No. 128077

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. JOHNNY ENGLISH, Petitioner-Appellant.	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-20-1016 There on Appeal from the Circuit Court of Cook County, Illinois, No. 95 CR 11734 The Honorable Timothy Joseph Joyce, Judge Presiding

BRIEF OF RESPONDENT-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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POINT AND AUTHORITIES

NATURE OF THE ACTION

Petitioner filed a notice of appeal from the circuit court's judgment denying leave to file a successive postconviction petition.

The Illinois Appellate Court dismissed the appeal for lack of jurisdiction because petitioner did not properly prove that he timely filed his notice of appeal. No question is raised about the sufficiency of the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether petitioner's notice of appeal was untimely because he failed to submit a certificate of service in compliance with Supreme Court Rule 12, which is the only acceptable means of proving the date of mailing under Supreme Court Rule 373.

JURISDICTION

On March 30, 2022, this Court allowed petitioner's petition for leave to appeal. Accordingly, this Court has jurisdiction over this appeal under Supreme Court Rules 315 and 612(b).

SUPREME COURT RULES INVOLVED

Supreme Court Rule 373 (Date of Filing in Reviewing Court).

> Unless received after the due date, the time of filing records, briefs or other documents required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. If received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing. Proof of mailing shall be as provided in Rule 12. This rule also

applies to a motion directed against the judgment and to the notice of appeal filed in the trial court.

Supreme Court Rule 12(b) (Proof of Service in the Trial and Reviewing Courts; Effective Date of Service).

(b) Manner of Proof. Service is proved: . . . (6) in case of service by mail by a self-represented litigant residing in a correctional facility, by certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered.

STATEMENT OF FACTS

Prior Proceedings

Following a bench trial, petitioner was convicted of armed robbery, the first degree murder of Frank Klepecki, and the attempted murder of Casey Klepecki. C38-51; R858.[1]

Casey Klepecki testified that on March 19, 1995, he and his brother Frank bought cocaine from petitioner's co-defendant, James Davis, in Chicago. R697, 699, 701-02, 711-15. Petitioner and Davis then robbed them at gunpoint. R717-23. After petitioner shot Frank, Casey was shot in the back as he fled; he then pretended to be dead until petitioner and Davis left. R725-28. Frank died of a gunshot wound to the chest. R385. Petitioner's and Davis's signed confessions to police admitted that they planned the robbery and were armed when they committed it. R535-47,

[1] The common law record, secured common law record, report of proceedings, and petitioner's opening brief are cited as "C__," "Sec. C__," "R__," and "Pet. Br. __," respectively.

814-19. A firearms expert testified that the bullets removed from Frank's body, R383-85, and from Casey's back during surgery, R643-44, were both .25-caliber, R480-83. William Wilson testified that he saw petitioner running from the scene of the shooting holding a .25-caliber automatic handgun. R448, 452-54.

The circuit court found petitioner guilty of armed robbery, first degree murder, and attempted first degree murder. R853. The court further found that petitioner murdered Frank in a brutal and heinous manner indicative of wanton cruelty, and sentenced petitioner to 70 years for first degree murder. R959-61. The court also sentenced him to concurrent, 30-year prison terms each for attempted murder and armed robbery. R961-62; Sec. C125.

Petitioner pursued an unsuccessful direct appeal, C79-84 (*People v. English*, No. 1-97-2365 (unpublished Rule 23 order) (Feb. 19, 1999)), pro se postconviction petition, C94-103 (*People v. English*, No. 1-02-0280 (unpublished Rule 23 order) (March 19, 2004)), and successive postconviction petition, *People v. English*, 403 Ill. App. 3d 121 (1st Dist. 2010).

Present Appeal

In July 2020, petitioner moved for leave to file a second successive postconviction petition, arguing that his 70-year sentence violated the Proportionate Penalties Clause of the Illinois Constitution because the circuit court failed to adequately consider, at sentencing, his youth at the time of the offense and his intellectual disability. C181-87. On August 3, 2020, the

circuit court denied leave to file the successive petition, holding that petitioner did not show cause and prejudice for failing to raise the claim in his initial postconviction petition. C209-16.

On September 10, 2020, the circuit court clerk received petitioner's notice of appeal from the circuit court's August 3, 2020 judgment. C217. Petitioner enclosed a "Notice of Mailing/Filing" that contained no language certifying that it was made under penalties of perjury. C218. The notice stated that petitioner "ha[d] mailed the attached successive postconviction petition on August 20, 2020 by depositing the said [*sic*] in the mail drop box of Graham Correctional Center." *Id.* It asserted that "the same ha[d] been mailed to" the addresses of the circuit court clerk and the State's Attorney's Office. *Id.* The circuit court received the documents in an envelope bearing a postage meter stamp dated "Sep. 01 2020." C219.

On September 18, 2022, the circuit court entered an order appointing counsel to represent petitioner on appeal; the order stated that the notice of appeal was filed on September 10, 2020 and was "timely per proof of service." C222.

The appellate court dismissed petitioner's appeal for lack of jurisdiction, concluding that the notice of appeal was untimely because petitioner did not satisfy the prerequisites for invoking the mailbox rule. *People v. English*, 2021 IL App (1st) 201016-U, ¶¶ 27-31. It held that Supreme Court Rule 373 required petitioner to prove the date of mailing with

a certificate of service as provided in Rule 12(b)(6), which he conceded that he failed to do. *Id.* ¶¶ 32-39. This Court granted leave to appeal.

STANDARD OF REVIEW

Whether the appellate court had jurisdiction presents an issue of law reviewed de novo. *Huber v. Am. Acct. Ass'n*, 2014 IL 117293, ¶ 9. Whether Illinois's mailbox rule permits a party to prove that he timely mailed, and therefore timely filed, his notice of appeal with evidence other than a certificate of service requires interpretation of this Court's rules, *Secura Ins. Co. v. Ill. Farmers Ins. Co.*, 232 Ill. 2d 209, 215-18 (2009), which is also an issue reviewed de novo, *People v. Abdullah*, 2019 IL 123492, ¶ 18.

ARGUMENT

Petitioner's Notice of Appeal Was Untimely Because He Failed to Provide a Certificate of Service in Compliance with Rule 12, Which Provides the Only Acceptable Method of Proving the Date of Mailing.

"The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura*, 232 Ill. 2d at 213; *see also* Ill. S. Ct. R. 606(a) ("the filing of the notice of appeal is jurisdictional"). "The timeliness of [a] notice of appeal is governed by this [C]ourt's rules." *Huber*, 2014 IL 117293, ¶ 9. Lower courts "do[] not have the authority to excuse the filing requirements of the supreme court rules governing appeals," *Secura*, 232 Ill. 2d at 218, for this Court's rules "are not mere suggestions," *People v. Houston*, 226 Ill. 2d 135, 152 (2007); *see also Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 353 (2006) ("supreme court rules 'are not aspirational'") (quoting *Roth v. Ill.*

Farmers Ins. Co., 202 Ill. 2d 490, 494 (2002) (internal citation and quotation marks omitted).

Petitioner was required to file his notice of appeal within 30 days of the circuit court's August 3, 2020 judgment, Ill. S. Ct. R. 606(b), i.e., by September 2, 2020. The circuit court received petitioner's notice of appeal on September 10, 2020, so it was timely only if petitioner could invoke the mailbox rule provided by Supreme Court Rule 373.

That rule provides that "[p]roof of mailing shall be as provided in Rule 12." Ill. S. Ct. R. 373. Rule 12(b)(6), in turn, requires an incarcerated, self-represented litigant to file a certification stating when he placed his filing into the prison mail system. Ill. S. Ct. R. 12(b)(6).

Petitioner failed to file a certificate of service. *See infra,* Part. A. Nor could petitioner establish his timely mailing with the postage meter stamp on his notice of appeal's mailing envelope, for Rule 373's plain language and amendment history clearly show that the Court intended that a certificate of service be the only valid means of establishing the mailing date. *See infra,* Part B. Consequently, petitioner's notice of appeal was untimely, and the appellate court correctly dismissed the out of time appeal for lack of jurisdiction.

A. Petitioner Failed to File a Certificate of Service In Compliance with Rule 12.

Illinois's mailbox rule provides that "[p]roof of mailing shall be as provided in Rule 12," Ill. S. Ct. R. 373, which, for incarcerated, self-

represented litigants, means "by certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered," Ill. S. Ct. R. 12(b)(6).

Petitioner concedes that he did not include this "requisite certification of proof of service" with his notice of appeal. Pet. Br. 8. And petitioner's "Notice of Mailing/Filing" was not a certification and did not even identify his notice of appeal.

Certification requires language asserting, under penalties provided by law, that the statements made are true. *See* 735 ILCS 5/1-109. The omission of certification language is not a mere "typographical error, misspelling, or other inadvertent mistake" that an appellate court can excuse as substantial compliance or harmless error. *Secura*, 232 Ill. at 217. Thus, in *Secura*, an attorney's signed cover letter was not an attorney certification or affidavit pursuant to Rule 12, and did nothing to prove that the attorney timely mailed a notice of appeal for purposes of Rule 373, because "the letter d[id] not contain an affidavit or a certificate and nothing [was] *certified or sworn to*." *Id.* at 216 (emphasis in original). Here, petitioner's notice of mailing likewise certified nothing. C218.

Moreover, the notice of mailing did not reference petitioner's notice of appeal, but rather "state[d] that [he] ha[d] mailed the attached *successive postconviction petition* on August 20, 2020 by depositing the said [*sic*] in the

mail drop box of Graham Correctional Center[.]" C218 (emphasis added). Accordingly, petitioner's notice of mailing "offers no more certainty concerning the timeliness of the notice [of appeal]" than the record would contain without it. *Secura*, 232 Ill. 2d at 216.

Because petitioner did not file a certificate of service that complied with Rule 12, he did not comply with Rule 373's specified means for invoking the mailbox rule, his notice of appeal was not timely filed under Rule 373, and the appellate court properly dismissed his appeal for lack of jurisdiction.

B. Petitioner May Not Rely on a Postmark to Establish the Date of Mailing for Purposes of the Mailbox Rule.

Petitioner cannot cure his failure to file a proper certificate by reliance on a postmark because: (1) the plain language of this Court's rules unambiguously provide that timely mailing is to be proven with a certificate of service, *see infra* Part B.1., (2) the rules' amendment history shows that the Court intended to disallow postmark evidence, *see infra* Part B.2, and (3) none of petitioner's policy arguments justifies departing from the plain language of the rules, *see infra* Part B.3.

1. The plain language of Rules 12 and 373 unambiguously shows that an incarcerated, self-represented litigant cannot prove timely mailing via other evidence, such as a postmark.

Supreme Court Rules are interpreted under the same canons of construction that apply to statutes. *See, e.g.*, *People v. Deroo*, 2022 IL 126120, ¶ 19. The goal of interpreting this Court's rules is to ascertain and give effect to the drafters' intent. *People v. Gorss*, 2022 IL 126464, ¶ 10. "The

most reliable indicator of the drafters' intent is the language of the rule, which must be given its plain and ordinary meaning." *Id.* Where the rule's "language is clear and unambiguous, it will be applied as written without resort to aids of construction," and reviewing courts "may not 'depart from its terms' or read into the rule exceptions, limitations, or conditions that conflict with the drafters' intent." *Id.* (quoting *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 38 (2009)); *see also People v. Tousignant*, 2014 IL 115329, ¶ 8.

Rule 373 makes clear that "[p]roof of mailing *shall* be as provided in Rule 12," without exception. Ill. S. Ct. R. 373 (emphasis added). The word "shall" is usually a "'clear expression of [the drafter's] intent to impose a mandatory obligation,'" *see, e.g.*, *People v. Sroga*, 2022 IL 126978, ¶ 31 (quoting *People v. O'Brien*, 197 Ill. 2d 88, 93 (2001)), and this Court has construed Rule 373 in just that manner, emphasizing the word "shall" and holding that "a party can only take advantage of Rule 373 if it files proper proof of mailing as required by Rule 12(b)(3)," *Secura*, 232 Ill. 2d at 215-16.

In keeping with this plain language, most appellate court panels to consider the question have correctly concluded that Rule 373 clearly requires a litigant to prove his mailing date via a certificate and that other evidence cannot suffice. *See, e.g.*, *People v. Cooper*, 2021 IL App (1st) 190022, ¶¶ 5, 16-18 (certificate of service was required, and timely mailing could not be inferred from fact that court received the filing only one day after it was due); *People v. Tolbert*, 2021 IL App (1st) 181654, ¶ 19 (postmark did not satisfy

the "plain language of the rule, which requires" proof of mailing via certificate of service); *People v. Shines*, 2015 IL App (1st) 121070, ¶¶ 33-34 (paralegal's affidavit attesting that prison mail room manager confirmed receiving the filing before it was due could not substitute for compliant proof of service); *In re Marriage of Sheth*, 2015 IL App (1st) 132611, ¶ 30 (postal tracking information did not suffice); *People v. Lugo*, 391 Ill. App. 3d 995, 998 (2d Dist. 2009) (postmark did not suffice); *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 11 (same).

And even the minority of appellate court panels that reached the contrary conclusion at least tacitly acknowledged that Rule 373's express language requires proof of mailing through the provided methods, and none even purported to find any textual basis for interpreting Rule 373 to allow postmark evidence. *See People v. Hansen*, 2011 IL App (2d) 081226, ¶¶ 10, 13 (quoting Rule 373's proof-of-mailing language, but criticizing cases holding that it does not allow postmark evidence for interpreting it "too literal[ly]"); *People v. Humphrey*, 2020 IL App (1st) 172837, ¶¶ 15-21 (adopting *Hansen's* interpretation without analysis or discussion of Rule 373's language); *Walker v. Monreal*, 2017 IL App (3d) 150055, ¶¶ 16-21 (same).

Whether petitioner can show timely service under Rule 373 turns on the text and history of that rule, and the cases petitioner cites from other jurisdictions interpreting other mailbox rules, Pet. Br. 22-27, shed no light on the intent of the drafters of this Court's rule; indeed, some even undermine

his position by showing the sort of clear language that the Court could have used in Rule 373 had it intended to allow postmark evidence, *see* Fed. R. App. P. 4(c)(1) (providing that "evidence (such as a postmark or date stamp)" is acceptable); Pa. R. App. P. 121(f) (incarcerated litigant's document "is deemed filed as of the date of the prison postmark").

In sum, unlike other rules from other jurisdictions, Illinois's mailbox rule unambiguously requires that mailing "*shall* be proven as provided in Rule 12," Ill. S. Ct. R. 373 (emphasis added), which requires that incarcerated, self-represented litigants file certificates of service, Ill. S. Ct. R. 12(b)(6).

2. Rule 373's amendment history confirms that the Court specifically intended to disallow proof of mailing via postmarks.

In addition to Rule 373's plain language, which makes it clear that mailing may only be proven through the "provided" methods, the rule's amendment history shows that the Court expressly eliminated postmark evidence as an acceptable method of proof.

Illinois's mailbox rule used to allow reliance on postmarks, but that language was removed decades ago, as this Court recognized in *Huber*:

> As originally adopted in 1967, Rule 373 provided that time of mailing "may be evidenced by a post mark affixed in and by a United States Post Office." Ill. S. Ct. R. 373. Because of problems with illegible postmarks, and delays in affixing postmarks in some cases, we amended Rule 373 in 1981 by eliminating that method of proof, and instead requiring that proof of mailing shall be made by filing an attorney certificate or

> nonattorney affidavit . . . . Ill. S. Ct. R. 373, Committee Comments (revised Jan. 5, 1981).

2014 IL 117293, ¶ 13. The Court deleted Rule 373's language allowing postmarks in 1981, with the intent to make certificates and affidavits the only valid proof of timely mailing, even in cases where a legible postmark may be available. The same amendment also replaced Rule 373's originally permissive language that "time of mailing . . . *may* be evidenced by a post mark," Ill. S. Ct. R. 373 (eff. Jan. 1, 1967) (emphasis added), with mandatory language providing that "proof of mailing *shall* be made by filing . . . a certificate of the attorney, or affidavit of a person . . . who deposited the paper in the mail[.]" Ill. S. Ct. R. 373 (eff. Feb. 1, 1981) (emphasis added).[2] Given that the Court changed "may" to "shall" at the same time it deleted Rule 373's postmark language, there can be no doubt that it used "shall" in its ordinary, mandatory sense, to require courts to accept only the prescribed forms of proof, and not postmarks, which the court found to be unreliable often enough to eliminate their use.

Further, "[t]he clearest indication that the [1981 amendment was] intended to avoid any kind or quality of postmarks is" that the Court did not

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[2] A later amendment incorporated by reference similar proof of service requirements from Rule 12, but retained this mandatory language, *see* Ill. S. Ct. R. 373 (eff. Feb. 1, 1994) (providing that "proof of mailing shall be as provided in Rule 12(b)(3)"), which is substantially the same in the current version of Rule 373. Another amendment relaxed the requirement that nonattorneys file notarized affidavits, Ill. S. Ct. R. 12(b)(3) (eff. Jan. 1, 2016), and the rule now permits anyone to prove timely mailing via a certificate of service, Ill. S. Ct. R. 12(b)(5)-(6).

merely qualify Rule 373's prior reference to postmarks, but removed it entirely. *Tolbert*, 2021 IL App (1st) 181654, ¶ 20. The problems that the Court sought to address "with the legibility of post marks . . . and delay in affixing them" were only present "in some cases." Ill. S. Ct. R. 373, Committee Comments (revised Jan. 5, 1981). Thus, it stands to reason that if the Court had intended to merely limit postmark evidence to cases in which postmarks are legible, it would have added language imposing a legibility requirement. Instead, the Court deleted Rule 373's language allowing postmark evidence, showing that it intended to make certificates or affidavits the only valid form of proof, even where a legible postmark is available.

And more recent amendments to Rules 12 and 373 show that the Court intended that incarcerated, self-represented litigants in particular must file certificates to invoke the mailbox rule.

In 2011, the Second District held that Rule 373 allowed incarcerated self-represented litigants to prove date of mailing via postmarks. At the time, Rule 12(b)(3) required an affidavit from the person who placed the filing in the United States mail, making it impossible for incarcerated litigants to literally comply with Rule 12(b)(3) and leading the appellate court, in *Hansen*, 2011 IL App (2d) 081226, to question whether the rule was intended to apply to them. *See id.*, ¶ 15 (citing *Lugo*, 391 Ill. App. at 1006 (McLaren, J. dissenting)). But in 2014, the Court resolved this question by adding a new provision requiring that an incarcerated, self-represented litigant state under

penalty of law when he placed his filing into his correctional institution's mail system and to whom it was addressed. *See* Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19, 2014) (now at Ill. S. Ct. R. 12(b)(6)). Then, in 2016, the Court eliminated any lingering doubt that incarcerated litigants must file certificates in compliance with Rule 12 to benefit from the mailbox rule, by amending Rule 373 to state that "proof of mailing . . . shall be as provided in Rule 12(b)(3), *or, in the case of mailing by a pro se petitioner from a correctional institution, as provided in subpart (b)(4) of Rule 12.*" Ill. S. Ct. R. 373 (eff. Nov. 1, 2016) (emphasis added).[3]

The 2014 and 2016 amendments therefore show that the Court specifically considered "the unique challenges facing incarcerated individuals," Pet. Br. 25, adopted a certification rule that does not make them responsible for anything beyond their "limited control," *id.*, and clearly stated in Rule 373 that incarcerated individuals shall prove timely mailing "as provided" in that rule. Moreover, it is telling that the Court resolved the question the *Hansen* court noted by creating a special certification

[3] A year later, the Court removed the language from Rule 373 specifying which subparts of Rule 12 apply to incarcerated litigants and to other parties, and instead simply stated that proof of mailing "shall be as provided in Rule 12." *See* Ill. S. Ct. R. 373 (eff. July 1, 2017). The removal of that language from Rule 373 did not change its requirements, as Rule 12's relevant subparts contain similar language. *See* Ill. S. Ct. R. 12(b)(5)-(6) (eff. July 1, 2017) (providing that "[s]ervice is proved . . . in case of service by mail by a self-represented litigant residing in a correctional facility, by certification" pursuant to Rule 12(b)(6), or for service by mail by other parties, pursuant to Rule 12(b)(5)).

requirement for incarcerated litigants and *not* by allowing them to use postmarks (as the panel in *Hansen* did).

When, as here, the drafter "amends an unambiguous statute [or Court rule] by deleting certain language[,] it is presumed that the [drafter] intended to change the law in that respect." *Ill. Landowners All., NFP v. Ill. Comm. Comm'n*, 2017 IL 121302, ¶ 42. Given that the Court deleted Rule 373's language allowing postmark evidence, replaced it with a clear requirement that timely mailing "shall" be proven via certificate, and clarified in its post-*Hansen* amendments that this requirement does, in fact, apply to incarcerated persons, petitioner cannot rebut the presumption that the Court intended to eliminate postmark evidence, even for incarcerated, self-represented litigants.

Because Rule 373's amendment history clearly shows that the Court intended to eliminate postmark evidence, the appellate court properly refused to adopt petitioner's contrary interpretation of Rule 373, as doing so would have required "not only that [it] . . . read into [the rule] language that is not there but that [it] rewrite the [rule] to reinsert language [that] the [drafter] affirmatively removed," which a court interpreting a statute or Court rule "may not do." *Ill. Landowners All.*, 2017 IL 121302, ¶ 42.

3. Petitioner's policy arguments do not justify rewriting Rule 373 to permit reliance on postmarks.

Petitioner seeks to rewrite the plain language of Rule 373 to allow proof of mailing via postmarks, but this Court considered and rejected his

policy arguments during the amendment process. Petitioner contends that postmarks and other mail system-generated evidence are the most "objective" and reliable proof of mailing date, and suggests that "'disregard[ing] the best, most competent evidence'" would be absurd and inconsistent with Rule 373's "pro-mailing policy." Pet. Br. 21-22 (quoting *Humphrey*, 2020 IL App (1st) 172837, ¶ 18 (which quotes *Hansen*, 2011 IL App (2d) 081226, ¶ 14) (internal quotation omitted)). Petitioner further argues that not accepting a legible postage meter stamp as proof of timely mailing is contrary to the intent of the amendment eliminating postmarks as a method of proof and unfairly denies pro se litigants access to the courts. Pet. Br. 9-10, 28-30.

Petitioner does not even attempt to argue that the language of Rules 12 and 373 supports his position, or even that the language is ambiguous. Pet Br. 8-32. And his public policy arguments cannot overcome the rules' unambiguous language, for, as petitioner admits, Pet. Br. 30, "[w]here [a rule's] language is clear and unambiguous, [a reviewing court] must apply the language used without further aids of construction," *Deroo*, 2022 IL 126120, ¶ 19. Although courts may depart from an enactment's plain language when it produces absurd results that the drafter clearly "could not have intended," *Evans v. Cook Cnty. State's Att'y*, 2021 IL 125513, ¶ 35, interpreting a rule or statute "'to mean something other than what it clearly says is a measure of last resort, to avoid great injustice or an outcome that could be characterized, without exaggeration, as an absurdity and an utter

frustration of [its] apparent purpose,'" *Manago v. Cnty. of Cook*, 2017 IL 121078, ¶ 14 (quoting *Ill. State Treasurer v. Ill. Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 39) (some internal quotations and citation omitted); *see also, e.g., Petersen v. Wallach*, 198 Ill. 2d 439, 447 (2002) ("an unjust or absurd result is generally not enough to avoid the application of a clearly worded statute").

The Court's requirement that incarcerated self-represented litigants prove timely mailing with certificates of service was entirely reasonable, and petitioner certainly cannot show that it was so "absurd" or unjust that the Court did not intend what it clearly said in Rule 373.

First, it is simply untrue that "there is no reason to insist upon" a certificate of service in cases where a legible postmark shows timely mailing, or that applying Rule 373 as written is contrary the Court's intent when it amended the rule to eliminate postmark evidence. Pet. Br. 28-30. As explained *supra,* Part B.2., the Court deleted from Rule 373 language that had allowed postmark evidence because of problems with illegible or delayed postmarks. An unlucky litigant who deposited his filing at the post office before it was due could find that his mailing had no legible postmark, or that a postmark was applied only belatedly, thus making the filing appear untimely. The Court addressed those problems by requiring certificates of service, as petitioner correctly notes, "to prompt litigants to supply proof of mailing that could withstand an illegible or delayed postmark, factors over

which a litigant has no control." Pet. Br. 30 (citing *Huber*, 2014 IL 117293 ¶ 13). And the Court eliminated postmark evidence, rather than merely limiting its use, to deter litigants from omitting certificates of service in the belief that postmarks would prove timeliness.

Indeed, accepting postmarks as proof of timely mailing could disadvantage incarcerated, self-represented litigants. Rule 12 seeks to give such litigants the benefit of *their* time of mailing — when they certify that they deposited their filings in prison mail systems. Ill. S. Ct. R. 12(b)(6). A postmark, by contrast, can show only when, at some later time, the prison staff applied postage to the filing and placed it into the United States mail. It is beyond dispute that there is often delay between the time documents are deposited in a prison mail system and the time the documents are processed by prison staff and mailed. *See, e.g.*, *People v. Saunders*, 261 Ill. App. 3d 700, 704 (2d Dist. 1994) (collecting cases observing delays from four to seven days). If an incarcerated, self-represented litigant places his filing into the prison mail system without a certificate of service only days before it is due, then even a short processing delay will result in a postmark showing untimely mailing. And, of course, in some cases, mail will have no legible postmark. Eliminating postmarks avoids fostering the perception that they can be relied upon to show timely mailing when, in fact, they cannot.

Moreover, a bright-line certificate requirement promotes judicial economy and eliminates unnecessary litigation about what postmarks show,

including "the need to debate the question of timeliness . . . when the postmark [is] not legible." *Tolbert*, 2021 IL App (1st) 181654, ¶ 20. Petitioner's proposed interpretation of Rule 373, under which appellate courts have the authority to accept whatever proof they find sufficiently reliable in a given case, would generate further litigation not only about what partially legible postmarks say, but also about what other forms of evidence are sufficiently reliable to show timely mailing. *See, e.g.*, *Tilden v. Comm'r*, 846 F.3d 882, 884-88 (7th Cir. 2017) (litigating whether shipping label purchased from Stamps.com and corroborating USPS tracking data proved timely mailing of Tax Court filing).

Nor does requiring incarcerated, self-represented litigants to certify their mailing dates "improperly deny" them "meaningful access to the courts," Pet. Br. 10, 29 (citing *Bounds v. Smith*, 430 U.S. 817, 823 (1977)), or work such "great injustice" as to show that this Court did not mean what it clearly said in its rules. Rule 12(b)(6)'s requirement that incarcerated litigants certify when they put their filings in prison mail systems is easy to comply with, does not make them responsible for anything outside of their "limited control," Pet. Br. 25, and does not deny them a "reasonably adequate opportunity to present claimed violations of fundamental constitutional rights," *Bounds*, 430 U.S. at 825. Indeed, petitioner in the past managed to file certificates of service compliant with the rules, C190; Sec. C456-57, and also filed pro se pleadings complying with far more complex and difficult

procedural requirements, *see, e.g.*, Sec. C458-509 (first pro se successive postconviction petition, raising over ten claims with citations to authority and supporting affidavits attached).

Further, petitioners who fail to comply with this Court's unambiguous rules are not without a remedy, for this Court's rules allow the appellate court to make equitable exceptions to avoid dismissing untimely appeals for lack of jurisdiction. Rule 606(c) allows litigants to file a late notice of appeal within six months of its due date on motion supported by affidavit showing that the appeal has merit and that the failure to timely appeal was not due to the litigant's culpable negligence. Ill. S. Ct. R. 606(c). And even after the time expires for filing such a motion in the appellate court, a litigant may seek a supervisory order from this Court allowing the out of time appeal. *See, e.g.*, *People v. Salem*, 2016 IL 118693, ¶¶ 21-23 (issuing supervisory order directing appellate court to reinstate untimely appeal). These procedures allow courts to address cases where applying Rule 373's bright-line certificate requirement would lead to inequitable results, and belie petitioner's argument that hewing to Rule 373's plain language would "improperly deny pro se litigants access to the courts." Pet. Br. 29.

Petitioner is also incorrect that Rule 373's "'liberal pro-mailing policy'" requires departing from its plain language. Pet Br. 21, 29 (quoting *Harrisburg-Raleigh Airport Auth. v. Dep't of Revenue*, 126 Ill. 2d 326, 341-42 (1989)). The "liberal pro-mailing policy" *Harrisburg-Raleigh* noted was

merely the practice of "equating mailing and filing dates"; the case said nothing about how the mailing date may be proven (except insofar as it quoted Rule 373's proof-of-mailing requirements, which did not allow postmark evidence then, either). *See Harrisburg-Raleigh,* Ill. 2d at 341-42. Petitioner is entitled to treat his date of mailing as the date of filing, if he properly proves that date. But he has failed to comply with this Court's clear rules for doing so.

For these reasons, the appellate court panels in *Hansen, Humphrey*, and *Walker* erred in disregarding Rule 373's clear and unambiguous requirement that "[p]roof of mailing *shall be as provided* in Rule 12," Ill. S. Ct. R. 373 (emphasis added), and in construing the rule as authorizing them to accept any proof that they considered to be as reliable as the "provided" methods, or "the best, most competent evidence," *Hansen*, 2011 IL App (2d) 081266, ¶ 14 (quoted in *Humphrey*, 2020 IL App (1st) 172837, ¶ 18, and *Walker*, 2017 IL App (3d) 150055, ¶ 21). "The plain language of the rules and [this Court's] interpretation of those rules in *Secura* limit the kind of evidence—not the strength of evidence—that may be considered by a court in determining whether a filing was timely mailed." *Cooper*, 2021 IL App (1st) 190022, ¶ 17; *see also, e.g.*, *Tilden*, 846 F.3d at 887 (federal regulation governing proof of timely mailing by official postmarks did not apply to USPS tracking data, even if it was as reliable as postmarks, for "[t]o say 'A is as good as B' is not remotely to show that A *is* B." (emphasis in original)). By

reading Rule 373 to permit whatever proof they found convincing, those appellate court panels treated the forms of proof that this Court prescribed as "mere suggestions," which this Court's "rules are not." *Houston*, 226 Ill. 2d at 152.

This Court should therefore overrule *Humphrey, Hansen*, and *Walker*, and hold that the appellate court below properly rejected petitioner's invitation to join those cases in ignoring Rule 373's unambiguous language and its amendment history, which clearly expresses the drafters' intent to eliminate postmarks as evidence of the date of mailing. And because petitioner failed to prove timely mailing with a certificate, as Rules 12(b)(6) and 373 require, his notice of appeal was not timely filed under Rule 373, the appellate court properly dismissed his untimely appeal for lack of jurisdiction, and this Court should affirm.

CONCLUSION

This Court should affirm the judgment of the appellate court.

November 18, 2022

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 Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 23 pages.

/s/ Aaron M. Williams
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PROOF OF FILING AND 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. On November 18, 2022, the foregoing **Brief of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which served the person named below at this registered email address:

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