No. 120797
IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	On appeal from the Appellate Court, Second District, No. 2-15-0456
Plaintiff-Appellee,	
v.	There on appeal from the Circuit Court of The Eighteenth Judicial Circuit, of DuPage County, Illinois Trial Court No. 2014-CF-2204
FERNANDO CASAS, JR.,	The Honorable Liam C. Brennan,
Defendant-Appellant.	Judge Presiding

OPENING BRIEF

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I.

The Appellate Court erred when it reversed the trial court and departed from 26 years of precedent when it found that the offense of violation of bail bond was a continuing offense which tolled the three year statute of limitations period. 5

Statutes

OTHER RELEVANT AUTHORITY

NATURE OF THE ACTION

The trial court granted Mr. Casas' Motion to Dismiss the Superseding Information for violation of bail bond because the statute of limitations had run as 16 years had passed since the defendant was convicted *in absentia* of the principal offense. The State appealed and the Appellate Court reversed the trial court and held that a violation of bail bond was a continuing offense pursuant to 720 ILCS 5/3-8(1998), and therefore was timely filed. *People v. Casas*, 2016 ILApp (2d) 150456. Mr. Casas filed a Petition for Leave to Appeal which was allowed.

ISSUE PRESENTED FOR REVIEW

Whether the Appellate Court erred in finding that the legislature intended that a violation of bail bond was a continuous offense pursuant to 720 ILCS 5/3-8(1998).

JURISDICTION

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court's opinion was filed April 14, 2016, the Petition for Leave to Appeal was filed May 19, 2016 and allowed on September 28, 2016.

STATUTES INVOLVED

720 ILCS 5/3-8 (West 1998) Limitation on offense based on series of acts:

> Limitation on Offense Based on Series of Acts. When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed.

720 ILCS 5/32-10 Violation of bail bond, states in relevant part:

(a) Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of such forfeiture, commits, if the bail was given in connection with a charge of felony . . . a felony of the next lower Class or a Class A misdemeanor if the underlying offense was a Class 4 felony . . .720 ILCS 5/32-10(a)(West 1998).

STATEMENT OF FACTS

Mr. Casas was charged in case No. 96 CF 1920, with manufacture and delivery of 900 grams of cocaine, a Class X felony. *People v. Casas* 2016 ILApp(2) 150456. After appearing in court for two years, he failed to appear in 1998, and his bail bond was ordered to be forfeited 30 days from the Order of June 9, 1998. (S.R. 7) Mr. Casas was tried *in absentia* and found guilty was sentenced *in absentia* to 20 years imprisonment in the Illinois Department of Corrections. (S.R. 8)

Sixteen years later he was arrested April 5, 2014, and has been incarcerated on his 20 year sentence for manufacture and delivery. (S.R. 8-9) The Grand Jury indicted him for a violation of bail bond on December 12, 2014. (C. 3) Mr. Casas moved to dismiss the indictment as it was past the three year statute of limitations. (C. 17-19) The trial court dismissed the indictment. (C. 23) The State filed a Superseding Information which stated that a violation of bail bond was a continuing offense beginning when Mr. Casas did not return to court until he was arrested. (C. 22) The State conceded in a footnote that the precedential law in Illinois on this issue was in *People v. Grogan*, 197 Ill.App. 3d 18 (1st Dist. 1990), but argued that *Grogan* was incorrectly decided. The trial court dismissed the Superseding Information based on *Grogan*. (C. 22, 23)

The State appealed the dismissal of the Superseding Information. The Appellate Court Second District found *Grogan's* reasoning incorrect and it reversed the trial court. *Casas*, 2016 ILApp(2) 150456 ¶1. The Appellate Court found that a violation of bail bond was a continuing offense; and therefore, the

statute of limitations period for that offense tolls until the defendant is returned to custody. *People v. Casas*, 2016 ILApp(2) 150456 at ¶1.

The Appellate Court first addressed the issue of whether a violation of bail bond was a continuing offense. It noted section 3-8 of the criminal Code defined a continuing offense and that several criminal statutes have been defined in case law as being continuing offenses. One of those statutes was the offense of escape which was found to be a continuing offense in *People v. Miller*, 157 Ill. App.3d 43 (1st Dist. 1987). *People v. Casas*, 2016 ILApp(2) 150456 at ¶10-12.

The Appellate Court found that a violation of bail bond was similar to escape and quoted *United States v. Bailey*, 444 U.S. 394 (1980) which found that " 'escape from...custody... is a continuing offense.' " *People v. Casas*, 2016 ILApp(2) 150456 at ¶12 quoting *United States v. Bailey*, 444 U.S. at 413.

The Appellate Court then departed from the reasoning in *Grogan* on two points and found it should no longer be followed. *People v. Casas*, 2016 ILApp(2) 150456 at ¶25. First, it found that *Grogan* erred as it cannot "categorically claim that a defendant who violates his bail bond is not a threat to the public." *People v. Casas*, 2016 ILApp(2) 150456 at ¶16. Second, it found *Grogan* was wrong as the legislature intended that a violation of bail bond be a continuing offense because that defendant has breached his lawful *custody*. *People v. Casas*, 2016 ILApp(2) 150456 at ¶17-18 (emphasis added).

The holding in *People v. Casas* is contrary to *People v. Grogan* and thus the Appellate Court districts have conflicting interpretations regarding the applicable statute of limitations for violations of bail bond.

ARGUMENT

I.
The Appellate Court erred when it reversed the trial court and departed from 26 years of precedent when it found that the offense of violation of bail bond was a continuing offense which tolled the three year statute of limitations period.

A. Standard of review

The issue is whether a violation of bail bond is a continuous offense. This case presents a question of statutory interpretation which is reviewed *de novo. People v. Espinoza,* 2015 IL 118218 ¶15.

B. Argument

i. Introduction

The *Casas* Court erred when it held that a violation of bail bond was a continuing offense under Section 3-8 of the Criminal Code. *People v. Casas*, 2016 ILApp(2) 150456. It reasoned that *People v. Miller*, 157 Ill. App.3d 43 (1st Dist. 1987) found the offense of escape was a continuing offense and a violation of bail bond was similar to escape, then a violation of bail bond should also be considered a continuing offense. That reasoning was inapposite to *People v. Grogan*, 197 Ill.App. 3d 18 (1st Dist. 1990). The *Casas's* Court erred because *Grogan* was subsequent to *Miller, Grogan* addressed *Miller's* holding by distinguishing the two offenses, and both cases arose from the First District.

Casas also erred by finding the legislature intended that a violation of bail bond be a continuing offense as post-*Grogan* the legislature did not move to amend the statute of limitations and *Casas* failed to offer support for that position. The legislature's intent since 1990 has supported *Grogan* as good law.

ii. Argument

Mr. Casas was charged with violation of bail bond:

> Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of such forfeiture, commits, if the bail was given in connection with a charge of felony . . . a felony of the next lower Class or a Class A misdemeanor if the underlying offense was a Class 4 felony . . .

720 ILCS 5/32-10(a)(West 1998).

The statute of limitations provided that all felonies must be prosecuted within three years after commission of the offense unless the statute describing the offense stated otherwise. 720 ILCS 5/3-5(b)(1998). That time period could be extended and tolled under several enumerated conditions, but a violation of bail bond was not one of those listed conditions. 720 ILCS 5/3-6 (1998). The statute enumerated some offenses which allowed a prosecution to be commenced at any time. 720 ILCS 5/3-5(a)(1998). In 1998, 9 offenses were listed and now 16 are listed but a violation of bail bond is still not included on that list. 720 ILCS 5/3-5(a)(2016). The statute of limitations tolls if the State files an information or an indictment. 720 ILCS 5/3-7 (c)(West 1998).

Casas reasoned that section 3-8 of the statute of limitations was applicable to a violation of bail bond. *Casas* ¶18. Section 3-8 stated:

> When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed.

720 ILCS 5/3-8 (West 1998). Under that section, the statute of limitations tolls until the last act is committed.

In this case, the State could have easily tolled the statute of limitations under section 3-7(c). It chose not to file an information or seek a grand jury indictment for violation of bail bond neither when Mr. Casas forfeited his bond nor after the trial and sentencing *in absentia*. 720 ILCS 5/3-7 (c)(West 1998). *People v. Morris,* 135 Ill.2d 540, 545 (1990). The State therefore exercised its prosecutorial discretion by not filing an information for violation of bail bond within the three year statute of limitations. When Mr. Casas was arrested, 16 years later, the State filed a Superseding Information which argued that a violation of bail bond was a continuing offense from the date Mr. Casas missed court until he was arrested. (C. 22)

Casas relied on *Miller* for its holding but the analysis needs to begin with *Grogan* for two reasons. First, *Grogan* is factually aligned with this case, unlike *Miller;* and second, *Grogan* was subsequent to *Miller* and distinguished it in its ruling using the analysis from *Toussie v. United States,* 397 U.S. 112 (1970).

In *Grogan,* the defendant was found guilty of violation of bail bond. *Grogan,* 197 Ill.App.3d at 19. He appealed alleging ineffective assistance of counsel because his attorney did not file a Motion to Dismiss the indictment based on an expiration of the statute of limitations. *Grogan,* 197 Ill.App.3d at 21. The State had indicted the defendant five years after the bond forfeiture. To determine whether the attorney was ineffective, the Court had to find the

applicable statute of limitations for violation of bail bond and it determined it was three years and that the trial attorney was thus ineffective.

In reaching that conclusion, *Grogan* had examined *Toussie v. United States,* 397 U.S. 112 (1970) for guidance. The defendant in *Toussie* was charged with failing to register for the draft. The draft registration act provided that male citizens register for the draft on their 18th birthday or within 5 days thereafter. *Toussie,* 397 U.S. at 113. The federal statute of limitations required that a prosecution be commenced within 5 years of the violation. *Id.* at 114. Mr. Toussie was indicted 8 years after the violation. The Government argued the statute was tolled as it was a continuing offense.

In evaluating whether an offense is continuous, the United States Supreme Court developed two approaches to the issue. First, did the statute of the offense define it as a continuing offense. The second approach, if the statute was silent, was to look at whether Congress "must assuredly have intended that it be treated as a continuing one." *Toussie* 397 U.S. at 115. In *Toussie*, failing to register after a five-day grace period was held not to be a continuing offense.

Grogan noted that it had applied *Toussie's* two approaches test in its earlier decision in *People v. Miller*, 157 Ill. App.3d 43 (1st Dist. 1987) where the defendant, a convicted felon, was charged with escape after he failed to return to a work release program. *Id.* at 44-45. *Grogan* acknowledged that in the *Miller* case, it found that the legislature, because of the "nature of the crime" must have intended escape to be a continuing offense. *Miller's* holding is based on *U.S. v. Bailey,* 444 U.S. 394 (1980) which found the federal escape statute to be a

continuing offense because escaped prisoners are a threat to society. *Bailey* at 413.

Grogan, however; distinguished a violation of bail bond offense from the offense of escape. It found that the:

> offense of violation of bail bond, unlike the offense of escape of a convicted felon, is not the kind of offense that poses a continuing threat to society, nor can it be defined as a series of related acts constituting a single cause of conduct, such as conspiracy or embezzlement. In the absence of sound rationale or pertinent case law, we cannot find that violation of bail bond constitutes a continuing offense.

Grogan, 197 Ill.App.3d 21-22 (1st Dist. 1990). The commonality of *Miller* and *Bailey* was that all the defendants were prisoners.

Thus, under *Grogan*, a violation of bail bond is a completed offense 30 days after the bond forfeiture. The Illinois Pattern Jury Instructions-Criminal enumerate that the elements of the offense of violation of bail bond are 1) that the defendant was admitted to bail; 2) that the bail was forfeited; and 3) that the defendant wilfully failed to surrender himself within 30 days following the forfeiture. IPI Criminal 4th, No. 22.54(2000). Thus, the offense is complete 30 days after forfeiture of bail.

As *Grogan* noted, violation of bail bond is not a "series of acts," nor is it "performed at different times." It is not a continuous offense like conspiracy where "every overt act is a renewal of the conspiracy, and the offense is continuous so long as overt acts in furtherance of its purpose are committed." *People v. Konkowski,* 378 Ill. 616, 621 (1942). Notably even conspiracy needs overt acts to make it a continuous offense. A violation of bail bond is one act: a failure to come

to court and to not surrender oneself within 30 days of that court date. The offense is completed 30 days after the forfeiture.

Grogan's holding has remained for 26 years. It is the policy of courts to stand by precedent and not to disturb settled points. *Espinoza,* 2015 IL 118218 ¶26. *Stare decisis* "is the means by which courts ensure that the law will develop in a principled and intelligent fashion, and will not merely change erratically." *Espinoza,* 2015 IL 118218 at ¶26.

"In statutory construction, *stare decisis* considerations are at their apex." *Espinoza,* 2015 IL 118218 ¶29. "Consideration of *stare* decisis weigh more heavily in the area of statutory construction than in the common law because a departure from a statutory construction 'amounts to an amendment of the statute itself rather than simply a change in the thinking of the judiciary with respect to common law concepts.'" *Espinoza,* 2015 IL 118218 at ¶29 citing *Fround v. Celotex Corp.* 98 Ill.2d 324 (1983).

"Any departure from stare decisis must be specially justified, and prior decisions should not be overruled absent good cause or compelling reasons. *Espinoza,* 2015 IL 118218, ¶30 relying on *Vitro v. Milhelcic,* 209 Ill.2d. 76 (2004). "Good cause exists 'when governing decisions are unworkable or badly reasoned.' " *Espinoza,* 2015 IL 118218 ¶30 quoting *People v. Colon,* 225 Ill.2d 125 (2007). In the case *sub judice,* there is neither a good cause nor a compelling reason to depart from the *Grogan* opinion. It is neither unworkable nor badly reasoned.

Nevertheless, in *Casas*, the Second District departed from *Grogan's* precedent. It held that "we cannot say that a defendant who violates his or her bail bond categorically does not pose a continuing threat to the public." *Casas,* 2016 ILApp(2) 150456 at ¶16. It also found that a violation of bail bond was a continuous offense like escape. In support it cited *Miller* and *U.S. v. Bailey,* 444 U.S. 394 (1980). *Casas,* 2016 ILApp(2) 150456 at ¶11-12. It held that the legislature intended it to be a continuous offense because like escape the defendant "has breached his lawful custody and obstructed justice." *Casas,* 2016 ILApp(2) 150456 at ¶17-18.

Respectfully, the *Casas* court fails to acknowledge the difference between the defendant's status in a violation of bail bond offense versus his status in an escape offense. A defendant on bond is absolutely not in custody.

First, one cannot find that every defendant who violates a bail bond is a threat to the public; as, even if a defendant violates the bail bond, once he is returned to court within the 30 days, he has a chance to prove by a preponderance of the evidence that his failure to appear was not intentional. 725 ILCS 5/110-3 (West 1998). He can even have a new bond set. 725 ILCS 110-6(b) (West 1998). Not every absence of a defendant even past the 30 day deadline means he is a threat to the public. Indeed, Mr. Casas was not arrested in the 17 years that he absented himself from the court. When he was arrested, it was for a traffic offense.(S.R. 8) As time passes, the likelihood that the defendant has reformed increases. Loren J. Mallon, *Selective Service-Failing to Register not a Continuing Offense*, DePaul L. Rev. 284, at 288 (vol. 20, 1971).

Second, the *Casas* Court was incorrect to find that the legislature intended a violation of bail bond to be a continuing offense. *Casas* offers no legislative history regarding the Illinois General Assembly's intent that a violation of bail bond was a continuing offense.

There is no evidence that the legislature intended that a violation of bail bond be a continuing offense under section 3-8. The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature, and that inquiry appropriately begins with the language of the statute. *People v. Hare,* 119 Ill.2d 441, 447 (1988) There is no rule of construction which allows the court to declare that the legislature did not mean what the plain language of the statute imports. Where an enactment is clear and unambiguous, the court is not free to depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express. *People v. Woodard,* 175 Ill.2d 435 (1997). Moreover, "'criminal limitations statutes are `to be liberally interpreted in favor of repose,' " *Toussie* at 115 citing *United States v. Scharton,* 285 U.S. 518, 522 (1932). Moreover, if a statute is ambiguous, the rule of lenity requires that any ambiguity must be resolved in that manner which favors the accused. *People v. Williams,* 2016 IL 118375 ¶ 15.

The *Toussie* two-part approach can be applied to this case. First, does the violation of bail bond statute define the offense as a continuing offense? The statute does not. 720 ILCS 5/32-10 (1998). Second, since the statute is silent, did the legislature intend it to be a continuing offense? A review of all the statutes

and the case law indicates that the legislature did not intend it to be a continuing offense.

The intent of the legislature can be shown by its inaction after a judicial ruling on a statute. After *Grogan* distinguished *Miller*, the legislature has not amended the statute of limitations to specify that a violation of bail bond was an offense where a prosecution could be commenced at any time nor was it an offense with an extended statute of limitations. 720 ILCS 5/3-5; 5/3-6 (West 2016). A judicial interpretation of a statute is considered part of the statute itself until the legislature amends it contrary to that interpretation. *People v. Woodard,* 175 Ill.2d 435 (1997). "When the legislature chooses not to amend a statute following judicial construction- it will be presumed that the legislature acquiesced in the Court's statement. *Espinoza,* 2015 IL 118218 ¶27 citing *Blount v. Stroud,* 232 Ill. 2d 302, 324 (2009).

The legislature has amended the violation of bail bond statute 10 times since January 1, 1962, as recently as 2013 where it replaced the mental state of willfully with knowingly. 720 ILCS 5/32-10 (West 2016) P.A. 97-1108, eff. 1-1-2013. The legislature enacted a statute in the Code of Corrections which mandated consecutive sentences for a violation of bail bond in 2010. 730 ILCS 5/5-8-4(West 2016) P.A. 96-1200 eff. 7-22-2010. Thus, the legislature has made some changes to the offense and sentencing statutes for violation of bail bond post *Grogan* and *Miller* but none indicated that the statute of limitations was tolled, or that the offense was a continuing offense.

The legislature has also amended 5/3-6 which is the extended limitations section of the statute of limitations 28 times since 1962. 720 ILCS 5/3-6 (West 2016). The legislature has never included a violation of bail bond as one of the enumerated offenses that should be considered as a crime with an extended limitation period for prosecutions. 720 ILCS 5/3-5; 3-6 (West 2016). A statute of limitations represents a legislative assessment of the relative interests of the State and the defendant in administering and receiving justice. *United States v. Marion*, 404 U.S. 307, 322 (1971). Indeed, the statute of limitations section is found under Article 3 "Rights of Defendant" section of the code.

Statutes of limitations are legislative creations. *People v. Ross,* 325 Ill. 417, 421 (1927). There were no statute of limitations at common law. Mallon, *supra*, at 286 n.10.

The establishment of limitations periods is properly left to the legislature based on its determination of what the public policy of this State should be with respect to specific crimes. *People v. Chenoweth,* 2015 IL 116898 ¶22.

Accordingly, the Illinois Senate Criminal law committee has 4 subcommittees. One of the subcommittees is for statutes of limitation. http:// www.ilga.gov/senate/committees. Thus, the legislature keeps abreast of this issue. Indeed, public policy considerations have moved the legislature to amend the statutes of limitations especially in the areas of domestic violence, firearms, and sexual abuse offenses. 720 ILCS 5/3-5; 3-6; 725 ILCS 5/32-10(a-5). Those are pressing public policy considerations.

Last year, the General Assembly amended section 3-7 and excluded from the period of limitation the time that the State Police lab takes to test DNA. 720 ILCS 5/3-7 (7)(West 2016). There were several bills pending in the 99th General Assembly which sought to amend the statute of limitations for sexual abuse crimes. HB1127, 99th Gen.Ass. (2016) and HB1129, 99th Gen. Ass.(2016). The legislature held hearings on this issue. Lisa Fielding, *Sex Abuse Survivor Urges Lawmakers To Change State Statues On Child Sex Abuse* CBS Chicago(sic) (Oct. 4, 2016)(sic) http://chicago.cbslocal.com/2016/10/04/sex-abuse-survivor-urges-lawmakers-to-change-state-statues-on-child-sex-abuse/. The Attorney General testified at the Senate's Subcommittee on statutes of limitation. *Id.*

The State should proceed through the legislature to amend the statute of limitations for violation of bail bond as it is currently doing with regard to other offenses. The State has had 26 years to approach the legislature with this issue and has not.

Third, the *Casas* opinion erred when it found that the defendant "has breached his lawful custody and obstructed justice." *Casas* at ¶18. The offenses of escape and violation of bail bond are not analogous. Escape is defined as "the intentional and unauthorized absence of a committed person from the custody of the Department." 730 ILCS 5/3-1-2 (i)(2016). Commitment is defined as "a judicially determined placement in the custody of the Department of Corrections on the basis of delinquency or conviction." 730 ILCS 5/3-1-2 (b)(2016).

A defendant on bond is not in custody. *People ex. rel. Morrison*, 58 Ill.2d 91 (1974). Bail is a release from custody and was so defined as, "the amount of

money set by the court which is required to be obligated and secured as provided by law for the release of a person in custody . . . ." 725 ILCS 5/102-6 (1998). Indeed, once a defendant has paid bond, the statute requires, "[U]pon depositing this sum the person shall be released from custody subject to the conditions of the bail bond." 725 ILCS 5/110-7(b)(West 1998). A bond established by a court "provides a defendant with judicial procedures that not only protect him from arbitrary arrest, but also provide a means to modify or contest an aspect of or denial of bond." *People v. Beachem*, 229 Ill.2d 237, 249-250 (2008).

Of course, a failure to comply with a condition of bond allows the court to issue a warrant for arrest but the defendant may be bailable "if he shows by the preponderance of the evidence that his failure to appear was not intentional." *Beachem*, 229 Ill.2d at 250, citing 725 ILCS 5/110-3 (West 2004) The court must also send a written to notice to the defendant's last known address informing him of the forfeiture and requiring him to come to court within 30 days. 725 ILCS 5/110-7 (g)(1998).

A defendant on bond may also alter the conditions of the bond. If the State or the defendant wants to alter bail bond conditions, reasonable notice must be given to the opposing party. *Beachem,* 229 Ill.2d at 250. 725 ILCS 5/110-6 (c)(d) (West 1998). If there is a violation of a condition, then the defendant is entitled to a hearing and the State must prove the violation by clear and convincing evidence. The defendant is entitled to counsel, to testify, to present witnesses, and cross-examine the State's witnesses. *Id.* at 250. One cannot alter the custodial status of a defendant. There are no hearings for a breach of custody to

determine whether it was intentional. There is no due process allocated for a prisoner who violates his custody by escaping.

Thus, there are a many differences between a violation of bail bond and a defendant who has escaped custody and those differences have been enacted by the legislature.

Inexplicably, the *Casas* opinion held that "to allow *Grogan* to stand unchallenged would, in our view, constitute an unwarranted windfall . . .(wherein) a defendant could thwart not only a prosecution for violating the bail bond, but also the underlying prosecution, which might well have gone cold . . ." *Casas* at ¶19.

Those are not the facts in this case. Mr. Casas was tried *in absentia*, found guilty *in absentia* and sentenced to 20 years, (not the minimum) *in absentia* for manufacture and delivery of a controlled substance. *Casas* at ¶2. There is absolutely no "thwarting" of a prosecution. The State could have tolled the statute but it chose not to file an information or seek a grand jury indictment for violation of bail bond.

Moreover, *Casas* also completely ignored the language in the violation of bail bond statute which allows for contempt charges in addition to violation of bail bond charges.

> Nothing in this Section shall interfere with or prevent the exercise by any court of its power to punishment for contempt.

720 ILCS 32-10(d)(West 1998).

The legislature has given the State ample avenues for prosecution of a violation of bail bond. If a defendant who is charged with violation of bail bond is acquitted of the original offense, then he can still be convicted of violation of bail bond. *People v. Tompkins,* 26 Ill.App.3d 322, 324 (4th Dist. 1975). Also, the penalty for conviction of violation of bail bond runs consecutive to the penalty for the underlying offense. 725 ILCS 5/32-10(d) (1998) and 730 ILCS 5/5-8-4(h) (West 1998).

Thus, a defendant can be charged with violation of bail bond, whether or not he is convicted of the underlying offense, his sentence on the violation must run consecutively to the underlying offense, and he can be charged with contempt. The State exercised its discretion and chose not to prosecute him for violation of bail bond or contempt.

Casas also found that it was not reasonable that the defendant thought a violation of bail bond was completed in 30 days. *Casas* at ¶22. It is reasonable as the money posted for bond goes to judgment on the 30th day. The notice of forfeiture informed Mr. Casas that he had 30 days to surrender or he would lose the entire bond. (S.R. 1) It is perfectly logical that a reasonable person would think that the 30th day is when the crime is committed. The jury instructions for the offense certainly find that it is a completed offense on the 30th day. IPI Criminal 4th, No. 22.54(2000).

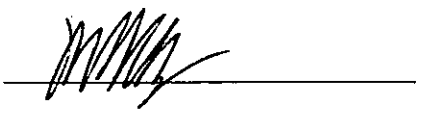
Casas also examined other jurisdictions to support its position and it conceded that there are different interpretations on this issue. *Casas* at ¶23.

The trial court was correct in dismissing the Superseding Information as it was time barred by the statute of limitations and its reliance on *Grogan* which should still be followed. An indictment or information is fatally defective when it is filed after the statute of limitations has expired. *People v. Strait,* 72 Ill.2d 503, 506 (1978). The Appellate Court was incorrect when it found the General Assembly intended for a violation of bail bond to be a continuous offense.

CONCLUSION

The Appellate Court's opinion should be reversed and the trial court's order dismissing the Superseding Information should be affirmed.

Respectfully submitted,



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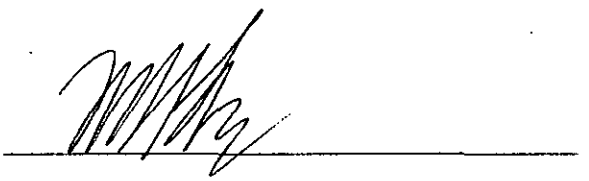
RULE 341 (C) CERTIFICATE OF COMPLIANCE

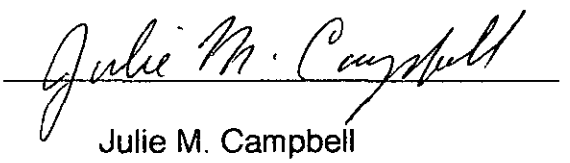
I certify that this brief conforms to the requirements of Rules 341(a) and(b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a), is 20 pages.



Mark H. Kusatzky

RULE 341 (C) 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 containing the Rule 341(d) cover, the 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a) is 20 pages.



Julie M. Campbell

APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

CRIMINAL ORDER 2014CF002204-71

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

VS

FERNANDO CASAS

2014CF002204

CASE NUMBER

FILED

15 Apr 20 AM 10: 32

Chris Kachiroubas

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

IT IS ORDERED, based on the COURT'S motion:

COURT NOTES THAT DEFENDANT DOES NOT OBJECT TO FILING OF SUPERSEDING INFORMATION. FILING ACCEPTED. DEFENDANT MOVES TO DISMISS. COURT GRANTS MOTION BASED ON REASONING OF PEOPLE V GROGAN 197 ILL APP 3D 18 (1ST DIST 1990). DEFENDANT REMANDED TO ILLINOIS DEPT OF CORRECTIONS TO SERVE REMAINDER OF SENTENCE.

Submitted by: LISA MADIGAN, ATTORNEY GENERAL

DuPage Attorney Number 400000

Attorney for PEOPLE OF THE STATE OF ILLINOIS

100 WEST RANDOLPH ST, STATE OF

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[illegible] 4/20/2015

JUDGE LIAM BRENNAN

Validation ID : DP-04202015-1033-05703

Date : 04/20/2015

7740

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	Case No. 14 CF 2204
Fernando CASAS, Jr., Defendant.	)	

FILED
2015 APR 28 PM 4: 24

CERTIFICATE OF IMPAIRMENT

1. On April 20, 2015 the People filed a superseding information alleging that defendant committed the offense of Violation of Bail Bond and that the statute of limitations was not implicated because violation of bail bond was a continuing offense. The information noted that the only appellate court opinion on point disagreed, *People v. Grogan*, 197 Ill.App.3d 18 (1st Dist. 1990), but that the People had a good-faith belief that *Grogan* was incorrectly decided and should be disagreed with on appeal.

2. On April 20, 2015, this Court dismissed the superseding information based on the reasoning in *Grogan*.

3. This Court's order dismissing the superseding information substantially impairs the People's ability to prosecute this matter as it terminates the prosecution.

The undersigned, on oath, says that the facts set forth in the forgoing information are True in substance and matter of fact.

Assistant Attorney General

Subscribed and sworn to before me
this 22nd day of April, 2015
Mary Jo Vail
Notary Public

OFFICIAL SEAL
MARY JO VAIL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-29-2018

7280

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	Case No. 14 CF 2204
Fernando CASAS, Jr., Defendant.	)	

FILED
2015 APR 28 PM 4: 23

NOTICE OF APPEAL

1. On April 20, 2015 the People filed a superseding information alleging that defendant committed the offense of Violation of Bail Bond and that the statute of limitations was not implicated because violation of bail bond was a continuing offense. The information noted that the only appellate court opinion on point disagreed, *People v. Grogan*, 197 Ill.App.3d 18 (1st Dist. 1990), but that the People had a good-faith belief that *Grogan* was incorrectly decided and should be disagreed with on appeal.

2. On April 20, 2015, this Court dismissed the superseding information based on the reasoning in *Grogan*.

3. This Court's order dismissing the superseding information terminates the prosecution and is appealable by the State. S. Ct. R. 604(a)(1); 725 ILCS 5/114-1(2) (dismissal based on limitations period).

4. Accordingly, the People give notice of appeal.

The undersigned, on oath, says that the facts set forth in the forgoing information are True in substance and matter of fact.

Assistant Attorney General

Subscribed and sworn to before me
this 22nd day of April, 2015
Mary Jo Vail
Notary Public

OFFICIAL SEAL
MARY JO VAIL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-20-2015

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,
v.
FERNANDO CASAS, JR., Defendant-Appellee.
No. 2-15-0456.
Appellate Court of Illinois, Second District.

Opinion filed April 14, 2016.

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.

Justices Hudson and Spence concurred in the judgment and opinion.

OPINION

JUSTICE HUTCHINSON delivered the judgment of the court, with opinion.

¶ 1 The question presented in this case is whether the offense of violation of bail bond is a continuing offense such that the limitations period on a violation-of-bail-bond prosecution is tolled until an offender is returned to custody. We hold that it is.

¶ 2 At some point in 1996 (the record does not indicate precisely when), defendant, Fernando **Casas**, Jr., was indicted by the statewide grand jury for the manufacture or delivery of cocaine in excess of 900 grams, a Class X felony. The case was transferred to Du Page County under case number 96-CF-1920. On October 16, 1996, the circuit court admitted defendant to bail in the amount of $750,000; he posted a 10% cash bond of $75,000. Thereafter, defendant regularly appeared in court for the case. On June 9, 1998, however, defendant failed to appear in court and his bond was forfeited. During the next 30 days, defendant did not surrender himself to authorities, and a bench

warrant was issued for his arrest. Later, defendant was tried *in absentia,* found guilty, and sentenced to 20 years' imprisonment.

¶ 3 On April 5, 2014, roughly 18 years after defendant was first indicted, the police stopped defendant for a traffic offense in Du Page County. During that stop, defendant gave the police a false name and a fake ID. In subsequent conversations with the police, defendant revealed his true identity, admitted that he stopped going to court in the 1996 case, and acknowledged the warrant for his arrest. Defendant also confessed that, because of the arrest warrant, he had used two different false identities, including the one on the fake ID, which he purchased in Mexico, to avoid apprehension while living in the United States.

¶ 4 Based on these facts, in December 2014, defendant was indicted for the violation of his 1996 bail bond. The Criminal Code of 2012 sets forth the offense of violation of bail bond as follows:

> "Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and knowingly fails to surrender himself or herself within 30 days following the date of the forfeiture, commits, if the bail was given in connection with a charge of [a] felony * * *, a felony of the next lower Class * * *." 720 ILCS 5/32-10(a) (West 2014).

The State's indictment alleged that defendant forfeited his bond by failing to appear in court on June 9, 1998, and by knowingly failing to surrender himself within 30 days of that date. The offense was charged as a Class 1 felony because defendant's underlying cocaine charge was a Class X felony.

¶ 5 Defendant moved to dismiss the indictment, arguing that a prosecution for violation of his bail bond was time-barred. 725 ILCS 5/114-1(a)(2) (West 2014). More specifically, defendant claimed that, under the general statute of limitations for felonies, the State had three years to bring the bail-bond charge against him (720 ILCS 5/3-5(b) (West 2014)), or until July 10, 2001.

Defendant noted that more than three years had passed, and asserted that the State did not allege any facts in the charging instrument that would toll or extend the three-year limitations period. See generally 720 ILCS 5/3-6 (West 2014) (extending limitations period for certain offenses); 720 ILCS 5/3-7 (West 2014) (excluding certain times from limitations period); 720 ILCS 5/3-8 (West 2014) (providing that for continuing offenses, limitations period is tolled and commences when "last such act" was committed).

¶ 6 In response, the State filed a superseding information, which provided as follows:

> "[O]n or about July 9, 1998, and continuing through and until April 5, 2014, [defendant] committed the offense of VIOLATION OF BAIL BOND, a Class 1 felony, in that * * * defendant, after being admitted to bail on or about October 16, 1996, for appearance in the Circuit Court of DuPage County * * * in case 96 CF 1920, and on or about June 9, 1998, he incurred a forfeiture of his bail and thereafter knowingly, willfully, and unlawfully failed to surrender himself within 30 days following the date of the forfeiture of the bail, in violation of [section 32-10(a) of the Criminal Code (720 ILCS 5/32-10(a) (West 2014))]; and because Violation of Bail Bond should be considered a continuing offense, the statute of limitations did not start running until April 5, 2014, when defendant was apprehended and admitted that he used a false identity to evade prosecution."

In a footnote in the information, the State asserted that "[t]his Court is bound by ***People*** *v. Grogan*, 197 Ill. App. 3d 18 (1st Dist. 1990), which held that violation of a bail bond is *not* a continuing offense." (Emphasis in original.) The State then noted that it, with the superseding information, was "mak[ing] a good[-]faith argument that *Grogan* was improperly decided and should be overruled."

¶ 7 The State's use of the phrase "continuing offense" was a reference to section 3-8 of the Criminal Code, which tolls the three-year limitations period as follows: "When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed." 720 ILCS 5/3-8 (West 2014).

¶ 8 The trial court granted defendant's motion to dismiss, finding that pursuant to *Grogan* defendant's prosecution for violation of a bail bond was time-barred. The State timely appealed.

¶ 9 On appeal, the State primarily contends that violation of bail bond is a continuing offense under section 3-8 of the Criminal Code (*id.*) and that *Grogan* was wrongly decided. Thus, according to the State, the limitations period was tolled when the offense was initially committed, and began to run once defendant was taken into custody. Accordingly, since defendant was charged with the bail-bond offense well within three years from the date of his arrest, the statute of limitations was not violated. In the alternative, the State argues that its reference to defendant's use of a false identification qualifies as an exception to the limitations period for when a criminal defendant "is not usually and publicly resident within this State" (720 ILCS 5/3-7(a) (West 2014)). Because we agree with the State on the first issue, we need not address the second.

¶ 10 Whether violation of bail bond is a continuing offense and whether the superseding information was properly dismissed present questions of law, which we review *de novo*. ***People*** *v. Macon*, 396 Ill. App. 3d 451, 454 (2009). As noted, most felony offenses must be charged "within 3 years after the commission of the offense." 720 ILCS 5/3-5 (West 2014). A crime is "committed," and the limitations period begins to run, when the final element of the offense is completed. See generally ***People*** *v. Blitstein*, 192 Ill. App. 3d 281, 284 (1989) (citing *Toussie v. United States*, 397 U.S. 112, 115 (1970)); ***People*** *v. Mudd*, 154 Ill. App. 3d 808, 815 (1987). But, as the Utah Supreme Court has helpfully observed, "[i]n the case of a continuing offense, while

criminal liability attaches when every element is satisfied, the statute of limitations does not begin to run until the perpetrator ceases to satisfy the elements of the crime. At that point, the whole arc of criminal conduct is aggregated into a single criminal violation." *State v. Taylor*, 2015 UT 42, ¶ 12, 349 P.3d 696.

¶ 11 As noted above, in Illinois, the continuing-offense exception is codified in section 3-8 of the Criminal Code (720 ILCS 5/3-8 (West 2014)). Illinois law holds that the continuing-offense exception to the statute of limitations applies in certain instances, such as where the crime is conspiracy (***People*** *v. Konkowski,* 378 Ill. 616, 621 (1941)), embezzlement (***People*** *v. Adams*, 106 Ill. App. 2d 396, 405 (1969)), criminal contempt (***People*** *v. Levinson*, 75 Ill. App. 3d 429, 436 (1979)), failure to maintain records concerning controlled substances (***People*** *v. Griffiths*, 67 Ill. App. 3d 16, 20 (1978)), or escape from custody (***People*** *v. Miller*, 157 Ill. App. 3d 43, 46 (1987)). Since escape and violation of bail bond are similar offenses, we will begin by discussing *Miller.*

¶ 12 In *Miller,* the defendant was convicted of escape and appealed on the basis that she had been charged with that offense after the limitations period had expired. *Id.* at 44-45. The First District Appellate Court (relying principally on the United States Supreme Court's decision in *United States v. Bailey*, 444 U.S. 394 (1980) (construing federal escape statute)), held that escape was a continuing offense under Illinois law. *Miller*, 157 Ill. App. 3d at 46. Specifically, the *Miller* court determined that "escape encompasses not only the defendant's initial departure but [also] his failure to return to custody." *Id.* The court noted that an escaped prisoner "poses a continuing threat to society" and that the consequences of viewing escape as "an isolated occurrence * * * would encourage a convicted felon to remain in hiding until the three-year statute of limitations had expired." *Id.* Accordingly, the court found that "once the defendant had escaped, she was under a duty to terminate her status as a fugitive by turning herself over to the authorities." *Id.* Thus, "[t]he three-year statute of limitations applicable to felonies [citation] is tolled during the period an escapee remains at large." *Id.*; see

also *Bailey*, 444 U.S. at 413 ("we think it clear beyond peradventure that escape from * * * custody * * * is a continuing offense and that an escapee can be held liable for failure to return to custody as well as for his initial departure").

¶ 13 Parenthetically, we note that we recently relied on *Miller* when holding that, because escape is a continuing offense, a defendant who was 16 when he escaped, but who was 17 when he was captured and arrested, could be prosecuted in criminal court rather than juvenile court. ***People** v. Esparza*, 2014 IL App (2d) 130149, ¶¶ 14-15.

¶ 14 Now, we turn to *Grogan,* which addressed whether violation of a bail bond is a continuing offense. There, the defendant was charged with theft and posted bond in July 1981. *Grogan*, 197 Ill. App. 3d at 19. When he failed to appear in court in December 1981, his bond was forfeited, and an arrest warrant was issued; then, when he failed to surrender within 30 days, judgment was entered on the bond forfeiture. *Id.* at 19-20. In 1987, the defendant was indicted for violation of his bail bond. *Id.* at 19. He was convicted of that offense and appealed. *Id.* at 21.

¶ 15 On appeal, the defendant argued that his trial counsel was ineffective for failing to argue that his prosecution on the bail-bond charge was barred by the three-year statute of limitations. *Id.* The State, relying on *Miller,* asserted that the offense of violation of bail bond was similar to the offense of escape. *Id.* The *Grogan* court framed the State as arguing the following: "because the purpose of the violation of bail bond statute is to impose a duty on defendant to appear in court, each day that defendant fails to surrender must be thought of as a breach of that duty and that this breach continues until defendant appears in court." *Id.* However, the *Grogan* court distinguished *Miller,* asserting that "[t]he offense of violation of bail bond, unlike the offense of escape of a convicted felon, is [(1)] not the kind of offense that poses a continuing threat to society, nor can it [(2)] be defined as a series of related acts constituting a single

[course] of conduct, such as conspiracy or embezzlement." *Id.* at 21-22.

¶ 16 We determine that the court in *Grogan* was wrong on both points. First, we cannot say that a defendant who violates his or her bail bond categorically does not pose a continuing threat to the public. In fact, it is precisely because of "the threat posed by persons who commit crimes while on bond" (***People*** *v. Dowthard*, 197 Ill. App. 3d 668, 671 (1990)) that the legislature implemented mandatory consecutive sentencing for any felony committed while a defendant is on bond. See Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-4(h) (now 730 ILCS 5/5-8-4(d)(9) (West 2014)). To be sure, a defendant's release on bail does reflect the trial court's initial impression that the defendant does "not pose a danger to any person or [to] the community" (725 ILCS 5/110-2 (West 2014) (listing conditions of bond)); however, it also reflects the court's assessment that the defendant will "comply with all conditions of bond" (*id.*). Once the defendant refutes this latter prediction, we see absolutely no reason why he should remain presumptively clothed in the former.

¶ 17 Second, and more importantly, the *Grogan* court was incorrect because the offense of violation of bail bond, like the offense of escape, *is* "a single [course] of conduct" (*Grogan*, 197 Ill. App. 3d at 21), and that course of conduct continues *beyond* the initial commission of the offense. Thus, the *Grogan* court seemingly misapprehended the nature of the offense of violation of bail bond, which is in fact the controlling question: whether the nature of the crime is such that the legislature intended it to be treated as a continuing offense. See *Esparza*, 2014 IL App (2d) 130149, ¶ 13 (quoting *Miller*, 157 Ill. App. 3d at 46, quoting *Bailey*, 444 U.S. at 413, quoting *Toussie*, 397 U.S. at 115).

¶ 18 We determine that the legislature intended that, like escape, violation of bail bond would be treated as a continuing offense. The nature of the offense is that the offender has secured bail and fled. Like escape, wherever else the bail-bond offender is, he is not where he is lawfully supposed to be; he has breached

his lawful custody and obstructed justice. Such acts "pose[ ] a threat to the integrity and authority of the court." *United States v. Gray*, 876 F.2d 1411, 1419 (9th Cir. 1989) (holding that "failure of a defendant to appear for sentencing" is a continuing offense). And, the threat to the court's authority posed by an on-bond fugitive defendant is just as acute 31 days after his failure to appear as it is, as this case shows, nearly 20 years after he has decided to become a fugitive. In addition, we note that, like escape, there is no separate crime in Illinois for not turning oneself in *after* the violation of his bail bond, so as to distinguish between an initial and a continuing violation. *Cf. United States v. Vowiell*, 869 F.2d 1264, 1269 (9th Cir. 1989). All of this convinces us that the General Assembly intended violation of bail bond to be treated as a continuing offense because the offense aggregates the entirety of the defendant's criminal conduct.

¶ 19 We note that we have also considered the consequences of interpreting these statutes — sections 3-8 and 32-10(a) of the Criminal Code — one way or another. See ***People*** *v. Gutman*, 2011 IL 110338, ¶ 12. While all limitations statutes inure to a defendant's benefit to some degree, to hold in defendant's favor in this case and allow *Grogan* to stand unchallenged would, in our view, constitute an unwarranted windfall. Such a holding would, as the court noted in *Miller,* encourage a defendant "to remain in hiding until the three-year statute of limitations had expired." *Miller*, 157 Ill. App. 3d at 46. Indeed, under that holding, a defendant could thwart not only a prosecution for violating the bail bond, but also the *underlying* prosecution, which might well have gone cold with evidence that has been "distorted or diluted by the passage of time." ***People*** *v. Macon*, 396 Ill. App. 3d 451, 456 (2009). We are singularly disinclined to hamstring both the State and the courts from punishing defendants to the full extent of their crimes.

¶ 20 In addition, our interpretation best enables the State to justly exercise its prosecutorial discretion and to treat each violation-of-bail-bond case on its own merits. To hold otherwise would force the State "to decide whether to pursue prosecution

of the [bail-bond offender] before his return to [the court's jurisdiction] and before all the facts surrounding the [bail-bond violation] are known." State v. Burns, 564 A.2d 593, 596 (Vt. 1989) (holding that escape is a continuing offense). Accordingly, consistent with the principles of statutory construction (see, *e.g.*, ***People*** *v. Williams,* 2016 IL 118375, ¶ 15), viewing the crime of violation of bail bond as a continuing offense strikes us as effectuating the legislature's intent and, furthermore, fosters a just result.

¶ 21 Citing *Toussie*, 397 U.S. 112, defendant contends that violation of a bail bond should not be considered a continuing offense. In *Toussie,* the defendant was required to register for the draft when he turned 18 or within 5 days thereafter. *Id.* at 113. The defendant failed to do so, and eight years later the defendant was indicted for failing to register. *Id.* The defendant moved to dismiss the indictment, claiming that the five-year limitations period had run. *Id.* at 113-14. The government, although agreeing that the crime was complete within 5 days after the defendant turned 18, nevertheless argued that failing to register was a continuing offense that was committed each day the defendant failed to register. See *id.* at 114. The United States Supreme Court disagreed. In doing so, the Court relied on the history of the draft laws, which viewed the duty to register as a "single, instantaneous act to be performed at a given time," and the principle that continuing offenses should not be too readily found. *Id.* at 116-17.

¶ 22 Here, unlike in *Toussie,* the history behind posting bail lends support to the conclusion that violation of a bail bond is a continuing offense. Throughout history, the primary reason why defendants were required to post bail was to ensure that they would appear in court whenever ordered to do so. See, *e.g.*, *United States v. Ryder*, 110 U.S. 729, 736 (1884) ("the object of bail in criminal cases is to secure the appearance of the principal before the court for the purposes of public justice"); see also Timothy R. Schnacke *et al.,* Pretrial Justice Institute, The History of Bail and Pretrial Release (Sept. 24, 2010). That obligation,

unlike the obligation that arises with the draft laws, is not comprised of a "single, instantaneous act to be performed at a given time." *Toussie*, 397 U.S. at 116-17. Rather, as a condition of bail, a defendant must "[a]ppear to answer the charge [on which bail was posted] in the court having jurisdiction on a day certain *and thereafter* as ordered by the court *until discharged or final order of the court.*" (Emphases added.) 725 ILCS 5/110-10(a)(1) (West 2014). For this reason, defendant here, unlike the defendant in *Toussie*, could not reasonably expect that his crime of violation of a bail bond was complete 30 days after he failed to appear in court on the scheduled court date.

¶ 23 We note that courts in both Texas and New York maintain that their respective equivalent bail-bond offenses are not continuing (*State v. Ojiaku*, 424 S.W.3d 633, 639 (Tex. App. 2013); ***People** v. Landy*, 125 A.D.2d 703, 704 (N.Y. App. Div. 1986)), although New York courts have not always held this view. See ***People** v. Ingram*, 74 Misc. 2d 635, 640 (N.Y. Crim. Ct. 1973) (find that bond-jumping defendant "divested himself of the protection of the statute of limitations by his chosen course of unavailability"). However, we believe that the better approach is the one taken by those jurisdictions that view this as a continuing offense (*e.g.*, *Gray*, 876 F.2d 1411; *State v. Francois*, 577 N.W.2d 417 (Iowa 1998), and particularly by the Nevada Supreme Court, which stated the following:

> "Bail is a privileged release from custody. To allow [the defendant] to avoid prosecution for [the bail-bond violation] simply because he eluded arrest long enough to surpass the three year statute of limitations is contrary to the purpose of [the violation-of-bail-bond statute] in particular and bail in general. Therefore, based on the fact that [the statute] is intended to punish those on bail who violate the conditions of their bail by failing to appear before the court when commanded, we conclude that [violation of a bail bond] is a continuing offense * * *." *Woolsey v. State*, 906 P. 2d 723, 726 (Nev. 1995).

We agree and so hold. We cannot, as the State has asked, "overrule" *Grogan,* since it is a decision of a court of equal stature; however, that does not prevent us from expressing our view that the decision in *Grogan* should no longer be followed. ***People*** *v. Thomas,* 2014 IL App (2d) 121203, ¶ 48.

¶ 24 Though it is not entirely clear from his appellate brief, defendant also appears to argue that the State's superseding information was "fatally defective" in that it referred to violation of bail bond as a "continuing offense" without specifically citing section 3-8 of the Criminal Code. To the extent that this is defendant's argument, we reject it. Our supreme court has declined to rigidly define what is required for the State to invoke an exception to the statute of limitations. See ***People*** *v. Morris,* 135 Ill. 2d 540, 547 (1990). The standard for assessing the sufficiency of a charging instrument — both for the offense and for exceptions to the statute of limitations — is whether the document "provide[s] notice to the defendant of precisely what the State will attempt to prove (and therefore to allow the defendant an opportunity to prepare a defense)." *Id.* Here, the superseding information provided that "on or about July 9, 1998, and *continuing through and until* April 5, 2014, [defendant] committed the offense of VIOLATION OF BAIL BOND." The information then indicated that "because Violation of Bail Bond should be considered a continuing offense, the statute of limitations *did not start running until April 5, 2014, when defendant was apprehended.*" (Emphasis added.) Despite the lack of a reference to section 3-8 of the Criminal Code, we determine that the superseding information sufficiently set forth the circumstances under which the State sought to invoke the continuing-offense exception to the three-year statute of limitations. Accordingly, the superseding information was not fatally defective.

¶ 25 For the above-stated reasons, we hold that the State's superseding information should not have been dismissed, that violation of bail bond is a continuing offense, and that *Grogan* should no longer be followed. We therefore reverse the judgment

of the circuit court of Du Page County and remand this cause for further proceedings.

¶ 26 Reversed and remanded.

http://chicago.cbslocal.com/2016/10/04/sex-abuse-survivor-urges-lawmakers-to-change-state-statues-on-child-sex-abuse/

Sex Abuse Survivor Urges Lawmakers To Change State Statues On Child Sex Abuse

CHICAGO (CBS) — Scott Cross made headlines when he testified that former U.S. House Speaker Dennis Hastert abused him when he was a wrestler at Yorkville High School in the late 1970's. He says sometimes it takes a lifetime for survivors to come forward.

"I understand that the average age that an individual is willing to come forward is roughly 42 years of age. Our current state stops at age 38. It is unbelievably hard to step forward and confront a person of power and trust in somebody that you idolized and respect," said Cross, who is now 54. He is also the brother of former Republican statehouse leader Tom Cross.

Currently in Illinois, such crimes must be reported and prosecuted within 20 years of the survivor turning 18.

In April, Cross testified at Hastert's sentencing hearing that he had molested him when he was 17.

"While this is difficult for me to discuss," Cross said, fighting back tears. "It's one that can't be swept under the rug. Earlier this year, it shocked the world that Hastert used his wealth, prestige and power accumulated through years of elected office to cover up sexual crimes he perpetrated over the years."

But Hastert was only charged with federal banking laws because the statute of limitations had run out.

"Hastert inflicted unbelievable pain on the lives of the youth," Cross said. "He was entrusted to care for yet he got a slap on the wrist. As hard as it is continue to live through the events of the past, the laws in Illinois and across the country have to change."

Cross joined Illinois Attorney General Lisa Madigan in testifying before the Senate Criminal Law Committee's Subcommittee on Statutes of Limitation.

Illinois Attorney General Lisa Madigan testifies. (Lisa Fielding)

"In Illinois there should not be statutes of limitations on crimes against children," Madigan said. "As we have understood more about the difficult process that

survivors endure, the federal government and states across the country have been rethinking statues of limitations on these crimes."

Nationwide, 36 others states and the federal government have removed criminal statutes of limitations for all sexual offenses against children.

"With the support of my family and the Attorney General, I'm here today to reclaim the power Hastert took from too many of us years ago and to channel it into actions," Cross said. "To empower survivors of sexual abuse to obtain justice under the law. It should offend everyone's faith in the judicial system that Illinois' laws today would still allow child molesters to avoid prosecution from heinous abuse because a survivor didn't come forward in time."

Scott Cross testifies (Lisa Fielding)

The General Assembly is considering four measures to eliminate criminal statutes of limitations for sexual offenders that are committed against children.

Senate Bill 3402 and House Bill 1127 remove the statutes of limitations in cases of sexual assault and sexual abuse of a child. House Bill 1128 and 1129 removes the statutes of limitations in cases of other sexual offenses against a

child such as incest, solicitation, grooming, possessing and disseminating child pornography, prostitution and failure to report sexual abuse of a child.

"There are other survivors from every corner of the state who like me, carried a tremendous burden, suffered under tremendous guilt, and felt powerless because we didn't come forward quick enough and as a result, we silenced because of Illinois' legal system," Cross said . "Seize this moment in history and make Illinois one of the toughest states on child sex offenders."

The soonest any of the proposed bills could be taken up is next month during lawmakers' brief fall session.

TABLE OF CONTENTS TO RECORD ON APPEAL

INDEX TO COMMON LAW RECORD

INDEX TO SUPPLEMENTAL RECORD