No. 128461

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JORGE L. REYES, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-19-0474. There on appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 11 CF 2428. Honorable Jeffrey S. MacKay, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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E-FILED
3/30/2023 2:45 PM
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SUPREME COURT CLERK

ARGUMENT

I. A petition to revoke a fine under 730 ILCS 5/5-9-2 (2019), like a petition for relief from judgment under 730 ILCS 5/2-1401 (2019), is not ripe for adjudication until 30 days pass after being filed and served on the State.

This case, in part, is before this Court because the circuit court dismissed Reyes's petition to revoke fines *sua sponte* 15 days after it was filed and before the State responded to the petition. However, the Appellate Court has previously determined that petitions to revoke fines are free standing collateral actions and should be governed by the rules of civil procedure. It was argued in the opening brief that the same 30-day waiting period should be enforced with a petition to revoke fines, just as it is with a 2-1401 petition, because it is the same type of complaint that invites a responsive pleading. (Op. Br. 7-12).

The State argues, on the other hand, that the judge was within his rights to dismiss Reyes's petitions because, since 730 ILCS 5/5-9-2 (West 2019) does not contain the 30-day waiting period within the statute itself, the legislature must not have intended such a waiting period to apply. (St. Br. 33). Yet Section 2-1401 contains so specific requirement for a 30-day response period before the judge can rule on the petition. Rather, this 30-day requirement applies to *all* petitions governed by the rules of civil procedure unless the authorizing statute states otherwise. See *People v. Mingo*, 403 Ill. App.2d 968, 970-71 (2d Dist. 2010) ("[T]he legislature has demonstrated, on numerous occasions, its ability to set time limits for the filing of motions and petitions when it has so chosen" outside of the rules of civil procedure.) As argued in the opening brief, since the petition to revoke fines is entirely separate from the criminal proceedings that led to the fines in question, it is civil in nature and therefore, the civil rules apply. (Op. Br. 7-8). See also *People v. Clemons*, 2011 IL App (1st) 102329, ¶¶ 9-10 (defendant's

petition brought under Section 2-1401, although filed under his criminal case number, is essentially a civil complaint inviting a responsive pleading and accordingly the rules of civil practice apply).

As such, Rule 105(a) contains several requirements to be set forth in the notice, including that the responding party must "file[ ] an answer or otherwise file[ ] an appearance in the office of the clerk of the court within 30 days after service, receipt by certified or registered mail, or the first publication of the notice, as the case may be, exclusive of the day of service, receipt or first publication." *People v. Laugharn*, 233 Ill.2d 318, 323 (2009) (quoting S.Ct.R. 105).

According to the State, basic rules of civil procedure, here Rule 105, only apply to a civil petition if the authorizing statute specifically states that the rules of civil procedure apply. (St. Br. 33). That is not the case. Rather, the proper procedures are determined by first looking at the rules codified in the authorizing statute and then fill in the gaps with the codified rules of civil procedure. Here, looking at 735 ILCS 5/5-9-2, the statute contains no specific procedural limitations, so the rules of civil procedure should apply.

The State provides no explanation for why the rules of civil procedure should not apply here, outside of arguing that judges are able to dismiss other kinds of petitions *sua sponte*. (St. Br. 33). However, looking at the examples the State provides, there are statutory provisions that specifically allow for such dismissal. For example, the statutes governing habeas applications list very specific reasons why relief may be granted under the habeas statutes. A judge may dismiss a habeas application *sua sponte* if it does not allege at least one of those reasons because the relief requested would not be authorized by the statute. Similarly, a motion for DNA testing, governed by 725

ILCS 5/116-3, has specific conditions that must be met for relief regarding: 1) what happened at trial; 2) how forensic testing has advanced since trial; and also 3) what allegations the defendant must make to show a *prima facie* case. 725 ILCS 5/116-3 (West 2022). This Court has determined that if the motion does not meet the standards outlined by the statute, the judge can dismiss the motion without response. *People v. O'Connell*, 227 Ill.2d 31, 38 (2007) ("trial court [may] *sua sponte* den[y] defendant's motion for DNA testing after determining that defendant's motion did not provide a legal basis for the request.") While the State points this out in its brief in an attempt to justify the premature dismissal in the instant case, it fails to acknowledge *why* this Court allowed a *sua sponte* dismissal in *O'Connell*. There, *sua sponte* dismissal was appropriate because the defendant pled guilty and the statute requires a trial for relief under 725 ILCS 5/116-3. *O'Connell*, 227 Ill.2d at 37.

There is no such limitation in 735 ILCS 5/5-9-2.Section 5-9-2 in its entirety states: "Except as to fines established for violations of Chapter 15 of the Illinois Vehicle Code, the court, upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 735 ILCS 5/5-9-2. The only limitations and conditions laid out in the statute are that the fines in question are not codified in Chapter 15 of the Vehicle Code, which the instant fines are not, and that there be good cause shown. 735 ILCS 5/5-9-2. Here, a cursory look at the instant petition shows that Reyes alleged good cause. Specifically, much of the two-page petition addresses cause where Reyes argued he:

- "ha[s] no money;"
- "only received "$15 a month in State pay;"

- "once released [he will] be homeless;"
- is indigent . . ."
- "will be homeless living in shelter with no financial assistant except shelter;" and
- "would like to have a fresh start on life upon his release from Illinois Department of Corrections, and with the revocation of fine(s) against him would provide him an opportunity to do just that." (C. 84-85).

Yet, the judge below dismissed the petition, not because it failed to provide a legal basis, but rather because he "failed to make a showing of good cause." (R. 59). Reyes did, however, argue cause, so the disposition would have concerned whether or not Reyes alleged *sufficient* cause. If Reyes failed to allege good cause in his petition or only sought the revocation of fines defined in Chapter 15 of the Vehicle Code, *sua sponte* dismissal would be appropriate. However, Reyes alleged good cause in his petition and none of the fines in question are specifically excluded by the statute. In other words, the judge did not *sua sponte* dismiss the petition for failing to provide a legal basis, but rather, he dismissed the petition on his own based on the *merits* of Reyes's petition. But in order to dismiss a petition that meets the requirements laid out in the statute on its merits, the judge has to wait 30 days to respond as required by Rule 105.

The State also argues "[t]here is no legal basis for defendant's attempt to import one (and only one) of the procedures governing petitions for relief from judgment under section 735 ILCS 5/2-1401 to bar *sua sponte* dismissal of a request for relief under section 5-9-2." Further, the State asks why Reyes seeks to apply the procedural rules governing 2-1401 petitions and not other collateral actions. Yet these concerns, again, miss the point of the opening argument completely.

As argued, this Court has held that the rules of civil procedure apply to 2-1401 petitions, even though they are criminal in nature, because they are free standing

collateral actions. (Op. Br. 7-8). As such, there is a requirement for the circuit court to wait for 30 days to allow the State to respond before resolution of the case as required by the rules of civil procedure. S.Ct.R. 105. It was argued in the opening brief that, because the Appellate Court has held that a petition to revoke fines is also a free standing collateral attack akin to a 2-1401 petition, the same rules should apply to each. (Op. Br. 7-12).

First, the Appellate Court did not hold that a petition to revoke fines was similar to the other motions that the State mentioned, rather it specifically held that petitions to revoke fines are similar to 2-1401 petitions. *Mingo*, 403 Ill. App.2d at 970-71. The court specifically held that, because petitions to revoke fines are freestanding collateral actions, the trial court can have jurisdiction to hear the petition even when there is an appeal pending. *Id*. at 972-73.

Further, the State's argument here is short-sighted because it is seeking to fit a round peg into a square hole in asking why Reyes is not asking for the procedural rules that govern other petitions, like post-conviction petitions for example. (St. Br. 34-35). Yet, as this Court knows, post-conviction petitions are uniquely governed by statutory rules that take them outside of the rules of civil procedure to some extent. For instance, the statute specifically allows for the judge to dismiss the petition without a State response if she determines that the petition does not raise even a gist of a constitutional claim. 725 ILCS 5/122-2.1 (West 2022); see also *People v. Porter*, 122 Ill.2d 64, 74 (1988) (stating that only a "gist" of a constitutional claim is needed at the first stage).

Yet, if the gist of a constitutional claim *is* raised, or if the judge failed to dismiss the petition within 90 days, the petition is advanced to the second stage of proceedings.

725 ILCS 5/122-2.1. At that stage, the Civil Rules of Procedure regarding notice and response apply just as they do in a 2-1401 petition. There, just as with a 2-1401 petition, after receiving an amended petition, the circuit court *must* wait 30 days to allow the State to respond before dismissing the petition. 725 ILCS 5/122-5. In other words, the State's argument falls apart because it is asking this Court why Reyes is not asking for the same procedures that govern post-conviction petitions when, in fact, he is. He is just not asking for those procedures that are defined exclusively by the Post Conviction Act and are exclusive to post-conviction petitions.

The State also claims that the rules of civil procedure only apply to collateral attacks if the statute explicitly specifies as such. (St. Br. 37). In doing so, the State points out instances where it is specified that the rules of civil procedure control, like, again in the Post Conviction Act and in habeas proceedings. (St. Br. 37) (citing 725 ILCS 5/122-5 and 735 ILCS 5/10-137). This argument is also short-sighted because the State ignores post-trial motions that courts have held are governed by civil rules, yet it does not specify those rules apply in its authorizing statute. For instance, a motion for DNA testing, which the State itself holds up as an example, is defined under the Code of Criminal Procedure, not civil. (St. Br. 33); 725 ILCS 5/116-3 (West 2022). Yet a motion for DNA testing is not treated as a criminal proceeding; rather it is a civil action "independent from any other type of collateral postconviction action" *People v. Gawlak*, 2019 IL 123182, ¶ 32. ("[S]ection 116-3 action[s] [are] civil in nature and independent from any other type of collateral postconviction action.") (citation omitted).

In fact, in *Gawlak*, this Court has ruled against the same argument the State makes here. *Id.* There, the Court affirmed the appellate court, which held:

> According to the State, "[a] motion for forensic DNA testing is available only to convicted criminal defendants pursuant to the Code of Criminal

> Procedure." We note, however, the fact that the motion for DNA testing at issue here may only be brought by a convicted criminal does not necessarily make the subsequent proceedings criminal in nature. In fact, even proceedings under the [Post Conviction Act], which are brought only by convicted persons, are considered civil in nature. *Gawlak*, 2017 IL App (3d) 150861, ¶ 11.

Similarly, the appellate court has held that fine revocation proceedings are "freestanding actions, collateral to the original action," so it is appropriate to apply the civil rules. *Mingo*, 403 Ill. App.3d at 971.

As it currently stands, the Appellate Court has likened petitions to revoke fines to petitions filed under Section 2-1401. Reyes argues here that the same general procedural rules should, therefore, apply to both petitions. In other words, the baseline procedural rules for all collateral freestanding actions should be the rules of civil procedure unless specifically deemed otherwise in the authorizing statute. As there is no such limiting language in 735 ILCS 5/5-9-2, the 30-day waiting period required by Rule 105 should have applied. Thus, the circuit court was premature in dismissing the instant petition.

For these reasons, this Court should hold that the order denying the petition to revoke fines must be vacated as premature and the cause should be remanded for further proceedings.

II. Contrary to the plain language of Section 5-9-2 of the Unified Code of Corrections allowing a defendant to seek revocation of fines except those under Chapter 15 of the Illinois Vehicle Code, the appellate court erroneously interpreted the statute to apply only to discretionary fines specifically listed in Section 5-9-1.

Even if this Court holds that the 30-day response period does not apply to a petition to revoke fines, the court below still narrowed the scope of the fines covered by Section 5-9-2 beyond what was intended by the legislature. Despite his agreeing to a plea deal that included "no fines," $1670 in fines were imposed against Reyes. After filing a 472 motion, that amount was lowered to $130, which is the amount the instant petition concerns. The Appellate Court held that Reyes could not have these fines revoked because: 1) they are not listed in Section 5-9-1 of the UCC and 2) their imposition was mandatory. In his opening brief Reyes argued that the Second District's reasoning was erroneous on both counts, and, as a result, this Court should revoke Mr. Reyes's outstanding fines.

A. The appellate court incorrectly held that Section 5-9-2 applies only to fines listed in Section 5-9-1.

The State argues that the historical context of the amendments to Sections 5-9-1 and 5-9-2 "defeats [Reyes's] argument that the legislature amended Section 5-9-2 to exclude fines under Chapter 15 of the Vehicle Code with the intent to counteract or contradict[]" *People v. Bennett*, 144 Ill. App.3d 184 (4th Dist. 1986). (St. Br. 18). That is not an accurate account of the argument in the opening brief. It was never argued that 5-9-2 was amended *with the intent* to contradict *Bennett*. If that was the ultimate intent of the legislature, one would hope that they would execute their intent with clear language and not a riddle. Rather, Mr. Reyes argued that the amendment to Section 5-9-2 shows that the appellate court's interpretation of the statute is nonsensical. In other words, the legislature did not intend to overrule *Bennett* with the amendment, but rather, the amendment itself calls into question the appellate court's holding in

Bennett, and in the instant case below. (Op. Br. 17).

Further, the State's historical context discussion only support's Mr. Reyes's position over its own. The State argues that the amendments to Section 5-9-2 were "in direct response to the appellate court's holding in [*People v. Ulrich*, 178 Ill. App.3d 1097 (3d Dist. 1989)] that section 5-9-1 appl[ied] [sic] to fines under Chapter 15 of the Vehicle Code." (St. Br. 18). First off, the State provides no citation to suggest that the legislature passed the amendment to Section 5-9-2 in direct response to the appellate court's holding in *Ulrich* outside of pointing out they both happened in the same year. The State also makes a huge leap to try to connect the amendment to Section 5-9-2 to limiting it to only apply to penal fines in arguing:

> [T]he General Assembly amended section 5-9-2 to similarly exclude "fines established for violations of Chapter 15 of the Illinois Vehicle Code," Public Act 87-396 (eff. Sept. 10, 1991), emphasizing that sections 5-9-1 and 5-9-2 are part of a unified statutory scheme that applies only to penal fines. (St. Br. 17).

The State provides no citation for this leap and does not fill in the gap between "fines established for violations of Chapter 15 of the Illinois Vehicle Code," and claiming somehow this narrowly tailored language somehow "emphasiz[es] that sections 5-9-1 and 5-9-2 are part of a unified statutory scheme that applies only to penal fines." Those concepts are certainly not inherently linked and it strains the mind to conceive of anyway this Court could read the excepting language in Section 5-9-2 as somehow speaking to the overall structure of Sections 5-9-1 and 5-9-2 and that they only apply to penal fines. Yet, the State has not connected the narrowly drafted language in Section 5-9-2 to the overarching holding it wishes to come out of this Court. Rather, it rests on a conclusory statement that links two completely separate and distinct concepts. The State seems to think that the legislature works in codes and riddles that need to be deciphered rather than in plain language. Further, *Ulrich* dealt with the imposition

of fines and not their revocation. There, this Court held that the circuit court does not have the ability to impose a fine less than what is required by the legislature. *People v. Ullrich*, 135 Ill.2d 477, 483-84 (1990). The distinction between the imposition and revocation of fines is discussed in the opening brief and has not been addressed by the State. (Op. Br. 20-22).

It makes more sense that if the legislature at that time wanted to limit Section 5-9-2 to only those discretionary fines listed in 5-9-1, it would have codified that imitation, and not just excepted those listed in Chapter 15 of the Vehicle Code. While the State argues that the amendment indicates intent to limit fines available for revocation under section 5-9-2 to only discretionary fines explicitly listed in section 5-9-1, the common sense and clearly obvious interpretation of the legislature's actions suggest that upon learning of *Ulrich*, they, or a lobbying body, determined that the fines listed Chapter 15 of the Vehicle Code were too important to be revoked so they were excepted. It does not make sense that the legislature would make its statute illogical and except fines that were already excepted as the State argues.

Further, the State fails to address the illogical nature of its argument. To restate the argument in the opening brief, the appellate court's, and now the State's, interpretation of Section 5-9-2 is illogical because, if true, those fines listed in Chapter 15 of the Vehicle Code would have already been excluded prior to the amendment. (Op. Br. 16-18). From a common sense standpoint, that makes no sense. From a logical standpoint it makes even less sense because the legislature would have created an unsound illogical statute that actually allows the fines to be revoked rather than omitting them. (Op. Br. 16-18). And as this Court has recently held, "[w]hen a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound to that construction, and the reading leading to absurdity should

be rejected." *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561, ¶ 27

Rather, this Court is to look at the clear and unambiguous language of a statute when determining its meaning. *People v. Tidwell*, 236 Ill.2d 151, 157 (2010). Further, criminal statutes should be interpreted to afford lenity to the accused. *In re Detention of Powell*, 217 Ill.2d 123, 142 (2005). Under that standard, it is difficult to defend the State's position. Conveniently, it ignores the inconsistences between the statutory language and the interpretation it wishes this Court to adopt.

B. The appellate court below also was incorrect when it held that Section 5-9-2 allows only the revocation of fines that the judge has discretion to impose and not those whose imposition is mandatory.

The State argues that Mr. Reyes is incorrect in his argument that the use of the word "fines" rather than specifying mandatory fines implies that the legislature intended Section 5-9-2 to apply to both mandatory and discretionary fines simply by citing the appellate court cases that Mr. Reyes argued were incorrect. (St. Br. 24). Further, again, the State misses the point in arguing that Mr. Reyes's argument makes a mandatory and discretionary distinction meaningless. (St. Br. 24). Mr. Reyes distinguished the difference between the imposition and revocation of fines in the opening brief. (Op. Br. 21). There is nothing to suggest that a fine that is mandatorily imposed cannot be later revoked for good cause. Because the State has not addressed the differences between imposition and revocation, Mr. Reyes rests largely on the arguments in his opening brief.

Likewise, Mr. Reyes argues that the State's argument that it "cannot be the purpose of the statute" to allow a judge to revoke a mandatory fine. (St. Br. 24-25). Quite the opposite. Mr. Reyes argues that the legislature was wise in drafting section 5-9-2 to allow a judge to revoke a fine that was mandatory in nature when there is cause to do so. Specifically, as the State points out, many of these fines are in place to fund

government purposes, "many of which rely on the proceeds from these assessments to function." (St. Br. 21).

Contrary to the State's position, allowing a hearing on the defendant's ability to pay a fine that would simply go to finding a government project *must* be the purpose of the statute if the payment of such a fine would pose an undue burden. Because the legislature has chosen to fund government programs with these mandatory fines, it makes sense to remove a judge's discretion in their imposition. Where imposition is mandatory, they cannot be bargained away and the judge cannot choose to not impose them if he does not agree they should be imposed. Rather, the defendant must later motion the court to revoke them and the court has discretion to revoke only if good cause is shown. This is a perfect procedural construct because it mirrors good, and the generally prevailing, public policy that someone should not be burdened with such fines to fund government operations when they lack the ability to pay and, at times, cannot even afford food. In other words, most of the time the mandatory fine will be paid and the government program will be funded, but in the case where there is good cause for the defendant to not pay it, the court can excuse the obligation.

Finally, Mr. Reyes contemplates "what if the State is right?" The State has answered that question in its brief. If this Court interprets Section 5-9-2 as Mr. Reyes argues and that interpretation is not in line with its actual legislative intent, it will "respond with speed and clarity" as it has done in the past. (St. Br. 18). If the State is correct, in the least, the legislature has drafted an illogical and incoherent statute. It cannot be argued that, if the State is correct, Section 5-9-2 is drafted in a way that expresses its intent. If the legislature wishes to amend Section 5-9-2 to something in line with the State's position, it can very easily do so by simply stating that it only applies to the fines listed in 5-9-1. But this Court should not read in any hidden or assumed

intent in its interpretation. Again, assuming that Mr. Reyes is somehow wrong, a holding in line with his arguments would, in the least, send a message to the legislature to be more clear in its statutory drafting.

C. **Mr. Reyes demonstrated good cause for his fines to be revoked.**

The State argues the Mr. Reyes has failed to show good cause for his fines to be revoked merely because he was incarcerated when he filed his petition. (St. Br. 26-27). Yet, Mr. Reyes's petition is focused on the situation he will face upon release, which for him includes homelessness, unemployment, and the fact that he will not have any assets. (C. 84-85). That is not the case for many inmates as many have a support system, jobs, and housing available upon their release from prison. Admittedly, most inmates will have little or no ability to pay while incarcerated and incarceration alone cannot be good case to revoke a fine. However, it is equally true that not all incarcerated individuals face the same situation upon release, so there should not be a blanket holding that good cause cannot be shown while someone is in prison as the State suggests.

The remainder of the State's arguments are sufficiently addressed in the opening brief. Mr. Reyes argues that he has established cause for the reasons therein and the State argues otherwise. (Op. Br. 24-25); (St. Br. 26-32). However, the main two issues in this case are not predicated on whether or not Mr. Reyes has established cause. Mr. Reyes rests on his brief as to the arguments regarding whether or not cause was established.

Ultimately, the legislature was clear in its drafting of Section 5-9-2 and the clear reading is that all fines, mandatorily or discretionarily imposed, besides those specifically listed in Chapter 15 of the Vehicle Code, may be revoked by the circuit court is good cause is shown to do so. That said, this Court should vacate the trial court's order denying his petition for revocation of fines and either enter an order revoking those fines or

remand this matter to the circuit court with appropriate instructions for further proceedings.

CONCLUSION

For the foregoing reasons and those set out in the Appellants Brief', Jorge Reyes, petitioner-appellant, respectfully requests that this Court vacate the trial court's order denying his petition for revocation of fines and either enter an order revoking those fines or remand this matter to the circuit court with appropriate instructions for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 15 pages.

/s/Andrew Thomas Moore
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No. 128461

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PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JORGE L. REYES, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 2-19-0474. There on appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 11 CF 2428. Honorable Jeffrey S. MacKay, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 March 30, 2023, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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