratliff's waiver was not valid and this Court should reverse Ratliff's conviction and remand for a new trial.

Additionally, the Appellate Court majority relied on *Haynes* to establish that strict compliance with Rule 401(a) is unnecessary where the record indicates the defendant's waiver of counsel was knowing and voluntary. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 13. The *Haynes* Court found substantial compliance where the defendant was admonished in strict accordance with Rule 401(a) at the time he indicated he wished to proceed *pro se*. *Haynes*, 174 Ill. 2d at 238-239. Defendant Haynes was subsequently ordered to undergo a fitness examination which found him fit to stand trial. *Id*. After the fitness determination, when defendant Haynes reiterated his desire to represent himself in response to the court's inquiry, the court did not renew the 401(a) admonitions. *Id*., at 240. Thus, the substantial compliance with Rule 401(a) found in the *Haynes* case actually involved compliance with the rule *at the time Haynes waived his right to counsel* even though it was not provided contemporaneously with the defendant's post-fitness waiver verification.

Additionally, the Appellate Court majority's reliance upon *Roberts* was erroneous. *Roberts* concerns an earlier version of Rule 401 which involved waiver of indictment, not waiver of counsel. *Roberts*, 27 Ill. App. 3d at 493, citing Ill. Rev. Stat. 1973, Ch. 110A, Sec. 401. Thus, *Roberts* provides no guidance concerning the waiver of the right to counsel because *Roberts* (who was represented by counsel

throughout the trial proceedings) challenged his conviction on the grounds that the trial court failed to admonish him about waiver of the indictment. *Roberts*, 27 Ill. App. at 493. The Committee Notes to Rule 401 make clear that, at the time of Roberts' trial in 1973, Rule 401(b) referred to waiver of the indictment. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Thus, the *Roberts* Court's conclusion that "the error in failing to admonish defendant concerning Rule 401(b)(1) and (2) is to be considered harmless" is, contrary to the Appellate Court majority's finding, inapplicable to Ratliff, because Rule 401(b) did not relate to the fundamental, constitutional right to counsel, but instead concerned the waiver of the indictment. *Roberts*, 27 Ill. App. 3d at 493, citing Ill. Rev. Stat., 1973, ch. 110A, sec. 401.

Critically, where the trial court does not substantially comply with Rule 401(a), the reviewing court need not determine whether the defendant's waiver of counsel was knowing and intelligent. *Baker*, 94 Ill. 2d at 137. "There can be no effective waiver of counsel without proper admonitions." *Langley*, 226 Ill. App. 3d at 749. Notably, Rule 401(a) admonishments must be provided "*at the time the court learns that a defendant chooses to waive counsel*, so that the defendant can consider the ramifications of such a decision." *Jiles*, 364 Ill. App. 3d at 329 (Emphasis added); see also *People v. Koch*, 232 Ill. App. 3d 923, 927-28 (4th Dist. 1992).

In light of *Baker*, *Koch*, *Langley*, *Haynes*, and *Jiles*, the instant trial court did not comply with the requirements of Rule 401(a). On July 11, 2019, Ratliff appeared before the court with counsel. (R9-10). Defense counsel expressed to the court that Ratliff wished to proceed *pro se* and Ratliff confirmed that he wished to represent himself. (R10). The court then asked Ratliff a series of questions, which included an inquiry into his age, education level, and mental and physical

health. (R11). The court explained to Ratliff that all pre-trial matters were his responsibility and that he would not be granted any special consideration by the court due to his self-representation. (R10-12). As the dissent noted in the Appellate Court, "the court admonished defendant about everything except what is required by Supreme Court Rule 401–the crime with which he was charged, the applicable sentencing range, and the practical consequences of an unsuccessful defense." *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 21 (McDade, J., dissenting). Because the court did not explain to Ratliff any of the admonitions enumerated in Rule 401(a), Ratliff never validly waived his right to counsel.

The Appellate Court majority conceded that "immediately before accepting the defendant's waiver," the circuit court "failed to advise the defendant of the nature of the charge, the possible sentencing range, and that he had a right to counsel, including appointed counsel if he was indigent." *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 14. The Appellate Court majority's determination that admonitions given nearly three months before Ratliff requested to proceed *pro se* sufficiently complied with Rule 401(a) was contrary to numerous cases that recognize a *pro se* defendant cannot be expected to remember those admonitions several months later. This is particularly so because at the earlier hearing, Ratliff was not requesting waiver of counsel. See *Jiles*, 364 Ill. App. 3d at 329-30 ("Defendant cannot be expected to rely on admonishments given months earlier, when he was not requesting to waive counsel"); *People v. Stoops*, 313 Ill. App. 3d 269, 275 (4th Dist. 2000) (Defendant "cannot be expected to rely on admonishments given several months earlier, at a point when he was not requesting to waive counsel"); *People v. Langley*, 226 Ill. App. 3d 742, 749–50 (4th Dist. 1992) ("A defendant cannot be expected to rely only on the admonishments given to him several months earlier—at a point when defendant was not requesting to waive counsel.").

If, as in *Jiles*, a period of one week more than three months is too long to expect a defendant to recall admonishments about a subject he was not contemplating at that time, Ratliff respectfully submits that he could not be expected to recall the admonishments given to him more than two-and-one-half months before he asked to waive his right to counsel. Ratliff's demonstrated inability to grasp the full breadth of the court proceedings in which he was engaged highlights the need for timely Rule 401(a) admonishments to him. Throughout the proceedings, Ratliff consistently presented untimely arguments which he had either already forfeited or would prematurely forfeit in frustration. For instance, he claimed his speedy trial rights had been violated while filing numerous frivolous pleadings. Further, he wished to challenge the State's evidence but entered a blind plea. Given that the purpose of Rule 401(a) is to "proactively impart to the defendant the requisite knowledge for a valid waiver of counsel," requiring Ratliff to remember admonishments provided at the initial stages of trial - more than two months earlier, in this case - and then be able to connect those admonishments to his later decision to waive counsel, is unrealistic and defeats the purpose of this Court's rules. *People v. Bahrs*, 2013 IL App (4th) 110903, ¶ 55.

Ratliff was Ill-Equipped to Proceed Pro Se

Due to the trial court's noncompliance with Rule 401(a), Ratliff never validly waived his right to counsel. The purpose of this rule is to ensure that a waiver of counsel has been knowingly and intelligently made. *Campbell*, 224 Ill. 2d at 84. Here, Ratliff went to secondary school through 9th grade, and he had a lengthy history of alcohol and drug use that severely impacted his well-being (R11, R91). Ratliff believed he was forced to proceed *pro se* because his appointed attorney shared with him that the State had offered a 22-year sentence, a standard attorney-

client communication that Ratliff perceived as a threat (R13-14). Ratliff did not believe his attorney was interested in mounting a defense on his behalf and, therefore, decided he must proceed *pro se* (R13-14). Ratliff then proceeded to submit frivolous motions and advance superfluous arguments throughout pre-trial and post-plea proceedings, often redundantly so. (C50-51, 53-55, 63-65, 80-83, 167-70; R25-34, 62-74, 243-44).

Specifically, Ratliff demonstrated that he wished to challenge the State's evidence, repeatedly advancing the claim that the State lacked sufficient evidence to convict him (C50-51, 53-55, 81-83, 91-93, 118, and 119-121). Nonetheless, Ratliff pled guilty to the charge of robbery between the fourth and fifth of six pleadings he filed disputing the State's evidence (C107). Ratliff also showed that he wished to subpoena both a closed circuit security video and a witness from the Road Ranger gas station where the offense allegedly occurred, but did not know how to do so (C54, 82, 91-93, and 118). With the voluntary assistance of the prosecutor, Ratliff subpoenaed the victim's medical records to dispute her claim that he assaulted her in the course of the robbery (R53). Yet when the providers failed to respond to the subpoena, Ratliff failed to request an order to compel from the court. In the midst of his frivolous motions, Ratliff repeatedly asserted that his speedy trial rights had been violated, failing to appreciate that the delays in the case were attributable to him (C63-64, 65-66, 71-74, 82, and 92). Additionally, Ratliff showed that he was interested in negotiating a guilty plea (C112-113, 115-116, 117, 118, 124-125, 126-127, and 132-133). However, each of his attempts at negotiation was directed towards the judge instead of the prosecutor, and all seven of these attempts were presented after he had already pled guilty (C107). Ratliff represented himself during *voir dire*, and then closed the day in court by approaching the State about entering a blind plea. (R190).

Not once during the course of pre-trial matters did the court ensure that Ratliff understood that he could request the assistance of a public defender, nor was Ratliff reminded of the severity of his charges. Finally, Ratliff requested a post-plea continuance so that he could come up with the funds to bond out and hire a private attorney after he had been convicted and ordered to remain in continuous custody (C137; R244-45). Ratliff's arguments in both court and various filings evidenced his grave misunderstanding of the trial process. Clearly, the instant case was not one of those rare situations where the failure to properly admonish the defendant could be excused because the defendant demonstrated a certain level of legal sophistication. See *People v. Redmond*, 2018 IL App (1st) 151188, ¶ 26.

At no time prior to Ratliff's entry of a blind plea did the trial court cure its failure to comply with Rule 401(a). This means the true purpose of Rule 401(a) was not served in that Ratliff clearly did not recognize the gravity of his decision to waive his right to counsel. Consequently, Ratliff's unenforceable waiver of counsel and subsequent self-representation resulted in an unnecessary tax on judicial economy considering the time and resources exhausted to address Ratliff's numerous meritless or untimely claims. Accordingly, because Ratliff was not properly admonished in the manner this Court requires, his guilty plea should be vacated and this matter remanded for further proceedings.

Plain Error

Ratliff anticipates that, as it did in the court below, the State might argue that Ratliff, acting *pro se*, forfeited the argument that the court erred by failing to advise him of his right to counsel before he waived that right. Ratliff's failure

to lodge a contemporaneous objection to the trial court's lack of admonishments must not be held against him on appeal, however. See *People v. Stewart*, 2023 IL App (1st) 210912, ¶ 40 ("We think it would be absurd to require a defendant to preserve the denial of his right to counsel by objecting to the absence of admonishments meant to safeguard that same right"); and *People v. Herring*, 327 Ill. App. 3d 259, 261 (4th Dist. 2002) ("This court has consistently held that the right to counsel is so fundamental that we will review as plain error a claim that there was no effective waiver of counsel although the issue was not raised in the trial court."). Whether a defendant preserved this issue is irrelevant because the absence of an effective waiver of counsel has consistently been treated as a serious error that warrants second prong plain error review. *Stewart*, 2023 IL App (1st) 210912, ¶ 41.

Notably, the appellate court majority held that this issue was subject to plain error review because the right to counsel is so fundamental that the failure to properly issue Rule 401(a) admonishments amounts to a reversible second-prong plain error, citing *People v. Brzowksi*, 2015 IL App (3d) 120376, ¶ 42. *Ratliff*, 2022 IL App (3d) 210194-U, ¶ 11. Ratliff requests that this Court review this issue for plain error. Under the plain error rule, a reviewing court may excuse the procedural default of an issue where "a clear or obvious error occurred" and either: (1) the evidence was closely balanced; or (2) the error was so serious that it affected the integrity of the trial. *People v. Sebby*, 2017 IL 119445, ¶ 48. "Deprivation of the Sixth Amendment right to counsel is a classic area of plain-error review." *People v. Vernon*, 396 Ill. App. 3d 145, 150 (2d Dist. 2009). Second-prong plain error is implicated in this case. See *People v. Black*, 2011 IL App (5th) 080089, ¶ 24 ("The right to counsel is fundamental, and the purported failure of the court to adhere

to the requirements of Rule 401(a) should be reviewed as a matter of plain error"). Accordingly, the trial court's failure to admonish Ratliff in accordance with Rule 401(a) should be reviewed under the second-prong of the plain-error doctrine.

In sum, the trial court failed to comply with the requirements of Rule 401(a), which rendered any waiver of counsel by Ratliff invalid. Considering that this error undermined the integrity and fairness of his guilty plea, Ratliff respectfully requests that this Honorable Court reverse the decision of the Appellate Court, hold that the trial court committed plain error when it failed to substantially comply with Rule 401(a), vacate Ratliff's guilty plea, and remand this case for a new trial.

CONCLUSION

For the foregoing reasons, Earl E. Ratliff, defendant-appellant, respectfully requests that this Honorable Court hold that the trial court committed plain error when it failed to substantially comply with Rule 401(a), reverse the decision of the Appellate Court, vacate Ratliff's guilty plea, and remand this case for a new trial.

Respectfully submitted,

SANTIAGO A. DURANGO
Deputy Defender

ANNE R. BRENNER
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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, is 22 pages.

/s/Anne R. Brenner
ANNE R. BRENNER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Earl E. Ratliff No. 129356

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
LASALLE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

EARL E. RATLIFF
Defendant/Respondent

Reviewing Court No: 3-21-0194
Circuit Court/Agency No: 2019CF000134
Trial Judge/Hearing Officer: H. CHRIS RYAN, JR.

E-FILED
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Matthew G. Butler, Clerk of the Court
APPELLATE COURT 3RD DISTRICT

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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PEOPLE OF THE STATE OF ILLINOIS
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v.

EARL E. RATLIFF
Defendant/Respondent

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IN THE CIRCUIT COURT OF THIRTEENTH JUDICIAL CIRCUIT

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	**AC No. 3-21-0194**
-vs-	)	No. 19 CF 134
EARL E. RATLIFF, Defendant-Appellant.	)	

AMENDED NOTICE OF APPEAL

(1)	Court to which appeal is taken:	Appellate Court of Illinois, Third Judicial District
(2)	Name of appellant and address to which notices shall be sent:	Earl E. Ratliff Register No. N51737 Hill Correctional Center P. O. Box 1700 Galesburg, IL 61402
(3)	Name and address of appellant's attorney on appeal:	Thomas A. Karalis Office of the State Appellate Defender Third Judicial District 770 E. Etna Road Ottawa, IL 61350 (815) 434-5531
(4)	Date of judgment or order:	May 7, 2021
(5)	Offense of which convicted:	robbery
(6)	Sentence:	15 years' imprisonment

/s/ Thomas A. Karalis
THOMAS A. KARALIS
Deputy Defender

2022 IL App (3d) 210194-U

Order filed December 2, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
	)	La Salle County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-21-0194
v.	)	Circuit No. 19-CF-134
	)	
EARL E. RATLIFF,	)	Honorable
	)	Howard C. Ryan Jr.,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Hauptman concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: The trial court's admonishments substantially complied with Illinois Supreme Court Rule 401(a).

¶ 2 The defendant, Earl E. Ratliff, appeals from his conviction for robbery, arguing that the court failed to comply with the admonishment requirements of Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before he waived his right to counsel.

¶ 3 I. BACKGROUND

¶ 4 The State indicted the defendant, Earl E. Ratliff, for robbery (720 ILCS 5/18-1(a) (West 2018)). The defendant first appeared in court on April 24, 2019, for arraignment. The court advised the defendant of the charge and possible penalties. The defendant indicated he wanted an attorney, and the court appointed counsel for the defendant.

¶ 5 On July 11, 2019, defense counsel appeared on behalf of the defendant and indicated that he wished to represent himself. The court questioned the defendant regarding his level of education, whether he had any mental disabilities, and if he had ever been involved in the legal system. The defendant responded that he had finished the ninth grade and had "a part of bipolar." Although the defendant stated that he had not been involved in the legal system, his criminal history showed multiple felony convictions. After questioning the defendant, the court provided the following admonishments:

> "Okay. Now, you have to understand something. Representing you on the particular matter in this is not simply a matter of stand up, tell your side of the story. There's procedures and protocol that have to be followed. That gentleman right there is here to convict you. He's not here to help you. I'm not here to help you either. I just make sure you get a fair trial. *** You're going to [be] held responsible for any type of discovery cutoffs, rulings, filings of motions. They are going to be you[r] responsibility. ***
>
> All right. Also, when you have an attorney representing you, they have freedom of access and movement and research availability to, you know, any type of matters that may need to be involved in. Also, you have the absolute right to represent yourself. I don't care one way or the other. If you discharge your lawyer, any claim about my lawyer didn't do something claim in the future is

> gone because you cannot claim ineffective because you were representing yourself."

The defendant stated that he understood the court's admonishments and that he still wanted to represent himself. The court granted the defendant's request and discharged counsel.

¶ 6 The defendant filed several motions, including motions asking to suppress evidence, alleging a speedy trial violation, seeking the dismissal of the case, and accusing the prosecutor of threatening him. The court held hearings on the defendant's motions and denied them all.

¶ 7 On November 18, 2019, a jury was selected for trial. The next day, the defendant indicated that he wished to enter a blind plea. The court admonished the defendant of the charge and sentencing range. The defendant stated that he understood and wanted to plead guilty. The court accepted the plea finding it to be knowing and voluntary. The court sentenced the defendant to 15 years' imprisonment.

¶ 8 The defendant filed a motion to withdraw his guilty plea. At a hearing on the defendant's motion, the court stated that it was essentially a motion to reconsider instead of to withdraw his plea. The defendant requested the assistance of counsel, and counsel was subsequently appointed.

¶ 9 Defense counsel indicated to the court that the defendant did not want to proceed with a motion to vacate his guilty plea but wanted a new motion to reconsider filed. Once counsel filed a new motion to reconsider, the court held a hearing on it. Defense counsel argued the court gave too much weight to the defendant's criminal history and not enough weight to his mental health and substance abuse issues. The court denied the motion, and the defendant appeals.

¶ 10 II. ANALYSIS

¶ 11 On appeal, the defendant argues that his conviction should be reversed because the court failed to comply with the admonishment requirements of Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before he waived his right to counsel. The defendant forfeited review of this issue because he neither objected to the court's admonishment nor raised the issue in his postplea motions. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, this issue is subject to plain error review because the right to counsel is so fundamental that the failure to properly issue Rule 401(a) admonishments amounts to a reversible second-prong plain error. See *People v. Brzowski*, 2015 IL App (3d) 120376, ¶ 42. The first step in plain error review is to determine whether a plain error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). "The word 'plain' here is synonymous with 'clear' and is the equivalent of 'obvious.' " *Id.* at 565 n.2.

¶ 12 For a court to accept a plea of guilty entered by a self-represented defendant, the defendant must make a valid waiver of his right to counsel. See *People v. Jones*, 36 Ill. App. 3d 190, 193 (1976). Rule 401(a) requires a court to inform the defendant of and determine that the defendant understands (1) the nature of the charge, (2) the minimum and maximum sentence, (3) and that he has a right to counsel, which will be appointed if he's indigent, before accepting his waiver of counsel. Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 13 The rule is intended "to ensure that a waiver of counsel is knowingly and intelligently made." *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Strict compliance with the rule is not required "if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." *Id.* at 236. A court's failure to provide a Rule 401(a) admonishment immediately before a defendant's waiver of his right to counsel does not render the defendant's waiver invalid. *Id.* at 242. "Substantial compliance means a deficiency in the admonishments does not prejudice the defendant, either because the

defendant already knows of the omitted information or because the defendant's degree of legal sophistication makes evident his or her awareness of the omitted information." *People v. Moore*, 2014 IL App (1st) 112592, ¶ 38. We review de novo the court's compliance with Rule 401(a). *People v. Wright*, 2015 IL App (1st) 123496, ¶ 46.

¶ 14 Here, immediately before accepting the defendant's waiver, the court questioned the defendant about his education and prior involvement in the legal system. The court also extensively admonished the defendant of the disadvantages of self-representation. However, the court failed to advise the defendant of the nature of the charge, the possible sentencing range, and that he had a right to counsel, including appointed counsel if he was indigent. See Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Despite these omissions, the record shows that the court stated the potential minimum and maximum sentencing range for the offense less than three months before the plea. The defendant also cannot claim that he was unaware of the nature of the charge, as he demonstrated through his motions that he knew what the charge against him was for. Any deficiency in the court's admonition regarding the nature of the offense and sentencing was therefore harmless. See *People v. Roberts*, 27 Ill. App. 3d 489, 493 (1975). We also note that the defendant exercised his right to the appointment of counsel during the posttrial proceedings. This established that the defendant was aware of and willing to assert his right to counsel.

¶ 15 In light of the record, we cannot say that the defendant's waiver was rendered unknowing or unintelligent because the court provided an inadequate Rule 401(a) admonishment. Thus, the court's admonishment did not amount to a plain error.

¶ 16 The defendant further contends that he received ineffective assistance of postplea counsel when counsel did not raise the issue of his Rule 401(a) admonishments in a postplea motion, causing the issue to be forfeited. Counsel was not ineffective for failing to raise a Rule 401(a)

admonishment issue in the postplea motion because, as we found above, such an issue was meritless where the record established that the court substantially complied with the rule and the defendant made a knowing and voluntary waiver of his right to counsel. See *People v. Williams*, 2021 IL App (3d) 190298, ¶ 26 (finding counsel has no duty to raise a meritless issue).

¶ 17 III. CONCLUSION

¶ 18 The judgment of the circuit court of La Salle County is affirmed.

¶ 19 Affirmed.

¶ 20 JUSTICE McDADE, dissenting

¶ 21 The trial court made admirable efforts to dissuade defendant from the unwise decision to represent himself. In those efforts, the court admonished defendant about everything except what is required by Supreme Court Rule 401—the crime with which he was charged, the applicable sentencing range, and the practical consequences of an unsuccessful defense. The majority acknowledges this deficiency as error, but finds defendant was not prejudiced by the error because the sentencing information had been given to him "less than three months before the plea," rendering the more timely omission harmless. The failure to apprise defendant of the charged offense was similarly harmless because his motions demonstrated that he was aware of that as well.

¶ 22 Apart from the fact that the rules were promulgated to serve important functions and should be followed for that reason alone, there is evidence in the record that defendant suffered from mental illness and that he had drug use issues. There is no factual basis for the majority's assumption that defendant could or did remember something that had been told to him three months earlier and, therefore, no support for any assumption that giving the required

admonishments prior to defendant's waiver of his right to counsel was excusable because it was unnecessary.

STATE OF ILLINOIS

THIRD DISTRICT APPELLATE COURT

BARBARA TRUMBO
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
AC3@IllinoisCourts.gov

January 18, 2023

Jay Wiegman
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350-1014

RE: People v. Ratliff, Earl E.
General No.: 3-21-0194
County: LaSalle County
Trial Court No: 19CF134

The Court has this day, January 18, 2023, entered the following order in the above entitled case:

Appellant's Petition for Rehearing is DENINED.

Justices Holdridge and Brennan concur in denial. Justice McDade would have allowed the petition.

Barbara A. Trumbo
Barb Trumbo
Clerk of the Appellate Court

c: Jessica Theodoratos
Joseph R. Navarro

No. 129356

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- EARL E. RATLIFF, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 3-21-0194. There on appeal from the Circuit Court of the Thirteenth Judicial Circuit, LaSalle County, Illinois, No. 19 CF 134. Honorable Cynthia M. Raccuglia, H. Chris Ryan, Jr., Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Joseph Navarro, LaSalle County State's Attorney, 707 Etna Road, Room 251, Ottawa, IL 61350;

Mr. Earl E. Ratliff, Register No. N51737, Hill Correctional Center, P. O. Box 1700, Galesburg, IL 61402

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 7, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Esmeralda Martinez
PARALEGAL
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us