THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 132129

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JIMMIE MARSHALL, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-25-0426. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 2025 CF 73. Honorable Jennifer H. Bauknecht, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT IN SUPPORT OF RULE 604(h) APPEAL

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NATURE OF THE CASE

Jimmie Marshall, Defendant-Appellant, appeals from a March 31, 2025, circuit court judgment under the pretrial release statute. Marshall filed a motion for relief on April 3, 2025, and it was denied on April 23, 2025.

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

ISSUES PRESENTED FOR REVIEW

1. Whether this Court should affirm its longstanding position that a defendant may not be considered to have knowingly and intentionally relinquished a right where he was not informed of that right or of the consequences of relinquishing it.

2. Whether PFA defendants whose attorneys provide ineffective assistance should be forced to suffer the consequences of their attorneys' errors.

3. Whether this Court should apply the public interest exception to mootness.

RULES INVOLVED

Illinois Supreme Court Rule 615(a) provides:

Insubstantial and Substantial Errors on Appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.

Illinois Supreme Court Rule 604(c) provides:

(1) Appealability of Order With Respect to Bail. Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. . . .

(2) Procedure. The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

***

(v) the arguments supporting the motion; and

(vi) the relief sought.

Illinois Supreme Court Rule 604(h)(2) (eff. April 15, 2024) provides:

As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.

Illinois Supreme Court Rule 604(h)(2) (eff. Sept. 18, 2023 to April 14, 2024) provided:

Review shall be by Notice of Appeal filed in the circuit court within 14 days of the entry or denial of the order from which review is being sought. The Notice of Appeal shall describe the relief requested and the grounds for the relief requested. A docketing statement is not required to be filed by the appellant.

Illinois Supreme Court Rule 605(d) (eff. April 15, 2024) provides:

(1) at the time of issuing the order, the circuit court shall advise the defendant substantially as follows: that defendant has a right to file a motion for relief from the court's order and also that the court will revisit the order of

detention or the condition of pretrial release at each subsequent court appearance, regardless of whether a motion for relief is filed; and

(2) at the time of its ruling on the defendant's motion for relief under Rule 604(h)(2), the circuit court shall advise the defendant substantially as follows:

(A) that the defendant has a right to appeal at any time before conviction and, if indigent, to be furnished, without cost to the defendant, with a transcript or audiovisual communication or other electronic recording of the proceedings of the hearing;

(B) that the defendant, if indigent, has the right to have counsel appointed on appeal.

Illinois Supreme Court Rule 605(d) (eff. Sept. 18, 2023 to April 14, 2024) provided:

In all cases in which an order is issued imposing conditions of pretrial release, granting the State's petition to deny pretrial release, or revoking a defendant's pretrial release under the Pretrial Fairness Act, at the time of issuing the order, the circuit court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal and, if indigent, to be furnished, without cost to the defendant, with a transcript or audiovisual communication or other electronic recording of the proceedings of the hearing;

(2) that the defendant, if indigent, has the right to have counsel appointed on appeal; and

(3) that the right to appeal the order will be preserved only if a Notice of Appeal under Rule 604(h) is filed in the circuit court within 14 days from the date on which the order is entered.

STATEMENT OF FACTS

On Friday, March 28, 2025, there was an incident in which Jimmie Marshall's oldest child was bullied by other children, and police got involved, questioning the children's mothers. (R. 3, 6) Marshall's wife wanted to file a police report, and Marshall became increasingly frustrated with law enforcement's handling of the issue. (R. 3-4) His frustration culminated in the State charging him with aggravated battery for punching a peace officer, causing great bodily harm. (C. 6)

The State sought to detain Marshall prior to trial, claiming that he posed a real and present danger that could not be mitigated by conditions. (C. 7) At the hearing, the State proffered that, following the altercation with Marshall, the officer had facial swelling and bruising and went to the hospital "where he underwent tests" that "discovered that he had a fractured nose as a result of this incident." (R. 5, 7) The State argued that its proffer showed that Marshall committed a detainable offense; it did not specifically claim that Marshall had caused great bodily harm. (R. 7)

Defense counsel argued Marshall was not a real and present danger and that conditions could mitigate any risk stemming from his release. (R. 11-13) The court found that the State had sufficiently proven that Marshall had committed a detainable offense and that he posed a real and present danger that conditions could not mitigate. (R. 17)

Counsel filed a motion for relief arguing that the State failed to show that Marshall would not comply with pretrial conditions. (C. 13-15) After a hearing, the court denied the motion, and Marshall filed a notice of appeal. (R. 25; C. 20)

On June 10, 2025, Marshall filed a memorandum in the appellate court, arguing, *inter alia*, that the State did not prove that he had committed an offense that was detainable under the Pretrial Fairness Act ("PFA") where it did not show by clear and convincing evidence that he had caused great bodily harm. Marshall acknowledged that he had not included this issue in his Rule 604(h)(2) motion for relief; however, he argued that the issue should be reviewed under either prong of plain error or as ineffective assistance of counsel for failing to argue the issue below. The appellate court found that the failure to make the argument in the motion for relief had affirmatively waived the issue, and it declined to review the issue under plain error. *People v. Marshall*, 2025 IL App (4th) 250426-U, ¶ 15. Additionally, the appellate court relied on *People v. Nettles*, 2024 IL App (4th) 240962, ¶ 25, for its finding that a PFA defendant could not establish the prejudice necessary to prove ineffective assistance of counsel where detention decisions must be revisited at every subsequent court date. *Id.*

On August 7, 2025, Marshall filed a petition asking this Court to grant review in order to clarify whether a defendant could knowingly and affirmatively relinquish a right he was not admonished he possessed, as the appellate court found in denying plain error review. He also asked this Court to determine whether a defendant could in fact be prejudiced by counsel's errors below where subsequent detention hearings do not require the same findings or hold the State to the same burdens as the original detention hearing.

This Court granted leave to appeal on September 29, 2025. Marshall, however, pleaded guilty on August 6, 2025, and was sentenced to probation

and released from custody on September 25, 2025. Appellate counsel was not informed of the resolution of the case below and discovered it after this Court granted review. *See* Ill. Sup. R. 604(h)(10) ("Notification of mootness").

Marshall filed a motion for this Court to adjudicate the appeal under the public interest exception to the mootness doctrine. The State objected to the motion, and on October 3, 2025, this Court filed an order stating that Marshall's motion to adjudicate the appeal was taken with the case.

ARGUMENT

I. This Court should affirm its longstanding position that a defendant may not be considered to have knowingly and intentionally relinquished a right where he was not informed of that right or of the consequences of relinquishing it.

This Court has long held that a defendant's due process rights are violated where he is considered to have waived a right but was not informed that he possessed that right or admonished as to the consequences of foregoing it. *See, e.g., People v. Jamison*, 181 Ill. 2d 24, 29 (1998); *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011); *People v. Flowers*, 208 Ill. 2d 291, 301 (2003); *People v. Foster*, 171 Ill. 2d 469, 472 (1996). While forfeiture "may be inadvertent—a failure to make a timely assertion of a right," waiver "is never inadvertent because it is an intentional relinquishment of a right," and errors that have been waived are not subject to plain error review. *People v. Ratliff*, 2024 IL 129356, ¶ 26. Because of the ramifications of a finding of waiver, rules regarding waiver and admonishments "are meant to work together," and proper admonishments are a "necessary antecedent" for a finding of knowing and voluntary relinquishment of a right. *Jamison*, 181 Ill. 2d at 29. Accordingly, a defendant's failure to exercise a right he did not know he possessed should be considered forfeiture, not waiver. *See People v. Drew*, 2024 IL App (5th) 240697, ¶ 23, n.2 (finding forfeiture).

In the context of appeals from proceedings under what is generally referred to as the Pretrial Fairness Act ("PFA"), however, some courts have found that waiver applies, in spite of the fact that a defendant is not admonished as to the rights he is said to waive by failing to include an issue in the motion for relief. *See, e.g.*, *People v. Marshall*, 2025 IL App (4th)

250426-U, ¶ 15; *People v. Nettles*, 2024 IL App (4th) 240962, ¶¶ 25-26; *People v. Jackson*, 2025 IL App (4th) 241411-U, ¶ 21. Under this Court's consistent precedent, this finding of waiver violates due process. *See, e.g.*, *Foster*, 171 Ill. 2d at 473 ("it would violate procedural due process rights to hold a defendant responsible for noncompliance with the strictures" of a rule governing his appeal rights if he has not been admonished regarding those rights). Because a finding of waiver without corresponding admonishments or other protections violates defendants' due process rights, this Court should find that issues not raised in a motion for relief are to be considered forfeited, not knowingly and intentionally abandoned, and therefore eligible for plain error review. *See People v. Moon*, 2022 IL 125959, ¶ 19 (plain error review "has roots in the same soil as due process.").

Illinois Supreme Court Rule 615(a), which governs plain error, provides that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a). Nothing in Rule 615(a) bars plain error review of pretrial detention orders or other interlocutory orders. *See People v. Gatlin*, 2024 IL App (4th) 231199 (reviewing pretrial detention order for plain error); *see also Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶¶ 1, 3, 76-78 (reviewing defaulted interlocutory argument for new trial for plain error); *People v. Oswald*, 106 Ill. App. 3d 645, 649-50 (2nd Dist. 1982) (reviewing interlocutory defaulted supervision claim for plain error).

The construction of Illinois Supreme Court rules is a question of law subject to *de novo* review. *People v. English,* 2023 IL 128077, ¶ 13.

A. The April 15, 2024, amendments to Rule 604(h) should not result in defendants' loss of due process rights.

1. History of Rule 604(h) and reasons for its amendment.

When the PFA went into effect, on September 18, 2023, defendants seeking to appeal their detention ruling[1] were required to file a notice of appeal describing "the relief requested and the grounds for the relief requested" within 14 days "of the entry or denial of the order from which review is being sought." Ill. Sup. Ct. R. 604(h)(2), (eff. Sept. 18 to Oct. 18, 2023). At that time, Rule 605(d) directed courts to advise defendants that the right to appeal the detention order "will be preserved only if a Notice of Appeal under Rule 604(h) is filed in the circuit court within 14 days from the date on which the order is entered." Ill. Sup. Ct. R. 605(d)(3) (eff. Sept. 18, 2023, to Dec. 6, 2023). Rule 604(h) did not contain any mention of waiver, and courts routinely assumed that unpreserved issues could be reviewed for plain error. *See*, *e.g., People v. Watkins-Romaine*, 2025 IL 130618, ¶ 28; *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 18; *Gatlin*, 2024 IL App (4th) 231199, ¶ 23; *People v. Davis*, 2024 IL App (3d) 240244, ¶ 17; *People v. Serrato-Zavala*, 2024 IL App (2d) 240255, ¶ 13.

In those earlier days of the PFA, it was thought that the "requirement of a 'beefed-up' notice of appeal" would "allow the notice to carry the weight of the appellant's argument when no [appellate] memorandum was filed." Ill. Sup. Ct. Pretrial Release Appeals Task Force, Report and Recommendations,

[1] This brief discusses appeals from detention orders, as that is what was at issue in this case; however, the same arguments apply to appeals from orders imposing conditions of release.

2024 ("Task Force Report") at 2. However, the notice of appeal was often a "cursory, check-the-box affair," lacking the case-specific argument required for effective appellate advocacy. *Id.* When no memorandum was filed and the appellant's argument rested on the notice of appeal, quantity far outpaced quality, and the appellate court sometimes objected to having to "act as an advocate or seek error on the appellant's behalf." *People v. Inman*, 2023 IL App (4th) 230864, ¶ 13.

On April 15, 2024, following the dramatic increase in the volume of pretrial detention appeals, Rule 604(h) was amended to require the filing of a motion for relief as a prerequisite to appeal. Ill. Sup. Ct. R. 604(h)(2) (eff. April 15, 2024). The Rule 604(h) amendments sought not only to reduce the number of appeals, but also to balance quantity with quality of appeals. "We believe," the Task Force Report stated, "that the Supreme Court should remain committed to providing meaningful appellate review of cases that are *meaningfully presented*." Task Force Report at 5 (emphasis in original).

The motion for relief was required to request "the same relief to be sought on appeal and the grounds for such relief." Ill. Sup. Ct. R. 604(h)(2). The rule stated, for the first time, that "any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, *shall be deemed waived*." *Id.* (emphasis added). While the Task Force Report advised that the change to Rule 604(h) required "a corresponding change to the admonitions to be given pursuant to Supreme Court Rule 605(d)," it did not recommend informing the defendant that any issues not included in the motion for relief would be considered abandoned. Task Force Report at 6. Rule 605(d) was then amended only to require the

court to inform defendants after the detention hearing that they had the right to file a motion for relief from the court's order and that the court would revisit the detention order at each subsequent court appearance. In addition, the court was required to inform defendants after a ruling on the motion for relief that they had the right to appeal at any time before conviction, and that, if indigent, they had the right to be provided with a transcript of the hearing and an attorney. Ill. Sup. Ct. R. 605(d) (eff. April 15, 2024). Courts are not required to admonish defendants that issues not raised in the motion for relief would be considered to have been voluntarily and intentionally relinquished.

2. The rules governing appeals following guilty pleas show that a defendant's due process rights are violated where he is found to have waived a right without receiving proper admonishments or other protections.

In the present case, and other recent cases, the appellate court has found that, following the amendment to Rule 604(h), PFA defendants have voluntarily relinquished issues not raised below, in spite of the lack of admonishments informing them about the consequences of failing to raise them. *See, e.g.*, *Marshall*, 2025 IL App (4th) 250426-U, ¶ 15; *Nettles*, 2024 IL App (4th) 240962, ¶¶ 25-26; *Jackson*, 2025 IL App (4th) 241411-U, ¶ 21. Citing *Ratliff*, 2024 IL 129356, cases have stated that such alleged "voluntary relinquishment" of a right is waiver, and issues that have been intentionally waived are not subject to plain error review. *Jackson*, 2025 IL App (4th) 241411-U, ¶¶ 18-19. Because cases finding waiver of PFA issues have analogized PFA appeals under Rule 604(h) to guilty plea appeals under Rule 604(d) and relied on cases involving guilty pleas, it is fruitful to compare and

contrast those rules in detail to show why the waiver provision in guilty plea appeals should not apply in PFA appeals. *See, e.g.*, *Nettles*, 2024 IL App (4th) 240962, ¶ 21 (appeals from guilty pleas are a "reasonable analog" to PFA appeals).

Like Rule 604(h), the subsection of Rule 604 governing post-plea appeals states that any issue not raised in the post-plea motion "shall be deemed waived." Ill. Sup. Ct. Rule 604(d). However, waiver may be found only where the defendant received the proper protections, including admonishments regarding the relinquishment of his rights. *People v. Dominguez*, 2012 IL 111336, ¶ 11. The cases that insist that PFA appeals must be treated the same as post-plea appeals focus only on the word "waived" in Rule 604 while ignoring the corresponding protections for post-plea defendants in Rules 604 and 605.

In *Ratliff*, this Court discussed the difference between forfeiture and waiver, but it did not have the opportunity to address the safeguards that ensure that a post-plea waiver is truly both knowing and intentional. 2024 IL 129356, ¶ 26. However, it is those safeguards, contained in Rules 605(b), 605(c), and 604(d), that distinguish post-plea requirements from post-detention requirements and that distinguish *Ratliff* from PFA cases.[2]

Rules 605(b) and 605(c), which set forth the admonishments required after a defendant pleads guilty pursuant to an open or negotiated plea, respectively, inform defendants that, prior to taking an appeal they must file

[2] Post-plea defendants' rights are further protected by their ability to allege ineffective assistance of post-plea counsel on appeal. (See Argument II, below.)

a post-plea motion. Crucially, the admonishments require the trial court to inform the defendant, personally in open court, that "any issue or claim of error not raised in the [post-plea] motion . . . shall be deemed waived." Rule 605(b)(6), (c)(6). This rule "must be strictly complied with in that the admonitions must be given." *Dominguez*, 2012 IL 111336, ¶ 11. Failure to provide the required admonishments generally requires remand for proper admonishments and the opportunity to file a new post-plea motion. *Id.*

In addition to the Rule 605 admonishments, post-plea defendants are afforded protections under Rule 604 that are not available to PFA defendants. Rule 604(d) requires post-plea attorneys to certify that they have (1) consulted with the defendant in order to "ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty," (2) examined the trial court file and reports of proceedings, and (3) made any amendments to the to the post-plea motion necessary for adequate presentation of any defects in the proceedings. Ill. Sup. Ct. R. 604(d).

Further, a facially sufficient 604(d) certificate, in which the attorney claimed to have completed all of the tasks described above, may be rebutted by the record. For instance, where counsel claimed to have consulted with the defendant to ascertain his contentions of error, but interactions in the courtroom showed that she had not, counsel's Rule 604(d) certificate was found not to comply with the rule. *People v. Gray*, 2023 IL App (4th) 230076, ¶ 41. As with insufficient Rule 605(b) or (c) admonishments, counsel's failure to file a sufficient, unrebutted Rule 604(d) certificate requires remand for further post-plea hearings. *See, e.g.*, *People v. Janes*, 158 Ill. 2d 27, 35 (1994).

This Court has held that, "[b]ecause of the strict waiver requirements

of Rule 604(d) . . . fundamental fairness requires that the defendant have the assistance of counsel in preparing and presenting his motion." *Janes*, 158 Ill. 2d at 35. The rule is "designed to insure . . . that defendant's due process rights are protected." *Id.* All of the post-plea rules are "meant to work together" (*Jamison*, 181 Ill. 2d at 29) to guarantee "that the ramifications of noncompliance comport with due process" (*Skryd*, 241 Ill. 2d at 41).

By contrast, the rule governing PFA admonishments contains no language regarding waiver and does not even explain that a motion for relief is a necessary prerequisite to an appeal. *See* Ill. Sup. Ct. R. 605(d). Unlike guilty plea defendants, PFA defendants are not informed that they will be considered to have knowingly and intentionally relinquished the right to appeal any issues not included in the motion. Nor are any duties analogous to those required under Rule 604(d) placed on PFA counsel to ascertain the defendant's contentions of error. Further, unlike in post-plea proceedings, where the case can be remanded to admonish the defendant about waiver and the consequences of waiver or for a proper Rule 604(d) certificate, in PFA appeals remand for proper admonishments or an attorney's verification is not a remedy, as no such admonishments or verification are required. Rather, plain error review is the only possible relief.

In this case and in other PFA appeals, however, the State's position has been that PFA defendants must suffer the consequences of waiver—as indicated in *Ratliff*—*without* the protections afforded to post-plea defendants. But such ramifications of noncompliance with Rule 604(h) do not comport with due process where there are no protections to ensure that any waiver is knowing and voluntary. *Dominguez*, 2012 IL 111336, ¶ 11. Moreover, it

makes little sense for PFA appellants to have fewer protections than appellants who have admitted their guilt: PFA defendants are presumed innocent. Further, unlike motions under Rule 604(d), the filing of a Rule 604(h)(2) motion for relief is not preceded by a plea that "waives all errors or irregularities that are not jurisdictional." *Ratliff*, 2024 IL 129356, ¶ 21 (quoting *People v. Brown*, 41 Ill. 2d 503, 505 (1988)). Indeed, the defendant's decision to plead guilty is "quintessential waiver." *People v. Jackson*, 199 Ill. 2d 286, 297 (2002). The omission of an issue from a Rule 604(h)(2) motion for relief, however, is akin to "failing to bring an error to the trial court's attention." *Ratliff*, 2024 IL 129356, ¶ 22, (quoting *People v. Townsell*, 209 Ill.2d 543, 547-48 (2004)) (*citing* Ill. S. Ct. R. 615(a). Accordingly, unpreserved issues in PFA appeals should be reviewed for plain error.

3. It was not the intention of the amended Rule 604(h) to deprive PFA appellants of due process.

While the amended Rule 604(h) uses the term "waived," the lack of protections afforded to PFA appellants means that it should not be interpreted to bar plain error review. Familiar statutory construction guidelines govern the interpretation of this Court's rules. *Dominguez*, 2012 IL 111336, ¶ 16. Proper interpretation involves analyzing a rule or statute in its entirety, considering its subject and the intent of the drafters. *Id.* The intent of the drafters is of paramount concern, and the plain language of a statute or rule is the best indication of that intent; however, that is not the end of the analysis. *See, e.g.*, *People v. Rinehart*, 2012 IL 111719, ¶ 24. Statutes and rules must be constitutional, and this Court does not favor interpretations of a statute or rule "that would raise legitimate doubts as to

the constitutional validity of a statutory provision." *People v. Scheib*, 76 Ill. 2d 244, 254 (1979). Indeed, a literal reading of a statute or rule must fail if it yields unjust results. *See, e.g.*, *Cassidy v. China Vitamins, LLC*, 2018 IL 122873, ¶ 17.

As discussed above, this Court has long held that due process is violated in the context of guilty plea appeals when a defendant who has not been admonished regarding the requirements of Rule 604(d) nevertheless suffers the ramifications of noncompliance. *See, e.g.*, *Foster*, 171 Ill. 2d at 472. Yet in PFA appeals, there is no mechanism by which a defendant could be admonished regarding the requirements of Rule 604(h); a defendant is simply never told that any issues not included in a motion for relief will be considered knowingly and intentionally relinquished. Nevertheless, according to the court below, the defendant must suffer the ramifications of the failure to preserve. *Marshall*, 2025 IL App (4th) 250426-U, ¶ 15. Under *Jamison*, *Foster*, and other cases involving guilty plea appeals, this does not comport with due process. Given that this Court will not favor statutory interpretations that lead to unconstitutional or unjust results, it should not interpret Rule 604(h) to require strict compliance by the defendant without any accompanying admonishments.

It is notable that the appellate court cases declining to conduct plain error review have also shown a disinclination to address any due process concerns. In *Nettles*, for instance, the court stated that appeals from guilty pleas are a "reasonable analog" to PFA appeals, though it failed to acknowledge the admonishment requirements and the attorney obligations that ensure waivers in guilty plea appeals are knowing and voluntary.

Nettles, 2024 IL App (4th) 240962, ¶ 21. *Nettles* even cited *Flowers*, 208 Ill. 2d at 300-01, which found that due process is violated where a defendant suffers the consequences of failing to comply with rules that were never explained. *Id.*, ¶ 21. Yet *Nettles* did not consider that detention hearings do not provide the same *due process* protections as this "reasonable analog."

Reading Rule 604(h) in conjunction with the language of the PFA shows that defendants detained in violation of the statute are entitled to relief. In *People v. Shannon*, 2024 IL App (5th) 231051, ¶ 11, the appellate court applied plain error review under the prior version of Rule 604(h), stressing that the PFA "makes clear on its face that the intent is to protect a person's fundamental right to liberty before trial. . . ." *Shannon* quoted the language of the statute stating that it is presumed that "'[a]ll persons charged with an offense shall be eligible for pretrial release before conviction.'" *Id.*, quoting 725 ILCS 5/110-2(a). Moreover, the PFA "'shall be liberally construed to effectuate the purpose of relying on pretrial release . . . ." *Id.*, 725 ILCS 5/110-2(e). Criminal statutes, of course, are always to be construed in favor of the accused (*see, e.g.*, *People v. Grever*, 222 Ill. 2d 321, 338 (2006)), so it is noteworthy that the legislature placed additional emphasis on this requirement under the PFA. The lower court's position that a defendant held in violation of the PFA requirements is not entitled to relief is contradicted by the clear intent of the statute. Indeed, it should be self-evident that a "[d]efendant has the right to remain free pending trial unless the requirements of the statute are followed." *People v. Vojensky*, 2024 IL App (3d) 230728, ¶ 10 (applying plain error review).

It is true that the Task Force Report suggested that Rule 604(h) be

amended to state that, "[o]ther than errors occurring for the first time at the hearing on the motion for relief, issues not raised in the motion [for relief] will not be considered on appeal." Task Force Report at 7. It reasoned "that an expedited, limited review of detention decisions is designed in the first instance to be review of the trial court's decision" and it was "unreasonable to expect this expedited process to carry the same weight and scope of argument that is seen in a direct appeal following conviction." *Id.* (emphasis omitted). This Court, however, declined to adopt this explicit language: forgoing the phrase "not be considered on appeal," it used the words "deemed waived." Ill. S. Ct. R. 604(h) (eff. April 15, 2024). Presumably, if this Court intended to wholly prohibit plain error review, it would have adopted the report's language, explicitly barring such review.[3] Further, it would have amended the Rule 605(d) admonishments to parallel those required by Rule 604(d), specifically informing the defendant that any issue not included in a motion for relief is deemed waived on appeal, thereby ensuring an intentional relinquishment of a right. But this Court took neither action.

Importantly, the Task Force's concerns about a strain on judicial resources have passed since Rule 604(h) was amended, and a plain error bar on pretrial detention appeals would do little for judicial economy. There is no question that pretrial detention appeals placed a significant burden on the

[3] Additionally, at the time Rule 604(h) was amended, this Court had not yet definitively declared that the term "waiver" in Rule 604(d) precluded plain error review. *See Ratliff*, 2024 IL 129356, ¶ 23 n.2. Rather, the term "waived" could still be seen as permitting plain error review, if it appeared the failure to preserve an issue was not knowing and voluntary. *See People v. Sophanavong*, 2020 IL 124337, ¶¶ 20, 28 (abrogated by *Ratliff*, ¶ 20).

appellate court before the April 15, 2024, amendments to Rule 604(h). Task Force Report at 2-3. Since the amendments took effect, the number of appeals have decreased dramatically. *See* Annual Report Fiscal Year - 2024 Office of the State Appellate Defender at 3 (describing post-amendment reduction in volume from approximately 250 appointments per month to 40 appointments per month).

The Rule 604(h) amendments sought not just to reduce the number of appeals, but to ensure that appeals were "*meaningfully presented.*" Task Force Report at 5 (emphasis in original). Such meaningful presentation "occurs where memoranda are filed by appellate counsel," as opposed to "the bare-bones statements made in a check-the-box notice of appeal." *Id.*

The Rule 604(h) amendments have achieved that goal, and that achievement is in no way reliant on a rejection of plain error review. Indeed, raising issues for plain error review necessarily involves the "meaningful presentation" of arguments and does not trigger needless resource expenditures by the appellate court. An unpreserved error may be raised only if it is "clear and obvious" or if the evidence is closely balanced. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). To demonstrate the need for plain error review, the appellant must clearly argue the alleged error and then must specifically delineate why this constituted plain error. This is the opposite of a "bare-bones," "check-the-box" argument.

For instance, in this case, Marshall argued that the State had not proved that he committed a detainable offense where it failed to show that he caused great bodily harm. (Def. memo at 5-8) The only aggravated battery offense that is detainable under the PFA is "aggravated battery resulting in

great bodily harm or permanent disability or disfigurement." 725 ILCS 5/110-6.1(a)(1.5); *People v. Grandberry*, 2024 IL App (3d) 230546, ¶ 12. Yet the State made no argument regarding *great* bodily harm, and the proffered evidence showed only bodily harm, which involves "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent." *People v. Mays*, 91 Ill. 2d 251, 256 (1982). The appellate argument discussed the facts and relevant case law and in no way required the appellate court to "act as an advocate or seek error on the appellant's behalf." *Inman*, 2023 IL App (4th) 230864, ¶ 13. The reasons for amending Rule 604(h) had nothing to do with legal arguments meaningfully raised in a memorandum.

Moreover, "a reviewing court *may exercise discretion* and excuse a defendant's procedural default" by conducting plain error review: it is not a mandatory burden placed on the appellate court. *People v. Sebby*, 2017 IL 119445, ¶ 48 (emphasis added). Finally, where appropriate, plain error review will serve to increase judicial efficiency by allowing the appellate court to provide guidance to the lower courts on hearings held under the PFA, particularly as legal interpretations of the statute are still being developed. *See* 725 ILCS 5/110-1, *et seq*.

While the quantity and quality of PFA appeals prior to the amendment of Rule 604(h) surely posed a problem for the courts, the biggest issue was the bare-bones presentation of arguments, *not* arguments properly presented in memoranda. If addressing the quantity of PFA appeals results in the inability to argue plain error, the amended Rule 604(h) will have thrown due process out with the bath water, which is a result that serves no one.

4. The amended Rule 604(h) should not result in PFA appellants receiving fewer due process protections than defendants seeking to appeal from their pre-PFA bond hearings.

The similarities and differences between Rule 604(c), which governs pre-PFA bond appeals and Rule 604(h), which governs appeals from detention hearings held pursuant to the PFA, also show that the amended Rule 604(h) was not intended to infringe on an appellant's due process rights. Rule 604(c) applies to defendants whose detention hearings were held any time prior to September 18, 2023—the date the PFA went into effect—but who have not yet been convicted,[4] while Rule 604(h) (either the original version of the amended) applies to defendants whose detention hearings were held on or after September 18, 2023.

Appeals from both pre-PFA bond hearings and PFA detention hearings require the defendant to file a motion for relief in the trial court stating the relief to be sought on appeal. Ill. Sup. Ct. R. 604(c)(1), (h)(2). In both circumstances, the defendant may file the motion any time prior to conviction. *Id.* However, there is a crucial distinction between the two rules: it is only Rule 604(h), governing PFA appeals, that states that issues not included in the motion for relief are "deemed waived." There is no waiver counterpart in Rule 604(c).

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[4] A defendant whose pretrial detention hearing was held before the enactment of the PFA may choose to remain under the authority of the old version of the pretrial release statute or reopen the detention decision under the PFA. *People v. Watkins-Romaine*, 2025 IL 130618, ¶ 43. Given that it is not unusual to wait years for trial, there are still pre-PFA defendants entitled to appeal their detentions under Rule 604(c). *See, e.g.*, "Stalled Justice: Yearslong delays in Cook County murder cases break rules, inflict pain and gouge taxpayers," Chicago Tribune, April 9, 2023.

Despite the fact that PFA appellants experience the strict consequences of waiver and pre-PFA bond appellants do not, in neither circumstance is the trial court required to admonish the defendant regarding waiver. Prior to the enactment of the PFA, Rule 605 did not contain any admonishments regarding pretrial detention appeals. Now, Rule 605(d) requires courts to admonish defendants that they have the right to file a motion for relief and that the court will revisit the detention order at each subsequent hearing. Ill. Sup. Ct. R. 605(d)(1) (eff. April 15, 2024). Following a ruling on the motion for relief under the PFA, the court is required to admonish defendants that they have the right to appeal at any time before conviction and explain the rights provided to indigent defendants. Ill. Sup. Ct. R. 605(d)(2) (eff. April 15, 2024). As discussed, above, there is no mention of waiver.

According to the Task Force Report, appeals from pre-PFA bond hearings and PFA detention hearings are meant to be "functionally identical." *See* Task Force Report at 5 (an "appeal from a decision setting bond and related conditions of release is functionally identical to an appeal from a detention decision under the PFA."). But without plain error review, they are not. In spite of the fact that neither kind of pretrial defendant is admonished regarding waiver, PFA defendants would be considered to have intentionally and knowingly relinquished review of any issue not raised in their motions for relief, while their pre-PFA counterparts would still be eligible for plain error review of issues not included in their motions.

This means that such appeals are in fact far from functionally identical, and there is no justification for such disparate treatment of pretrial

appellants. Given that the pretrial detention reforms were meant to "strive toward a fair, equitable system," it seems incongruent for defendants under the new system to be afforded fewer protections on appeal than defendants under the old system. Ill. Sup. Ct. Comm'n on Pretrial Practices Final Report April 2020, page 18.

B. Barring plain error review would lead to absurd and unjust results.

Just as the appellate courts that have rejected plain error review have chosen not to address the due process implications of their rulings, they have also chosen not to address the absurd and unjust practical implications. However, without plain error review, the PFA provides no mechanism to remedy even an obvious error that affects defendants' fundamental rights, such as being detained on a non-detainable charge or not being present for the detention hearing. There is no path by which a defendant would have the right to a new first detention hearing without first obtaining reversal and remand from the appellate court. While the defendant would have the right to a *continued* detention hearing, that would not and could not address many of the issues that should be reviewed as plain error.

It is redundant but true: there is only one original detention hearing. Moreover, that hearing differs from hearings on a defendant's continued detention. At the original detention hearing, the defendant is presumed to be entitled to release. 725 ILCS 5/110-1.5. To obtain a defendant's pretrial detention, the State bears the burden of proving by clear and convincing evidence that: (1) the proof is evident or presumption great that the defendant committed a detainable offense; (2) the defendant poses a real and

present threat to the safety of any person or persons or the community or a flight risk; and (3) no condition or combination of conditions can mitigate the real and present or the risk of willful flight. 725 ILCS 5/110-6.1(e). Where, as in most hearings, the parties proceed solely by proffer, courts review the circuit court's decision *de novo*. *People v. Morgan*, 2025 IL 130626, ¶ 51.

Continued detention hearings are a different matter. There, the judge must find that continued detention is necessary to "avoid a real and present threat to the safety of any person or persons or the community . . . or to prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(i-5). Such hearings do not require a showing that proof is evident or the presumption great that the defendant committed a detainable offense. *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 14. There is no longer a presumption of release. Rather than ask whether pretrial conditions can mitigate the threat posed by a defendant, continued detention hearings start from the premise that detention is necessary to guard against that threat. *Id.* Simply put, "the question relating to whether the State proved each of the three propositions for pretrial detention by clear and convincing evidence during the initial hearing is not before the court" in continued detention hearings. *People v. Post*, 2025 IL App (4th) 250598, ¶ 25.

Further, some courts have found that there must be a change of circumstance between the first hearing and subsequent hearings in order to justify a change in the detention ruling. *See People v. Walton*, 2024 IL App (4th) 240541, ¶ 28; *cf People v. Rice*, 2025 IL App (3d) 250262, ¶ 12 (finding no change is necessary). And it is not clear that the appellate court would be permitted to review the issue *de novo* if it arose from a continued hearing. *See*

Post, 2025 IL App (4th) 250598, ¶ 29 (applying abuse of discretion standard in appeal from continued detention hearing).

This means that at a continued detention hearing, a defendant is not entitled to address serious errors that occurred in the original hearing. *People v. Gatlin*, 2024 IL App (4th) 231199, illustrates the problem. In *Gatlin*, the defendant was completely unable to participate in his pretrial detention hearing, conducted via videoconference, because both his microphone and the microphones in the courtroom were muted for the majority of the hearing; he could not hear what was being said, and no one could hear him. *Id.* ¶¶ 8, 12. On appeal, the defendant argued that his constitutional rights were violated as he was effectively not present for his own hearing; the State countered that he had forfeited the issue by failing to include it in his notice of appeal under the prior version of Rule 604(h), which did not include the current waiver provision. *Id.*, ¶ 12. The appellate court reviewed the issue as plain error and concluded that the defendant's non-presence "affected the fundamental fairness" of the hearing and "challenged the integrity of the judicial process," and it remanded for a new hearing. *Id.*, ¶¶ 23-25.

Without plain error review, the error in *Gatlin*, which another court described as structural, would have no remedy. *See People v. Vincent*, 2024 IL App (4th) 240218, ¶ 39 (the error in *Gatlin* was "structural"). In other contexts structural, second-prong plain errors are immediately remedied. *See, e.g.*, *Moon*, 2022 IL 125959, ¶ 74 ("once structural error is found, automatic reversal is required"). And if this had occurred at a pre-PFA bond hearing, the defendant would be entitled to a remedy under Rule 604(c), just as the defendant in *Gatlin* was, under the pre-amendment Rule 604(h). But now a

defendant in that position would have no options. The defendant would not be entitled to a *new* original detention hearing; yet at the subsequent hearings, there would be no presumption of release, the State would not be required to prove that he had committed a detainable offense or, indeed, to present any of the evidence it proffered at the original hearing, which the defendant did not hear. The defendant would simply be out of luck, and would be held indefinitely following a hearing in which he was effectively not present.

Without plain error review, *no* unpreserved error would be remediable, no matter how serious. It would not matter if the defendant was not charged with a detainable offense, as in *People v. Davis*, 2024 IL App (3d) 240244, and *People v. Serrato-Zavala*, 2024 IL App (2d) 240255, ¶ 13 (both finding plain error). As the *Serrato-Zavala* court found, however, "the strict enforcement of forfeiture could result in the continued pretrial detention of a person who has not committed an offense that qualifies for such detention." *Id.*

Nor would it matter that the defendant was denied the right to testify, as in *People v. Wallace*, 2024 IL App (4th) 240673-U, ¶ 20 (finding plain error). There would be no remedy if the State's petition to detain was untimely, as in *Vojensky*, 2024 IL App (3d) 230728, ¶ 10 (finding plain error) or if the State did not file a petition to detain at all, as in *People v. Moore*.[5] Indeed, there would not be a remedy if the trial court based its decision on its own negative opinion of the PFA, as in *People v. Atterberry*, 2023 IL App (4th)

[5] *People v. Moore*, Nos. 4-24-1079, 4-24-1080 cons. (summary order under Supreme Court Rule 23). Plain error review denied. Petition for leave to appeal granted January 5, 2025 (No. 131283); State's motion to dismiss as moot granted March 25, 2025.

231028, ¶ 20 (issue was preserved); or even if, in a hypothetical case, the court announced that it had a policy to always detain people of certain races. In each of those cases, the defendant who failed to raise the issue in the motion for relief would be found to have intentionally and knowingly chosen not to raise the issue, even though he was never admonished, and the appellate court would have no authority to correct the error. But as this Court has found, it is a violation of due process to impose such consequences on a defendant without admonishments. *See, e.g.*, *Skryd*, 241 Ill. 2d at 41.

If trial counsel were so inclined (see Argument II below, regarding ineffective assistance of counsel), they could, upon learning that serious errors had been deemed waived on appeal, potentially file a new motion for relief that included the error that was considered waived on appeal. And the circuit court might be permitted to, at its discretion, revisit and alter its prior detention ruling based on the new argument. *Walton*, 2024 IL App (4th) 240541, ¶ 20 (the circuit court has the authority to revisit and alter its prior detention ruling). However, given that the previously unraised issue, even if supported by a memorandum, would have been considered waived *on appeal*, it is not clear that the defendant would be granted a second bite at the apple in the trial court when he could have raised it in the motion following the first detention decision. A new motion for relief raising that issue might be considered an improper bid to rescind the voluntary relinquishment of a right. Appellate courts' findings that there must be a change of circumstance between the first hearing and subsequent hearings in order to justify a change in the detention ruling presents a further barrier to relief when the defendant seeks only to challenge a fundamental error from the original

hearing. *Id.*, ¶ 28.

It is also not clear how an appellate court would be able to review an issue contained in a second motion for relief when it was considered waived on appeal following the first motion for relief. Waived is waived: a defendant cannot unwaive waiver simply by trying again.

Lack of plain error review would also limit the appellate court's ability to instruct the lower courts. If there were a county in which both the judge and defense attorneys operated under a misunderstanding of the law, the judge would make erroneous rulings, and defense counsel, believing the ruling to be correct, would not raise it in motions for relief. Even if defendants in such cases filed motions for relief on other issues followed by a notice of appeal, the appellate court would never have the opportunity to rule on the erroneous decision and correct the lower court's misunderstanding.

Additionally, refusing to review unpreserved issues for plain error could lead to further problems because a defendant is not permitted to appeal a continued detention ruling while "a prior appeal under this rule by the same party remains pending in the appellate court." Ill. Sup. Ct. R. 604(h)(11). Defendants with a meritorious, preserved issue on appeal would be forced to dismiss their appeal in order to address another meritorious issue that was not included in the first motion for relief, rather than the appellate court reviewing the two issues at the same time, with the unpreserved issue reviewed as plain error.

To hold that any issue not raised in a motion for relief is simply not reviewable, in spite of the lack of admonishments or other protections for PFA appellants, is to accept the outcomes discussed above, outcomes which,

in any other context, would be clearly remediable violations of due process.

C. Plain error review is the only remedy, as there can be no remand for admonishments regarding waiver.

When a post-guilty-plea defendant does not receive the required admonishments or where post-plea counsel fails to file an unrebutted Rule 604(d) motion, the defendant is entitled to remand for proper admonishments or for post-plea counsel to comply with Rule 604(d). But in PFA appeals, such a remand would not be a remedy. PFA defendants are not entitled to be admonished about waiver, nor are PFA attorneys required to certify that they, among other duties, consulted with the defendant regarding errors. Because remand would not ensure that any issue not raised in the motion for relief was, in fact, knowingly and willingly abandoned, plain error is the only method available that results in a remedy for a substantial error. Plain error review has its "roots in the same soil as due process," and with PFA appeals, plain error review is the only way to protect the right to due process. *Moon*, 2022 IL 125959, ¶ 19.

Accordingly, this Court should reverse the appellate court's decision and find that unpreserved PFA issues may be reviewed on appeal.

II. PFA defendants whose attorneys provide ineffective assistance should not be forced to suffer the consequences of their attorneys' errors.

Courts agree that defendants are entitled to the Sixth Amendment right to effective assistance of counsel at pretrial release hearings. *See, e.g.*, *People v. Nettles*, 2024 IL App (4th) 240962, ¶ 25. However, despite this recognition, some courts find that, no matter how far below professional

norms counsel's representation falls, pretrial defendants must nevertheless suffer the consequences of the ineffective assistance. These courts find that a defendant who is harmed by counsel's ineffectiveness cannot, in fact, prove prejudice under the standards of *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). *See id.* Courts have found that a pretrial defendant cannot prove prejudice for two different reasons: first, because a defendant is entitled to a continued detention hearing at every court date, and therefore attorneys have the opportunity to improve their performance (*e.g.*, *Nettles*, 2024 IL App (4th) 240962, ¶ 25), and second, because the ultimate outcome of the criminal proceeding has not yet been determined (*e.g.*, *Drew*, 2024 IL App (5th) 240697, ¶ 37). Neither of those justifications stands up to scrutiny, and this Court should find that defendants are entitled to a remedy for their attorneys' ineffectiveness.

Pretrial defendants are entitled to effective assistance of counsel. *Nettles*, 2024 IL App (4th) 240962, ¶ 25, citing *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 199 (2008). Effective representation in the pretrial context includes "making effective arguments for the accused on such matters as the necessity for . . . bail." *Coleman v. Alabama*, 399 U.S. 1, 9 (1970). To prove ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) counsel's deficient performance resulted in prejudice. *People v. Lewis*, 2022 IL 126705, ¶ 44. Counsel may provide ineffective assistance by waiving an issue. *People v. Villarreal*, 198 Ill. 2d 209, 227-28 (2001).

As the United States Supreme Court has held, the "determination whether the hearing is a 'critical stage' requiring the provision of counsel"

depends on an analysis of whether "potential substantial prejudice to defendant's rights" is at stake and counsel has the ability "to help avoid that prejudice." *Coleman*, 399 U.S. at 9, quoting *United States v. Wade*, 388 U.S. 218, 227 (1967). There is, then, an inherent contradiction between the United States Supreme Court's interpretation of a pretrial defendant's Sixth Amendment rights and that of the appellate courts that deny there is prejudice. While the Supreme Court maintained that the possibility of prejudice is a necessary condition for a "critical stage," the court below held that in fact *no prejudice* can result from ineffectiveness at this critical stage. *People v. Marshall*, 2025 IL App (4th) 250426-U, ¶ 15, citing *Nettles*, 2024 IL App (4th) 240962, ¶ 25.

Such a contradiction in the interpretation of a defendant's Sixth Amendment rights is a legal question, which is reviewed *de novo*.[6] *People v. Morgan*, 2025 IL 130626, ¶ 22.

A. The right to continued detention hearings does not prevent a defendant from suffering prejudice due to counsel's errors.

The court in this case rejected Marshall's claim of ineffective assistance of counsel by relying on *Nettles*, which held that pretrial defendants cannot show prejudice because "the detention decision is not closed," and they are entitled to have the detention decision "revisited at every court date." *Nettles*, 2024 IL App (4th) 240962, ¶ 25, cited (but not quoted) by *Marshall*, 2025 IL App (4th) 250426-U, ¶ 15. *Nettles* found that

[6] The issue of whether Marshall proved prejudice in his specific case presents a mixed question of law and fact that is ultimately also reviewed *de novo*. *Lewis*, 2022 IL 126705, ¶ 48. However, because Marshall is no longer held in pretrial custody, this Court need not address his specific circumstances.

even following counsel's sub-standard representation at the original detention hearing, the defendant could "still file a proper motion for relief and take a proper appeal." *Id.* The court concluded, "It is difficult to discern how a defendant could establish that he has been prejudiced by his attorney 'dropping the ball' when the ball is still in the air." *Nettles*, 2024 IL App (4th) 240962, ¶ 25.

The *Nettles* court was mistaken in stating that "the detention decision is not closed." 2024 IL App (4th) 240962, ¶ 25. In fact, the *original* detention decision is most certainly closed, and the defendant is entitled only to continued detention hearings. As discussed above, in Argument I, there are enormous differences between the two kinds of hearings, and a defendant whose counsel provided ineffective representation at the original hearing does not, in fact, get a do-over.

To recap the points made in the plain error argument: It is only at the original hearing that the defendant is *presumed* to be entitled to release, that the State bears the burden of proving the three factors required for detention—(1) a detainable offense; (2) real and present danger or flight risk; (3) no conditions sufficient to mitigate the risk—by clear and convincing evidence, or, indeed, that the State has to prove that the defendant committed a detainable offense at all. *See* 725 ILCS 5/110-1.5, 5/110-6.1(e); *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 14.

At subsequent hearings, the defendant no longer benefits from the presumption of release, the State is not required to proffer evidence, and the judge need only find that continued detention is necessary to "avoid a real and present threat to the safety of any person or persons or the community

. . . or to prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(i-5). Further, some courts have found that there must be a change of circumstance between the first hearing and subsequent hearings in order to justify a change in the detention ruling. *See People v. Walton*, 2024 IL App (4th) 240541, ¶ 28; *cf People v. Rice*, 2025 IL App (3d) 250262, ¶ 12 (finding no change is necessary). And it is not clear that the appellate court would be permitted to review the issue *de novo* if it arose from a continued hearing. *See People v. Post*, 2025 IL App (4th) 250598, ¶ 29 (applying abuse of discretion standard in appeal from continued detention hearing).

In practice, affirming the lower court's decision would mean that there would be no remedy when counsel failed to present evidence or challenge the State's evidence at the original hearing. For instance, if counsel failed to present an alibi, the defendant would not be entitled to present that evidence at a subsequent hearing: the evidence would not show a change in circumstance, and at continued detention hearings the court does not reconsider whether the defendant had committed the offense. If counsel failed to argue that, for instance, the State's video evidence clearly showed that the defendant was not the perpetrator, or the State failed to introduce any evidence of great bodily harm in an aggravated battery case, there would likewise be no second chance.

And, in the absence of an appellate decision finding ineffective assistance, counsel might not recognize or might even deny that he or she had committed any errors at the original hearing and fail to attempt a remedy. Or the trial court may find that counsel forfeited the argument by failing to raise it at the original hearing. Or the court may simply refuse to

consider matters it is not required to at continued hearings.

Some errors might be reviewable as plain error, should this Court allow such review, but others might not rise to the level of a fundamental error but nevertheless require a remedy. This would encompass, for instance, most issues involving the strength of the State's evidence and counsel's failure to challenge it, which would be more akin to a trial error than plain error. *See, e.g.*, *People v. Jackson*, 2022 IL 127256, ¶ 37 (discussing trial errors). Nevertheless, if such errors resulted in the defendant's improper detention, the defendant should be entitled to relief.

Nettles also cited the fact that defendants could file a new motion for relief following a subsequent hearing as a reason they could not show prejudice. 2024 IL App (4th) 240962, ¶ 25. But there is no guarantee that counsel will do this if she is unaware of the error. And even if a new motion was filed, that simply raises new issues of forfeiture and waiver. Where an issue could have been, but was not, raised in the original motion for relief, it is very likely that the issue would be deemed forfeited or even waived in the second motion, as it would have been considered waived on appeal. It also seems unlikely that an appellate court would be able to review an issue contained in a second motion for relief when the same issue was considered waived on appeal following the first motion for relief.

The *Nettles* court found that, until the pretrial period was over, "the ball was still in the air" regarding the defendant's release. 2024 IL App (4th) 240962, ¶ 25. But while there might still be *a* ball, it is not the same ball that was in the air at the original proceeding. That ball was waived or forfeited by counsel's failure to retrieve it, and the defendant suffers the prejudice.

B. A defendant who is wrongly incarcerated due to pretrial counsel's error suffers prejudice regardless of the outcome of the trial.

The appellate court in *People v. Drew* took a different approach to prejudice. It found that a defendant could not prove prejudice from counsel's obvious errors at a pretrial hearing unless the defendant could prove that those errors resulted in a guilty verdict. 2024 IL App (5th) 240697, ¶ 37. Specifically, the court stated that a defendant could not show prejudice resulting from a pretrial release hearing because "the defendant cannot show a reasonable probability that *the result of the criminal process* would have been different because no plea deal is at issue and *defendant's trial has not been held*." 2024 IL App (5th) 240697, ¶ 35 (emphasis added). This reasoning is deeply erroneous and serves only to deny defendants the right to effective assistance of counsel during pretrial hearings.

Drew correctly noted that prejudice requires a finding that, absent counsel's errors, the result of the proceeding would have been different. *Id.*, ¶ 33, quoting *Strickland*, 466 U.S. at 694. However, *Drew* evinced a faulty understanding of what "the proceeding" must mean in the pretrial detention context. The *Drew* court found that "the proceeding" meant the entire criminal trial, not the pretrial release proceedings, and, in so finding, it relied only on appeals from criminal convictions, not pretrial rulings.

That interpretation defies both logic and the Sixth Amendment right to effective assistance. If a defendant must wait until the entire pretrial period is over to challenge counsel's performance, relief is impossible, as he could not recapture the time he wrongly spent in jail. Further, it would be only under unusual circumstances, for instance the defendant's need to

personally retrieve key evidence, in which pretrial detention could prejudice a defendant by leading directly to a guilty verdict; this is something most defendants could not prove. Yet the harm caused by wrongful pretrial detention can encompass much more than the inability to locate evidence, for instance, the loss of a job, a home, or custody of one's children or the exacerbation of mental or physical health issues, not to mention the obvious harm of the general loss of freedom. *See, e.g.*, Ill. Sup. Ct. Comm'n on Pretrial Practices Final Report April 2020, page 18. If the defendant must wait until the end of the pretrial period to challenge his incarceration based on counsel's ineffectiveness, the right to effective assistance of counsel for pretrial hearings would exist in name only. How could a defendant be guaranteed effective assistance unless he could challenge ineffective assistance?

Drew relied for its finding that a defendant cannot show prejudice for pretrial incarceration until after the trial on *People v. Jocko*, 239 Ill. 2d 87, 89 (2010), which is inapposite. 2024 IL App (5th) 240697, ¶ 35. In *Jocko*, the defendant filed a *pro se* motion alleging that the trial court had erred by denying him access to an attorney at his arraignment and bail hearing; the court never held a hearing on the motion. *Jocko*, 239 Ill. 2d at 89. Later, also before the trial, the defendant sent a letter to the trial court alleging that his attorney was not conducting a sufficient investigation into his case and did not want to raise certain issues. *Id.* at 90. After he was convicted, the defendant argued on appeal that the trial court should have held a *Krankel* hearing into the claims of ineffectiveness that he raised in the letter. *Id.* This Court found that, because it was not possible to determine whether counsel's actions affected the outcome of the trial until it was over, there was no need

to hold a *Krankel* hearing prior to the conviction. *Id.*

In *Jocko*, all of the issues raised in the letter to the court addressed counsel's performance as related the ultimate question of the defendant's culpability at trial. It is therefore logical that a court could not determine whether the defendant suffered harm from that performance until the defendant was convicted; if he were not convicted and simply objected to counsel's strategy, there would be no prejudice other than frustration.

Not so with pretrial detention hearings. Counsel's errors at pretrial detention hearings do not affect the outcome of *the trial*, they affect the outcome of the *pretrial detention hearing*, and improper pretrial detention or excessive release conditions are the prejudice. Although *Jocko* referred to a bail hearing, the issue was the court's failure to ensure the defendant had any assistance of counsel at all, not any failure by counsel.

The other cases *Drew* relied on for this point are similarly irrelevant. *United States v. Burns*, 990 F. 2d 1426, 1437 (4th Cir. 1993), for instance, also involved an appeal from a criminal conviction. The defendant argued that the trial itself was unfair because his attorney failed to file a bond motion. *Id.* The court found that "whether the lawyer's unprofessional dereliction contributed to the delay in Burns's release has no bearing upon the lawyer's performance in defending him on the merits," and that the defendant could not prove prejudice *at trial* for counsel's failures *pretrial*. *Id.* Here, the issue is counsel's errors contributing to the result of pretrial hearings which carry their own prejudice.

The unpublished federal case *Drew* cited is the same: the defendant appealed from a conviction after a trial, and could not prove that the result of

the trial would have been different had counsel sought pretrial release. *Drew*, 2024 IL App (5th) 240697, ¶ 37, citing *Rumley v. Vannoy*, No. CV 19-9649, 2020 WL 9422952, at *20 (E.D. La. May 29, 2020).

Drew also rejected the United State's Supreme Court's holding in *Lafler v. Cooper* that "any amount of [additional] jail time has Sixth Amendment significance." *Drew*, 2024 IL App (5th) 240697, ¶ 35, distinguishing *Lafler v. Cooper*, 566 U.S. 156, 165 (2012) (brackets in *Lafler*). *Drew* denied that a defendant is prejudiced by *pretrial* incarceration caused by counsel's errors and found that *Lafler*'s holding applied only to defendants incarcerated after being found or pleading guilty. *Id.* This reasoning is backwards. A pretrial defendant is *presumed innocent*. Indeed, it is very possible that the defendant will be found not guilty, that the charges will be dropped, or that they will be reduced to a lesser offense that is not detainable under the PFA or even following conviction. The court's belief that a guilty defendant is prejudiced by additional jail time and a defendant who is presumed innocent is not defies common sense and should be rejected.

C. Conclusion.

Defendants are entitled to effective assistance of counsel at pretrial detention hearings, but that right is violated where they are powerless to challenge *in*effective assistance. Yet under *Marshall*, *Nettles*, *Drew*, and similar cases, there are no available measures to address counsel's performance, to compel counsel to raise the relevant claims in the trial court, or otherwise to guarantee that the defendant receives the effective representation to which he is entitled. Accordingly, this Court should find that the protections of *Strickland*, including the right to challenge counsel's

performance, applies to pretrial defendants.

III. This Court should apply the public interest exception to mootness.

Even though Jimmie Marshall is no longer being held awaiting trial, this Court should apply the public interest exception to mootness to determine (1) whether a defendant could knowingly and affirmatively relinquish a right he was not admonished he possessed, and (2) whether a defendant could in fact be prejudiced by counsel's errors below where subsequent detention hearings do not require the same findings or hold the State to the same burdens as the original detention. Reviewing courts apply the public interest exception where, as here: (1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur. *People v. Morgan*, 2025 IL 130626, ¶ 16.

This Court has explicitly applied the public interest exception at least twice in the context of PFA appeals, which, due to their time-sensitive nature, are particularly likely to become moot during the pendency of appeals. In *Morgan*, which addressed the standard of review applicable to PFA cases, this Court applied the exception because determining the correct standard "will provide consensus throughout the Illinois judiciary" and because "this issue is likely to recur." *Morgan*, 2025 IL 130626, ¶ 17. In *People v. Cooper*, which addressed untimely PFA hearings, this Court applied the exception over the defendant's objection "because the magnitude and immediacy of the interests involved warrant action by this court, the

question is of a public nature, an authoritative determination of the question is desirable for the future guidance of public officers, and the question is likely to recur." *Cooper*, 2025 IL 130946, ¶ 16, n.1.

All of the criteria of the public interest exception apply here. First, the questions are of a public nature, as the issues of whether plain error review or ineffective assistance of counsel claims may apply are not dependent on the specific facts of this case. *See In re Alfred H.H.*, 233 Ill. 2d 345, 356 (2009). Every arrestee in Illinois is subject to the PFA's strictures, defendants will continue to seek to raise issues not included in their motions for relief, and the failure to admonish them that those issues will be considered to have been voluntarily relinquished will also continue. Likewise, every day defendants face detention hearings and motion for relief hearings in which they are prejudiced by their attorneys' failure to preserve errors following the initial hearing. These questions are capable of evading judicial review because of the nature of PFA litigation: fast in duration and custody status can change at any court date. *See, e.g.*, *People v. Luebke*, 2025 IL App (5th) 241208-U, ¶¶ 21-23 (applying the public interest exception to a legal question raised under the PFA).

Second, there is a need for an authoritative determination by this Court. While the rule governing motions for relief uses the term "waived," the trial court is under no obligation to admonish the defendant that the motion for relief is a prerequisite to appeal or, even more crucially, that issues not raised in the motion will be deemed to have been intentionally relinquished. See *People v. Ratliff*, 2024 IL 129356, ¶ 26 (waiver is an intentional and knowing relinquishment of a right). However, this Court has repeatedly

found that imposing ramifications on a defendant without admonishments violates due process. See, *e.g., People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011); *People v. Flowers*, 208 Ill. 2d 291, 301 (2003); *People v. Jamison*, 181 Ill. 2d 24, 29 (1998); *People v. Foster*, 171 Ill. 2d 469, 472 (1996). Appellate courts are divided on how to interpret the waiver language in the absence of relevant admonishments and require an authoritative determination by this Court. See, *e.g., People v. Drew*, 2024 IL App (5th) 240697, ¶ 23, n.2; *People v. Collins*, 2025 IL App (2d) 240734-U, ¶ 14; and *People v. Pederson*, 2024 IL App (2d) 240441-U, ¶ 19 (all allowing review of issues not raised in a motion for relief); *contra*, *e.g.*, *Marshall*, 2025 IL App (4th) 250426-U, ¶ 15; and *Nettles*, 2024 IL App (4th) 240962, ¶¶ 25-26, 34.

Likewise, an authoritative determination is needed on the issue of ineffective assistance of counsel. *Nettles* found that a PFA appellant could not prove prejudice because "[t]he detention decision is not closed; indeed, it cannot be, as it must be revisited at every subsequent court date." 2024 IL App (4th) 240962, ¶ 25; see also *Marshall*, 2025 IL App (4th) 250426-U, ¶ 15. However, the same questions are, in fact, *not* revisited at every subsequent court date. Rather, continued detention hearings do not start from the presumption of release, but rather "from the premise that detention was necessary to guard against [any] threat." *Thomas*, 2024 IL App (1st) 240479, ¶ 14.

Thomas concluded that "the finding required [at subsequent hearings] is simply a less demanding standard than what is required at [the original] detention hearing." Id. If, at subsequent hearings, the defendant no longer enjoys the presumption of release and the State faces a less demanding

standard, it is not the same decision that is revisited at every court date but rather a lesser one, and the defendant can be prejudiced by counsel's failures at the original proceeding

Finally, this Court's guidance is needed for future litigants, both defendants and the State. As argued above, these issues regarding waiver, forfeiture, plain error, and ineffective assistance of counsel in the context of PFA proceedings will continue to arise. Appellate attorneys have a duty to zealously represent their client's interests and will continue to ask reviewing courts to address clear and obvious errors that affect their clients' substantial rights, are closely balanced, or are due to counsel's shortcomings below. See, *e.g.*, *People v. Walton*, 2025 IL App (4th) 241541-U, ¶ 21; *Luebke*, 2025 IL App (5th) 241208-U, ¶¶ 25-31 (both where defendant-appellant sought plain-error review). The current state of affairs leads to uncertainty for defendants and for inefficiencies for the State. If the State knew with certainty whether plain error or ineffective assistance of counsel were relevant to PFA appeals, it would not have to waste time arguing against their applicability but rather devote their attention to the merits of the issues.

Therefore, even though Marshall's pretrial detention order is now moot, this Court should invoke the public interest exception and review the issues raised in this brief.

CONCLUSION

For the foregoing reasons, Jimmie Marshall, Defendant-Appellant, respectfully requests that this Court, in spite of this case's mootness, reverse the appellate court's decision and find that unpreserved PFA issues may be reviewed for plain error and ineffective assistance of counsel.

Respectfully submitted,

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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 43 pages.

/s/ Deborah K. Pugh
DEBORAH K. PUGH
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Jimmie Marshall No.

INDEX TO THE RECORD

Report of Proceedings ("R")

2025 IL App (4th) 250426-U

NO. 4-25-0426

FILED
July 30, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JIMMIE MARSHALL, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of Livingston County No. 25CF73 Honorable Jennifer H. Bauknecht, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying defendant pretrial release.

¶ 2 Defendant, Jimmie Marshall, appeals the trial court's order denying pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2024)). On appeal, defendant argues the court erred in finding the State proved by clear and convincing evidence (1) he committed a detainable offense and (2) no condition or combination of conditions would mitigate the threat he posed to the community. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 31, 2025, the State charged defendant with aggravated battery, a Class 1 felony (720 ILCS 5/12-3.05(a)(3)(i) (West 2024)), alleging he knowingly caused great bodily harm to Sergeant Andy Rork of the Livingston County Sheriff's Office, whom defendant knew

to be a peace officer engaged in the performance of his authorized duties. On the same day, the State petitioned to deny defendant pretrial release pursuant to section 110-6.1(a)(1.5) of the Code (725 ILCS 5/110-6.1(a)(1.5) (West 2024)), alleging the proof was evident and presumption great he committed a detainable offense, his pretrial release posed a real and present threat to the safety of others, and no conditions could mitigate that threat.

¶ 5 During the detention hearing, the State proffered that on March 28, 2025, deputies with the Livingston County Sheriff's Office broke up a fight between juveniles, one of whom was defendant's stepson. Defendant and his wife subsequently called the police station and spoke with Rork about filing a report. Defendant "instantly became verbally hostile," and he refused to listen when Rork attempted to explain the situation. Rork eventually ended the call, saying he would speak to defendant after defendant calmed down. Defendant proceeded to call both 911 and the nonemergency number "continuously," demanding to speak with a "white shirt lieutenant." When line operators advised defendant no lieutenant was working at the time, he did not believe them. He "became very upset" and "began threatening officers." Defendant subsequently drove to the police station and verbally confronted Rork in the lobby, demanding to speak with a supervisor. When defendant learned Rork was the supervisor on duty, defendant was "verbally hostile towards him."

¶ 6 Defendant eventually left the station and called 911 from the parking lot, telling the operator that "someone better come talk to him before he blows up and takes matters into his own hands." Rork exited the building and told defendant he was under arrest for calling 911 when there was no emergency and making threatening comments. When Rork attempted to effectuate the arrest, defendant punched him "multiple times in the face." Defendant fled the scene on foot before officers caught and arrested him. Rork suffered a fractured nose, facial

swelling, and bruising, and he went to the hospital for treatment.

¶ 7 The State argued defendant presented a threat to the safety of Rork and police officers in general, citing the violent nature of the offense and defendant's prior criminal history, which included convictions for second degree murder, possession of contraband in a penal institution, domestic battery, and aggravated battery causing great bodily harm. The State contended no pretrial release conditions would mitigate the threat defendant posed, as defendant's criminal history consisted primarily of acts of physical violence, and none of the conditions available, such as GPS monitoring and weekly or biweekly reporting to the Office of Statewide Pretrial Services, would mitigate the threat defendant posed.

¶ 8 Defendant insisted he did not pose a real and present threat because the events in question stemmed from "a highly charged emotional situation" during which defendant was dissatisfied with law enforcement's response to harm befalling his stepson. Defendant scored a 3 out of 14 on the Virginia Pretrial Risk Assessment Instrument-Revised (VPRAI-R), had a full-time job, and was the primary provider for his four children. Defendant had been diagnosed with bipolar disorder and major depressive disorder, but he insisted he was taking his medications. Defendant argued pretrial release conditions, such as anger management treatment and a mental health evaluation, would mitigate his dangerousness, and he asserted he would abide by any pretrial conditions the trial court might impose.

¶ 9 The trial court granted the petition to deny pretrial release, finding the State proved by clear and convincing evidence defendant committed a detainable offense, posed a real and present threat to the safety of the community, and no release conditions could mitigate that threat. The court asserted, "[T]he probable cause statement alone is enough here for me to find that the proof is evident or presumption great that the defendant has committed a detainable

offense, the offense being aggravated battery to a police officer, class 1 felony, causing great bodily harm." The court observed defendant was charged with a "very serious offense," which carried a maximum sentence of 15 years' imprisonment. The court noted defendant's "significant criminal history," which included "two very serious violent offenses," namely, a 2018 conviction for aggravated battery causing great bodily harm and a 2006 conviction for second degree murder. The court also cited defendant's conviction for bringing contraband into a penal institution in 2008 as an indication defendant was unlikely to abide by pretrial release conditions. The court emphasized defendant's mental health issues, "a history of violence, up to and including killing someone," and the fact defendant was willing to strike a police officer and break his nose as indicative of "the very real risk" defendant posed to the community. The court found this risk was "too real" and could not be mitigated by available pretrial conditions. The court stated, "When presented with an issue involving his stepson, this defendant chooses to harass, go to a police department, act entirely inappropriate, engage in a physical altercation to the point where he breaks a police officer's nose and then proceeds to flee from the scene." The court found defendant "poses a real and significant danger to the community" and was "unlikely to comply with any or all pretrial release conditions that could be imposed in this case."

¶ 10 On April 4, 2025, defendant filed a motion for relief pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Apr. 15, 2024), arguing less restrictive conditions would avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case. Defendant did not argue the issue he raises for the first time here—that the State failed to show he committed a detainable offense and threatened the safety of the community. Following an April 23, 2025, hearing, the trial court denied the motion.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the trial court erred in finding the State proved by clear and convincing evidence the proof was evident or presumption great (1) he committed a detainable offense and (2) no less restrictive conditions would mitigate the threat he posed. We disagree.

¶ 14 Under section 110-6.1(e) of the Code (725 ILCS 5/110-6.1(e) (West 2024)), it is presumed all criminal defendants are entitled to pretrial release. The State may seek a defendant's pretrial detention if he is charged with a detainable offense as enumerated in the Code and, after a hearing, the trial court finds his release would present "a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case," or he "has a high likelihood of willful flight to avoid prosecution." 725 ILCS 5/110-6.1(a)(1), (8) (West 2024). The State bears the burden of proving "by clear and convincing evidence that any condition of [pretrial] release is necessary." 725 ILCS 5/110-2(b) (West 2024). When the parties proceed solely by proffer during a detention hearing, we review *de novo* the trial court's determination. *People v. Morgan*, 2025 IL 130626, ¶ 54.

¶ 15 First, defendant argues the State did not prove by clear and convincing evidence the proof was evident or presumption great he committed a detainable offense. Defendant did not include this issue in his Rule 604(h)(2) motion for relief, and he raises it for the first time on appeal. Rule 604(h)(2) provides, "Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived." Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). Defendant acknowledges he did not raise this issue earlier and argues defense counsel provided ineffective assistance by not including it in his motion for relief. Alternatively, defendant urges us to consider his argument's

merits via a plain error analysis. However, in *People v. Nettles*, 2024 IL App (4th) 240962, ¶¶ 24-36, this court rejected similar efforts to gain appellate review of waived claims not raised in a motion for relief, finding neither ineffective assistance nor plain error were applicable. Following *Nettles*, we decline to review defendant's argument that the State did not prove he committed a detainable offense, as defendant waived the issue by not including it in his Rule 604(h)(2) motion for relief. See *Nettles*, 2024 IL App (4th) 240962, ¶¶ 25-26, 34.

¶ 16 Second, defendant argues the State failed to show by clear and convincing evidence that no conditions could mitigate the threat he posed to the community, citing his low VPRAI-R score, the age of his criminal convictions, and his family and employment status. Defendant also highlights defense counsel's suggestion that the trial court could require him to submit to further psychiatric evaluation as a pretrial release condition to determine whether his medications needed to be adjusted. However, the record shows the court considered the appropriate factors, including those cited by defendant, before determining no pretrial release conditions would mitigate defendant's dangerousness to the community. We agree.

¶ 17 In reaching its conclusion, the trial court noted defendant's violent criminal history, which included convictions for second degree murder and aggravated battery causing great bodily harm. While incarcerated, defendant was convicted of bringing contraband into a penal institution, which indicated defendant would not comply with any pretrial release conditions the court might impose. The court further observed the specific circumstances of the charged offense, where defendant repeatedly struck a peace officer, thereby demonstrating a complete disregard for law enforcement's authority. Defendant also fled the scene, further undercutting his insistence that he would comply with pretrial release conditions. Given the specific facts of the charged offense, defendant's violent criminal history, his demonstrated

disregard for legal authority, and the physical safety threat he poses to the community as a whole, the court did not err in finding the State proved by clear and convincing evidence that no condition short of detention could mitigate the threat defendant posed. See 725 ILCS 5/110-5(a)(1)-(5) (West 2024).

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment.

¶ 20 Affirmed.

EFILED IN CIRCUIT COURT
LIVINGSTON COUNTY, ILLINOIS
4/24/2025 11:31 AM
Jacquelyn Gragson
CIRCUIT CLERK

IN THE CIRCUIT COURT OF Livingston **COUNTY**
Fourth **JUDICIAL CIRCUIT**

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff-Appellee,)
)
-vs-) No. 2025 CF 73
)
JIMMIE MARSHALL ,)
Defendant-Appellant.)

NOTICE OF APPEAL FROM PRETRIAL DETENTION OR RELEASE ORDER PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)

(Defendant as Appellant)

Court from which appeal is taken:

Circuit Court of Livingston County.

The Judge who entered the order on the motion for relief under Rule 604(h)(2): Honorable Judge Jennifer Bauknecht

Date of Order on Motion for Relief*: April 23, 2025

***Without an Order on a Motion for Relief, this notice of appeal is prohibited by Rule 604(h)(2).**

Date(s) of Hearing(s) Regarding Pretrial Release: April 23, 2025, March 31, 2025

Court to which appeal is taken:

Appellate Court of Illinois, Fourth Judicial District

Name of Defendant and address to which notices shall be sent (if Defendant has no attorney):

Defendant's Name: JIMMIE MARSHALL
Defendant's Address: 320 East Hack Street, Cullom, IL 60929
Defendant's E-mail:
Defendant's Phone:

If Defendant is indigent and has no attorney, does he or she want one appointed? ☑ Yes ☐ No

Name of Defendant's attorney on appeal (if any):

Attorney's Name: _____

Attorney's Address: _____

Attorney's E-mail: _____

Attorney's Phone: _____

Name of Defendant's trial attorney (if any):

Attorney's Name: Marinna Metoyer

Attorney's Address: 110 N. Main Street, Pontiac, Illinois 61764

Attorney's E-mail: mmetoyer@livingstoncountyil.gov

Attorney's Phone: 815 842 1310

Is the trial attorney a public defender? ☑ Yes ☐ No

Nature of Order Appealed (check only one):

☑ Denying pretrial release

☐ Revoking pretrial release

☐ Imposing conditions of pretrial release

Are there currently pending any other appeals in this matter by the same party under the Pretrial Fairness Act? ☐ Yes* ☑ No

***If Yes, this notice of appeal is prohibited by Rule 604(h)(11).**

I certify that everything in this NOTICE OF APPEAL FROM PRETRIAL DETENTION OR RELEASE ORDER PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ William H. Bertram

Your Signature

William H. Bertram

Printed Name

6198823

Attorney # (if any)

No.

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- JIMMIE MARSHALL, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-25-0426. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois, No. 2025 CF 73. Honorable Jennifer H. Bauknecht, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Mr. David J. Robinson, Chief Deputy Director - PTFA, State's Attorneys Appellate Prosecutor, 725 South Second Street, Springfield, IL 62704, Safe-T@ilsaap.org;

Michael Regnier, Livingston County State's Attorney, 110 North Main Street, Pontiac, IL 61764, lvsa@livingstoncountyil.gov;

Mr. Jimmie Marshall, C/O Last known address, Register No. M21521, Livingston County Jail, 320 E. Hack St., Cullom, IL 60929

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 November 10, 2025, the Brief and Argument for Defendant-Appellant in Support of Rule 604(h) Appeal 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. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument for Defendant-Appellant in Support of Rule 604(h) Appeal to the Clerk of the above Court.

/s/Hannah Baity
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