No. 128398

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Appellate Court of
	) Illinois, Second Judicial District,
Respondent- Appellee,	) No. 2-21-0197
	)
vs.	) There heard on Appeal from the
	) Circuit Court of Winnebago
JESSICA R. LIGHTHART,	) County, Illinois, No. 02-CF-3683
	)
Petitioner-Appellant.	) Hon. Robert Randall Wilt,
	) Judge Presiding

REPLY BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

Steven W. Becker
Law Office of Steven W. Becker LLC
205 N. Michigan Avenue, Suite 810
Chicago, Illinois 60601
(312) 396-4116
swbeckerlaw@gmail.com

Counsel for Petitioner-Appellant

ORAL ARGUMENT REQUESTED

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CYNTHIA A. GRANT
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ARGUMENT

The Trial Court Erred in Granting the State's Motion to Dismiss Ms. Lighthart's Petition for Post-Conviction Relief on Timeliness Grounds Where Ms. Lighthart, Who Could Not Perfect a Direct Appeal Because of Her Trial Counsel's Ineffectiveness in Filing the Wrong Post-Plea Motion, Filed Her Petition in a Timely Manner Within Three Years of the Date of Conviction.

The State devotes the vast majority of its brief to addressing a question not raised by Ms. Lighthart and not necessary for the resolution of the instant appeal in order to deflect from the actual issue it cannot legally overcome.

In this regard, the State attempts to answer the question of what it means to "file a direct appeal." (*See* Resp. Br. at 11-28) Relying exclusively upon Illinois Supreme Court Rule 606(a), the State asserts that "[a] direct appeal is initiated by filing a notice of appeal challenging the judgment of conviction." (Resp. Br. at 12) The State then concludes that "[i]nitiating a direct appeal by filing a notice of appeal is also consistent with the way in which courts have always used the phrase 'file an appeal.'" (Resp. Br. at 13) In the context of the present case, the State's argument, in its simplest form, can be summarized as follows: (1) In order to file a direct appeal, the defendant must file a notice of appeal; (2) because Ms. Lighthart filed a notice of appeal, she filed a direct appeal; (3) because Ms. Lighthart filed a direct appeal, she cannot avail herself of the three-year limitations period under 725 ILCS 5/122-1(c); (4) *ergo*, her post-conviction petition was untimely.

The State's entire line of argument, however, is misplaced in the context of the current case. It represents a classic "straw man" – the same fallacy underlying the Fourth District's decision in *People v. Byrd*, 2018 IL App (4th) 160526, and, by extension, the Second District's opinion under review herein.

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The outcome of the present case is controlled by Illinois Supreme Court Rules 604(d) and 606(b) – not Rule 606(a). Ms. Lighthart's case involves a negotiated guilty plea – not the typical direct appeal stemming from a criminal conviction predicated upon a bench or jury trial. Accordingly, an entirely different legal regime applies.

The sole issue in the instant case is whether Ms. Lighthart could legally file a notice of appeal in the first place, not the definition of what it means to "file a direct appeal." You cannot answer the second question until you answer the first, which the State herein vehemently refuses to do because it does not like the answer. If Ms. Lighthart could not file a notice of appeal because her attorney failed to file a timely motion to withdraw plea and vacate judgment pursuant to Rule 604(d), then the Court need not – and should not – reach the entirely separate and much-more complicated question of what it means to "file a direct appeal." As demonstrated below, the State clearly recognizes this and therefore attempts to reframe the issue by putting the proverbial cart before the horse.

In contrast to the State's formulation of the issue, Ms. Lighthart's argument can be summarized as follows: (1) In order to file a notice of appeal in a negotiated guilty plea case, the defendant must first file a timely motion to withdraw plea and vacate judgment; (2) because Ms. Lighthart's attorney failed to file a timely motion to withdraw plea and vacate judgment, Ms. Lighthart could not file a notice of appeal; (3) because Ms. Lighthart could not file a notice of appeal, she could not file a direct appeal; (4) because Ms. Lighthart did not file a direct appeal, she had three years from the date of conviction in which to file her post-conviction petition under 725 ILCS 5/122-1(c); (5) *ergo*, her post-conviction petition was timely.

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The Committee Comments to Rule 604(d) explain in unequivocal language that "Paragraph (d) . . . provides that *before a defendant may file a notice of appeal* from a judgment entered on his plea of guilty, he must move in the trial court to vacate the judgment and withdraw his plea." ILL. SUP. CT. R. 604(d), Committee Comments (Revised July 1, 1975) (emphasis added). The State does not dispute the legal accuracy of this proposition; instead, it simply asks the Court to discount it altogether. (Resp. Br. at 24)

In fact, the State asks this Court to ignore as irrelevant the very applicability of Illinois Supreme Court Rule 604(d) itself, to wit: "Her argument that Rule 604(d) 'categorically prohibits' a defendant who enters a negotiated guilty plea from 'filing . . . a direct appeal' or 'even fil[ing] a notice of appeal unless she first files' a timely motion to withdraw the guilty plea is both irrelevant and incorrect." (Resp. Br. at 23 (internal citation omitted)) Similarly, with respect to Rule 606(b), the State contends that "Petitioner is also wrong that, when read in conjunction with Rule 606(b), Rule 606(a) exempts negotiated guilty plea cases governed by Rule 604(d) from the rule that appeals are perfected by filing notices of appeal." (Resp. Br. at 27)

The State's assertion that Ms. Lighthart's reliance on Rules 604(d) and 606(b) in the context of a negotiated guilty plea case could somehow be "irrelevant" is legally indefensible, especially in light of this Court's very-recent decision in *People v. Walls*, 2022 IL 127965, which was not issued until after Ms. Lighthart's opening brief was filed. It is well established that this Court's decisions are controlling and must be followed. *See Northern Trust Co. v. Knox*, 373 Ill. App. 3d 479, 487 (1st Dist. 2007) ("A decision of the Illinois Supreme Court is binding on all trial courts").

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Walls sets forth in no uncertain terms – and fully consistent with Ms. Lighthart's contentions from the outset of this litigation – that Rules 604(d) and 606(b) are to be read *in pari materia*, operate in tandem, and are outcome-determinative in negotiated guilty plea cases: "Rule 606(b), therefore, provides the time for filing a notice of appeal following the denial of a Rule 604(d) motion . . . . Rule 606(b) provides a 30-day time period for filing an appeal following the denial of one of those Rule 604(d) motions directed against the final judgment." *Walls*, 2022 IL 127965, ¶ 24. Thus, Rule 606(b), which provides that "*[e]xcept as provided in Rule 604(d)*, the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment," controls in the context of a negotiated plea case. ILL. SUP. CT. R. 606(b) (West 2020) (emphasis added). In other words, absent the timely filing of Rule 604(d) postjudgment motion, no notice of appeal may be filed. *Walls*, 2022 IL 127965, ¶ 24; ILL. SUP. CT. R. 604(d), Committee Comments (Revised July 1, 1975). The Court in *Walls* thus concluded, "[i]n sum, our rules require filing a notice of appeal within 30 days after the denial of a Rule 604(d) postjudgment motion to either reconsider sentence or to withdraw a guilty plea." *Walls*, 2022 IL 127965, ¶ 26.

Next, although having to admit that "[t]o be sure, the untimely filing of petitioner's direct appeal likely meant that it was not 'perfected' within the meaning of Rule 606(a)," the State remarks that the Post-Conviction Hearing Act "says nothing about 'perfecting a direct appeal'; it required only that petitioner initiate or '*file* a direct appeal,' which she did." (Resp. Br. at 16) Yet, in *Walls*, this Court specifically stated that "[t]he only jurisdictional step in *perfecting* an appeal is timely filing a notice of appeal," which, in the context of a negotiated guilty plea case, "require[s] filing a notice of appeal within

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30 days *after* the denial of a [timely] Rule 604(d) postjudgment motion . . . ." *Walls*, 2022 IL 127965, ¶ 26 (emphasis added). Thus, without the timely filing of a motion to withdraw plea and vacate judgment, a defendant who accepts a negotiated guilty plea cannot perfect an appeal, which is why Rule 604(d) explicitly provides that "*No appeal shall be taken upon a negotiated plea of guilty* challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." ILL. SUP. CT. R. 604(d) (West 2007) (emphasis added).

In light of *Walls*, the Third District in *People v. Ross*, 352 Ill. App. 3d 617 (3d Dist. 2004), was correct in relying upon the plain language of Rule 604(d) in construing the limitations periods in 725 ILCS 5/122-1(c) in the context of a negotiated guilty plea case and in emphasizing that where the defendant's conviction was entered upon such a plea, "no appeal shall be taken" without complying with the post-plea motion requirements of Rule 604(d). *Id.* at 619. The court likewise accurately held that "[a] notice of appeal filed in the trial court without complying with the rule vests the appellate court with authority to consider only the trial court's jurisdiction – not the merits of the cause" and that, in such a case, the appellate court's only recourse is to dismiss the appeal. *Id.* at 619-20. This is consistent with this Court's ruling in *Walls* that where the notice of appeal is untimely, it "fail[s] to confer jurisdiction to consider the direct appeal." *Walls*, 2022 IL 127965, ¶ 26. *See* Ross, 352 Ill. App. 3d at 620 ("For post-conviction purposes, a direct appeal dismissed for failure to file a timely postplea motion pursuant to Rule 604(d) is tantamount to no appeal at all. . . . Therefore, for purposes of the Act, no direct appeal was taken."). Finally, the *Ross* court rightly concluded that, in

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such a situation, "[a] defendant who takes no direct appeal from his conviction has three years to file a timely post-conviction petition." *Ross*, 352 Ill. App. 3d at 619.

For the same reasons, *Byrd*, as well as the Second District's decision under review herein, which followed *Byrd* in lockstep, was wrongly decided in that it failed to acknowledge, as this Court in *Walls* confirmed, the preeminence of Rules 604(d) and 606(b) in cases involving negotiated guilty pleas and, instead, relied exclusively upon the more-general Rule 606(a), which, as provided for in Rule 606(b), is explicitly limited by Rule 604(d). Yet, the more-specific rule controls over the general. *See People v. Craig H.*, 2022 IL 126256, ¶ 26; *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511, ¶ 45.

In *Byrd*, the defendant, who entered into a negotiated guilty plea, did not file a timely motion to withdraw plea and vacate judgment. *See Byrd*, 2018 IL App. (4th) 160526, ¶¶ 13, 15. Because he failed to file a timely post-plea motion pursuant to Rule 604(d), he could not file a notice of appeal. Since he could not, by operation of law, file a direct appeal (because he could not file a notice of appeal), the three-year limitations period under Section 122-1(c) applied to him. Therefore, the Fourth District's reliance on Rule 606(a) as the basis for its analysis of what it means to "file a direct appeal" under Section 122-1(c) was entirely misplaced and wholly irrelevant to the case at hand, which, because it involved a negotiated guilty plea, was instead controlled by Rule 604(d).

The remainder of the State's contentions require little or no mention because they simply repeat the same errors committed by the Court in *Byrd*.

For example, in support of its position, the State persists in citing to this Court's decision in *People v. Johnson*, 2017 IL 120310, which was erroneously relied upon by

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Byrd and *Lighthart*, although the State admits that "*Johnson* did not involve a negotiated guilty plea" and "the definition of 'fil[ing] a direct appeal' was not the main issue in *Johnson*." (Resp. Br. at 28) As previously pointed out (Open. Br. at 20-21), *Johnson* has no bearing whatsoever on this case. It dealt with the entirely distinct legal question of the applicable limitations period for filing a post-conviction period where no petition for leave to appeal was filed. *Johnson*, 2017 IL 120310, ¶ 17. In addition, as noted above, *Johnson* did not involve a negotiated guilty plea. If *Johnson* had some relevance to filing a notice of appeal in a negotiated guilty plea case, it surely would have been cited by this Court in *Walls*. It was not.

Furthermore, the State contends that "petitioner's approach would make the Act's time limits more confusing than ever . . ." (Resp. Br. at 22) To the contrary, Ms. Lighthart's approach, which follows the common-sense analysis articulated in *Ross*, dramatically simplifies the analysis. In short, where a defendant in a negotiated guilty plea case fails to file a timely motion to withdraw plea and vacate judgment, the three-year limitations period listed in Section 122-1(c) automatically applies because, in such a situation, the defendant, by operation of law, cannot "file a direct appeal." This is a simple, bright-line rule that is consistent with Rules 604(d) and 606(b).

On the other hand, the approach advocated by *Byrd* and the State herein is not only expressly contrary to the dictates of Rule 604(d) – and therefore should be rejected on this ground alone, but it renders the applicable limitations period dependent upon the vagaries of the mere ministerial act of filing a notice of appeal, which, in the context of a negotiated guilty plea case, (1) provides no material benefit for the defendant (as the reviewing court lacks jurisdiction over the appeal from its inception) and (2) will

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inevitably snare the unwary filer, who will invariably be an incarcerated *pro se* defendant, into unknowingly forfeiting the statutory three-year limitations period with no idea of the potential impact on the time for filing her post-conviction petition until it is too late.

Moreover, the State's interpretation would lead to absurd, inequitable, and inconsistent results, as it would mean that a defendant who was similarly situated to Ms. Lighthart but who failed to file any notice of appeal (whether by lack of knowledge, lack of initiative, or design) would have three years in which to file a post-conviction petition, but a defendant such as Ms. Lighthart or the defendant in *Byrd*, who did file notices of appeal in an effort to preserve their rights, would only have six months in which to file a post-conviction petition.

Lastly, in the event that the Court does not rule in Ms. Lighthart's favor with respect to the applicability of the three-year limitations period in her case, she contends that she is still entitled to relief because her petition was filed in accordance with *Ross*, which was the only appellate decision addressing the statute of limitations issue at bar at the time of the submission of her post-conviction petition. In *Central City Educ. Ass'n v. Illinois Educ. Labor Relations Board*, 149 Ill. 2d 496 (1992), this Court, in affirming the appellate court's rejection of a timeliness challenge, held that "we cannot penalize the petitioner for untimely filing of his petition when the law governing the applicable appeal period was not settled." *Id.* at 533.

The State contends that *Central City* is distinguishable because "[i]t was not 'generally accepted' in 2007 – when petitioner filed her initial postconviction petition – that a defendant whose direct appeal was dismissed on procedural grounds had three

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years to seek postconviction relief. One case, *Ross*, 352 Ill. App. [3d] 617, held as much in 2004 . . . ." (Resp. Br. at 29) The State, however, fails to cite to any contrary authority that existed at the time Ms. Lighthart filed her initial post-conviction petition. Thus, Ms. Lighthart's petition was filed in accord with the prevailing appellate case law at the time. Even if there had been contrary authority, Ms. Lighthart should still be eligible for equitable relief under the holding in *Central City* because the Court explained that it would be equally unfair to penalize a petitioner when the law governing the applicable appeal period "was not settled." *Central City*, 149 Ill. 2d at 533.

Moreover, Ms. Lighthart's petition for post-conviction relief was filed in August of 2007. It has now been pending for more than 15 years and has yet to be adjudicated on the merits. During this time, the Second District reversed and remanded Ms. Lighthart's case for further post-conviction proceedings on account of trial counsel's arguable ineffectiveness for failing to file the correct post-plea motion (C. 231-240) – an issue upon which the circuit court judge below made a direct finding of ineffectiveness and even agreed with Ms. Lighthart that the State should have confessed error on. (R. 790-791) Yet, it was this precise error made by Ms. Lighthart's trial counsel in 2004 that created the procedural nightmare that served as the basis for the State's motion to dismiss on timeliness grounds over 16 years later. Given these gross inequities and delays, this Court's decision in *Central City* takes on added significance.

Conclusion

Illinois Supreme Court Rule 604(d) makes this an easy case. *Walls* makes it even easier. Because a timely motion to withdraw plea and vacate judgment was not filed by Ms. Lighthart's public defender, she could not file a notice of appeal. As a result, she

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could not file a direct appeal, and, under 725 ILCS 5/122-1(c), she had three years in which to file her post-conviction petition. Therefore, her petition was timely. Accordingly, this Court need not weigh in on what it means to "file a direct appeal" under Section 122-1(c) because Ms. Lighthart could not file a direct appeal in the first place. That inquiry may wait for another day.

Accordingly, Jessica Lighthart, Petitioner-Appellant, respectfully requests that this Court reverse the trial court's judgment granting the State's motion to dismiss on timeliness grounds, as well as the appellate court's affirmance, and remand the case for further proceedings on the merits of Ms. Lighthart's post-conviction petition.

Respectfully submitted,

/s/ Steven W. Becker
Steven W. Becker
Law Office of Steven W. Becker LLC
205 North Michigan Ave., Suite 810
Chicago, Illinois 60601
(312) 396-4116
swbeckerlaw@gmail.com

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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 reply brief, excluding the pages 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(a), is 10 pages.

/s/ Steven W. Becker
Steven W. Becker
Attorney for Jessica R. Lighthart

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JESSICA R. LIGHTHART,	) County, Illinois, No. 02-CF-3683
	)
Petitioner-Appellant.	) Hon. Robert Randall Wilt,
	) Judge Presiding

NOTICE OF FILING

TO: Kwame Raoul, Illinois Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601;

Edward R. Psenicka, Deputy Director, State's Attorneys Appellate Prosecutor, 2032 Larkin Ave., Elgin, IL 60123;

Hon. J. Hanley, Winnebago County State's Attorney, 400 West State Street, 7th Floor, Rockford, IL 61101.

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. I hereby certify that a copy of the Reply Brief and Argument and accompanying papers in the above-entitled cause were filed electronically with the Clerk of the above Court on April 3, 2023.

/s/ Steven W. Becker
Steven W. Becker
Law Office of Steven W. Becker LLC
205 N. Michigan Ave., Suite 810
Chicago, IL 60601
(312) 396-4116
swbeckerlaw@gmail.com

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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I hereby certify that I will send 13 copies of the Reply Brief and Argument and accompanying papers to the Clerk of the above Court upon acceptance of filing. Additionally, on April 3, 2023, the date the brief was submitted for filing with the Clerk's Office, I will serve one copy via email to the below-mentioned individuals:

Kwame Raoul, Illinois Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601 (eserve.criminalappeals@atg.state.il.us);

Edward R. Psenicka, Deputy Director, State's Attorneys Appellate Prosecutor, 2032 Larkin Ave., Elgin, IL 60123 (2nddistrict.eserve@ilsaap.org);

Hon. J. Hanley, Winnebago County State's Attorney, 400 West State Street, 7th Floor, Rockford, IL 61101 (StatesAttorney@sao.wincoil.gov).

/s/ Steven W. Becker
Steven W. Becker
Law Office of Steven W. Becker LLC
205 N. Michigan Ave., Suite 810
Chicago, IL 60601
(312) 396-4116
swbeckerlaw@gmail.com

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