

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 251129-U
NOS. 4-25-1129, 4-25-1130 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 17, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
RYAN D. ARSENAULT,	)	Nos. 23CF419
Defendant-Appellant.	)	23CF501
	)	
	)	Honorable
	)	Holly J. Henze,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Doherty and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed and remanded, finding (1) the trial court abused its discretion in ordering defendant's sentences to run consecutively and (2) trial counsel provided ineffective assistance in failing to file a certification of waiver of assessments.

¶ 2 Defendant, Ryan D. Arsenault, pled guilty to violating probation and was sentenced to consecutive terms of three and five years in the Illinois Department of Corrections for forgery (720 ILCS 5/17-3(a)(2) (West 2022)) and unlawful delivery of methamphetamine (720 ILCS 646/55(a)(2)(A) (West 2022)), respectively. Defendant appeals, arguing that the trial court abused its discretion in imposing consecutive sentences. He additionally argues that his trial counsel provided ineffective assistance by failing to file a certification of waiver of assessments pursuant to Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023).

¶ 3 We agree with defendant on both issues and reverse and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 On June 30, 2023, defendant was charged by information with two counts of forgery (720 ILCS 5/17-3(a)(2) (West 2022)). The information alleged that on May 26, 2023, defendant cashed false checks at two separate branches of a bank. On August 17, 2023, defendant was indicted in a separate case on one count of unlawful delivery of methamphetamine (less than five grams) (720 ILCS 646/55(a)(2)(A) (West 2022)).

¶ 6 At a hearing on April 3, 2024, defendant and the State presented a plea agreement to the trial court. Under the agreement, defendant would plead guilty to one count of forgery and one count of possession with intent to deliver methamphetamine. In exchange, he would be sentenced to 24 months of probation, with 180 days of jail time stayed, and ordered to pay \$12,096.06 in restitution to First Bankers Trust. The remaining forgery charge against him would be dismissed.

¶ 7 The trial court informed defendant of the possible penalties associated with his charges, including the possibility that the court could order defendant's sentences to run consecutively. Defendant stated that he understood. The State provided a factual basis for the plea, stating that officers with the Quincy Police Department would testify that an investigation revealed that defendant had cashed fraudulent checks in his name purporting to have been issued from a business at which he was not employed. Regarding the unlawful delivery charge, the State proffered that investigators with the West Central Illinois Task Force would testify that they set up a controlled buy in which a confidential source purchased items from defendant that were thereafter tested and found to contain methamphetamine.

¶ 8 The trial court found that there existed a factual basis for the plea and that the plea was knowingly and voluntarily made. It accepted the plea and sentenced defendant to probation

according to its terms. As part of his probation, defendant was ordered not to violate any criminal statute of any jurisdiction, not to use or be in possession of any cannabis or controlled substances, to submit to random drug testing, and to report as directed to his probation officer. Additionally, defendant was ordered to pay various assessments, including criminal assessments totaling \$2,764.

¶ 9 On June 28, 2024, the State filed a petition to issue the mittimus. The petition alleged that defendant had violated the terms of his probation by failing to attend scheduled appointments with his probation officer on five separate dates and testing positive for methamphetamine, cocaine, fentanyl, and heroin on April 30, 2024, and positive for methamphetamine on June 4, 2024. The State alleged that defendant had admitted to using methamphetamine before taking the June drug test. The State asked that defendant's stayed jail sentence be imposed.

¶ 10 On July 17, 2024, the State filed a petition to revoke defendant's probation. This petition alleged that defendant had been charged with unlawfully possessing fentanyl. On the same day, a hearing was held on both of the State's petitions. Maxwell Smith, defendant's probation officer, corroborated the substance of the State's petition to issue the mittimus. He further testified that defendant was not engaged in treatment for substance abuse but was on a waiting list to begin inpatient treatment.

¶ 11 The trial court began by taking judicial notice of defendant's recent charge for possession of fentanyl, which defendant allegedly committed on April 11, 2024, eight days after he was sentenced in the instant case. The court noted defendant's multiple positive drug tests and failures to report to probation appointments. It issued a mittimus for 60 days of imprisonment but stated that if a spot in a treatment program became available during that time, it would consider lifting the mittimus to allow defendant to attend treatment.

¶ 12 At a hearing on July 24, 2024, counsel for defendant informed the trial court that defendant had secured a bed in a treatment center. The court allowed defendant to be released from jail to attend treatment.

¶ 13 At a hearing on August 28, 2024, defense counsel informed the trial court that defendant had successfully completed inpatient treatment.

¶ 14 On February 7, 2025, the State filed an amended petition to revoke defendant's probation. The amended petition alleged that defendant had again violated the terms of his probation by (1) committing the offense of unlawful possession of fentanyl on April 11, 2024, (2) failing to attend four additional probation appointments between August 2024 and November 2024, (3) failing to attend outpatient treatment following his successful completion of inpatient treatment and being unsuccessfully discharged from his drug treatment program as a result, and (4) testing positive for methamphetamine on September 23, 2024, and November 19, 2024.

¶ 15 At a hearing on February 10, 2025, defendant admitted to the allegations that he had failed to attend his probation appointments and had tested positive for methamphetamine in September and November 2024. The State withdrew the allegations relating to his charge for possession of fentanyl and his failure to complete outpatient treatment. The trial court revoked defendant's probation, and the matter was continued for sentencing.

¶ 16 The sentencing hearing was held on March 27, 2025. The only evidence offered was defendant's presentence investigation report (PSI) and a later addendum to the report. The PSI detailed defendant's history of substance use, including his use of alcohol, marijuana, methamphetamine, heroin, and cocaine throughout his life. The report also discussed defendant's apparent dishonesty regarding his drug use, noting that he had tested positive for methamphetamine, heroin, and cocaine on dates occurring after he had claimed to have ceased

using the drugs. For example, the 41-year-old defendant reported having not used cocaine since he was 21 years old but had tested positive for cocaine less than one year earlier. The PSI also discussed defendant's criminal history, which dated back to 1999 and included numerous driving infractions, as well as convictions for possession of controlled substances and probation failures.

¶ 17 The trial court stated that it had considered the factual basis of defendant's convictions, the PSI and addendum, the history of the case, the statutory factors in aggravation and mitigation, and defendant's character, attitude, and demeanor. Referencing defendant's dishonesty regarding his drug use, the court found that he "[had] problems with the truth." It found that defendant was not "getting the message from continued sentences to probation" and that it was "time for prison." It further added that defendant's conviction for possession with intent to deliver methamphetamine "wasn't simply just meth use. It was delivery. Thought goes into that. That's not just an addiction problem. That's criminality." It sentenced defendant to three years for his forgery conviction and five years for his unlawful delivery conviction, to run consecutively.

¶ 18 Defendant filed a motion to reconsider. At a hearing on the motion, defense counsel argued that consecutive sentences may only be imposed where it is the opinion of the trial court that they are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record. Counsel referred to the transcript of defendant's sentencing hearing and argued that the court had not articulated a specific basis on which to sentence defendant to consecutive terms. Specifically, counsel argued that the court had not made the finding on the record that defendant presented a danger to the public. Counsel argued that defendant's sentences should be amended to run concurrently based on the court's failure to "follow the rules."

¶ 19 The trial court responded that it had emphasized defendant's character and lack of

honesty at the sentencing hearing and had noted that one of his crimes was delivery, which was more than mere addiction or personal use. The court stated:

“And I do remain firm and will specifically make the finding on the record that I took into consideration the nature and circumstances of the offenses, the history and character of the defendant. *** And I’ll make the specific finding that consecutive sentences are required to protect the public from further criminal conduct.”

The court continued:

“[T]his wasn’t just—he’s not being resentenced for simple use or possession. He is being resentenced for delivery and obviously while in active use, a crime of dishonesty and it wasn’t a simple theft. It wasn’t just a simple retail theft. *** This was a very serious crime and [the State] is correct, the public has to absorb those costs.

So I will make the finding that the public does need to be protected.”

¶ 20 The trial court subsequently denied defendant’s motion to reconsider.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues (1) the trial court abused its discretion in sentencing him to consecutive sentences and (2) trial counsel was ineffective for failing to file a certification of waiver of court assessments pursuant to Illinois Supreme Court Rule 404(e) (eff. Sept. 1, 2023). We will address each issue in turn.

¶ 24 A. Consecutive Sentences

¶ 25 Section 5-8-4(c)(1) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-

4(c)(1) (West 2024)) provides that consecutive sentences may be imposed where it is the opinion of the trial court, based on the nature and circumstances of the offense and the defendant's history and character, that consecutive sentences are required to protect the public from further criminal conduct by the defendant. This section further requires the court to "set forth in the record" the basis for its decision that consecutive sentences are necessary. *Id.* The failure to use the specific language contained in the statute does not necessarily mean that a sentence must be reversed. *People v. Pittman*, 93 Ill. 2d 169, 177-78 (1982). Rather, the record must only "show that the sentencing court is of the opinion that a consecutive term is necessary for the protection of the public." *Id.* at 178. We will not substitute our judgment for that of the trial court merely because we would have balanced the appropriate sentencing factors differently. *People v. O'Neal*, 125 Ill. 2d 291, 298 (1988). The imposition of consecutive sentences will not be reversed absent an abuse of discretion. *People v. Couch*, 387 Ill. App. 3d 437, 445 (2008).

¶ 26 Defendant's argument on this point is twofold. He asserts both that the trial court did not give the basis for its decision on the record, as required by the Code, and that the imposition of consecutive sentences was an abuse of discretion. We find that, regardless of the sufficiency of its findings on the record, the court abused its discretion in sentencing defendant to consecutive terms. Accordingly, we will focus on the latter argument.

¶ 27 Defendant argues that the trial court's imposition of consecutive sentences was an abuse of discretion based on his history and character and the nonviolent nature of his charges. He argues that a determination that a defendant is a danger to the community involves evidence that the defendant's offense is "significant in some way and has been repeated so many times it suggests the defendant will reoffend." He maintains that "[w]ithout highlighting evidence of a pattern of conduct or providing some additional reasoning as to why these offenses were especially

egregious,” the trial court did not do “its job of adequately justifying the sentencing in the record as required.”

¶ 28 We agree. We emphasize that a trial court may only impose consecutive sentences after making a specific factual finding: that based on “the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant.” 730 ILCS 5/5-8-4(c)(1) (West 2024). Absent such a finding or a mandatory consecutive sentence requirement, the legislature has prescribed that sentences for multiple offenses “shall run concurrently.” *Id.* § 5/5-8-4(a). Illinois courts have taken very seriously the idea that consecutive sentences are the exception, not the rule. This appellate district has said that consecutive sentences are “rarely appropriate” (*People v. Wrice*, 140 Ill. App. 3d 494, 500 (1986)), and the Illinois Supreme Court has stated that “[c]onsecutive sentences should be imposed sparingly” (*O’Neal*, 125 Ill. 2d at 298).

¶ 29 Here, at defendant’s resentencing, the trial court sentenced him to consecutive sentences after finding that probation was no longer an option, that defendant was dishonest about his drug use while on probation, and that his conviction for delivery was more than “simply just meth use” and demonstrated “criminality.” It provided no further explanation.

¶ 30 At the hearing on defendant’s motion to reconsider, the trial court minimally elaborated on its position, stating:

“I do remain firm and will specifically make the finding on the record that I took into consideration the nature and circumstances of the offenses, the history and character of the defendant. I believe I can take into consideration the history of the case, knowledge gained throughout probation reviews. That information is also

contained in the [PSI]. And I'll make the specific finding that consecutive sentences are required to protect the public from further criminal conduct.

Again, this wasn't just—he's not being resentenced for simple use or possession. He is being resentenced for delivery and obviously while in active use, a crime of dishonesty and it wasn't a simple theft. It wasn't just a simple retail theft. It wasn't just a simple stealing a bad check and writing it for \$10 at the gas station. This was a very serious crime and [the State] is correct, the public has to absorb those costs.

So I will make the finding that the public does need to be protected.”

¶ 31 In short, the trial court here focused not on this particular defendant or the circumstances of this case, but on the nature of the offenses in general. While it is true that a charge of delivery of methamphetamine is a more serious offense than a charge of possession, that difference is reflected in the different sentencing ranges applicable to each offense. The issue here is that the court's rationale essentially proves too much. If being convicted of forgery and delivery of methamphetamine were sufficient to justify consecutive sentences, it would mean that any person convicted of these two offenses could have their sentences imposed consecutively, without regard to the particular circumstances of the case.

¶ 32 We consider this a far cry from the statutory standard, which directs courts to consider the “nature and circumstances of the offense and the history and character of the defendant.” 730 ILCS 5/5-8-4(c)(1) (West 2024). The trial court here described nothing about the circumstances of the offenses which were not inherent in them or about defendant's criminal history, which largely consisted of less serious offenses. The court's only case-specific comments were about defendant's untruthfulness in connection with his probation violations. While certainly

a valid factor in assessing defendant’s rehabilitative potential, we find it too thin a basis on which to conclude that this case is one of those few justifying a sentence which is “rarely appropriate” (*Wrice*, 140 Ill. App. 3d at 500) and to be “imposed sparingly” (*O’Neal*, 125 Ill. 2d at 298).

¶ 33 While the abuse of discretion standard of review is highly deferential to trial courts—as it should be—it still provides for “meaningful review” and does not constitute “ ‘rubber-stamping’ ” of trial court decisions. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 99 (2006). Indeed, when the supreme court established abuse of discretion as the appropriate standard of review of consecutive sentences, it did so in a case in which it found that the imposition of consecutive sentences was an abuse of discretion. *O’Neal*, 125 Ill. 2d at 301. We find this case to be one of those in which, even under an abuse of discretion review, the imposition of consecutive sentences is unsupported by the record. Accordingly, we find that the court abused its discretion in sentencing defendant to consecutive terms.

¶ 34 B. Rule 404(e) and Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024)

¶ 35 Next, defendant argues that his trial counsel provided ineffective assistance in failing to file a certification of waiver of assessments pursuant to Illinois Supreme Court Rule 404(e) (eff. Sep. 1, 2023).

¶ 36 Rule 404(e) provides, in relevant part, as follows:

“In any case where a defendant is represented by a public defender, criminal legal services provider, or an attorney in a court-sponsored *pro bono* program, the attorney representing that defendant shall file a certification with the court, and that defendant shall be entitled to a waiver of assessments *** without necessity of an Application under this rule.” *Id.*

¶ 37 “ ‘To demonstrate ineffective assistance of counsel, a defendant must show that

(1) the attorney’s performance fell below an objective standard of reasonableness and (2) the attorney’s deficient performance prejudiced the defendant in that, absent counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.’ ” *People v. Hoskins*, 2025 IL App (4th) 240991, ¶ 32 (quoting *People v. Jackson*, 2020 IL 124112, ¶ 90). We review claims of ineffective assistance of counsel *de novo*. *Id.* ¶ 35.

¶ 38 Here, where defendant was represented by a public defender throughout the pendency of his case, counsel was required to file a certification pursuant to Rule 404(e) to have defendant’s applicable court assessments waived, including \$549 for his forgery conviction and \$2,215 for his unlawful delivery conviction. Filing this certification would have entitled defendant to a waiver. See Ill. S. Ct. R. 404(e) (eff. Sept. 1, 2023). Accordingly, counsel’s failure to file a Rule 404(e) waiver prejudiced defendant by denying him the waiver to which he was entitled. See *People v. Yarber*, 2026 IL App (4th) 250294-U, ¶ 69. Defendant has therefore established ineffective assistance of counsel by showing both deficient performance on the part of counsel and resulting prejudice. See *id.*

¶ 39 In the past, we have remanded for compliance with Rule 404(e) based on a theory of ineffective assistance of counsel. See generally *People v. Glas*, 2025 IL App (4th) 241199-U, ¶ 35. However, the State in the instant case argues that we should remand on a different ground. Specifically, the State argues that this issue is governed by Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024). Rule 472(a) provides that the trial court retains jurisdiction to correct certain sentencing errors at any time following judgment. Ill. S. Ct. R. 472(a) (eff. Feb. 1, 2024). These errors include “[e]rrors in the imposition or calculation of fines, fees, assessments, or costs.” Ill. S. Ct. R. 472(a)(1) (eff. Feb. 1, 2024). Rule 472(c) emphasizes that “[n]o appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless

such alleged error has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. Feb. 1, 2024)

The State therefore argues that, because defendant did not raise this issue in the trial court before raising it on appeal, Rule 472 compels us to remand to the trial court to allow it to consider the issue first.

¶ 40 In *People v. Nibbelin*, 2025 IL App (4th) 240446-U, we addressed the question of whether counsel’s failure to file a certification pursuant to Rule 404(e) was governed by Rule 472. We concluded that it was, reasoning that the broad and unqualified language of Rule 472 stated that it applied to “*any* claim of error in the imposition of assessments.” (Emphasis added) *Id.* ¶ 37. We found that the failure to file a certification under Rule 404(e) for waiver of court assessments resulted in such an error. *Id.* Accordingly, we remanded to the trial court to allow the defendant to file a motion under Rule 472. *Id.* ¶ 38.

¶ 41 However, our supreme court has since granted leave to appeal in *Nibbelin*. See *People v. Nibbelin*, No. 131825 (Sept. 24, 2025). Further, we have ourselves questioned the correctness of the *Nibbelin* decision following its publication.

¶ 42 In *People v. Bogard*, 2026 IL App (4th) 250354-U, decided approximately five months after *Nibbelin*, we were faced with the same issue concerning the interaction of Rule 404(e) and Rule 472. In *Bogard*, the defendant argued that his counsel was ineffective for failing to file an application for an assessment waiver pursuant to Rule 404(e). *Id.* ¶ 50. Following *Nibbelin*’s reasoning that counsel’s failure to file a Rule 404(e) application was a sentencing error in imposing assessments, we remanded for the defendant to file a motion raising his sentencing claim in the trial court under Rule 472(a). *Id.* ¶ 59.

¶ 43 However, Justice Doherty partially dissented from the majority opinion. He argued that Rule 472 did not apply to an attorney’s failure to file an application to waive assessments

under Rule 404(e) for two reasons. See *id.* ¶¶ 68-9, 71-74 (Doherty, J., dissenting). First, Rule 472 applied only to “ ‘sentencing errors.’ ” *Id.* ¶ 71. Justice Doherty explained that, when counsel fails to file a certification under Rule 404(e), “there is no trial court ‘error’ at all, only inaction on the part of defendant and his attorney, *i.e.*, the failure to file a waiver application.” *Id.* ¶ 74. Accordingly, Rule 472 does not apply. Second, Justice Doherty noted that Rule 404 requires an application of waiver of assessments to be filed no later than 30 days after sentencing, meaning it would be untimely when reviewed by the trial court on remand under Rule 472. *Id.* ¶¶ 68-69. He explained:

“[T]he extension of trial court jurisdiction at the heart of Rule 472 *does not affect* the period for filing an application for waiver of assessments, which is due under Rule 404 before the trial court loses jurisdiction (*i.e.*, within 30 days of sentencing). If anything, Rule 472 begins to operate only after the 30-day period specified in Rule 404 expires.” (Emphasis in original) *Id.* ¶ 72.

He argued that *Nibbelin* failed to “address the interplay between its ruling and the 30-day deadline under Rule 404,” noting that remanding to allow the defendant to file a motion under Rule 472 was pointless, as the trial court would be bound to find that such a motion was untimely under Rule 404. *Id.* ¶¶ 74, 78. Justice Doherty concluded that the only path to overcoming the failure to timely seek an assessment waiver under Rule 404(e) was via an ineffective-assistance-of-counsel argument. Accordingly, he stated that he would remand the case for that purpose, noting, “We cannot remand this case on this issue *except* as a remedy for ineffective assistance.” (Emphasis in original). *Id.* ¶ 81.

¶ 44 In *Yarber*, decided approximately two months after *Bogard*, we changed course. There, again, the defendant argued that his counsel was ineffective for failing to file a certification

of waiver of court assessments under Rule 404(e). *Yarber*, 2026 IL App (4th) 250294 ¶ 63. The State, in turn, argued that the case required remand for the defendant to file a motion under Rule 472 in the trial court. *Id.*

¶ 45 We began by agreeing with the defendant that his counsel was ineffective. *Id.* ¶ 69. We further noted that both the defendant and the State agreed that the case must be remanded to the trial court and that the defendant must be allowed to raise his claim for waiver of assessments. *Id.* ¶ 71. They merely disagreed on “the proper procedural tool” that granted remand authority: Rule 404 or Rule 472. *Id.* Abandoning our prior stance, we concluded that Rule 404 was the correct rule to follow, as Rule 472 did not apply to the defendant’s claim. *Id.* Echoing Justice Doherty’s dissent in *Bogard*, we concluded that the plain language of Rule 472 did not extend to a defense counsel’s failure to comply with Rule 404(e) because such a failure was not an error by the trial court in the imposition of fines, fees, assessments, or costs. *Id.* ¶ 73. We further held “remand to the trial court with instructions for defense counsel to comply with Rule 404(e) [was] the only way to ensure a defendant receives the remedy to which he or she [was] entitled.” *Id.*

¶ 46 Having considered the reasoning advanced in *Nibbelin*, Justice Doherty’s dissent in *Bogard*, and *Yarber*, and without definitive supreme court guidance on this issue, we believe the correct course to take is that followed in *Yarber*. We conclude that the appropriate vehicle for remand in the case of counsel’s failure to file the required certification under Rule 404(e) is that of ineffective assistance, not Rule 472. Because defendant here has established that his counsel rendered ineffective assistance in failing to file a certification of waiver of assessments under Rule 404(e), remand is necessary to allow that certification to be filed.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we reverse the trial court’s imposition of consecutive

sentences and remand to the trial court with directions to enter an order that defendant's sentences are to run concurrently. We also remand to allow defense counsel to file the certification of waiver of court assessments under Rule 404(e) to which defendant is entitled.

¶ 49 Reversed and remanded with directions.