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§2-1

Right to

[Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341 \(1974\)](#) The federal constitution does not require that States provide an appeal for criminal defendants, but a State cannot arbitrarily eliminate appeal rights for indigents while leaving open avenues of appeal for more affluent persons.

[United States v. MacDonald, 435 U.S. 850, 98 S.Ct. 1547, 56 L.Ed.2d 18 \(1978\)](#) A defendant is not entitled to appeal from a pre-trial order denying his motion to dismiss on grounds that his Sixth Amendment right to a speedy trial was violated.

[People v. Harrison, 226 Ill.2d 427, 877 N.E.2d 432 \(2007\)](#) Because a verdict of "not guilty by reason of insanity" is an "acquittal," the defendant may not appeal the predicate finding that he committed the acts in question. The Court stressed that a NGBI verdict absolves the defendant of any criminal liability, and that the defendant has other means to challenge a posttrial finding that he is in need of inpatient mental health services.

[People v. Savory, 197 Ill.2d 203, 756 N.E.2d 804 \(2001\)](#) The trial court's denial of a motion for scientific testing under [725 ILCS 5/116-3](#) is an appealable "order" under Supreme Court Rule 2(b)(2).

[People v. Reedy & Wilson, 186 Ill.2d 1, 708 N.E.2d 1114 \(1999\)](#) A criminal defendant may challenge the constitutionality of sentence credit legislation on direct appeal after the Department of Corrections has calculated the good-time credit. Illinois courts have traditionally recognized that good-time credit is a part of every sentence. Furthermore, the truth-in-sentencing statute specifically mandates that the trial judge inform the public of the actual length of time a defendant subject to "truth-in-sentencing" is likely to be incarcerated. In view of the "readily apparent" connection between good-time and sentencing hearings, "it would be unjust to hold that defendants lack standing on direct appeal to challenge the constitutionality of the very statute under which they were sentenced."

[People v. Robinson, 187 Ill.2d 461, 719 N.E.2d 662 \(1999\)](#) Under [People v. Mazzone, 74 Ill.2d 44, 383 N.E.2d 947 \(1978\)](#), where a criminal defendant dies while his direct appeal is pending the criminal proceedings abate ab initio from their inception. The Mazzone rule recognizes "that the purpose of criminal prosecutions is to punish the defendant," and that "continuing criminal proceedings when the defendant is dead is a useless act."

[People v. Mack, 182 Ill.2d 377, 695 N.E.2d 869 \(1998\)](#) The Court elected to exercise jurisdiction over an interlocutory appeal in a death case although Supreme Court Rules did not authorize an appeal to the Supreme Court. Under Supreme Court Rule 302(b), the Supreme Court may take a case filed in the Appellate Court when the public interest "requires prompt adjudication by the Supreme Court."

[People v. Allen, 71 Ill.2d 378, 375 N.E.2d 1283 \(1978\)](#) The final judgment in a criminal case is the sentence. See also, [People v. Rose, 43 Ill.2d 273, 253 N.E.2d 456 \(1969\)](#).

[People v. Chatman, 49 Ill.App.3d 1034, 364 N.E.2d 739 \(4th Dist. 1977\)](#) An appeal lies to the appellate court for the district in which the circuit court which tried the case is located regardless of the district where the offense occurred.

[People v. Hiatt, 229 Ill.App.3d 1094, 595 N.E.2d 733 \(3d Dist. 1992\)](#) By providing in Rule 604(f) that a defendant may appeal the denial of a motion to dismiss a criminal proceeding based on "former jeopardy,"

the Supreme Court intended to allow appeals involving not only traditional double jeopardy, but also violations of the mandatory joinder statute. See also, [People v. Hobbs, 301 Ill.App.3d 481, 703 N.E.2d 943 \(4th Dist.1998\)](#)

[People v. Partee, 125 Ill.2d 24, 530 N.E.2d 460 \(1988\)](#) A defendant who is convicted in absentia may appeal without first moving for a hearing to determine whether his absence was willful. However, a reviewing court has discretion to refuse to hear a fugitive's appeal unless and until he returns to the jurisdiction. But see, [Ortega-Rodriguez v. U.S., 507 U.S. 234, 113 S.Ct. 1199, 122 L.Ed.2d 581 \(1993\)](#) where it was held that although an appellate court has the discretion to dismiss an appeal where flight from the trial court's jurisdiction sufficiently affects the appellate process (i.e., where the escape causes such delay that the prosecution is prejudiced in locating witnesses for retrial), there is no mandatory rule requiring dismissal in such cases) and [People v. Vasquez, 339 Ill.App.3d 546, 791 N.E.2d 33 \(1st Dist. 1985\)](#) where the court recognized it has discretion to hear an appeal of a fugitive.

[People v. Aliwoli, 60 Ill.2d 579, 328 N.E.2d 555 \(1975\)](#) Where an appeal was dismissed solely because of neglect by defendant's attorney, and there was no reason to believe that defendant was responsible for the delay, the appellate court erred by dismissing the appeal. See also, [People v. Moore, 133 Ill.2d 331, 549 N.E.2d 1257 \(1990\)](#).

[First Capitol Mortgage v. Talandis, 63 Ill.2d 128, 345 N.E.2d 493 \(1976\)](#) A reviewing court may dismiss an appeal due to the appellant's failure to file a timely brief, but may not reverse the trial court because the appellee fails to file a timely brief. In the latter situation, the judgment of the trial court may be reversed if the appellant's brief demonstrates prima facie reversible error and the contentions of the brief are supported by the record. In other cases, the reviewing court should decide the merits of the appeal if the record is simple and the claimed errors may be easily decided without an appellee's brief.

[People v. Fearing, 110 Ill.App.3d 643, 442 N.E.2d 939 \(4th Dist. 1982\)](#) As part of a plea agreement, defendant promised not to appeal but after the guilty plea was accepted and sentence imposed, the defendant appealed. The Appellate Court dismissed the appeal, holding that the right to appeal can be waived pursuant to a plea agreement.

[People v. Walensky, 286 Ill.App.3d 82, 675 N.E.2d 952 \(1st Dist. 1996\)](#) If the trial court rules on some, but not all, of the issues raised in a motion to suppress, the order is not final and appealable until there is a subsequent order disposing of the remaining issues.

[People v. Sistrunk, 259 Ill.App.3d 40, 630 N.E.2d 1213 \(1st Dist. 1994\)](#) Through no fault of his own, defendant's appeal was delayed for several years. Among the issues raised on appeal, defendant argued that his convictions should be reversed because he was denied due process by the ten-year delay between sentencing and the time his appeal was heard. The Court agreed that the right to appeal is subject to the due process clauses of the Federal and State Constitutions. In addition, the Court suggested that the Illinois Constitution, which guarantees a "certain remedy" for "all injuries and wrongs" and provides that justice is to be obtained "freely, completely and promptly," includes the right to have a criminal appeal promptly considered. However, the Court concluded that the defendant was not entitled to relief where his claims were eventually denied and there was no reason to believe that the result would have been different had no delay occurred.

[People v. Selby, Hand, & Glenn, 298 Ill.App.3d 605, 698 N.E.2d 1102 \(4th Dist. 1998\)](#) Under Supreme Court Rule 603, cases declaring statutes unconstitutional must be appealed to the Supreme Court. However, because an order finding that an administrative regulation is unconstitutionally vague is not the equivalent

of holding that a statute is unconstitutional, the State's appeal was properly filed in the Appellate Court.

Cumulative Digest Case Summaries §2-1

[In re Henry B., 2015 IL App \(1st\) 142416 \(No. 1-14-2416, 1/26/15\)](#)

In general, the Appellate Court has jurisdiction to review final judgements. However, it lacks jurisdiction to review an interlocutory order unless jurisdiction is afforded by Supreme Court rule. Two rules authorize appeals in juvenile cases. Rule 660(a) provides for appeals from final judgements, and Rule 662 allows an appeal from an interlocutory order where no dispositional order has been entered in 90 days.

The court concluded that where a continuance under supervision is ordered under 705 ILCS 405/5–615 without a finding of guilt or a judgement order, neither Rule 660(a) nor Rule 662 authorizes an appeal. Because the Appellate Court lacked jurisdiction, the appeal was dismissed.

[In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 \(5th Dist. 2010\)](#)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. [705 ILCS 405/5-615\(a\)](#) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

[People v. Bozarth, 2015 IL App \(5th\) 130147 \(No. 5-13-0147, 1/26/15\)](#)

The Illinois Constitution authorizes appeals in final judgements and permits the Supreme Court to provide for appeals of orders that are not final. Supreme Court Rule 604(b) provides that a defendant may appeal from an order of supervision and may seek review of the conditions of supervision, the finding of guilt, or both. Thus, the Appellate Court had jurisdiction to hear an appeal where after a stipulated bench trial defendant was sentenced to one year of court supervision.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

[People v. Love, 2013 IL App \(3d\) 120113 \(No. 3-12-0113, 9/24/13\)](#)

The Illinois Constitution prohibits appeals from nonfinal judgments but grants the Illinois Supreme Court the authority to provide for appeals to the Appellate Court from other than final judgments. Ill. Const. 1970, art. VI, §6. Supreme Court Rule 604(b) authorizes appeals from orders of supervision and allows a defendant to appeal “from the judgment and . . . conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both.” Under this rule, defendant has the right to appeal both the finding of guilty and the conditions of supervision.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)

[People v. McCaslin, 2014 IL App \(2d\) 130571 \(No. 2-13-0571, 12/11/14\)](#)

1. A defendant has a constitutional right to appeal a criminal conviction, but may waive that right through neglect or by conscious choice. An agreement not to appeal should be enforced unless the defendant can show that it was made involuntarily or unintelligently or suffers from some similar infirmity.

2. Defendant pleaded guilty to burglary and as part of the plea agreement was accepted into a drug-court program. The agreement provided that sentencing would be deferred until the successful completion of or unsuccessful discharge from the drug-court program. The plea agreement also stated that if the defendant “commits a new felony offense” the State would file a petition to discharge defendant from the

program. As a condition of entering the program, defendant executed a document which stated: “I waive any and all rights to appeal I may have in the event I am dismissed from the [drug-court program] and understand and consent to the Court and . . . Drug Court Team being the sole authority for determining such dismissal.”

The State subsequently filed a petition to terminate defendant’s participation in the drug-court program, alleging that he had been charged with a felony in another county. At the hearing on the petition, defendant argued that the State was required to show that he had committed a new felony, not merely that he had been charged. The trial court granted the petition to terminate, and defendant appealed.

The Appellate Court dismissed the appeal, finding that defendant had waived his right to appeal and agreed that the trial court and drug-court team would determine whether he should be dismissed from the program. Furthermore, the record showed that the waiver of the right to appeal was voluntary and intelligent where the trial court ascertained that defendant understood the agreement and defense counsel indicated that he had discussed the agreement with defendant. The court rejected the argument that the trial court was required to specifically admonish a defendant who waives his appellate rights, noting that Illinois Supreme Court Rule 402, which specifies the admonishments to be given before accepting a guilty plea, does not require any specific admonishment concerning a waiver of the right to appeal.

3. In a concurring opinion, Justice Jorgensen agreed that defendant waived his appellate rights but stated that “such sweeping waivers can have a detrimental effect on the integrity and sustainability of drug-court programs.” Justice Jorgensen criticized the use of waivers of appellate rights as occurred in this case because drug-court programs are afforded “virtually unfettered authority” to terminate participants from the program without permitting any challenge to the State’s failure to prove that the agreement has been violated.

(Defendant was represented by Assistant Deputy Defender Paul Glaser, Elgin.)

[People v. Reid, 2014 IL App \(3rd\) 130296 \(No. 3-13-0296, 12/15/14\)](#)

After he was convicted of first degree murder, defendant agreed to waive his right to appeal and his right to file a post-conviction petition. In return, the State agreed to not seek a death sentence. Defendant subsequently filed a direct appeal, which the Appellate Court heard after finding that the trial court had given improper admonishments regarding the waiver of appellate rights.

Defendant then filed a post-conviction petition which was dismissed as frivolous and patently without merit. The Appellate Court affirmed the dismissal order, holding that defendant had been properly admonished concerning the waiver of his right to file a post-conviction petition.

1. Because a waiver of the right to appeal resembles a guilty plea, before accepting such a waiver the trial court must admonish defendant under Supreme Court Rule 605. However, because no specific admonishments are prescribed by statute or rule, the validity of a waiver of the right to file a post-conviction petition is determined under general constitutional standards. Thus, a waiver of the right to file a post-conviction petition is valid if it represents an intelligent and voluntary relinquishment of a known right.

2. The court concluded that defendant’s waiver of his right to pursue post-conviction relief was knowing and voluntary where the trial court explained in open court that defendant had the right to seek post-conviction relief, explained that post-conviction proceedings would occur after the direct appeal was complete, and stated that agreeing to the waiver would mean that defendant “could take no further legal action” to challenge his conviction. The court found that the trial judge was not required to discuss the specific process of post-conviction proceedings, including the standard to be applied at first-stage proceedings and the right to receive a free transcript.

Because defendant’s waiver of post-conviction proceedings was proper and could be enforced, the trial court’s order denying the petition as frivolous was affirmed.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[People v. Sims, 403 Ill.App.3d 9, 931 N.E.2d 1220 \(1st Dist. 2010\)](#)

The Appellate Court dismissed defendant’s direct appeal of his conviction in March 1993 due to the failure of his counsel to file the record on appeal. In September 1993, defendant’s attorney signed for and

received the common law record. Defendant learned in November 1994 that his appeal had been dismissed. In 1996, defendant filed a *pro se* motion to reinstate his appeal in the Appellate Court and a *pro se* motion to file a late notice of appeal in the Supreme Court. Both motions were denied. In 2006, defendant filed a *pro se* post-conviction petition, which ultimately led to his being permitted to file a late notice of appeal in 2009. At that point, the common law record and jury selection proceedings could not be located or reconstructed.

1. As a general rule, a defendant is obligated to provide a complete record for review of his appellate claims. This rule is relaxed where defendant is not at fault for the incompleteness and the missing record is material to meaningful review of his contentions on appeal. Defendant contended he was denied his right to meaningful appellate review where through no fault of his own the record on appeal was incomplete. The Appellate Court acknowledged that the incompleteness of the record was not the fault of the defendant and that the missing records could not be reconstructed. It denied any relief to defendant because he had not established that the missing records were material to meaningful review of his appeal. Defendant could not identify any specific error that occurred in the missing records. It was not enough that as a result of the missing record it could not be determined whether or not an error occurred.

2. Delay of an appeal can violate due process. To determine whether delay violates due process, courts utilize the four-part test of [Barker v. Wingo, 407 U.S. 514 \(1972\)](#), designed to address violations of defendant's Sixth Amendment right to a speedy trial. Those factors are: (1) length of the delay; (2) reason for the delay; (3) defendant's responsibility to assert his right; and (4) the resulting prejudice to defendant. Applying these factors, the court found no violation of defendant's right to due process. The court acknowledged that the 17-year delay did merit further inquiry and the initial delay of the appeal was due to ineffective assistance of counsel. But the court also found that defendant was responsible for the delay from 1994 when defendant learned the appeal was dismissed, until 1996, when he filed *pro se* motions. The record was silent as to any action taken by defendant from 1996 until 1999, and from 2000 until 2006, during which times he took no action. Moreover, defendant suffered no prejudice. The loss of records did not interfere with meaningful appellate review of his conviction, and defendant endured no unlawful incarceration, as the court concluded no error occurred at his trial.

(Defendant was represented by Assistant Defender Carolyn Klarquist, Chicago.)

[People v. Utsinger, 2013 IL App \(3d\) 110536 \(No. 3-11-0536, 5/30/13\)](#)

Supreme Court Rule 604(b), entitled "Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment," provides in relevant part: "A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge *** may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt, or the conditions of the sentence, or both."

This rule explicitly states that a defendant placed under court supervision may seek review of the conditions of supervision or of the finding of guilt that precedes the order of supervision. The Appellate Court rejected, as contrary to the plain language of the rule, the argument that because an order of supervision is not a "sentence" as defined by 730 ILCS 5/5-1-19 (a disposition imposed on a convicted defendant), an offender receiving supervision based on a finding of guilt may not appeal that finding unless defendant violates supervision, resulting in a conviction. This "impractical interpretation" would require a defendant to refuse supervision after a finding of guilt in order to preserve his right to review a finding of guilt. Given the select number of offenders eligible for supervision, the court did not believe that the Illinois Supreme Court by adopting Rule 604(b) intended that those persons be denied access to appellate review of trial court errors.

(Defendant was represented by former Assistant Defender Melissa Maye, Ottawa.)

[Top](#)

§2-2

Notice of Appeal

§2-2(a)

Generally

[People v. Smith, 228 Ill.2d 95, 885 N.E.2d 1053 \(2008\)](#) The filing of a notice of appeal is a jurisdictional step for appellate review. Unless the notice of appeal is proper, the reviewing court lacks jurisdiction. A reviewing court has an independent duty to consider issues of jurisdiction, whether or not a party has raised them. Although a notice of appeal is to be construed liberally, the court of review has jurisdiction to consider only the judgments specified in the notice. A notice of appeal is sufficient to confer jurisdiction when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the opposing litigant of the nature of the appeal. Here, the Court found that defendant's notice of appeal was improper because it did not fairly and adequately set out the judgment to be appealed or the relief sought. The notice of appeal referred only to the original conviction of November 10, 2004, and not to the judgment which the defendant sought to appeal - the denial of a motion for sentence correction on February 21, 2006.

[People v. Sanders, 40 Ill.2d 485, 240 N.E.2d 627 \(1968\)](#) Under Supreme Court Rule 606(a), a defendant's request that the clerk prepare and file a notice of appeal is sufficient to preserve the right to appeal. See also, [People v. Miner, 4 Ill.App.3d 409, 280 N.E.2d 469 \(4th Dist. 1972\)](#) (letter sent to Circuit Court Clerk, although not an explicit demand or request for a notice of appeal, created a duty on the clerk to file a notice of appeal).

[People v. Wilk, 124 Ill.2d 93, 529 N.E.2d 218 \(1988\)](#) To properly perfect an appeal from a plea of guilty, the defendant is required to file a motion to vacate the plea (or to reduce the sentence) before filing a notice of appeal. (Supreme Court Rule 604(d)). However, failing to file a motion to vacate does not bar the appeal if the defendant was not properly admonished of this requirement by the trial judge. See also, [People v. Dorsey, 129 Ill.App.3d 52, 471 N.E.2d 1053 \(4th Dist. 1984\)](#).

[People v. Latona & Martinez, 184 Ill.2d 260, 703 N.E.2d 901 \(1998\)](#) The trial court did not act improperly where, after it lost jurisdiction, it issued amended mittimus to reflect the sentence credit to be awarded. While the trial court may not modify a judgment after it has lost jurisdiction, it may correct the record to accurately reflect the judgment that was in fact entered.

[People v. Alston, 302 Ill.App.3d 207, 706 N.E.2d 113 \(2d Dist. 1999\)](#) Where the defendant files a timely post-trial motion after a notice of appeal has been filed, the notice of appeal is deemed premature and the judgment is not final and appealable until the post-trial motion has been decided. (Under recent amendments to Supreme Court Rule 606(b), a notice of appeal filed before the trial court decides a timely post-trial motion has no effect, without regard to whether the notice of appeal was filed before or after the post-trial motion.)

[People v. Kellerman, 337 Ill.App.3d 781, 786 N.E.2d 599 \(3d Dist. 2003\)](#) The Appellate Court has jurisdiction over an appeal only if a notice of appeal is filed in the trial court within 30 days of a final order. A notice of appeal mailed within 30 days is considered to have been timely filed. Where a deficiency in the notice of appeal concerns form rather than substance, the court has jurisdiction if: (1) the notice fairly and accurately advised the appellee of the nature of the appeal, and (2) the appellee was not prejudiced by any deficiency in the notice. A pro se document placed in the prison mail system within 30 days of the summary dismissal of a post-conviction petition substantially complied with the notice of appeal requirement. The pro se document was entitled "Notice of Filing of Notice of Appeal," and stated defendant wished "to file an

Appeal of the Circuit Court's Order of Dismissal August 2, 2001 in which the Post-Conviction relief and cause was dismissed." This document fairly and accurately advised the State of the nature of the appeal, and that the State suffered no prejudice.

[People v. Curry, 167 Ill.App.3d 146, 520 N.E.2d 984 \(2d Dist. 1988\)](#) The trial court had jurisdiction to hear a post-trial motion even though a notice of appeal had been filed. Because a subsequent notice of appeal was filed after the post-trial motion was denied, the trial court's actions were construed as granting a Rule 309 dismissal of the appeal before ruling on the post-trial motion. See also, [People v. Hook, 248 Ill.App.3d 16, 615 N.E.2d 6 \(2d Dist. 1993\)](#) (motion for reconsideration of the sentence, filed after the notice of appeal but within 30 days of the sentencing hearing, was an implicit motion to dismiss the appeal)

[People v. Richmond, 278 Ill.App.3d 1042, 663 N.E.2d 1090 \(3d Dist. 1996\)](#) By filing a motion to reconsider the sentence within 30 days after sentencing, the defendant revested the trial court with jurisdiction, even though a notice of appeal had been previously filed. See also, [People v. Rowe, 291 Ill.App.3d 1018, 684 N.E.2d 1368 \(2d Dist. 1997\)](#).

[People v. Larry, 144 Ill.App.3d 669, 494 N.E.2d 1212 \(2d Dist. 1986\)](#) Trial court lacked jurisdiction to reinstate convictions on three counts after notice of appeal was filed. After a notice of appeal is filed, the trial court may only take action on "purely ministerial" matters, which are "independent of, and collateral to, the judgment on appeal."

[People v. Circella, 6 Ill.App.3d 214, 285 N.E.2d 254 \(1st Dist. 1972\)](#) Once the State files a notice of appeal from an adverse ruling on a motion to suppress, the trial court loses jurisdiction to reconsider the merits of the cause as they relate to the order of judgment specified in the notice of appeal. The only actions the trial court may take are ministerial acts specified by rule.

[Chicago Title and Trust v. Czubak, 67 Ill.App.3d 184, 384 N.E.2d 765 \(1st Dist. 1978\)](#) Trial judge could properly grant motion for attorney's fees and costs after notice of appeal was filed. Matters independent of and distinct from the questions involved in the appeal are not removed from the jurisdiction of the trial court.

Cumulative Digest Case Summaries §2-2(a)

[People v. Bailey, 2014 IL 115459 \(No. 115459, 2/6/14\)](#)

1. Under the revestment doctrine, a court may regain jurisdiction after the time for filing a post-judgment challenge has expired. The revestment doctrine applies where the parties actively participate, without objection, in proceedings which are inconsistent with the merits of an earlier judgment.

The revestment doctrine is interpreted narrowly, and may apply if both parties seek to modify or overturn the prior judgment. However, the doctrine is inapplicable where a party opposes modification of the existing judgement, even if that party failed to object to the timeliness of a late challenge.

2. The revestment doctrine did not apply here. Although the State failed to object on timeliness grounds when defendant moved to vacate his plea more than three years after the plea was entered, it actively opposed any modification of the conviction and sentence. The court stated that the State's "attempt to defend the merits of the prior judgment cannot be viewed as being inconsistent with that judgment."

Because the State opposed the motion to withdraw the plea, it did not assert a position that was inconsistent with the merits of the prior judgment. Because the criteria for the revestment doctrine was not satisfied, the trial court should have dismissed the motion to withdraw the plea instead of considering it on the merits.

3. The court added that the Appellate Court erred by dismissing the appeal for lack of jurisdiction,

because that order left intact the trial court's improper exercise of jurisdiction. Once the Appellate Court found that it lacked jurisdiction to consider the appeal, it should have vacated the trial court's judgment and ordered that the motion to withdraw the plea be dismissed.

4. The court rejected the State's argument that the revestment doctrine should be abolished in criminal cases because it conflicts with the need for finality in judgments and the rule establishing deadlines for filing jurisdictional post-judgment motions. The court found that the doctrine, which has been applied in criminal cases since at least 1983, should not be abolished in the absence of a demonstration of good cause or the identification of compelling reasons. "The inherent conflict between a rule and its exception does not meet that high standard."

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Lewis, 234 Ill.2d 32, 912 N.E.2d 1220 \(2009\)](#)

In a non-death case, the timely filing of a notice of appeal is the sole jurisdictional step required to initiate appellate review. The purpose of the notice of appeal is to inform the prevailing party that the other party seeks review, and to provide notice of the subject of the appeal. In [People v. Smith, 228 Ill.2d 95, 885 N.E.2d 1053 \(2008\)](#), the court concluded that a notice of appeal which specifically mentioned a different judgment than that which the defendant sought to appeal was insufficient to provide notice to the State of the judgment being appealed, or to afford jurisdiction to the reviewing court.

Here, a notice of appeal which stated that defendant was appealing from his conviction was sufficient although it specifically listed only the date on which defendant's motion to suppress was denied. Because the notice stated that defendant was appealing his conviction, and a defendant is not allowed to appeal only from a denial of a suppression motion, the State could not have reasonably believed that defendant was attempting to appeal the suppression ruling. (See also, **NARCOTICS**, §35-4 & **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-2(a), (b)(5)).

(Defendant was represented by Assistant Defender Catherine Hart, Springfield.)

[People v. Patrick, 2011 IL 111666 \(No. 111666, 12/30/11\)](#)

1. A timely filing of a notice of appeal is the only jurisdictional step for initiating appellate review. The purpose of the notice of appeal is to notify the prevailing party that the opposing party seeks review of the circuit court's judgment. The notice of appeal confers jurisdiction to consider only the judgments or parts thereof that are specified in the notice. A notice of appeal should be considered as a whole, however, and is sufficient to confer jurisdiction when it fairly and adequately sets out the judgment complained of and the relief sought in a way that makes the opposing party aware of the nature of the appeal.

2. The court held that both notices of appeal filed in this case were sufficient to afford jurisdiction for the Appellate Court to review the trial court's order concerning defendant's post-trial, *pro se* motions raising allegations of ineffective assistance of counsel. Defense counsel filed a notice of appeal on the day the trial court denied a motion to reconsider the sentence, which was after the trial court held that defendant's *pro se* allegations were untimely. That notice of appeal listed the date of judgment as the date the motion to reconsider was denied, and identified the offenses and sentences imposed. Thus, it indicated that defendant was appealing from the judgment of conviction.

In addition, the circuit court clerk had filed a notice of appeal some ten weeks earlier, on the date of sentencing. That notice listed the date of sentencing as the judgment date and listed the offenses and sentences. In addition, it left blank the heading; "If appeal is not from a conviction, nature of Order appealed from." The court found that this notice of appeal indicated that defendant was appealing from his conviction.

The court concluded that even if there was confusion due to the conflicting dates in the notices of appeal, the State had adequate notice that defendant sought to review his conviction. Furthermore, the failure to comply strictly with the proper form of a notice of appeal is not fatal if the deficiency is one of form rather than substance and there is no prejudice to the appellee. The State did not argue that it was prejudiced by any confusion in the notices of appeal, and it did not appear that any prejudice occurred.

The court did not discuss whether the first notice of appeal was void under Supreme Court Rule 606(b), which states that a notice of appeal filed before timely post-trial motions are filed has no effect. Here, defense counsel filed a timely motion to reconsider the sentence after the circuit clerk filed the first notice of appeal.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

In re Isiah D., 2105 IL App (1st) 143507 (No. 1-14-3507, 6/8/15)

On appeal from a 2014 order finding him to be a habitual juvenile offender and a violent juvenile offender, the minor respondent argued that the conviction resulting from his guilty plea in 2013 could not be used as a predicate for HJO and VJO status because the plea admonishments had been improper. The court concluded that under **In re J.T.**, 221 Ill.2d 338, 851 N.E.2d 1 (2006), it lacked jurisdiction to consider issues arising from the 2013 plea because respondent failed to file a timely appeal from that proceeding. The court concluded that **J.T.** implicitly overruled **In re J.W.**, 164 Ill.App.3d 826, 518 N.E.2d 310 (1st Dist. 1987), which found that the Appellate Court had jurisdiction to consider the propriety of a prior guilty plea that was used as a predicate in a subsequent case.

The court noted that because minors have not been held to come within the Post-Conviction Hearing Act, respondent was effectively left without a remedy unless the Supreme Court saw fit to exercise supervisory authority.

(Respondent was represented by Assistant Defender Kathleen Weck, Chicago.)

People v. Decaluwe, 405 Ill.App.3d 256, 938 N.E.2d 181 (1st Dist. 2010)

A notice of appeal is sufficient to confer jurisdiction on the Appellate Court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal. A notice of appeal should be liberally construed and considered as a whole.

The notice of appeal listed two of defendant's convictions, but not the third from which defendant also sought to appeal. A strict construction of Supreme Court Rule 606(d) would require that all three be listed. Defendant left the line blank following the language, "If appeal is not from a conviction, nature of order appealed from." This indicated defendant's intent to appeal from all of the convictions, not just the two identified on the notice of appeal. The State never contested the sufficiency of the notice of appeal. Construing the notice of appeal liberally and as a whole, it was sufficient to confer jurisdiction on the Appellate Court.

(Defendant was represented by Assistant Defender Robert Markfield, Chicago.)

People v. Garcia, 2015 IL App (1st) 131180 (Nos. 1-13-1180 & 1-13-1229 (cons.) 9/8/15)

A defendant's notice of appeal serves two functions: (1) it vests the Appellate Court with jurisdiction and (2) it informs the State that defendant is seeking review. The court should liberally construe the contents of a notice of appeal and ignore mere technical defects in form, but the notice must fairly and accurately advise the State of the nature of the appeal.

Here all but one of defendant's claims were dismissed on July 27, 2010 at the second stage of post-conviction proceedings. The final claim was denied on March 28, 2013 after a third-stage evidentiary hearing. Following that denial, defendant filed a notice of appeal stating that an appeal was being taken from the trial court's order on March 28, 2013, describing it as follows: "Post-conviction petition denied after Stage III hearing."

On appeal defendant attempted to challenge the trial court's ruling on an issue that had been dismissed at the second stage. The Appellate Court held that it lacked jurisdiction to consider that claim. Defendant's notice of appeal stated that he was appealing the denial of his claim on March 28, 2013 following the third stage evidentiary hearing. It thus did not fairly and accurately advise the State that he was challenging the July 27, 2010 order dismissing a claim at the second stage of proceedings.

(Defendant was represented by Assistant Defender Darrel Oman, Chicago.)

[People v. Garcia, 2015 IL App \(1st\) 131180](#) (Nos. 1-13-1180 & 1-13-1229 (cons.), modified upon denial of rehearing 2/2/16)

An appeal from a final judgment includes every previous ruling that represents a step in the procedural progression leading to the final judgment and every preliminary decision necessary to the ultimate relief.

Here all but one of defendant's post-conviction claims were dismissed on July 27, 2010 at the second stage of proceedings. The final claim was denied on March 28, 2013 after a third-stage evidentiary hearing. Following that denial, defendant filed a notice of appeal stating that an appeal was being taken from the trial court's order on March 28, 2013, describing it as follows: "Post-conviction petition denied after Stage III hearing."

On appeal defendant challenged the trial court's ruling on an issue that had been dismissed at the second stage. The State argued that the Appellate Court lacked jurisdiction to consider that claim because defendant failed to raise the claim in his notice of appeal by stating that he was appealing the denial of his claim on March 28, 2013 following the third-stage evidentiary hearing. The State argued that defendant affirmatively chose to only appeal the third-stage issue, not the entire judgment.

The court rejected the State's argument. Defendant could not appeal the July 27, 2010 ruling dismissing his claims at the second stage of proceedings until after there was a final and appealable judgment, which only occurred after the outcome of the third-stage hearing. The rules for post-conviction proceedings do not provide for interlocutory appeals, so defendant had to wait until the final judgment disposing of the entire petition before he could appeal.

The July 27, 2010 order partially dismissing defendant's petition and advancing the remaining claim to the third stage was both a step in the procedural progression of his case and a preliminary determination necessary to reach the final judgment. Defendant's notice of appeal thus included both rulings. But the court noted that when a petition raising several factually distinct claims that were not resolved in one hearing, the "better practice would be to specify all of the orders resolving the distinct claims in the notice of appeal."

(Defendant was represented by Assistant Defender Darrel Oman, Chicago.)

[People v. McCray, 2016 IL App \(3d\) 140554 \(No. 3-14-0554, 9/27/16\)](#)

After defendant's bench trial, the trial court imposed a six-year sentence for unlawful possession of heroin and unlawful possession of cannabis with intent to deliver. The defendant filed a notice of appeal six days later.

Nine days after the notice of appeal was filed, the trial court filed a written judgment which added the requirement that defendant pay a drug assessment in the amount of \$2000. The Appellate Court vacated the \$2000 assessment as an improper modification of the sentence.

1. Once a notice of appeal is filed, the Appellate Court's jurisdiction attaches. At this point, the trial court may not modify the order or judgement or take any action which interferes with appellate review.

The entry of a written judgement order is a ministerial act that merely evidences the oral pronouncement of sentence, which is the judicial act comprising the judgment of the court. Thus, the trial court has jurisdiction to complete the ministerial act of filing a written judgment order even after notice of appeal has been filed.

2. However, the trial court lacked jurisdiction to modify the sentence after the notice of appeal had been filed. Because the \$2000 drug assessment was not imposed during the trial court's oral pronouncement, the court could not assess that amount in the written judgement order. The court acknowledged that during the oral pronouncement the trial court ordered that defendant pay costs, but found that the drug assessment is a "fine" rather than a "cost."

(Defendant was represented by Assistant Defender Editha Rosario-Moore, Ottawa.)

[People v. Mutesha, 2012 IL App \(2d\) 110059 \(No. 2-11-0059, 11/19/12\)](#)

Although the filing of a notice of appeal vests jurisdiction in the Appellate Court, the trial court

retains jurisdiction to decide matters that are independent of and collateral to the judgment on appeal. Collateral or supplemental matters include those lying outside the issues on appeal or arising subsequent to delivery of the judgment appealed from. Review of whether a trial court properly exercised jurisdiction is *de novo*.

Before the court ruled on defendant's post-trial motion and conducted a sentencing hearing, defendant was found unfit to be sentenced. He appealed from that finding. While the fitness appeal was pending, defendant was restored to fitness. The court then proceeded to deny the post-trial motion and impose sentence. Defendant appealed his conviction and sentence.

Hearings to reexamine fitness are provided by statute at maximum intervals of 90 days where a defendant is expected to become fit with treatment. 725 ILCS 5/104-20(a). Because the judgment restoring defendant to fitness was based on new facts, it was independent of and collateral to the judgment on appeal, and the trial court retained jurisdiction to hear and decide the matter.

The trial court did not have jurisdiction, however, to rule on defendant's post-trial motion and impose sentence after he was restored to fitness while the appeal from the finding that he was unfit was pending. Both the post-trial motion and the sentencing hearing were central issues in the criminal matter and were not collateral to the fitness appeal. The orders denying the post-trial motion and sentencing the defendant were therefore void. If the defendant wished to obtain a ruling on his post-trial motion and be sentenced immediately upon his restoration of fitness, he should have first moved to dismiss his pending fitness appeal.

The Appellate Court vacated the order denying the post-trial motion as well as defendant's sentence, and dismissed defendant's appeal.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

People v. Salcedo, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2011) (No. 1-08-3148, 6/9/11)

1. Unless a timely post-judgment motion is filed, the trial court loses jurisdiction 30 days after final judgment is entered. In a criminal case, the sentence is the final judgment. Thus, the trial court retains jurisdiction only if the defendant files a motion to reconsider the sentence or a notice of appeal within 30 days of sentencing.

2. Without deciding whether the trial court has authority to grant an extension of time in which to file a post-sentencing motion, the court found that the motion which the judge granted was merely a continuance of the hearing on such a motion, if one was timely filed. The court noted that defense counsel's motion stated that because he was involved in another trial, he would be unavailable for "any evidentiary trial or hearing."

3. The court concluded, however, that the parties revested the trial court with jurisdiction to consider an untimely post-sentencing motion. Under the revestment doctrine, parties revest the trial court with personal and subject matter jurisdiction by actively participating in proceedings which are inconsistent with the merits of a prior judgment. Conduct is deemed inconsistent with a prior judgment where it could be construed as an indication that the parties do not view the prior judgment as final and binding. Active participation, rather than mere consent, is required to revest jurisdiction.

If jurisdiction is revested in the trial court, the filing of a notice of appeal within 30 days after the ruling on an untimely post-judgment motion vests the Appellate Court with jurisdiction.

Here, the State revested the trial court with jurisdiction when it affirmatively argued that defendant's untimely motion to reconsider the sentence should be denied on its merits. "By participating rather than objecting to the hearing, the State essentially acknowledged that the previous sentencing judgment should be revisited." The court rejected the argument that jurisdiction is revested only where both parties specifically seek to set aside the judgment; the revestment doctrine applies where a party challenges a prior judgment and the opposing party acts in a manner that is inconsistent with the final and binding nature of that judgment.

Defendant's convictions for first degree murder and aggravated battery with a firearm were affirmed.

(Defendant was represented by Assistant Defender Michael Soukup, Chicago.)

[People v. Shaw, 2016 IL App \(4th\) 150444 \(No. 4-15-0444, 4/29/16\)](#)

725 ILCS 5/113-3.1 authorizes the trial court to order the defendant to pay a reasonable sum to reimburse the county or State for the cost of court-appointed counsel. On appeal, defendant argued that the trial court erred by ordering a public defender fee without providing notice or conducting a hearing to determine defendant's ability to pay. The State conceded the issue and argued that the cause should be remanded for a hearing on the appropriateness of a public defender fee.

Although neither party raised the issue, the court found on its own motion that it lacked jurisdiction to consider the issue. Defendant filed the notice of appeal December 19, 2012, and indicated that he was appealing the judgement that was entered December 17, 2012. Because the public defender fee was not ordered until nearly two months later, and defendant failed to file an amended notice of appeal, the court concluded that it lacked jurisdiction to consider the public defender fee.

A notice of appeal confers jurisdiction to review only the judgments or parts thereof that are specified in the notice of appeal. Although notices of appeal are to be construed liberally, the notice of appeal here did not fairly and adequately set out the assessment of a public defender fee as a ground for the appeal.

(Defendant was represented by Assistant Defender Erica Nichols Cook, Springfield.)v

[People v. Stevenson, 2011 IL App \(1st\) 093413 \(No. 1-09-3413, 11/4/11\)](#)

Supreme Court Rule 606(b) provides that “[w]hen a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court,” and a “new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely filed postjudgment motions.”

Defendant mailed a *pro se* motion to reconsider sentence from prison on the same date that the court denied trial counsel's timely-filed motion to reconsider sentence and that trial counsel filed a notice of appeal. The *pro se* motion raised the same issue raised in trial counsel's motion. The circuit court denied the *pro se* motion 18 months later, after defendant's appellate counsel had the motion placed on the circuit court's call for a ruling. The Appellate Court concluded for the following reasons that the *pro se* motion did not void the notice of appeal previously filed by counsel pursuant to Rule 606(b), and therefore it did not have jurisdiction to hear an appeal from the denial of that motion.

1. Defendant had no right to file a *pro se* post-sentencing motion. With the exception of post-trial motions alleging ineffective assistance of trial counsel, defendants represented by counsel have no authority to file *pro se* motions and the court should not consider such motions. The Appellate Court concluded that the record refuted that the trial court exercised its discretion to permit hybrid representation during the post-trial proceedings. Defendant never made a clear statement to the court that he wanted to proceed *pro se*, and the trial court informed defendant numerous times following the denial of his post-trial motion alleging trial counsel's ineffectiveness that he was represented by counsel and could not file any further *pro se* post-trial motions. The Appellate Court also rejected the argument that defendant was not represented by counsel at the time he filed his *pro se* motion as there was no indication in the record that trial counsel had asked for leave to withdraw.

2. Even assuming that defendant did have the right to file a *pro se* motion, the plain language of Rule 606(b) contemplates the filing of only one post-judgment motion directed against the conviction or the sentence or both. It does not authorize the filing of successive and repetitious motions that raise issues that were or could have been raised earlier and thereby extend the time for appeal.

3. Even if the trial court could be required to rule on a successive motion, defendant's *pro se* motion was not properly filed because no notice accompanied the motion that would have brought the motion to the attention of the trial court within a reasonable time. At the time that defendant filed his motion, [730 ILCS 5/5-8-1\(c\)](#) provided that a post-sentencing motion would not be deemed timely filed “unless it is filed with

the circuit court clerk within 30 days after the sentence is imposed together with a notice of motion, which notice shall set the motion on the court's calendar on a date certain within a reasonable time after the date of filing." The tolling provisions of Rule 606(b) were not triggered by the filing of the *pro se* motion due to defendant's failure to comply with this notice requirement.

4. Litigants may revest a court that has general jurisdiction over the matter with personal and subject matter jurisdiction after it has been lost if they actively participate without objection in further proceedings that are inconsistent with the merits of the prior judgment. The revestment doctrine did not apply in this case because the parties cannot divest the Appellate Court of jurisdiction it obtained with the filing of a notice of appeal and a certificate in lieu of record. Moreover, although the State did not object to the circuit court's jurisdiction to rule on the *pro se* motion, neither was its conduct inconsistent with the merits of the final judgment as the State defended the validity of the sentencing proceedings.

Although the notice of appeal filed by trial counsel following denial of his motion to reconsider did properly perfect an appeal from defendant's conviction, that appeal was dismissed on appellate counsel's motion, and the Appellate Court had lost jurisdiction to reinstate that appeal due to the passage of time.

(Defendant was represented by Assistant Defender Lindsey Anderson, Chicago.)

[People v. Thomas, 402 Ill.App.3d 1129, 932 N.E.2d 658 \(5th Dist. 2010\)](#)

In [People v. Morris, 236 Ill.2d 345, 925 N.E.2d 1069 \(2010\)](#), the Supreme Court held that [People v. Whitfield, 217 Ill.2d 177, 840 N.E.2d 658 \(2005\)](#), does not apply retroactively to convictions which became final before December 20, 2005, the date on which **Whitfield** was announced. Here, the court held that the conviction in defendant's case became final on November 15, 2005, when consecutive sentences were entered on a guilty plea which had been entered a week earlier.

Although a timely motion directed at the plea or to reconsider the sentence would have delayed entry of a final judgment, a letter which the defendant wrote to the judge did not constitute such a motion. Because the letter merely pointed out that under the plea agreement the sentences were to run concurrently, it was the equivalent of a motion to correct the mittimus. Correcting the mittimus is merely a ministerial act which does not toll the entry of a final judgement.

Because defendant's conviction was final before December 20, 2005, the **Whitfield** rule did not apply.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

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§2-2(b)

Timeliness

[People v. Williams, 59 Ill.2d 243, 320 N.E.2d 13 \(1974\)](#) A defendant may be allowed to appeal, though the notice of appeal is untimely, where defendant was not advised of the time requirements and defendant's counsel, rather than defendant himself, was at fault. See also, [People v. Aliwoli, 60 Ill.2d 579, 328 N.E.2d 555 \(1975\)](#); [People v. Harris, 113 Ill.App.3d 663, 447 N.E.2d 941 \(1st Dist. 1981\)](#).

[People v. Hardaman, 59 Ill.2d 155, 319 N.E.2d 800 \(1974\)](#) The denial of defendant's request to file a late notice of appeal (Rule 606) upheld where defendant failed to show that "the failure to file a notice of appeal on time was not due to his culpable negligence."

[People v. Allen, 71 Ill.2d 378, 375 N.E.2d 1283 \(1978\)](#) The defendant's notice of appeal was timely where it was filed after the judge's oral pronouncement of sentence but before the written sentencing order was filed. See also, [People v. Mennenga, 195 Ill.App.3d 204, 551 N.E.2d 1386 \(4th Dist. 1990\)](#)

[People v. Jones, 104 Ill.2d 268, 472 N.E.2d 455 \(1984\)](#) State's notice of appeal was untimely and failed to confer jurisdiction where it was filed after the judge's oral ruling allowing the motion to suppress but before the written order of suppression was filed.

[In re Malloy, 96 Ill.App.3d 1020, 422 N.E.2d 76 \(1st Dist. 1981\)](#) When the last day of the filing period for a notice of appeal falls on a Sunday or a holiday, a notice of appeal filed the following day is timely. See also, [5 ILCS 70/1.11](#) (time for performing any act provided by law is extended if last day of period is Saturday, Sunday or holiday).

[People v. Gutierrez, 387 Ill.App.3d 1, 899 N.E.2d 1193 \(1st Dist. 2008\)](#) The post-conviction court properly granted leave to file an untimely notice of appeal where defendant's family sought to appeal the conviction, the trial court appointed counsel for appeal, but no notice of appeal was filed and defendant was not contacted by appointed counsel. Under [People v. Ross, 229 Ill.2d 255, 891 N.E.2d 865 \(2008\)](#), the post-conviction court may grant leave to file an untimely notice of appeal where the failure to file a timely notice of appeal is the result of ineffective assistance of counsel.

[People v. Robinson, 229 Ill.App.3d 627, 593 N.E.2d 148 \(3d Dist. 1992\)](#) Where the trial judge mistakenly informed the defendant that his notice of appeal was due within 30 days of the issuance of the mittimus (rather than 30 days of sentencing), the Appellate Court would consider timely a notice of appeal filed within 30 days of the mittimus.

[People v. Leach, 245 Ill.App.3d 644, 612 N.E.2d 825 \(2d Dist. 1992\)](#) Defendant was charged in two separate prosecutions. In the [first](#) case he was successful in obtaining an order quashing the arrest. He then obtained a written order in the second case stating that the prosecution was collaterally estopped from relitigating the legality of the arrest. The State failed to file a notice of appeal in the second case. Six weeks later the trial court issued a second written order stating, in greater detail, the basis for the collateral estoppel ruling. Two weeks later, the State filed a notice of appeal. The Court found that it had no jurisdiction to consider the appeal in the second case. The original collateral estoppel order had "the substantive effect of quashing the arrest and suppressing the evidence"; therefore, the time for filing a notice of appeal began to run at that point. The first order unequivocally held that the issues could not be relitigated, and the nature of collateral estoppel makes a formal statement of factual findings and legal conclusions unnecessary.

[People v. Burks, et al., 355 Ill.App.3d 750, 824 N.E.2d 1064 \(3d Dist. 2005\)](#) The Court held that it had jurisdiction to hear the case because the State had made a timely request to file a late notice of appeal. Under Supreme Court Rule 606, a motion for leave to file a late notice of appeal must be filed within six months of the expiration of the initial 30-day period for appealing a final judgement.

[People v. Carter, 332 Ill.App.3d 576, 773 N.E.2d 1140 \(1st Dist. 2002\)](#) A notice of appeal is deemed filed as of the date it is mailed. Although the record contained no clear indication of a mailing date, the court held that the notice of appeal must have been mailed on or before the due date of November 10. "[I]t is virtually impossible that the filing clerk would have received defendant's notice of appeal on Monday, November 13, 2000, if the notice had been mailed from the Dixon Correctional Center on either Saturday, November 11, 2000, or Sunday, November 12, 2000."

[People v. Fikara, 345 Ill.App.3d 144, 802 N.E.2d 260 \(2d Dist. 2003\)](#) Where the trial court disposed of defendant's post-conviction petition by denying several claims, but granted resentencing on an Apprendi issue, defendant was required to file a notice of appeal within 30 days in order to preserve his right to appeal, although resentencing had not yet occurred. Where the defendant filed a notice of appeal on the day after

resentencing (some seven months after the petition had been denied), the Appellate Court lacked jurisdiction to consider the trial judge's rulings on the post-conviction claims.

[People v. Wade, 326 Ill.App.3d 940, 761 N.E.2d 1196 \(1st Dist. 2001\)](#) Under Supreme Court Rule 604(d), once a motion to withdraw the plea or reconsider sentence is denied, notice of appeal must be filed within 30 days. Whether an order is a final judgment is determined by its substantive effect rather than its form.

[People v. MacArthur, 313 Ill.App.3d 864, 731 N.E.2d 883 \(2d Dist. 2000\)](#) Although defendant filed his posttrial motion more than 30 days after trial, the parties revested the trial court with jurisdiction by actively participating in a hearing on the untimely motion. Not only did the trial court and the State actively participate in the proceedings, but the State obtained continuances to respond to the merits of the motion.

[People v. Stoops, 313 Ill.App.3d 269, 728 N.E.2d 1241 \(4th Dist. 2000\)](#) The final judgment in a criminal case is the pronouncement of sentence, not the entry of the written judgment order. Where the defendant was sentenced on January 28, 1998, he was required to file his notice of appeal within 30 days of that date although no sentencing order was entered until March 6.

[People v. Tlatenchi, 391 Ill.App.3d 705, 909 N.E.2d 198 \(1st Dist. 2009\)](#) Under Supreme Court Rule 373, a mailed "paper" that is received after the due date is deemed to have been filed at the time of mailing, provided that proof of the mailing complies with Supreme Court Rule 12(b)(3) which requires that when service is by mail, proof of service must be by a certificate of the attorney or an affidavit of a person other than the attorney, stating that the paper has been placed in the mail and giving the time and place of mailing, the complete address which appeared on the envelope, and the fact that proper postage was prepaid. A motion to withdraw a guilty plea was not timely filed where it was received after the due date and contained an unnotarized proof of service in which the defendant stated that she placed the motion in the prison mail system eight days before the due date. Because the defendant was not an attorney, the proof of service was required to be by affidavit rather than by certificate. This holding would appear to apply if the mailed "paper" is a pro se Notice of Appeal.

Cumulative Digest Case Summaries §2-2(b)

[In re Commitment of Hernandez, 239 Ill.2d 195, 940 N.E.2d 1082 \(2010\)](#)

The respondent was adjudicated sexually dangerous in 2004. In 2007, the trial court granted conditional release and ordered the Department of Human Services to submit a conditional release plan. The State filed a notice of appeal after the trial court granted conditional release but before the trial court approved the conditional release plan.

The Appellate Court found that the notice of appeal was untimely because it was filed before the judgement was final. The State appealed. The Supreme Court found that the issue was moot because while the cause was on appeal, the trial court had revoked conditional release.

1. An appeal is moot when intervening events make it impossible for a reviewing court to grant effective relief. Because the State had already received the relief it sought - the return of the respondent to the custody of DHS - any opinion which the court might enter would be purely advisory. Thus, the issue was moot.

2. The public interest exception to the mootness doctrine allows a reviewing court to consider a moot issue where there is a clear showing that the question is of a substantial public nature, an authoritative determination is needed to guide lower courts and the bar, and the issue is likely to recur. In determining whether an authoritative determination is needed, the court examines whether the law is in disarray or there

is conflicting precedent.

If any of the three factors are absent, the public interest exception is inapplicable. The court concluded that the State could not establish the second factor – that an authoritative determination was required - because the Appellate Court’s holding was based on well-settled law concerning the finality of judgements, there was no conflicting precedent, and the State could not direct the court to any Illinois case which had adopted the rule it sought in this case. Furthermore, there was *no* precedent in Illinois on the narrow issue of the timeliness of the notice of appeal in a sexually dangerous person case; instead of issuing an opinion as a matter of first impression, the Appellate Court should have dismissed the appeal as moot because the respondent’s conditional release had been revoked by the time the Appellate Court considered the case.

The Appellate Court’s judgment was vacated and the appeal dismissed.

[People v. Bailey, 2014 IL 115459 \(No. 115459, 2/6/14\)](#)

1. Under the revestment doctrine, a court may regain jurisdiction after the time for filing a post-judgment challenge has expired. The revestment doctrine applies where the parties actively participate, without objection, in proceedings which are inconsistent with the merits of an earlier judgment.

The revestment doctrine is interpreted narrowly, and may apply if both parties seek to modify or overturn the prior judgment. However, the doctrine is inapplicable where a party opposes modification of the existing judgement, even if that party failed to object to the timeliness of a late challenge.

2. The revestment doctrine did not apply here. Although the State failed to object on timeliness grounds when defendant moved to vacate his plea more than three years after the plea was entered, it actively opposed any modification of the conviction and sentence. The court stated that the State’s “attempt to defend the merits of the prior judgment cannot be viewed as being inconsistent with that judgment.”

Because the State opposed the motion to withdraw the plea, it did not assert a position that was inconsistent with the merits of the prior judgment. Because the criteria for the revestment doctrine was not satisfied, the trial court should have dismissed the motion to withdraw the plea instead of considering it on the merits.

3. The court added that the Appellate Court erred by dismissing the appeal for lack of jurisdiction, because that order left intact the trial court’s improper exercise of jurisdiction. Once the Appellate Court found that it lacked jurisdiction to consider the appeal, it should have vacated the trial court’s judgment and ordered that the motion to withdraw the plea be dismissed.

4. The court rejected the State’s argument that the revestment doctrine should be abolished in criminal cases because it conflicts with the need for finality in judgements and the rule establishing deadlines for filing jurisdictional post-judgment motions. The court found that the doctrine, which has been applied in criminal cases since at least 1983, should not be abolished in the absence of a demonstration of good cause or the identification of compelling reasons. “The inherent conflict between a rule and its exception does not meet that high standard.”

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Bridgewater, 235 Ill.2d 85, 918 N.E.2d 553 \(2009\)](#)

Under **[People v. Marker, 233 Ill.2d 158, 908 N.E.2d 16 \(2009\)](#)**, the State’s motion to reconsider an order granting a motion to suppress tolls the time for filing an interlocutory appeal. Because the State filed a timely motion to reconsider the trial court’s suppression order, and when that motion was denied filed a timely notice of appeal, the Appellate Court had jurisdiction to consider the State’s appeal. (See also, **[SEARCH & SEIZURE, §§45-12, 45-13](#)**).

(Defendant was represented by Assistant Defender Fletcher Hamill, Ottawa.)

[People v. Salem, 2016 IL 118693 \(Nos. 118693, 118694, 1/22/16\)](#)

1. Under Illinois Supreme Court Rule 606(b), a notice of appeal must be filed within 30 days after

the entry of the final judgment, or if a motion directed against the judgment is timely filed, within 30 days after the entry of an order disposing of the motion. In a criminal case, the entry of a sentence is the final judgment.

Rule 606 does not define the term “timely,” but the Code of Criminal Procedure provides timelines for filing various motions. A motion for a new trial is timely for purposes of Rule 606 if it is filed in compliance with the timelines set forth in the Code. Section 116-1(b) of the Code provides that a motion for a new trial shall be filed within 30 days after “the entry of a finding or the return of a verdict.” 725 ILCS 5/116-1(b).

2. Defendant was tried and convicted after two separate trials. In both cases, defendant filed a motion for a new trial more than 30 days after the finding of guilt, but less than 30 days after he was sentenced. The State did not object to the timeliness of either motion and the trial court denied them on the merits. Defendant then filed notices of appeal within 30 days after the denial of the motions, but not within 30 days after the trial court entered sentences in his case. The Appellate Court held that defendant did not file timely notices of appeal and thus it did not have jurisdiction to review his cases.

3. The Supreme Court agreed that defendant did not file timely notices of appeal and thus the Appellate Court did not have jurisdiction to hear his appeals. Defendant failed to file notices of appeal within 30 days after he was sentenced as required by Rule 606(b). He also failed to file motions for a new trial within 30 days of the verdict as required by section 116-1(b) and thus the deadline for filing notices of appeal was not extended by filing the motions.

4. But the Court exercised its supervisory authority to grant defendant relief. The Illinois Constitution vests the Supreme Court with supervisory authority over all the lower courts of the Illinois. Ill. Const. 1970, art. VI, §16. This authority is unlimited in extent and circumscribed by no specific rules. But, as a general rule, the Court will only issue a supervisory order if the normal appellate process will not provide adequate relief and the dispute involves a matter important to the administration of justice.

Here, given the unique facts of this case, where both the trial court and defense counsel were confused about the time limits on filing a motion for a new trial, the Court held that defendant had not been afforded adequate relief by the normal appellate process. It therefore exercised its supervisory authority and directed the Appellate Court to consider the merits of defendant’s appeal.

(Defendant was represented by Assistant Defender Jay Weigman, Ottawa.)

[In re Christopher P., 2012 IL App \(4th\) 100902 \(No. 4-10-0902, 9/12/12\)](#)

1. An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible for the reviewing court to grant effectual relief to the complaining party. Generally, a reviewing court will not resolve a moot question solely to establish precedent or govern future litigation.

A moot issue can be addressed under the public-interest exception, which requires: (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur. The existence of conflicting authority is not a requirement of the public-interest exception.

The Appellate Court concluded that the question of whether sentencing credit was available for a county treatment program for delinquent minors could be reached even though the issue was moot. The issue of sentencing credit is undeniably a question of public importance. The issue is likely to recur if county public officials believe that the program does not qualify for sentencing credit. Even though the issue is one of first impression, an authoritative determination to guide public officers is desirable.

2. When no direct appeal is taken from an order of probation, and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of probation, unless the underlying judgment of conviction is void.

Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was

timely filed, the Appellate Court had jurisdiction to consider the issue.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Darius L., 2012 IL App \(4th\) 120035 \(No. 4-12-0035, 9/12/12\)](#)

1. An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible for the reviewing court to grant effectual relief to the complaining party. Generally, a reviewing court will not resolve a moot question solely to establish precedent or govern future litigation.

A moot issue can be addressed under the public-interest exception, which requires: (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur. The existence of conflicting authority is not a requirement of the public-interest exception.

The Appellate Court concluded that the question of whether sentencing credit was available for a county treatment program for delinquent minors could be reached even though the issue was moot. The issue of sentencing credit is undeniably a question of public importance. The issue is likely to recur if county public officials believe that the program does not qualify for sentencing credit. Even though the issue is one of first impression, an authoritative determination to guide public officers is desirable.

2. When no direct appeal is taken from an order of probation, and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of probation, unless the underlying judgment of conviction is void.

Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was timely filed, the Appellate Court had jurisdiction to consider the issue.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Henry P., 2014 IL App \(1st\) 130241 \(No. 1-13-0241, 5/30/14\)](#)

Since defendant did not file a notice of appeal within 30 days of the final judgment, the Appellate Court did not have jurisdiction to consider her claim that the Juvenile Court Act's minimum mandatory sentence of five years' probation violated the equal protection clause.

The court rejected defendant's argument that it had jurisdiction to review her claim because it involved a constitutional attack on a statute which, if successful, would render the underlying judgment void. Although a void judgment may be attacked at any time, a judgment is void only where the court that entered the judgment lacked jurisdiction. Even if the Juvenile Court Act violated equal protection, the probation order was entered by a court of competent jurisdiction, and hence the order was merely voidable, not void.

(Defendant was represented by Assistant Defender Megan Ledbetter, Chicago.)

[In re L.W., 2016 IL App \(3d\) 160092 \(Nos. 3-16-0092 & 3-16-0093, 7/13/16\)](#)

To perfect an appeal from a guilty plea and sentence, a defendant must file a notice of appeal within 30 days of the final judgment. In proceedings under the Juvenile Court Act, the dispositional order is the final judgment.

The State filed a petition to revoke defendant's probation and a petition for an adjudication of indirect criminal contempt alleging that defendant had violated his probation. On October 5, 2015, defendant pled guilty to the violation of probation. The court accepted the plea, revoked defendant's probation, and resented him to probation. The court also found defendant in indirect criminal contempt and sentenced him to 179 days of detention, but stayed the sentence pending the outcome of defendant's compliance with probation.

On November 30, 2015, the State filed a motion to lift the stay on defendant's contempt sentence. On February 11, 2016, defendant filed a motion to withdraw his plea. The court held that it did not have jurisdiction to address defendant's motion to withdraw. The court granted the State's motion to lift the stay

on defendant's sentence, ordered defendant to serve 30 days in custody, but stayed the remaining sentence. Defendant filed a notice of appeal on February 24, 2016.

On appeal, the State argued that the Appellate Court did not have jurisdiction to hear defendant's appeal since the October 5, 2015 order that imposed the contempt sentence was a final and appealable order and defendant never filed a notice of appeal within 30 days of the order.

The Appellate Court rejected the State's argument and held that it had jurisdiction to address defendant's appeal. The instant appeal arose from the contempt proceeding and that judgment was not final and appealable until the penalty was imposed. But the trial court stayed the contempt penalty and retained jurisdiction to ensure that defendant would comply with the terms of his probation. When defendant failed to comply, the trial court enforced its judgment on February 11 by lifting the stay. At that point, the trial court's order became final and appealable. Defendant timely filed his notice of appeal on February 24, less than 30 days after the final judgment.

(Defendant was represented by Assistant Defender Brian Kohut, Ottawa.)

[People v. Allen, 2016 IL App \(4th\) 140137 \(No. 4-14-0137, 5/3/16\)](#)

1. A timely notice of appeal is a jurisdictional requirement for a reviewing court to hear an appeal. Under Supreme Court Rule 606(b), the notice of appeal must be filed within 30 days after the entry of the final judgment or 30 days after an order disposing of a timely motion against the judgment. In a criminal case, the judgment is final when sentence is imposed. Thus, a motion challenging the judgment must generally be filed within 30 days after the sentence is entered.

Supreme Court Rule 606(b) provides that where a timely post-trial or post-sentencing motion directed against the judgment "has been filed by counsel or by defendant, if not represented by counsel," any notice of appeal filed before entry of the order disposing of the post-judgment motion has no effect and is to be stricken by the trial court. This rule applies whether the post-judgment motion was filed before or after the notice of appeal.

2. On November 1 2013, defendant was sentenced for a drug conviction. Defendant was represented at sentencing by trial counsel, who indicated that defendant wished to appeal but had no assets. The trial court directed the circuit clerk to file a notice of appeal on defendant's behalf and appointed the Office of the State Appellate Defender as appellate counsel.

On November 6, five days later, defendant filed a *pro se* motion to reconsider the sentence. Two days later, the trial court entered an order striking the notice of appeal, which had not yet been filed by the circuit clerk. The clerk's office then filed a notice of appeal four days after the trial court entered the order striking the notice of appeal.

On February 3, 2014, the trial court conducted a hearing at which trial counsel appeared and declined to adopt defendant's *pro se* motion. The trial court ordered the *pro se* motion stricken because defendant was represented by counsel. A docket entry stated that the notice of appeal was "reinstated," and a second notice of appeal was filed February 20, 2014.

On appeal, the State argued that the court lacked jurisdiction to consider the appeal. The State argued that: (1) defendant's *pro se* motion was a nullity because he was represented by counsel when the motion was filed, (2) the trial court erred by striking the original notice of appeal, and (3) the court lacked jurisdiction because a timely notice of appeal was not filed within 30 days of sentencing.

The court rejected the State's argument, finding no evidence that defendant was represented by counsel when he filed the *pro se* motion. Trial counsel indicated that defendant wished to appeal, and the Office of the State Appellate Defender was appointed for purposes of the appeal. Defendant's *pro se* motion noted service on the court and the State's Attorney's office, and was filed before the notice of appeal was filed by the clerk's office. The court concluded that because the *pro se* motion was filed while defendant was unrepresented, it tolled the time period for filing a notice of appeal. The notice of appeal filed February 20, 2014 was therefore timely and afforded jurisdiction for the Appellate Court to consider the appeal.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

[People v. Bailey, 2012 IL App \(2d\) 110209 \(No. 2-11-0209, 12/10/12\)](#)

Absent a timely postjudgment motion, a circuit court loses jurisdiction to vacate or modify its judgment 30 days after its entry. Under the revestment doctrine, the parties may revest the circuit court with jurisdiction after the 30-day period has run when the parties (1) without objection, (2) actively participate, and (3) in further proceedings inconsistent with the merits of the prior judgment. A party's participation in the proceedings is not inconsistent with the merits of the prior judgment when the party advocates that the court deny the motion and uphold the court's judgment.

More than three years after he was sentenced, defendant filed a motion to vacate his guilty plea and sentence. The State did not object to the untimeliness of the motion, and actively participated in the proceedings on the postplea motion. But the State argued against the defense motion on its merits and did not agree that the judgment be vacated.

Because the post-plea motion was not timely, it did not toll the 30-day post-judgment period for filing a notice of appeal. The parties did not revest the circuit court with jurisdiction because the State's opposition to the motion was not inconsistent with the merits of the prior judgment. Therefore, the notice of appeal filed by the defendant within 30 days of the denial of the postplea motion was untimely and did not confer jurisdiction on the Appellate Court.

McLauren, J., dissented. The State's failure to object to the untimeliness of the motion meant that it addressed the merits of the motion and proceeded in contravention to the obvious merit of the finality of the judgment. The revestment doctrine does not require that a party stand on finality alone in order to prevent revestment, but it does require a party to raise the issues of untimeliness and the circuit court's lack of jurisdiction in order to prevent revestment.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Feldman, 409 Ill.App.3d 1124, 948 N.E.2d 1094 \(5th Dist. 2011\)](#)

Where a defendant may not appeal without first filing a motion to withdraw guilty plea, it is the order denying the motion that is the final judgment. The filing of a timely motion to reconsider that judgment does not run afoul of the general rule against the filing of successive postjudgment motions, and provides the trial court the opportunity to correct any errors resulting from the denial of the motion to withdraw. A notice of appeal filed within 30 days of the denial of the motion to reconsider is timely filed.

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

[People v. Hughes, 2011 IL App \(2d\) 090992 \(No. 2-09-0992, 7/19/11\)](#)

1. Defendant's guilty plea was not void although the count to which he pled had been *nolle prossed* by the prosecution some six years earlier, when the State sought to have defendant declared sexually dangerous. Although the trial court has no jurisdiction over a dismissed charge and the State is generally required to file a new charging instrument in order to reinstate a prosecution, under the revestment doctrine litigants may revest a court which has general jurisdiction with both personal and subject matter jurisdiction.

To revest jurisdiction, the parties must actively participate without objection in proceedings which are inconsistent with the merits of the prior judgment. Revestment depends not on the consent of the parties, but on their active participation in certain proceedings.

2. The court concluded that the revestment doctrine applied where the parties reached an agreement by which the trial court was to vacate its previous dismissal of the charges, defendant was to plead guilty to one count and receive a 14-year-sentence, and the State was to withdraw the petition under which defendant had been adjudicated sexually dangerous. By presenting the agreement, the parties clearly participated in proceedings that were inconsistent with the prior dismissal of the charges.

(Defendant was represented by Assistant Defender Darren Miller, Elgin.)

[People v. Lane, 2011 IL App \(3d\) 080858 \(No. 3-08-0858, mod. op. 7/18/11\)](#)

A court loses jurisdiction to modify its judgment 30 days after entry of the judgment unless a timely post-judgment motion is filed. The parties may re-vest the court with jurisdiction where the parties actively participate without objection in further proceedings that are inconsistent with the merits of the prior judgment.

Defendant filed a motion to reduce his sentence after more than 30 days had elapsed since the date that he was sentenced *in absentia*. The trial court was re-vested with jurisdiction where the prosecutor did not object to the motion even after the court expressed concern that the motion was untimely, and instead argued the merits of the motion to reduce sentence.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[People v. Lane, 404 Ill.App.3d 254, 935 N.E.2d 578 \(3d Dist. 2010\)](#)

A court loses jurisdiction to modify its judgment 30 days after entry of the judgment unless a timely post-judgment motion is filed. The parties may re-vest the court with jurisdiction where the parties actively participate without objection in further proceedings that are inconsistent with the merits of the prior judgment.

Defendant filed a motion to reduce his sentence after more than 30 days had elapsed since the date that he was sentenced *in absentia*. The trial court was re-vested with jurisdiction where the prosecutor did not object to the motion even after the court expressed concern that the motion was untimely, and argued the merits of the motion to reduce sentence.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[People v. Lugo, 391 Ill.App.3d 995, 910 N.E.2d 767 \(2d Dist. 2009\)](#)

1. Under Supreme Court Rule 373, a pleading received after the due date is deemed to have been filed at the time of mailing. Proof of the date of mailing “shall” be made as provided by Rule 12(b)(3).

Rule 12(b)(3) provides that for service by mail, proof of service is made by the certificate of an attorney or the affidavit of a non-attorney, stating the identity of the person who deposited the paper in the mail, the time and place of mailing, the complete address on the envelope, and that proper postage was prepaid. Rule 373 applies to the filing of a notice of appeal in the trial court.

2. A postmarked envelope taped to the back of the notice of appeal was not an affidavit by a person other than an attorney, as contemplated by Rule 12(b)(3). The court noted that Rule 373 at one time specifically authorized the use of postmarks as proof of mailing, but that authorization was removed by the Supreme Court in 1981 due to problems with legibility and questions about delay in affixing postmarks.

The court noted, however, that an incarcerated indigent defendant generally mails documents by giving them to prison staff, not by personally mailing them. In this case, the court was not called on to decide “[w]hether an incarcerated litigant’s documents are considered mailed” when given to prison staff or only when placed in a mailbox, or whether Rule 12 requires the affidavit of the defendant or of the person who physically placed the document in the mail.

(Defendant was represented by Assistant Defender Darren Miller, Elgin.)

[People v. Maclin, 2013 IL App \(1st\) 110342 \(No. 1–11–0342, 12/16/13\)](#)

The Appellate Court found that it lacked jurisdiction to consider defendant’s post-conviction appeal.

Under Illinois Supreme Court Rule 606, a notice of appeal in a criminal case must be filed with the clerk of the circuit court within 30 days after final judgment is entered. Rule 651 provides that appeals in post-conviction cases shall be in accordance with the rules for criminal appeals. Where the notice of appeal is received by the clerk after the 30-day filing period has expired, the mailbox rule provides that the date of mailing is deemed to be the time of filing, provided that the notice of appeal was properly addressed and mailed to the circuit clerk.

Defendant, an inmate at Pontiac, placed the notice of appeal in the prison mail system several days before the 30-day filing period expired, but the notice did not reach the circuit clerk’s office until after that

period had passed. The court concluded that the mailbox rule did not apply, however, because the mailing had been addressed to the State's Attorney rather than to the circuit clerk. Although the State's Attorney forwarded the notice of appeal to the circuit clerk, it was not received until after the filing period had expired.

The court added:

We are powerless to confer jurisdiction where none exists, regardless of our understanding of and sympathy for Maclin's position. We note that while this court is unable to consider Maclin's appeal, the rules allow him to seek recourse in the Illinois Supreme Court. The supreme court has the power to exercise its supervisory authority to reinstate appeals in this court that we are otherwise unable to consider.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

[People v. Maiden, 2013 IL App \(2d\) 120016 \(No. 2-12-0016, 6/18/13\)](#)

A notice of appeal received after its due date is deemed filed at the time of mailing. Proof of mailing "shall be as provided in Rule 12(b)(3)" Supreme Court Rule 373. Rule 12(b)(3) provides that mailing is proved "by certificate of the attorney, or an affidavit of a person other than the attorney, who deposited the paper in the mail *** stating the time and place of mailing ***, the complete address which appeared on the envelope ***, and the fact that proper postage was prepaid."

Rule 12(b)(3) is liberally construed to accommodate incarcerated defendants because an incarcerated party cannot control the movement of a document after it is placed in the institutional mail. Administrative regulations of the Department of Corrections provide that prisoners are permitted to send reasonable amounts of legal mail, even with insufficient funds in their accounts to cover postage, if they provide signed vouchers authorizing deductions of future funds to cover the costs of postage. 20 Ill. Adm. Code 525.130(a).

Defendant executed a notarized affidavit stating that he timely placed a notice of appeal in the prison mail, properly addressed to the clerk and the State's Attorney, but he did not state that proper postage was prepaid. His affidavit was sufficient to demonstrate that the notice of appeal had been mailed in a timely manner even though defendant did not attest that proper postage was prepaid. Defendant did all that he could do, which was to place the mail in the hands of the prison staff, and that was that he could attest to.

(Defendant was represented by Assistant Defender Santiago Durango, Ottawa.)

[People v. Maynard, 393 Ill.App.3d 605, 912 N.E.2d 1281 \(4th Dist. 2009\)](#)

The State's notice of appeal was premature where: (1) it was filed on the date the trial court issued its decision in a letter which instructed defense counsel to prepare a written order for the judge's signature, and (2) a new notice of appeal was not filed after the trial court entered a written order six days later. Because the premature notice of appeal does not afford jurisdiction to consider an appeal from a suppression order, the State's appeal was dismissed.

[People v. Cowart, 2015 IL App \(1st\) 113085 \(No. 1-11-3085, 2/9/15\)](#)

The court found that it lacked jurisdiction to consider a successive post-conviction petition raising ineffective assistance of counsel where the trial court's resolution of that motion delayed the notice of appeal more than 30 days after the first post-judgment motion was denied and past the point at which the Appellate Court could grant leave to file a late notice of appeal under Illinois Supreme Court Rule 606(c). The court acknowledged that the trial court erroneously advised defendant and counsel that a successive post-judgment motion raising ineffective assistance tolled the time for filing a notice of appeal, but found that it lacked authority to exercise jurisdiction over the appeal.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Peterson, 2011 IL App \(3d\) 100513 \(Nos. 3-10-0513, 3-10-0514, 3-10-0515, 3-10-0546, 3-10-0550, 7/26/11\)](#)

When the State seeks review of an interlocutory order under Supreme Court Rule 604(d), it must either file a notice of appeal or a motion to reconsider the order within 30 days. An exception permits review beyond the 30-day time frame only where there is a material change in the facts that could not have been presented earlier with due diligence. This 30-day time limit is jurisdictional. [People v. Taylor, 50 Ill.2d 136, 277 N.E.2d 878 \(1971\)](#).

The State filed a motion *in limine* to admit certain hearsay statements pursuant to a statutory exception ([725 ILCS 5/115-10.6](#)) and under the common-law doctrine of forfeiture by wrongdoing. After a hearing, the circuit court ruled that some of the statements were inadmissible because they did not meet the statutory standard of reliability, but did not rule on the admissibility of the statements under the forfeiture doctrine. After more than 30 days had elapsed, the State filed a motion to reconsider asking the court to admit the excluded statements under the forfeiture doctrine. The defense objected to the motion as untimely. The court denied the motion, later clarifying that it believed that the statute codified and took precedence over the common law. The State filed a notice of appeal indicating its intent to appeal from both the original order and the denial of the motion to reconsider. After a defense motion to dismiss appeal was denied, the State sought and obtained leave to file a late notice of appeal from both rulings.

Based on its continuing duty to review its own jurisdiction over any matter pending before it, the Appellate Court declined to reach the merits of the State's appeal on the ground that the State had failed to properly perfect its appeal.

1. Because the State filed neither a notice of appeal nor a motion to reconsider within 30 days of the date of the original order, the court had jurisdiction to hear the appeal only if there had been a material change in the facts that could not have been presented earlier with due diligence. The Illinois Supreme Court's decision in [People v. Hanson, 238 Ill.2d 74, 939 N.E.2d 238 \(2010\)](#), decided a week before the motion to reconsider was filed, was not a material change in the facts allowing for an exception to the 30-day limit.

Even assuming that a change in the law could trigger the change-in-the-facts exception, **Hanson** did not change the law by recognizing that the doctrine of forfeiture by wrongdoing was a hearsay exception as well as a confrontation-clause exception. Nor did **Hanson** adopt a new rule that admissibility under the forfeiture doctrine does not depend on a showing of reliability. The forfeiture doctrine was adopted by the Illinois Supreme Court three years earlier in [People v. Stechly, 225 Ill.2d 246, 870 N.E.2d 333 \(2007\)](#). In [Stechly](#), the court held that the doctrine was co-extensive with [Federal Rule of Evidence 804\(b\)\(6\)](#), which is both a hearsay and a confrontation-clause exception, and does not condition the admissibility of the statements on a showing of reliability. Moreover, the common-law doctrine is an equitable rule that has never required a showing of reliability. That the State initially sought admission of both testimonial and hearsay statements under the forfeiture doctrine belies its claim that it was unaware prior to **Hanson** that the doctrine applied to hearsay as well as testimonial evidence.

2. Even if **Hanson** did clarify the common-law rule in some material respects, there was no excuse for the State's failure to file a timely notice of appeal or motion to reconsider. The State's motion was based on statutory and common-law grounds, and the court failed to rule on the common-law grounds. Some of the hearsay statements that the State sought to admit were testimonial. At a minimum, the State could have timely appealed the motion with respect to those statements under **Stechly**.

3. The ruling on the motion to reconsider was not separate and independent from the original order. The motion to reconsider raised no new issue not raised by the original motion. Both the court and the State treated the motion as a motion to reconsider. It makes no difference that the circuit court did not consider the forfeiture doctrine in its original order. The **Taylor** rule applies to appealable suppression orders, not merely to the legal grounds upon which suppression orders are decided. Like the doctrine of *res judicata*, the **Taylor** rule is not limited to issues actually considered, but those that could have been raised in the earlier proceeding. The original ruling was immediately appealable regardless of whether it reached each or any theory of admissibility argued by the State. The underlying merit of the State's appeal is irrelevant to whether the State properly perfected the appeal.

4. Supreme Court Rule 606(c) provides that the Appellate Court may grant leave to file a late notice of appeal where the appellant files a motion in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal supported by a showing of reasonable excuse for failing to file the notice of appeal on time. This rule is applicable to interlocutory appeals by the State. The rule does not excuse the State's failure to file a timely notice of appeal because the State provided no reasonable excuse for its untimely appeal other than its claim that **Hanson** changed the law, which is unsupported.

5. Carter, J., dissented, concluding that the court had jurisdiction and that the excluded statements were admissible under the forfeiture doctrine.

The State could not appeal from a ruling on the admissibility of the statements pursuant to the common-law forfeiture doctrine until it obtained a ruling on that ground. As the circuit court did not consider that ground in its original order, the State's motion asking for a ruling on that ground was not a motion to reconsider the original order. Thus, the second ruling was an independent ruling from the original order from which a timely appeal was taken.

Moreover, **Hanson** held for the first time that the forfeiture doctrine is an exception to both the hearsay rule and the confrontation clause, and that the statements need not reflect any additional indicia of reliability to be admitted. Just as an exception to the law-of-the-case doctrine exists where the Supreme Court, following an appeal, makes a contrary ruling on the precise issue of law on which the Appellate Court had based its prior opinion, the State should have been allowed to reopen the issue of the admissibility of the statements post-**Hanson** to allow the circuit court to correct itself.

People v. Salcedo, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2011) (No. 1-08-3148, 6/9/11)

1. Unless a timely post-judgment motion is filed, the trial court loses jurisdiction 30 days after final judgment is entered. In a criminal case, the sentence is the final judgment. Thus, the trial court retains jurisdiction only if the defendant files a motion to reconsider the sentence or a notice of appeal within 30 days of sentencing.

2. Without deciding whether the trial court has authority to grant an extension of time in which to file a post-sentencing motion, the court found that the motion which the judge granted was merely a continuance of the hearing on such a motion, if one was timely filed. The court noted that defense counsel's motion stated that because he was involved in another trial, he would be unavailable for "any evidentiary trial or hearing."

3. The court concluded, however, that the parties revested the trial court with jurisdiction to consider an untimely post-sentencing motion. Under the revestment doctrine, parties revest the trial court with personal and subject matter jurisdiction by actively participating in proceedings which are inconsistent with the merits of a prior judgment. Conduct is deemed inconsistent with a prior judgment where it could be construed as an indication that the parties do not view the prior judgment as final and binding. Active participation, rather than mere consent, is required to revest jurisdiction.

If jurisdiction is revested in the trial court, the filing of a notice of appeal within 30 days after the ruling on an untimely post-judgment motion vests the Appellate Court with jurisdiction.

Here, the State revested the trial court with jurisdiction when it affirmatively argued that defendant's untimely motion to reconsider the sentence should be denied on its merits. "By participating rather than objecting to the hearing, the State essentially acknowledged that the previous sentencing judgment should be revisited." The court rejected the argument that jurisdiction is revested only where both parties specifically seek to set aside the judgment; the revestment doctrine applies where a party challenges a prior judgment and the opposing party acts in a manner that is inconsistent with the final and binding nature of that judgment.

Defendant's convictions for first degree murder and aggravated battery with a firearm were affirmed. (Defendant was represented by Assistant Defender Michael Soukup, Chicago.)

[People v. Smith, 2011 IL App \(4th\) 100430 \(No. 4-10-0430, 10/11/11\)](#)

A court will consider an incarcerated defendant's postplea motion to be timely filed if the defendant placed it in the prison mail system within the requisite 30-day period for filing of a postplea motion, regardless of the date on which it was received or file-stamped.

Defendant was sentenced on July 31, 2009, and his postplea motion was due on Monday, August 31, 2009. It was file-stamped on September 2, 2009. An affidavit of service and proof of service showing timely mailing from the prison accompanied the postplea motion. The affidavit was not notarized.

Applying [People v. Tlatenchi, 391 Ill.App.3d 705, 909 N.E.2d 198 \(2009\)](#), the Appellate Court concluded that when a defendant relies on the date of mailing as the date of filing for a postplea motion, proof of mailing must be as provided by Supreme Court Rule 12(b)(3). That rule requires that service by a non-attorney be proved by an affidavit attesting to the time and place of mailing, the complete address appearing on the envelope, and the fact that proper postage was prepaid. The affidavit must be sworn to before an authorized person to be considered an affidavit. Verification pursuant to [735 ILCS 5/1-109](#) is not a substitute for the affidavit required by Rule 12(b)(3).

The court declined to follow [People v. Hansen, 2011 IL App \(2d\) 081226](#), which concluded that it was unreasonable to refuse to allow proof of mailing by an inmate into the prison mail system other than by Rule 12(b)(3).

Because defendant's proof of mailing was not notarized, it was insufficient to establish timely mailing. The trial court was divested of subject-matter jurisdiction to consider the untimely postplea motion after 30 days, and therefore the trial court's order disposing of the postplea motion was void. The appeal was dismissed because a "void order does not cloak the appellate court with jurisdiction to consider the merits of an appeal."

Cook, J., dissented. Unlike **Tlatenchi**, the State did not raise the issue of the sufficiency of the proof of mailing in the circuit court and in fact agreed that the motion was timely. Rule 12(a)(3) does not impose a jurisdictional requirement as to the notarization of affidavits of service. Therefore the State is bound by its waiver and the court should address the case on its merits.

(Defendant was represented by Assistant Defender Susan Wilham, Springfield.)

[People v. Spencer, 408 Ill.App.3d 1, 948 N.E.2d 196 \(1st Dist. 2011\)](#)

A defendant must file his notice of appeal within 30 days of the entry of the final judgment from which he is appealing, or, if a motion directed against the judgment is timely filed, within 30 days of the order disposing of that motion.

Defendant's notice of appeal was timely filed. Defendant was sentenced on January 25, 2008. On February 19, 2008, defendant filed a motion to reconsider sentence, as demonstrated by a faint file stamp on the notice of that motion and by a proof of service signed and certified by a non-attorney that the motion was presented to the clerk and the State's Attorney on that date. A notice of appeal was then filed on April 10, 2008, the date that the defendant withdrew the motion.

(Defendant was represented by Assistant Defender John Koltse, Chicago.)

People v. Stanford, ___ Ill.App.3d ___, ___ N.E.2d ___ (2d Dist. 2011) (No. 2-09-0420, 6/16/11)

A notice of appeal must be filed within 30 days of the date of the final judgment, which is either the date of sentencing or the date of the disposition of a timely-filed post-judgment motion.

Although ordinarily defendant has no authority to file a *pro se* motion while he is represented by counsel, the Appellate Court concluded that the timely filing of a *pro se* motion to reduce sentence tolled the time for the filing of the notice of appeal, considering the "unusual circumstances of this case." First, defendant evinced his intent to appeal by filing the *pro se* motion and a notice of appeal. Second, it was not unreasonable for defendant to act *pro se* following the sentencing hearing, because his counsel was preoccupied with his own surgery and recovery. Third, statements made by the court to the defendant at a status hearing, to the effect that his notice of appeal was premature and that he could not appeal until his motion to reconsider sentence had been heard, led the defendant to withdraw his notice of appeal and to

believe that his *pro se* motion tolled the time for filing the notice of appeal.

Therefore, a notice of appeal, filed on the same day that the court denied the *pro se* motion and counsel's untimely-filed motion to reconsider sentence, was timely and the Appellate Court had jurisdiction to hear the appeal.

(Defendant was represented by Assistant Defender Kathleen Weck, Elgin.)

[People v. Stevenson, 2011 IL App \(1st\) 093413 \(No. 1-09-3413, 11/4/11\)](#)

Supreme Court Rule 606(b) provides that “[w]hen a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court,” and a “new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely filed postjudgment motions.”

Defendant mailed a *pro se* motion to reconsider sentence from prison on the same date that the court denied trial counsel's timely-filed motion to reconsider sentence and that trial counsel filed a notice of appeal. The *pro se* motion raised the same issue raised in trial counsel's motion. The circuit court denied the *pro se* motion 18 months later, after defendant's appellate counsel had the motion placed on the circuit court's call for a ruling. The Appellate Court concluded for the following reasons that the *pro se* motion did not void the notice of appeal previously filed by counsel pursuant to Rule 606(b), and therefore it did not have jurisdiction to hear an appeal from the denial of that motion.

1. Defendant had no right to file a *pro se* post-sentencing motion. With the exception of post-trial motions alleging ineffective assistance of trial counsel, defendants represented by counsel have no authority to file *pro se* motions and the court should not consider such motions. The Appellate Court concluded that the record refuted that the trial court exercised its discretion to permit hybrid representation during the post-trial proceedings. Defendant never made a clear statement to the court that he wanted to proceed *pro se*, and the trial court informed defendant numerous times following the denial of his post-trial motion alleging trial counsel's ineffectiveness that he was represented by counsel and could not file any further *pro se* post-trial motions. The Appellate Court also rejected the argument that defendant was not represented by counsel at the time he filed his *pro se* motion as there was no indication in the record that trial counsel had asked for leave to withdraw.

2. Even assuming that defendant did have the right to file a *pro se* motion, the plain language of Rule 606(b) contemplates the filing of only one post-judgment motion directed against the conviction or the sentence or both. It does not authorize the filing of successive and repetitious motions that raise issues that were or could have been raised earlier and thereby extend the time for appeal.

3. Even if the trial court could be required to rule on a successive motion, defendant's *pro se* motion was not properly filed because no notice accompanied the motion that would have brought the motion to the attention of the trial court within a reasonable time. At the time that defendant filed his motion, [730 ILCS 5/5-8-1\(c\)](#) provided that a post-sentencing motion would not be deemed timely filed “unless it is filed with the circuit court clerk within 30 days after the sentence is imposed together with a notice of motion, which notice shall set the motion on the court's calendar on a date certain within a reasonable time after the date of filing.” The tolling provisions of Rule 606(b) were not triggered by the filing of the *pro se* motion due to defendant's failure to comply with this notice requirement.

4. Litigants may revest a court that has general jurisdiction over the matter with personal and subject matter jurisdiction after it has been lost if they actively participate without objection in further proceedings that are inconsistent with the merits of the prior judgment. The revestment doctrine did not apply in this case because the parties cannot divest the Appellate Court of jurisdiction it obtained with the filing of a notice of appeal and a certificate in lieu of record. Moreover, although the State did not object to the circuit court's jurisdiction to rule on the *pro se* motion, neither was its conduct inconsistent with the merits of the final judgment as the State defended the validity of the sentencing proceedings.

Although the notice of appeal filed by trial counsel following denial of his motion to reconsider did

properly perfect an appeal from defendant's conviction, that appeal was dismissed on appellate counsel's motion, and the Appellate Court had lost jurisdiction to reinstate that appeal due to the passage of time.

(Defendant was represented by Assistant Defender Lindsey Anderson, Chicago.)

[People v. Terefenko, 2014 IL App \(3d\) 120850 \(No. 3-12-0850, 9/12/14\)](#)

1. Appeals from post-conviction proceedings are generally governed by the rules for criminal appeals. Under Illinois Supreme Court Rule 604(b) a defendant must file a notice of appeal in the circuit court within 30 days after the entry of a final judgment or, if defendant files a timely motion attacking the final judgment, within 30 days of a dispositive ruling on that motion. If defendant files no motion against the judgment within 30 days, the trial court loses jurisdiction. A timely notice of appeal is necessary to vest the Appellate Court with jurisdiction.

2. The trial court held a third-stage evidentiary hearing on defendant's post-conviction petition. Defendant, who had been deported, was not present during the hearing, but his counsel agreed to hold the hearing in his absence. After dismissing the petition on August 20, the court asked counsel if he wanted to appeal. Counsel reserved his decision, and the court scheduled a status hearing for September 19, and when counsel did not appear, continued the case until September 20.

When counsel did not appear again on September 20, the court extended the deadline for filing post-judgment motions to October 4. On that date counsel informed the court that he would not be filing any post-judgment motions or a notice of appeal. After determining that the clerk had notified defendant at his last known address of his right to appeal, the court appointed OSAD to file a notice of appeal for defendant, which it did on October 5.

3. The Appellate Court held that it lacked jurisdiction to consider defendant's appeal since he did not file a timely notice of appeal within 30 days of the final judgment date. The final judgment was entered on August 20, making September 19 the deadline for filing a notice of appeal or a post-judgment motion. The October 5th filing came too late.

The Appellate Court rejected defendant's argument that the notice of appeal was timely because the trial court had extended the deadline for filing post-judgment motions until October 4, the date it ordered OSAD to file a notice of appeal. Defendant relied on **People v. Church**, 334 Ill. App. 3d 607 (3d. Dist., 2002) for the proposition that upon a proper application and showing of good cause, a trial court has the inherent authority to grant an extension of time for filing a post-judgment motion.

Here, however, defendant never made a proper application or established good cause for an extension of time. Additionally, the trial court never explicitly authorized an extension of time for filing a notice of appeal on September 19. Instead, the court merely stated that it didn't know if defense counsel was going to file a notice of appeal and then continued the case until September 20 "for that purpose." The Appellate Court held that such language was not explicit enough to grant an extension.

4. The court also rejected defendant's argument that jurisdiction was proper because the trial court failed to properly notify defendant of his right to appeal. Under Supreme Court Rule 651(b), upon entry of an adverse judgment in a post-conviction case, the clerk of the trial court shall at once mail or deliver to defendant notice that the court has ruled against him and that he has the right to appeal.

The clerk "at once" mailed notice of the court's ruling to defendant at his last known address. Although the trial court knew defendant had been deported to Poland and the last known address was in the United States, defendant had a responsibility to inform the court of a new address in Poland; the trial court had no obligation to locate the new address itself.

Illinois Supreme Court Rule 606(c) allows a defendant to file a late notice of appeal where the failure to file a timely notice was not due to defendant's culpable negligence. Defendant had no reasonable excuse for failing to keep the court informed of his whereabouts, and his lack of communication with the court was culpable negligence.

5. The dissent would hold that under **Church** the trial court properly extended the time until October 5 for defendant to file a notice of appeal. Although there was no formal application for and showing of good

cause, the trial court was concerned about defendant's absence and whether he received notice of the court's judgment. Under these circumstances, defendant's notice of appeal was timely.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

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§2-3 Counsel

[Halbert v. Michigan, 545 U.S. 605, 125 S.Ct. 2582, 162 L.Ed.2d 552 \(2005\)](#) [In Douglas v. California, 372 U.S. 253 \(1963\)](#), the Supreme Court held that an indigent defendant is entitled to appointed appellate counsel on first appeals as a matter of right. Among the justifications for the Douglas rule are that a first appeal as a matter of right is an adjudication on the merits, and likely provides the only opportunity for a defendant to obtain review of a criminal conviction. [Ross v. Moffitt, 417 U.S. 600 \(1974\)](#), by contrast, held that appointed counsel need not be provided to indigent appellants who are seeking discretionary review by the State's highest court or by federal courts. Because discretionary review by higher courts is not based on the need to correct errors in a particular case, and a defendant who has received the assistance of counsel at a first stage appeal as a matter of right may rely on the record, the briefs filed in the lower court, and in many cases an opinion when seeking discretionary review, the assistance of counsel is not required for a fair process.

[Martinez v. Court of Appeal of California, 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed.2d 597 \(2000\)](#) [Faretta v. California, 422 U.S. 806 \(1975\)](#), which held that a criminal defendant has a constitutional right to represent himself at trial, does not require that a defendant be allowed to represent himself on appeal. However, states may choose to recognize a State constitutional right to self-representation on appeal.

[Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 \(1985\)](#) A defendant has a due process right to the effective assistance of counsel on appeal.

[Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 \(1967\)](#) Where only frivolous issues are presented by an appeal, counsel must so advise the Appellate Court and request permission to withdraw. That request must be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of the brief should be sent to the client, who should be given time to raise any points that he chooses. If the Appellate Court decides, after a full examination of all the proceedings, that the case is frivolous, it may grant leave to withdraw.

[Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 \(2000\)](#) [Anders v. California, 386 U.S. 738 \(1967\)](#) was merely a "prophylactic" procedure and is not constitutionally required. States are free to experiment with other methods of dealing with indigent appeals which present only frivolous issues, so long as the procedure adopted "afford[s] adequate and effective appellate review" by reasonably ensuring "that an indigent's appeal will be resolved in a way that is related to the merit of that appeal."

[Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 \(1987\)](#) The requirements of Anders do not apply to appeals in post-conviction petitions.

[McCoy v. Wisconsin, 486 U.S. 429, 108 S.Ct. 1895, 100 L.Ed.2d 440 \(1988\)](#) Appointed counsel who moves to withdraw in the belief that the appeal is frivolous must submit a brief "referring to anything in the record that might arguably support the appeal." Counsel should also discuss why the issues identified as arguable

are without merit.

[**Penson v. Ohio**, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 \(1988\)](#) Appellate counsel was allowed to withdraw after he filed a certificate stating he had read the record and found no reversible error. The reviewing court declined to appoint other counsel but, upon review of the record, found an instruction error relating to one conviction. The Court held that it was error to allow counsel to withdraw without filing an Anders brief and before the reviewing court examined the record to determine whether there were arguable issues. The state court also erred by failing to appoint new counsel once an arguable claim was found. The state court's review of the record and consideration of briefs filed on behalf of a codefendant were not an adequate substitute for counsel.

[**Jones v. Barnes**, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 \(1983\)](#) Appointed counsel is not required to raise all nonfrivolous issues on appeal. Appointed counsel may, as a matter of professional judgment, decide not to raise issues requested by the defendant. See also, [**People v. Barnard**, 104 Ill.2d 218, 470 N.E.2d 1005 \(1984\)](#).

[**Blankenship v. Johnson**, 118 F.3d 312 \(5th Cir. 1997\)](#) Where the State seeks discretionary review after an indigent defendant has obtained relief in a lower court, the defendant has a right to the assistance of counsel. Otherwise, the defendant "would be unable to defend the reversal of his conviction in all but the most compelling cases."

[**People v. Anthony**, 198 Ill.2d 194, 761 N.E.2d 1188 \(2001\)](#) In affirming the trial court's order granting a motion to suppress, the court noted that the Appellate Court failed to appoint counsel for the indigent defendant. "We strongly advise both the Appellate Court and the trial court to protect diligently the right to counsel for indigent defendants in State appeals."

[**Kirwan v. Welch**, 133 Ill.2d 163, 549 N.E.2d 348 \(1989\)](#) The State Appellate Defender may be appointed to represent a defendant in an appeal from an order of supervision. Illinois law provides that the Appellate Defender may be appointed to "represent all misdemeanor appellants except in cases where a sentence of imprisonment is not possible," and a prison sentence may be imposed if an order of supervision is revoked.

[**Kirwan v. Karns**, 119 Ill.2d 431, 519 N.E.2d 465 \(1988\)](#) The State Appellate Defender may be appointed only as provided by statute which does include cases involving only questions of child custody under Ch. 37, §§705-8(3) & 705-11(2).

[**People v. McDonald**, 168 Ill.2d 420, 660 N.E.2d 832 \(1995\)](#) A criminal defendant who is represented by counsel does not have the right to also file a pro se brief on appeal. See also, [**People v. Morrison**, 260 Ill.App.3d 775, 633 N.E.2d 48 \(4th Dist. 1994\)](#) and [**People v. Thompson**, 331 Ill.App. 3d 948, 773 N.E.2d 15 \(1st Dist. 2002\)](#) where the Courts held that an indigent appellant has no right to "hybrid representation" in which he receives the assistance of appellate counsel and also files pro se briefs.

[**Alexander v. Pearson**, 354 Ill.App.3d 643, 821 N.E.2d 728 \(1st Dist. 2004\)](#) The State Appellate Defender Act, which provides that the Office of the State Appellate Defender shall "represent indigent persons on appeal in criminal and delinquent minor proceedings. . . when appointed to do so . . . under a Supreme Court Rule or law of this State," authorizes appointment of the Office of the State Appellate Defender only in criminal and delinquent proceedings. Therefore, the trial court lacked authority to appoint the office as counsel in an appeal from a habeas corpus proceeding.

[**People v. Jackson**, 362 Ill.App.3d 1196, 841 N.E.2d 1098 \(4th Dist. 2006\)](#) Although Supreme Court Rules

607 and 651(d) support an argument that a criminal defendant has the right to represent himself on appeal, the court concluded that defendant failed to make a timely assertion of that right and that "judicial efficiency outweighs defendant's interest" in representing himself.

Cumulative Digest Case Summaries §2-3

[People v. Merriweather, 2013 IL App \(1st\) 113789 \(1-11-3789, 10/15/13\)](#)

1. Defendant argued that because the 30-day period following a guilty plea is a "critical stage" of the criminal process during which the defendant has a constitutional right to counsel, the trial court must appoint counsel when a defendant who pleaded guilty files any *pro se* document requesting the appointment of counsel. Defendant entered a negotiated guilty plea, and subsequently filed a *pro se* notice of appeal without filing a motion to withdraw the plea. Supreme Court Rule 604(d) requires that a defendant who wishes to appeal from a negotiated guilty plea must first file a motion to withdraw the plea. Under Rule 604(d), if the defendant is indigent counsel is to be appointed upon the filing of the motion to withdraw the plea.

The court rejected the argument, noting that defendant was represented by counsel at both his guilty plea and sentencing and properly admonished by the trial court concerning the requirement that he move to withdraw his plea. The court stated that under Rule 604(d), filing a motion to withdraw a negotiated plea is a "condition precedent" to taking an appeal and triggers the right to counsel on appeal.

2. The court also rejected the argument that constitutional questions would be raised concerning Supreme Court Rule 606(a), which governs the perfection of appeals, unless counsel is appointed whenever a *pro se* guilty plea defendant files a notice of appeal. Defendant argued that Rule 606(a) permits a defendant to file a *pro se* notice of appeal without filing a motion to withdraw the plea, and that a defendant might unintentionally waive his right to an appeal because he does not have the assistance of counsel in filing a motion to withdraw the plea and perfecting the appeal.

The court acknowledged that Rule 606(a) permits a defendant to file a *pro se* notice of appeal. However, without fully explaining its holding, the court found that a guilty plea defendant who defaults on the Rule 604(d) requirement to file a motion to withdraw the plea is not constitutionally entitled to the appointment of counsel for appeal. The court also noted that although defendant's direct appeal must be dismissed due to the failure to comply with Rule 604(d), defendant is not barred from raising constitutional claims in post-conviction proceedings.

(Defendant was represented by Assistant Defender Ginger Leigh Odom, Chicago.)

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§2-4

State Appeals

§2-4(a)

Generally

[Sanabria v. United States, 437 U.S. 54, 98 S.Ct. 2170, 57 L.Ed.2d 43 \(1978\)](#) Even if a defendant's acquittal is "egregiously erroneous," the prosecution is barred from appealing.

[United States v. Scott, 437 U.S. 82, 98 S.Ct. 2187, 57 L.Ed.2d 65 \(1978\)](#) When a defendant successfully terminates the proceedings without submission to judge or jury on the issue of guilt or innocence, the prosecution may appeal. See also, [United States v. Wilson, 420 U.S. 332, 95 S.Ct. 1013, 43 L.Ed.2d 232 \(1975\)](#) where the Court held that the double jeopardy clause does not bar a government appeal regarding

errors of law.

[People v. Kliner, 203 Ill.2d 402, 786 N.E.2d 976 \(2002\)](#) A trial court order granting a motion to allow DNA testing under [725 ILCS 5/116-3](#), even if a final order, may not be appealed by the State.

[People v. Miller, 202 Ill.2d 328, 781 N.E.2d 300 \(2002\)](#) Supreme Court Rule 603 authorizes the State to appeal directly to the Supreme Court when a statute has been held unconstitutional by the trial court.

[People v. VanCleve, 89 Ill.2d 298, 432 N.E.2d 837 \(1982\)](#) The jury returned verdicts of guilty but the trial judge set aside the verdicts and entered a judgment of acquittal because of insufficient evidence. The Court held that a trial judge has authority to enter a judgment of acquittal notwithstanding the verdict, and this decision cannot be appealed by the State. See also, [People v. Carter, 194 Ill.2d. 88, 741 N.E.2d 255 \(2000\)](#).

[People ex rel. Daley v. Limperis, 86 Ill.2d 459, 427 N.E.2d 1212 \(1981\)](#) Defendants were charged with Class X felonies. The stipulated evidence at their bench trials was that they delivered over 30 grams of cocaine. However, the trial judge found each defendant guilty of delivery of less than 30 grams and sentenced each to probation. The State sought to have the defendants sentenced for Class X felonies but the Court held that the convictions on the lesser included offense of delivery of less than 30 grams operated as acquittals of the greater offense and the State cannot appeal from an acquittal.

[People v. Alfano, 78 Ill.2d 434, 401 N.E.2d 554 \(1980\)](#) Where the trial judge ordered the testimony of State's witnesses stricken because of a discovery violation and subsequently found the defendants not guilty due to insufficient evidence, the State could not appeal.

[People v. Malloy, 76 Ill.2d 513, 395 N.E.2d 381 \(1979\)](#) The entry of findings at an implied-consent hearing is a final and appealable judgment. Thus, the State could appeal from the finding that the defendant had not been adequately advised of the consequences of a failure to submit to breath analysis.

[People v. Schwartz, 58 Ill.2d 274, 319 N.E.2d 23 \(1974\)](#) The State can appeal to the Supreme Court following an appellate court's reversal of a conviction based upon insufficiency of the evidence without violating Double jeopardy principles.

[People v. Kuhn, 126 Ill.2d 202, 533 N.E.2d 909 \(1988\)](#) Defendant argued that a sentencing provision was unconstitutional because it prohibited supervision for a DUI that occurs within five years of a negotiated guilty plea to reckless driving. The trial judge agreed and set the case for a status hearing. The State filed a notice of appeal before the trial judge imposed any sentence. The Supreme Court held that in the absence of a sentence, it lacked jurisdiction to hear the appeal.

[People v. Ruiz, 194 Ill.2d 454, 742 N.E.2d 299 \(2000\)](#) Although an appeal from an order precluding the State from seeking a death sentence "does not readily fit within the range of State appeals authorized by our rules," where the State could have sought review of the order under the Illinois Supreme Court's general supervisory authority it was "appropriate to consider the present appeal on its merits."

[People v. Wallerstedt, 77 Ill.App.3d 677, 396 N.E.2d 568 \(3d Dist. 1979\)](#) The defendant filed a motion for acquittal on the ground that his jury's finding of guilty was inconsistent with the trial court's finding of not guilty in regard to two co-defendants. The trial judge ruled that the evidence was not sufficient to sustain defendant's conviction, and dismissed the indictment. The Court held that the State could not appeal. Although the trial court's order was labeled a dismissal of the indictment, the substantive effect of the action taken was to grant the motion for acquittal due to insufficient evidence.

[People v. Laxton, 139 Ill.App.3d 904, 488 N.E.2d 303 \(3d Dist. 1986\)](#) Trial court's finding that defendant was not guilty of DUI was an acquittal where the finding was made after the State's evidence showed that the offense occurred in a different county. The Court rejected the State's contention that the trial judge's order was merely a dismissal for improper venue. See also, [People v. Pender, 154 Ill.App.3d 978, 507 N.E.2d 951 \(4th Dist. 1987\)](#).

[People v. Hall, 291 Ill.App.3d 411, 683 N.E.2d 1274 \(1st Dist. 1997\)](#) The State argued that the trial court erred by convicting defendant of second degree murder, after a trial for first degree murder, because the statute authorizing second degree murder did not authorize a conviction for that crime where defendant was charged with felony murder. The Court refused to consider the State's argument, holding that Supreme Court Rule 604 did not permit the State to appeal the entry of a second degree murder conviction.

[People v. Bean, 135 Ill.App.3d 336, 481 N.E.2d 888 \(5th Dist. 1985\)](#) Granting of defendant's motion to dismiss charges, based on the failure of the complainant and another State witness to appear after the jury was sworn and opening statements were made, was in effect an acquittal from which the State could not appeal.

[People v. Quick, 321 Ill.App.3d 392, 748 N.E.2d 1227 \(3d Dist. 2001\)](#) An incarcerated defendant whose case is remanded for a new trial has a statutory right to a speedy trial within 120 days after the Appellate Court's mandate is filed. A State petition for certiorari is a request for discretionary review, and is not an "appeal" under the Supreme Court Rules and does not toll the speedy trial term under Supreme Court Rule 604(a)(4), which provides that time during which "an appeal by the State is pending is not counted for the purpose of determining" whether a defendant is entitled to release on speedy trial grounds.

[People v. Tellez, 295 Ill.App.3d 639, 693 N.E.2d 516 \(2d Dist. 1998\)](#) Where the trial court amends a charge to strike the allegation that the offense is a Class 3 felony, the "substantive effect of the court's action [is] to dismiss a Class 3 felony charge and to replace it with a petty offense charge." Under such circumstances, an appeal is permitted under Supreme Court Rule 604(a)(1), which allows the State to appeal an order that has the substantive effect of dismissing a charge.

[People v. Zook, 177 Ill.App.3d 62, 531 N.E.2d 1066 \(4th Dist. 1988\)](#) The State may not appeal the dismissal of an information at a preliminary hearing following a finding of no probable cause.

[People v. Wells, 279 Ill.App.3d 564, 664 N.E.2d 660 \(5th Dist. 1996\)](#) Supreme Court Rule 604(a)(3) provides that a defendant "should not be held in jail or to bail during the pendency of an appeal by the State . . . unless there are compelling reasons for his continued detention or being held to bail." The trial court denied defendant's release because he was charged with murder and had refused to submit to Illinois jurisdiction before he was extradited. The trial court rejected defense counsel's argument that defendant was unlikely to be convicted at trial, finding that the strength of the evidence is irrelevant to whether there are compelling reasons for continued detention. The Court held that neither the seriousness of the charge nor the fact that defendant contested extradition, standing alone, is a "compelling" reason for detention. Rule 604 does not exclude persons charged with serious crimes, and the exercise of a legal right does not justify imprisonment. Also the trial judge should have considered the strength of the evidence and likelihood of conviction. Since the purpose of Rule 604(a)(3) is to prevent the unjustified incarceration of persons who may never be convicted, the trial court must consider the likelihood of an eventual conviction when determining whether there are "compelling reasons" for continued detention. Where it is unlikely that a conviction will ever occur, incarceration during a State appeal would "assume an aura of punishment for a crime authorities believe, but cannot prove, the defendant committed."

Cumulative Digest Case Summary §2-4(a)

[In re K.E.F., 235 Ill.2d 530, ___ N.E.2d ___ \(2009\) \(No. 107402, 12/17/09\)](#)

1. Supreme Court Rule 604(a)(1) provides that in criminal cases, the State may appeal from an order which has the effect of “suppressing evidence,” if the State certifies that the suppression substantially impairs the State’s ability to prosecute the case. Under [People v. Drum, 194 Ill.2d 485, 743 N.E.2d 44 \(2000\)](#), evidence is “suppressed” within the meaning of Rule 604(a)(1) if the order prevents information from being presented to the trier of fact. Where the trial court’s ruling leaves open another method for admission of the evidence in question, but the State declines to avail itself of that option, evidence has not been “suppressed.”

2. Where the trial court held that statements by an alleged victim of child sexual abuse were reliable and could be admitted under [725 ILCS 5/115-10](#) if the other provisions of §115-10 were satisfied, a DVD of the statement was not “suppressed” when the court deemed that the complainant had failed to “testify” as required by §115-10. When the State called the minor as a witness, it made no attempt to question her about the events underlying the charges or the content of her statement. Instead, the prosecution limited its direct examination to the circumstances surrounding the videotaped statement, asking whether the minor had spoken to the investigator who took the statement and whether her answers had been truthful.

The court concluded that the DVD was not “suppressed” because the State could have gained admission of the evidence by merely asking the complainant questions concerning the alleged offense, so that she would have “testified” in accordance with §115-10:

[T]he State chose – for reasons that quite frankly defy comprehension – to attempt to gain admission of a prior statement that the trial court had already ruled reliable and admissible . . . by calling the alleged victim to the stand and asking her only whether she had previously answered [the investigator’s] questions truthfully. . . . The trial court indicated it would admit the statement under various scenarios, so long as the prosecutor questioned [the minor] about the pertinent events, irrespective of her answers, but the prosecutor was steadfast in his refusal and his desire to pursue an interlocutory appeal.

We question the wisdom of that course of action, but we have no doubt that . . . admissibility of the evidence in question was a matter entirely within the State’s control. . . . [T]he sole impact of the circuit court’s order is on the *means* by which the information is to be presented.

That is not suppression of evidence.

3. In dissent, Justices Burke and Freeman found that the majority should have first determined the issue on which leave to appeal had been granted – whether Rule 604(a)(1) applies in juvenile delinquency proceedings, instead of focusing on the secondary question of whether the order “suppressed” evidence.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[People v. Castleberry, 2015 IL 116916 \(No. 116916, 11/19/15\)](#)

1. The issue of whether a judgment is void or voidable presents a question of jurisdiction. Jurisdiction is a fundamental prerequisite to a valid judgment and any judgment rendered by a court that lacks jurisdiction is void and may be attacked at any time. By contrast, an erroneous judgment entered by a court having jurisdiction is merely voidable.

Jurisdiction generally consists of two parts: subject matter and personal jurisdiction. Subject matter jurisdiction refers to the court’s power “to hear and determine cases of the general class to which the proceeding in question belongs.” Personal jurisdiction refers to the court’s power “to bring a person into its

adjudicative process.”

2. Decisions in Illinois have also held that the power to render a particular judgment is “as important an element of jurisdiction” as personal and subject matter jurisdiction. Based on this concept, Illinois courts have developed a rule holding that a circuit court acts without “inherent authority” or “inherent power” if it imposes a sentence that violates a statutory requirement. And since the court has acted without inherent power, it has acted without jurisdiction, making the sentence void. Accordingly, a sentence that does not conform to statutory requirements is void.

3. Defendant was convicted of two counts of aggravated criminal sexual assault. At sentencing, the State argued that defendant was subject to a mandatory 15-year sentencing enhancement on each count because he was armed with a firearm when he committed the offenses. The trial court imposed the add-on on one count, but refused to impose it on the second count.

Defendant appealed and, in response to an argument raised by the State, the Appellate Court held that the add-on was a mandatory statutory requirement that had to be added to each sentence. The court further held that a sentence which lacked the enhancement was void since it did not conform to statutory requirements.

4. The Illinois Supreme Court abolished the void sentence rule. It held that the “inherent power” idea of jurisdiction, on which the void sentence rule was based, was at odds with the grant of jurisdiction given to the circuit courts under Illinois’ constitution. The constitution provides that circuit courts “shall have original jurisdiction of all justiciable matters.” Ill. Const. 1970, art VI, § 9. Since jurisdiction is granted by the constitution, the failure to satisfy a statutory requirement cannot deprive the court of its power or jurisdiction to hear a cause of action. A judgement is void only if the court lacks jurisdiction over the parties or the subject matter.

Subject matter jurisdiction extends to all “justiciable matters.” To invoke the court’s “subject matter jurisdiction, a party need only present a justiciable matter, *i.e.*, a controversy appropriate for review by the court.” This rule applies to criminal as well as civil cases since in granting jurisdiction Illinois’ constitution does not distinguish between civil and criminal cases.

The Supreme Court reversed the Appellate Court’s judgment increasing defendant’s sentence by 15 years.

5. The court rejected the State’s argument that even without the void sentence rule the State could request and the Appellate Court could increase defendant’s sentence under Supreme Court Rules 604(a) and 615(b)(1). Rule 604(a) does not permit the State to appeal a sentencing order and hence provides no authority for the State to request an increased sentence on cross-appeal. While the State may raise any argument in support of the court’s judgment, a request to increase a defendant’s sentence is not in support of the judgment, but is instead a new issue designed to lessen the rights of defendant. Rule 615(b)(1) only grants the reviewing court authority to reduce a defendant’s punishment. It does not grant the court plenary power to increase criminal sentences.

The State may, however, seek relief in appropriate circumstances via a writ of *mandamus*. *Mandamus* is an extraordinary remedy to enforce the performance of official duties where no exercise of discretion is involved. Only issues of law are considered in *mandamus*. Factual questions or issues of discretion or judgment are not permitted. The State may use *mandamus* where the circuit court violated a mandatory sentencing requirement, but may not challenge discretionary sentencing decisions.

(Defendant was represented by Assistant Defender Therese Bissell, Chicago.)

[People v. Holmes, 235 Ill.2d 59, 919 N.E.2d 318 \(2009\)](#)

1. Under [People v. Taylor, 50 Ill.2d 136, 277 N.E.2d 878 \(1971\)](#), the State is barred from relitigating pretrial issues where a defense motion to suppress was granted and the State failed to file a timely appeal or motion to reconsider. For purposes of the **Taylor** rule, there is no substantive difference between evidence suppressed based on the State’s wrongful conduct and evidence that is excluded on evidentiary grounds. In either case, further litigation requires a timely notice of appeal or motion to reconsider.

An exception to the **Taylor** rule allows review where there has been a material change in the evidence which, with due diligence, could not have been presented at the previous proceeding.

2. Where the State failed to file a notice of appeal or motion to reconsider from an order excluding evidence of defendant's prior convictions, a motion to reconsider filed almost two years later was untimely. The exception to the **Taylor** rule - for material changes in the evidence - was inapplicable for two reasons. First, the purported change in the evidence concerned a matter of which the State had been aware throughout the proceedings.

Second, the State failed to demonstrate due diligence where it had known of the allegation for almost two years, but simply failed to investigate.

[People v. Martinez, 2013 IL 113475 \(No. 113475, 4/18/13\)](#)

1. The Illinois Constitution provides that there shall be no appeal from a judgment of acquittal after a trial on the merits in a criminal case. Ill. Const. 1970, Art. V, §6. The prohibition against the State appealing an acquittal is grounded in the principle of double jeopardy. The State may appeal in criminal cases only from a judgment or order that has the substantive effect of dismissing a charge. Supreme Court Rule 604(a)(1).

2. To trigger the protections of the double jeopardy clause, there must first be an attachment of jeopardy. Generally, in a jury trial, jeopardy attaches when a jury is empaneled and sworn. But in assessing whether jeopardy has attached, rules should not be applied mechanically when the interests they protect are not endangered and when their mechanical application would frustrate society's interest in enforcing its criminal laws. The overriding inquiry should be whether the defendant was actually in danger or at risk of being found guilty of any offense.

3. The State participated in jury selection after the court denied the State's oral motion for a continuance of the trial because two of its witnesses were not present. Before the jury was sworn, the State presented a written motion for a continuance. When the court denied that motion, the State indicated it would not participate any further in the proceedings. The jury was sworn, the State declined to present any evidence, and the court granted the defense motion for a directed acquittal. The State appealed.

Under the "unique set of facts presented here," jeopardy did not attach when the jury was sworn. Defendant was never at risk of a conviction when the State indicated it would not participate before the jury was sworn. The defendant's interest in retaining a chosen jury was not implicated where there was no trial to be completed by that tribunal. Because defendant was not placed in jeopardy, there was no true acquittal.

The Illinois Supreme Court therefore concluded that the State could appeal from the circuit court's judgment. Rather than an acquittal, the order of the trial court directing judgment in favor of the defendant was an appealable dismissal order under Rule 604(a)(1).

(Defendant was represented by Assistant Defender Darren Miller, Chicago.)

[In re B.C.P., 2012 IL App \(3d\) 100921 \(No. 3-10-0921, 1/23/12\)](#)

In general, the Appellate Court only has jurisdiction to review an appeal from a final judgment, and does not have jurisdiction to review an interlocutory appeal unless jurisdiction is specifically provided by Supreme Court Rule.

Two Supreme Court Rules provide for appeals in juvenile delinquency proceedings: Rule 660(a) and Rule 662. Rule 660(a) provides that "[a]ppeals from final judgments . . . shall be governed by the rules applicable to criminal cases," except where otherwise specifically provided. Rule 662 provides for interlocutory appeals, but only under very limited circumstances—when a dispositional order has not been entered within 90 days from either an adjudication of wardship or a revocation of probation or conditional discharge.

The State sought to appeal from an order granting a motion to suppress the statement of a minor in a juvenile delinquency proceeding. Neither Rule 660(a) nor Rule 662 authorize an interlocutory appeal from such an order.

The court refused to read Rule 660(a) to incorporate Rule 604(a)(1), which authorizes the State to appeal from a suppression order in a criminal case. While Rule 660(a) incorporates the rules applicable to criminal cases, it does so only in the context of appeals from final judgments. A suppression order is not a final judgment. Where the language of the rule was clear and unambiguous, the court could not read into Rule 660 exceptions, limitations, and conditions that the drafters did not intend. If the drafters of the rules had intended to allow an interlocutory appeal from a suppression order in a juvenile proceeding, they would have so provided in Rule 662.

The court dismissed the State's appeal for lack of jurisdiction.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[People v. Daniels, 2016 IL App \(1st\) 142130 \(No. 1-14-2130, 6/20/16\)](#)

1. A *nolle prosequi* is the formal entry by the State declaring that it is unwilling to prosecute certain charges. It terminates those charges against the defendant and leaves the matter as it was before charges were filed. A *nolle prosequi* is not a final disposition of the case and will not bar another prosecution for the same offense. But where the State "causes the entrance of an unconditional *nolle prosequi*," the proceeding is terminated and the same indictment cannot be reinstated at a subsequent term. The State may only reinstate a *nolled* charge by asking the trial court to vacate the *nolle* order before jeopardy attaches. Alternatively, the State may file a new charge to initiate separate proceedings against a defendant.

2. The State charged defendant with multiple counts of aggravated unlawful use of a weapon (AUUW) and unlawful use of a weapon by a felon. As part of negotiated guilty plea, the State *nolled* all the charges except one count of AUUW and defendant pled guilty to that count. After serving his sentence, defendant filed a 2-1401 petition challenging his conviction because it was based on a statute held facially unconstitutional in **Aguilar**, 2013 IL 112116. The trial court denied the petition.

3. On appeal, the State conceded that defendant's conviction should be vacated but asked the Appellate Court to remand the case to the trial court to reinstate six of the *nolled* charges. The Appellate Court vacated defendant's conviction but denied the State's request to reinstate the charges.

The court first noted that the State never asked the trial court to reinstate the charges nor did it file new charges to initiate a separate proceeding. The appeal related solely to the dismissal of defendant's 2-1401 petition, which was an altogether new proceeding, not a continuation of defendant's criminal case. That case ended when defendant pled guilty. The Appellate Court thus lacked jurisdiction to address issues related to the *nolled* counts.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

[People v. Latimer, 403 Ill.App.3d 595, 935 N.E.2d 1037 \(2d Dist. 2010\)](#)

On appeal, the State expressed concern that the court's suppression order might lead to confusion at trial if it offered evidence that the court had not suppressed. The Appellate Court refused to address the State's concerns. Supreme Court Rule 604(a)(1) authorizes the State to appeal from an order the substantive effect of which results in the suppression of evidence. The State is not authorized to appeal from an order that might result in confusion. The State was in effect seeking an impermissible advisory opinion.

(Defendant was represented by Assistant Defender Linda Johnson, Elgin.)

[People v. Martinez, 2011 IL App \(2d\) 100498 \(No. 2-10-0498, 10/5/11\)](#)

The Illinois Constitution provides that "after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal." [Ill. Const. 1970, Art. VI, §6](#). Where there has been a purported acquittal in a criminal proceeding, the question of whether the acquittal followed a trial on the merits as understood by the Illinois Constitution is answered by whether jeopardy attached before the acquittal was rendered. Whether jeopardy attached is decided based on whether defendant was placed at risk of a determination of guilt, not by mechanical application of a rule of thumb, such as whether the jury was empaneled and sworn.

The “acquittal” entered by the trial court was in fact a dismissal from which the State could appeal. Supreme Court Rule 604(a)(1). A jury was sworn and given preliminary instructions but before the jury was sworn, the State unsuccessfully moved for a continuance, and indicated that it would not participate in the trial as its material witnesses were absent. The court ultimately granted the defense motion for a directed finding after no evidence was presented. As there was no risk of a determination of guilt, jeopardy had not attached.

(Defendant was represented by Assistant Defender Darren Miller, Elgin.)

[People v. Mendiola, 2014 IL App \(4th\) 130542 \(No. 4-13-0542, 3/4/14\)](#)

1. In criminal cases, the State may appeal from an order or judgment which has the substantive effect of dismissing a charge, arresting judgment, quashing an arrest or search warrant, or suppressing or excluding evidence. (Sup. Ct. Rule 604(a)(1)). Generally, the notice of appeal is due within 30 days after entry of judgement. (Sup. Ct. Rule 606(b)).

2. Before defendant’s trial on four counts of aggravated criminal sexual abuse and one count of predatory criminal sexual assault of a child, the State filed a motion *in limine* to admit the recording of a telephone call between defendant and the mother of the complainants. After the motion was denied, the cause proceeded to a jury trial. The trial resulted in acquittals on the four counts of aggravated criminal sexual abuse and a hung jury on the single count of predatory criminal sexual assault of a child. A mistrial was declared on that count.

Before the retrial on the remaining count, the State again filed the motion *in limine* seeking to introduce the recording. The trial court again denied the motion, and the State filed a notice of appeal.

The Appellate Court concluded that it lacked jurisdiction to consider the appeal because the State did not appeal before the first trial. The court found that under **People v. Nelson**, 377 Ill.App.3d 1031, 880 N.E.2d 1096 (1st Dist. 2007), the State waived its right to appeal the trial court’s denial of the motion when it elected to proceed with the first trial rather than appeal the pretrial ruling. “The State forfeited its right to appeal based on the supposed substantial impairment of its case when it decided to prosecute defendant.”

3. The court rejected the argument that the trial court’s ruling occurred after the first trial had started, at which time the State could have appealed only rulings on motions to suppress illegally seized evidence. (725 ILCS 5/114-12(c)). Because the trial court denied the motion *in limine* after *voir dire* had started but before any jurors had been sworn, jeopardy had not attached. Thus, the denial constituted a pretrial ruling.

The appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

[People v. Newlin, 2014 IL App \(5th\) 120518 \(No. 5-12-0518, 9/23/14\)](#)

On defendant’s direct appeal challenging the sentence for his first degree murder conviction, the Appellate Court concluded that it lacked jurisdiction to consider the State’s attempt to raise the trial court’s failure to impose mandatory fines. First, the court noted that the record failed to support the argument that mandatory fines had not been imposed, rejecting the State’s attempt to use a printout of the circuit clerk’s online records to show what assessments were allegedly made. Second, the court stated that the failure to impose mandatory fines is not a matter which can be appealed by the State under Supreme Court Rule 604(a).

The court concluded:

What the State is essentially trying to do . . . is to piggyback an appeal on defendant's appeal. We can find no authority for such practice and will not allow the State to raise the issue of fines in such a manner.

(Defendant was represented by Assistant Defender Duane Schuster, Springfield.)

[People v. Peterson, 2011 IL App \(3d\) 100513](#) (Nos. 3-10-0513, 3-10-0514, 3-10-0515, 3-10-0546, 3-10-0550, 7/26/11)

When the State seeks review of an interlocutory order under Supreme Court Rule 604(d), it must

either file a notice of appeal or a motion to reconsider the order within 30 days. An exception permits review beyond the 30-day time frame only where there is a material change in the facts that could not have been presented earlier with due diligence. This 30-day time limit is jurisdictional. [People v. Taylor, 50 Ill.2d 136, 277 N.E.2d 878 \(1971\)](#).

The State filed a motion *in limine* to admit certain hearsay statements pursuant to a statutory exception ([725 ILCS 5/115-10.6](#)) and under the common-law doctrine of forfeiture by wrongdoing. After a hearing, the circuit court ruled that some of the statements were inadmissible because they did not meet the statutory standard of reliability, but did not rule on the admissibility of the statements under the forfeiture doctrine. After more than 30 days had elapsed, the State filed a motion to reconsider asking the court to admit the excluded statements under the forfeiture doctrine. The defense objected to the motion as untimely. The court denied the motion, later clarifying that it believed that the statute codified and took precedence over the common law. The State filed a notice of appeal indicating its intent to appeal from both the original order and the denial of the motion to reconsider. After a defense motion to dismiss appeal was denied, the State sought and obtained leave to file a late notice of appeal from both rulings.

Based on its continuing duty to review its own jurisdiction over any matter pending before it, the Appellate Court declined to reach the merits of the State's appeal on the ground that the State had failed to properly perfect its appeal.

1. Because the State filed neither a notice of appeal nor a motion to reconsider within 30 days of the date of the original order, the court had jurisdiction to hear the appeal only if there had been a material change in the facts that could not have been presented earlier with due diligence. The Illinois Supreme Court's decision in [People v. Hanson, 238 Ill.2d 74, 939 N.E.2d 238 \(2010\)](#), decided a week before the motion to reconsider was filed, was not a material change in the facts allowing for an exception to the 30-day limit.

Even assuming that a change in the law could trigger the change-in-the-facts exception, **Hanson** did not change the law by recognizing that the doctrine of forfeiture by wrongdoing was a hearsay exception as well as a confrontation-clause exception. Nor did **Hanson** adopt a new rule that admissibility under the forfeiture doctrine does not depend on a showing of reliability. The forfeiture doctrine was adopted by the Illinois Supreme Court three years earlier in [People v. Stechly, 225 Ill.2d 246, 870 N.E.2d 333 \(2007\)](#). In [Stechly](#), the court held that the doctrine was co-extensive with [Federal Rule of Evidence 804\(b\)\(6\)](#), which is both a hearsay and a confrontation-clause exception, and does not condition the admissibility of the statements on a showing of reliability. Moreover, the common-law doctrine is an equitable rule that has never required a showing of reliability. That the State initially sought admission of both testimonial and hearsay statements under the forfeiture doctrine belies its claim that it was unaware prior to **Hanson** that the doctrine applied to hearsay as well as testimonial evidence.

2. Even if **Hanson** did clarify the common-law rule in some material respects, there was no excuse for the State's failure to file a timely notice of appeal or motion to reconsider. The State's motion was based on statutory and common-law grounds, and the court failed to rule on the common-law grounds. Some of the hearsay statements that the State sought to admit were testimonial. At a minimum, the State could have timely appealed the motion with respect to those statements under **Stechly**.

3. The ruling on the motion to reconsider was not separate and independent from the original order. The motion to reconsider raised no new issue not raised by the original motion. Both the court and the State treated the motion as a motion to reconsider. It makes no difference that the circuit court did not consider the forfeiture doctrine in its original order. The **Taylor** rule applies to appealable suppression orders, not merely to the legal grounds upon which suppression orders are decided. Like the doctrine of *res judicata*, the **Taylor** rule is not limited to issues actually considered, but those that could have been raised in the earlier proceeding. The original ruling was immediately appealable regardless of whether it reached each or any theory of admissibility argued by the State. The underlying merit of the State's appeal is irrelevant to whether the State properly perfected the appeal.

4. Supreme Court Rule 606(c) provides that the Appellate Court may grant leave to file a late notice

of appeal where the appellant files a motion in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal supported by a showing of reasonable excuse for failing to file the notice of appeal on time. This rule is applicable to interlocutory appeals by the State. The rule does not excuse the State's failure to file a timely notice of appeal because the State provided no reasonable excuse for its untimely appeal other than its claim that **Hanson** changed the law, which is unsupportable.

5. Carter, J., dissented, concluding that the court had jurisdiction and that the excluded statements were admissible under the forfeiture doctrine.

The State could not appeal from a ruling on the admissibility of the statements pursuant to the common-law forfeiture doctrine until it obtained a ruling on that ground. As the circuit court did not consider that ground in its original order, the State's motion asking for a ruling on that ground was not a motion to reconsider the original order. Thus, the second ruling was an independent ruling from the original order from which a timely appeal was taken.

Moreover, **Hanson** held for the first time that the forfeiture doctrine is an exception to both the hearsay rule and the confrontation clause, and that the statements need not reflect any additional indicia of reliability to be admitted. Just as an exception to the law-of-the-case doctrine exists where the Supreme Court, following an appeal, makes a contrary ruling on the precise issue of law on which the Appellate Court had based its prior opinion, the State should have been allowed to reopen the issue of the admissibility of the statements post-**Hanson** to allow the circuit court to correct itself.

[People v. Shinaul, 2015 IL App \(1st\) 140477 \(No. 1-14-0477, 10/5/15\)](#)

In 2009, defendant entered a negotiated guilty plea to the Class 4 felony of aggravated unlawful use of a weapon. As part of the plea agreement, seven other counts of AUUW were nol-prossed.

After **People v. Aguilar**, 2013 IL 112116, found that the Class 4 felony of AUUW was unconstitutional, defendant filed a §2-1401 motion to vacate his conviction. The State agreed that the conviction was required to be vacated, but asked the trial court to reinstate four of the charges that had been nol-prossed in the original proceeding. Those charges were based on provisions of the AUUW statute that had not been at issue in **Aguilar**, including carrying a weapon without a valid FOID card and while under the age of 21.

The trial court granted the §2-1401 petition, ordered the conviction vacated, and allowed defendant to withdraw his guilty plea. However, the court denied the motion for reinstatement of the dismissed charges. The State appealed.

The court found that it lacked jurisdiction to consider the appeal.

1. Under Supreme Court Rule 604(a), the State may appeal only where a judgment has the substantive effect of: (1) dismissing a charge for grounds enumerated in §114-1 of the Code of Criminal Procedure; (2) arresting judgment because of a defective indictment, information or complaint; (3) quashing an arrest or search warrant; or (4) suppressing evidence. In addition, the State argued that it has the right to appeal any judgement the substantive effect of which resulted in the dismissal of the charge.

The court concluded that granting a §2-1401 motion to vacate a conviction does not have the substantive effect of dismissing a charge. Noting that there was no pending criminal proceeding involving defendant, the court stated that the "denial of the reinstatement cannot be recast as a 'dismissal of an indictment, information or complaint' because, simply put, there was no indictment, information or complaint pending before the court."

2. The court noted, however, that it was not expressing any opinion about whether the State could institute a new prosecution concerning the previously dismissed charges.

(Defendant was represented by Assistant Defender Amanda Ingram, Chicago.)

[People v. Wade, 2016 IL App \(3d\) 150417 \(No. 3-15-0417, 7/28/16\)](#)

1. The imposition of a fine is a judicial act. Because the circuit clerk lacks authority to levy fines, any fines imposed by the clerk are void at their inception. The court concluded that [People v. Castleberry](#),

[2015 IL 116916](#), does not preclude the defendant from challenging, as void, fines which were imposed by the circuit clerk.

Castleberry abolished the “void sentence rule” on the ground that the circuit courts are granted general jurisdiction by the constitution and do not derive their authority from statute. Because the circuit clerk is a nonjudicial officer and has no jurisdiction to sentence criminal defendants, **Castleberry** does not apply to the unauthorized imposition of fines by a circuit clerk. The court vacated the fines and fees and remanded the cause with directions to the trial court to impose each proper fine, fee, assessment and court costs.

2. In a partial concurrence and partial dissent, Justice Schmidt found that the majority should not have remanded the cause for reimposition of the vacated fines. Fines are part of a criminal sentence. In **Castleberry**, the Supreme Court held that the Appellate Court may not increase a sentence on appeal, even if the sentence is illegally low. Under **Castleberry**, the only recourse to correct an illegally low sentence is for the State to seek a writ of *mandamus*.

Thus, Justice Schmidt would conclude that the fines imposed by the circuit clerk should be vacated without remand.

(Defendant was represented by Assistant Defender Andrew Boyd, Ottawa.)

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§2-4(b)

Suppression Orders

[People v. Truitt, 175 Ill.2d 148, 676 N.E.2d 665 \(1997\)](#) Rule 604(a)(1) allows the State to appeal where the order has the substantive effect of: (1) dismissing the charge, (2) arresting judgment because of a defective indictment, information or complaint, (3) quashing an arrest or search warrant, or (4) suppressing evidence. Before the State may appeal a pretrial suppression order under Rule 604, the prosecutor is required to file a certificate stating that the suppression substantially impairs the State's ability to prosecute the case. An order is appealable only if it in fact does "suppress evidence." The trial court's order did not "suppress evidence" here but merely required the State to present live testimony instead of substituting a laboratory report under a statute allowing the report to be presented unless defendant objected within a specified time period.

[People v. Drum, 194 Ill.2d 485, 743 N.E.2d 44 \(2000\)](#) Under Supreme Court Rule 604(a)(1), the State may appeal any order which has the substantive effect of suppressing evidence. For purposes of the State's right to appeal, there is no substantive distinction between a pretrial order "excluding" evidence and one "suppressing" evidence. Here, the order denying the State's motion in limine had the substantive effect of barring use of the co-defendant's testimony at defendant's trial, "regardless of whether the order is characterized as 'excluding' the testimony or 'suppressing' it." Because the substantive effect of the order was to suppress evidence, the Appellate Court had jurisdiction to consider the State's interlocutory appeal.

[People v. Carlton, 98 Ill.2d 187, 455 N.E.2d 1385 \(1983\)](#) A certification of impairment must be filed in every case in which the State seeks to appeal from a pre-trial suppression order. But, because the filing of such a certificate is not a jurisdictional requirement, the State may file it as a supplement to the record on appeal.

[People v. Keith, 148 Ill.2d 32, 591 N.E.2d 449 \(1992\)](#) Defendant argued that the appeal should be dismissed

because the State had other evidence of intoxication, so that its ability to prosecute the case was not substantially impaired. The Court rejected this argument; courts must rely on the prosecutor's good-faith evaluation of the impact of the suppression order on the case, without questioning the truthfulness of the certificate of impairment. The Court also held that the state could appeal an order barring blood alcohol results because the substantive effect of the order was to suppress evidence.

[People v. Flatt, 82 Ill.2d 250, 412 N.E.2d 509 \(1980\)](#) The defendant, who was charged with burglary, filed a motion for the State to produce a broken glass window that allegedly contained the defendant's fingerprints. The trial court granted the motion. After the jury was sworn, the State advised the court that the glass was unavailable. Defendant filed a motion in limine to suppress the State's fingerprint evidence, and the trial court ordered the fingerprint evidence suppressed. The trial was terminated while the State filed an interlocutory appeal.

The Court held that the State has the right to appeal for the purpose of reviewing whether the suppression motion was wrongfully considered during trial. "The right of such review, however, does not extend to rulings that do no more than exclude evidence during trial but must be limited to rulings which substantially impair the State's ability to prosecute the case. Here, the trial court erroneously entertained defendant's motion to suppress during trial; thus, although the trial court declared a mistrial after jeopardy had attached, "this action was triggered by the defendant, who may, therefore, be tried anew without violating the prescription against double jeopardy."

[People v. Phipps, 83 Ill.2d 87, 413 N.E.2d 1277 \(1980\)](#) Prior to defendant's trial for offenses occurring at the Lincoln Developmental Center, the trial court ordered the State to provide defendant with copies of all personnel files of State witnesses who were residents of the Center. The State objected on the ground that the files are confidential and privileged. The trial court ruled that the witnesses could invoke their privilege and prevent disclosure, but those who did would not be allowed to testify. The State could appeal this ruling because the substantive effect of the trial court's order "does prevent evidence from being admitted."

[People v. Scholin, 62 Ill.2d 372, 342 N.E.2d 388 \(1975\)](#) An order dismissing two counts of a theft information "with leave to the State to file amended information within five days did not have the substantive effect of dismissing the charges. Thus, the State's appeal was improper.

[People v. Dorsey, 129 Ill.App.3d 128, 472 N.E.2d 101 \(1st Dist. 1984\)](#) The trial court granted defendant's motion in limine to stop the State from mentioning the victim's "non-identification" of the perpetrator while looking at photos and a lineup (defendant's photo was not among those looked at, and he was not in the lineup). However, during opening statement the prosecutor mentioned the "non-identification." The defense objected, and the trial judge granted a mistrial. The Court held that the State waived its challenge to the in limine order. If the State felt that the order was erroneously entered, it should have sought appropriate relief at that time. Furthermore, the State could not appeal from the trial court's mistrial order, because that order related only to the admissibility of evidence based solely on evidentiary grounds and did not "suppress" evidence within the meaning of Rule 604(a)(1).

[People v. Holmes, 383 Ill.App.3d 506, 890 N.E.2d 1045 \(1st Dist. 2008\)](#) Under [People v. Taylor, 50 Ill.2d 136, 277 N.E.2d 878 \(1971\)](#), the State loses its right to appeal or seek reconsideration of a suppression order unless it files a notice of appeal or a motion for reconsideration within 30 days. The Taylor rule is subject to one exception. The trial court may reconsider a suppression ruling, despite the passage of 30 days, if the facts change materially after the suppression order is entered and the new evidence could not have been presented at the time of the earlier motion. The Court found that a "new" fact was raised by the fact that a police report suggested that the complainant had lied in her response to a motion for supplemental discovery filed after the suppression ruling was made. Because any misrepresentation occurred after the trial court ruled

on the motion to suppress, the resulting credibility issue was a material "new" fact that could not have been raised at the time of the original suppression hearing. Because the "facts" had changed materially, the trial court had authority to reconsider its suppression ruling. Similarly, the Appellate Court had jurisdiction to hear the State's appeal.

[People v. Marker, 382 Ill.App.3d 464, 888 N.E.2d 590 \(2d Dist. 2008\)](#) A motion to reconsider the suppression of evidence does not toll the time for the State to file a Notice of Appeal for an interlocutory appeal. The tolling provision of Supreme Court Rule 606(b) applies only to final judgments, and permitting the State to delay an interlocutory appeal would prolong the anxiety of facing criminal charges and possibly deprive the defendant of his right to be released from custody during a State appeal.

[People v. Baltimore, 381 Ill.App.3d 115, 885 N.E.2d 1096 \(2d Dist. 2008\)](#) The trial court's order did not prevent evidence from being presented to the jury, and merely excluded a videotape which could not be verified as an accurate reflection of an original surveillance tape. Even after the order was entered, the State had the option of either taking the jury to the scene of the burglary to view the surveillance tape on the equipment on which it had been recorded, or issuing a subpoena to have that equipment brought to court.

[People v. Wallace, 106 Ill.App.3d 567, 435 N.E.2d 960 \(5th Dist. 1982\)](#) The State was permitted to appeal from the trial court's granting of a pretrial motion in limine to exclude evidence of other crimes. "The reasoning and concerns of the Illinois Supreme Court in [People v. Young, 82 Ill.2d 234, 412 N.E.2d 501 \(1980\)](#) compel the conclusion that the court intended to permit the State to appeal from pretrial exclusion orders involving evidentiary questions, as well as statutory and constitutional considerations."

[People v. Davis, 117 Ill.App.3d 98, 452 N.E.2d 887 \(4th Dist. 1983\)](#) The State was permitted to appeal from the trial court's granting of a pretrial motion in limine to prohibit use of a prior conviction as impeachment.

[People v. Moore, 385 Ill.App.3d 1019, 897 N.E.2d 369 \(3d Dist. 2008\)](#) 725 ILCS 5/114-11(g) provides that if a motion to suppress is made during trial, is determined by the trial court to be timely, and results in suppression of a confession, the trial court "shall terminate the trial . . . without further proceedings, unless the State files a written notice that there will be no interlocutory appeal . . . Such termination of trial shall be proper and shall not bar subsequent prosecution of the identical charges and defendants." Reversible error occurred where the trial court failed to terminate the trial to allow the State to file an interlocutory appeal of a suppression order. Thus, the State was free to bring the defendant to trial again after the Appellate Court affirmed the suppression order.

[People v. Kite, 97 Ill.App.3d 817, 423 N.E.2d 524 \(5th Dist. 1981\)](#) The State was permitted to appeal from the trial court's pretrial ruling prohibiting the State from introducing a transcript of a missing witness's preliminary hearing testimony.

[People v. Stuckey, 78 Ill.App.3d 1085, 398 N.E.2d 97 \(1st Dist. 1979\)](#) State was properly allowed to appeal from a pre-trial order suppressing identification testimony.

[People v. Johnson, 113 Ill.App.3d 367, 447 N.E.2d 502 \(2d Dist. 1983\)](#) The defendant moved to exclude the testimony of a certain State witness who would testify that on the night of the offense, the defendant was not in the witness's liquor store. The State intended to present this testimony after a police officer testified that defendant had said he was at the liquor store and not at the scene of the offense. The trial judge ruled that the witness would only be allowed to testify in rebuttal if the defendant took the stand. The State appealed. The Appellate Court held that the State could not appeal because the trial judge's ruling was "based wholly on evidentiary grounds, specifically the relevance of the testimony in the State's case in chief."

[People v. Montgomery](#), 84 Ill.App.3d 695, 405 N.E.2d 1275 (1st Dist. 1980) At defendant's trial for rape the State, in an effort to show a common design and modus operandi, sought to introduce the defendant's palm print, which had been found at the scene of another rape. The trial court refused to allow the State to introduce the palm print, holding that its prejudicial effect outweighed its probative value. The State appealed, contending that the trial court's ruling was one "suppressing" evidence. The Court held that the State could not appeal the trial court's ruling. The "evidence was not 'suppressed' as that term was intended by Supreme Court Rule 604(a)(1), rather its exclusion was based upon evidentiary grounds."

[People v. Benda](#), 124 Ill.App.3d 950, 464 N.E.2d 1268 (2d Dist. 1984) Trial court's ruling excluding evidence offered under the co-conspirator exception was based wholly on evidentiary grounds (lack of foundation) and could not be appealed by the State.

[People v. Bradley](#), 129 Ill.App.3d 177, 472 N.E.2d 480 (1st Dist. 1984) The State could not appeal a midtrial ruling excluding testimony about a chemical test on defendant's blood; the basis for exclusion was that the person who performed the test was not licensed pursuant to statute.

[People v. Bean](#), 135 Ill.App.3d 336, 481 N.E.2d 888 (5th Dist. 1985) Granting of pretrial motion in limine to bar evidence of another crime was an "exclusion of evidence" rather than a suppression, "since the motion attacked the relevance of the evidence." Therefore, the State could not appeal.

Cumulative Digest Case Summaries §2-4(b)

[In re B.C.P.](#), 2013 IL 113908 (No. 113908, 6/20/13)

Supreme Court Rule 660(a), governing appeals in delinquent minor cases, incorporates the criminal appeals rules, but only as to final judgments. Supreme Court Rule 662 allows for certain interlocutory appeals in juvenile cases, but an order granting a motion to suppress is not one of them. Therefore, the provision of Supreme Court Rule 604(a)(1) allowing the State to appeal from an order granting a motion to suppress does not apply to juvenile cases under existing appellate rules.

Exercising its rulemaking authority, the Illinois Supreme Court held that Rule 660(a) should be modified to allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. Since the adoption of Rule 660(a), the General Assembly has radically altered the Juvenile Court Act to make the juvenile adjudicatory process more criminal in nature. As a consequence, juveniles receive many of the same protections that criminal defendants receive. In light of this shift, the State has the same interests in appealing a suppression order in a juvenile case that it does in a criminal case: obtaining correction of errors that would otherwise be precluded by the double jeopardy clause; avoiding unfairness in allowing errors favoring the State to be corrected while not allowing correction of errors favoring the defense, resulting in distortion of the development of the law; and eliminating frustration of the primary purpose of a trial – to ascertain the truth of the charges.

Given the compelling case for the need for interlocutory review of suppression orders in juvenile cases, the Supreme Court saw no need to defer the matter to the rules committee. Extending the expedited appeal process provided by Supreme Court Rule 660A to State appeals from suppression orders adequately addressed any concern that delays caused by appeals could interfere with the rehabilitation of the minors.

(Respondent was represented by Assistant Defender Gabrielle Green, Ottawa.)

[In re K.E.F.](#), 235 Ill.2d 530, ___ N.E.2d ___ (2009) (No. 107402, 12/17/09)

1. Supreme Court Rule 604(a)(1) provides that in criminal cases, the State may appeal from an order

which has the effect of “suppressing evidence,” if the State certifies that the suppression substantially impairs the State’s ability to prosecute the case. Under [People v. Drum, 194 Ill.2d 485, 743 N.E.2d 44 \(2000\)](#), evidence is “suppressed” within the meaning of Rule 604(a)(1) if the order prevents information from being presented to the trier of fact. Where the trial court’s ruling leaves open another method for admission of the evidence in question, but the State declines to avail itself of that option, evidence has not been “suppressed.”

2. Where the trial court held that statements by an alleged victim of child sexual abuse were reliable and could be admitted under [725 ILCS 5/115-10](#) if the other provisions of §115-10 were satisfied, a DVD of the statement was not “suppressed” when the court deemed that the complainant had failed to “testify” as required by §115-10. When the State called the minor as a witness, it made no attempt to question her about the events underlying the charges or the content of her statement. Instead, the prosecution limited its direct examination to the circumstances surrounding the videotaped statement, asking whether the minor had spoken to the investigator who took the statement and whether her answers had been truthful.

The court concluded that the DVD was not “suppressed” because the State could have gained admission of the evidence by merely asking the complainant questions concerning the alleged offense, so that she would have “testified” in accordance with §115-10:

[T]he State chose – for reasons that quite frankly defy comprehension – to attempt to gain admission of a prior statement that the trial court had already ruled reliable and admissible . . . by calling the alleged victim to the stand and asking her only whether she had previously answered [the investigator’s] questions truthfully. . . . The trial court indicated it would admit the statement under various scenarios, so long as the prosecutor questioned [the minor] about the pertinent events, irrespective of her answers, but the prosecutor was steadfast in his refusal and his desire to pursue an interlocutory appeal.

We question the wisdom of that course of action, but we have no doubt that . . . admissibility of the evidence in question was a matter entirely within the State’s control. . . . [T]he sole impact of the circuit court’s order is on the *means* by which the information is to be presented. That is not suppression of evidence.

3. In dissent, Justices Burke and Freeman found that the majority should have first determined the issue on which leave to appeal had been granted – whether Rule 604(a)(1) applies in juvenile delinquency proceedings, instead of focusing on the secondary question of whether the order “suppressed” evidence. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[People v. Crossley, 2011 IL App \(1st\) 091893 \(No. 1-09-1893, 12/7/11\)](#)

Supreme Court Rule 604(a) allows the State to appeal from an order suppressing evidence in a criminal case. An order suppresses evidence within the meaning of the rule when it prevents the information from being presented to the trier of fact. An order that only affects the means by which the State may present information does not suppress evidence.

The State appealed from an order denying its petition to certify as a material witness the keeper of records at a hospital where defendant’s blood was drawn after an accident. The State sought the records as a necessary step to prove that a trained phlebotomist drew the blood under the supervision of a licensed physician, and that the state trooper took the correct sample into custody for transportation to the state crime lab.

The denial of the State’s petition did not affect the State’s ability to call the phlebotomist and the trooper as witnesses, who were the only witnesses that the defense contended the State needed to call to meet the foundation requirements for admitting the blood-alcohol test results. Because the order appealed from did not prevent the State from presenting evidence, the order did not suppress evidence.

The court dismissed the appeal on the ground that it lacked jurisdiction to hear the appeal.

[People v. Mendiola, 2014 IL App \(4th\) 130542 \(No. 4-13-0542, 3/4/14\)](#)

1. In criminal cases, the State may appeal from an order or judgment which has the substantive effect of dismissing a charge, arresting judgment, quashing an arrest or search warrant, or suppressing or excluding evidence. (Sup. Ct. Rule 604(a)(1)). Generally, the notice of appeal is due within 30 days after entry of judgment. (Sup. Ct. Rule 606(b)).

2. Before defendant's trial on four counts of aggravated criminal sexual abuse and one count of predatory criminal sexual assault of a child, the State filed a motion *in limine* to admit the recording of a telephone call between defendant and the mother of the complainants. After the motion was denied, the cause proceeded to a jury trial. The trial resulted in acquittals on the four counts of aggravated criminal sexual abuse and a hung jury on the single count of predatory criminal sexual assault of a child. A mistrial was declared on that count.

Before the retrial on the remaining count, the State again filed the motion *in limine* seeking to introduce the recording. The trial court again denied the motion, and the State filed a notice of appeal.

The Appellate Court concluded that it lacked jurisdiction to consider the appeal because the State did not appeal before the first trial. The court found that under **People v. Nelson**, 377 Ill.App.3d 1031, 880 N.E.2d 1096 (1st Dist. 2007), the State waived its right to appeal the trial court's denial of the motion when it elected to proceed with the first trial rather than appeal the pretrial ruling. "The State forfeited its right to appeal based on the supposed substantial impairment of its case when it decided to prosecute defendant."

3. The court rejected the argument that the trial court's ruling occurred after the first trial had started, at which time the State could have appealed only rulings on motions to suppress illegally seized evidence. (725 ILCS 5/114-12(c)). Because the trial court denied the motion *in limine* after *voir dire* had started but before any jurors had been sworn, jeopardy had not attached. Thus, the denial constituted a pretrial ruling.

The appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

[People v. Phillips, 2011 IL App \(2d\) 101142 \(No. 2-10-1142, 12/29/11\)](#)

[Illinois Supreme Court Rule 604\(d\)](#) permits the State to appeal from an order or judgment the substantive effect of which results in suppressing evidence. While pretrial orders suppressing evidence have a preclusive effect and are generally appealable, different rules apply for mid-trial orders resulting in the suppression of evidence, because such orders have a disruptive effect on ongoing trials and burden the defendant.

The State may obtain review of a mid-trial suppression order where the order granted a defense motion to suppress evidence on the ground that it was illegally obtained. If the defense motion to suppress did not allege that the evidence was illegally obtained, the State can only seek review of the trial court's authority to entertain the motion to suppress during the trial and not of the merits of the trial court's ruling.

The circuit court granted defendant's mid-trial motion to strike the results of defendant's breath test on a ground other than that the evidence was illegally obtained. The circuit court properly considered the motion to strike mid-trial because the State did not turn over to the defense the affidavits on which defendant based his motion until after the bench trial had commenced. Defendant could not have objected to the results until trial, and the court ruled promptly when defendant made his objection.

Having decided that the circuit court properly entertained the motion to strike during trial, the Appellate Court dismissed the State's appeal from the merits of the court's ruling.

[People v. Sedlacek, 2013 IL App \(5th\) 120106 \(No. 5-12-0106, 3/28/13\)](#)

Supreme Court Rule 604(a)(1) allows the State to obtain review of an order or judgment the substantive effect of which results in suppressing evidence. For purposes of Rule 604(a)(1), there is no substantive distinction between evidence that is excluded and evidence that is suppressed. The pertinent question in determining whether jurisdiction exists under Rule 604(a)(1) is whether the order, in fact, is one

that suppresses or excludes evidence.

The State was entitled to appeal from an order directing that the State's expert record his examination of the defendant on the issue of insanity. The State's expert had indicated that he would not conduct the examination if it was required to be recorded. Therefore the substantive effect of the order was to prevent the State from obtaining information that it was otherwise entitled to use. When an order prevents information from being presented to the trier of fact, evidence is suppressed, and the State may appeal from that order.

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§2-5

Record on Appeal

§2-5(a)

For Indigents

[Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed.2d 891 \(1956\)](#) State must provide free transcript to indigent defendants on appeal, or provide other means of affording adequate and effective appellate review to indigents. See also Supreme Court Rules 607 and 608.

[Mayer v. Chicago, 404 U.S. 189, 92 S.Ct. 410, 30 L.Ed.2d 372 \(1971\)](#) Indigent defendants in nonfelony cases who are not subject to imprisonment have the right to a record of sufficient completeness to permit proper consideration of claims on appeal. The Court discussed the meaning of a "record of sufficient completeness."

[Draper v. Washington, 372 U.S. 487, 33 S.Ct. 774, 9 L.Ed.2d 899 \(1963\)](#) State may not condition a free transcript on the trial judge's finding that issues on appeal are not frivolous.

[People v. Pankoff, 70 Ill.2d 69, 374 N.E.2d 182 \(1978\)](#) The Court held that a defendant does not forfeit his right to a free transcript simply because he is at liberty on bail. [People v. Bond, 178 Ill.App.3d 1020, 534 N.E.2d 156 \(4th Dist. 1989\)](#) The cost of a transcript can not be taken from the indigent defendant's bond. Under Rule 607(b), the defendant, if indigent is entitled to a free transcript for appeal.

[People v. Majka, 365 Ill.App.3d 362, 849 N.E.2d 428 \(2d Dist. 2006\)](#) Supreme Court Rule 323(c) provides that where no verbatim transcript is available, a party can prepare a proposed report of proceedings from the best available resources, including recollection. The party preparing the bystander's report must serve it on the other parties, who may propose amendments. The trial court then reviews the submissions and certifies the report to the extent it is accurate. Although doubts arising from an incomplete record are normally resolved against the appellant, such a rule cannot be applied where a full transcript is unavailable and a bystander's report is submitted.

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§2-5(b)

Sufficient Record

[People v. Edwards, 74 Ill.2d 1, 383 N.E.2d 944 \(1978\)](#) The appellant has the burden to present a sufficiently complete record to support the claim of error. Where the record is insufficient or does not demonstrate the alleged error, the reviewing court must affirm. See also, [Foutch v. O'Bryant, 99 Ill.2d 389,](#)

[459 N.E.2d 958 \(1984\)](#) ("doubts which arise from the incompleteness of the record will be resolved against the appellant").

[People v. Stewart, 179 Ill.2d 556, 689 N.E.2d 1129 \(1997\)](#) The responsibility for presenting a sufficient record of asserted errors falls upon the party who makes the assertion of error. If the record on appeal is incomplete, a court of review will indulge in every reasonable presumption favorable to the judgment, including the presumption that the trial court ruled correctly.

[People v. Kline, 92 Ill.2d 490, 442 N.E.2d 154 \(1982\)](#) Defendant failed to produce a record on which his claim of improperly disparate sentences could be considered. See also, [People v. Centanni, 164 Ill.App.3d 480, 517 N.E.2d 1207 \(2d Dist. 1988\)](#).

[People v. Smith, 42 Ill.2d 479, 248 N.E.2d 68 \(1969\)](#) Defendant argued that reversal was required because the closing arguments at trial were not taken down by the court reporter, precluding him from showing their prejudicial nature. The Court affirmed, noting that defense counsel did not ask that the arguments be taken down and that the Supreme Court Rules authorize reconstruction of trial proceedings.

[People v. Mays, 91 Ill.2d 251, 437 N.E.2d 633 \(1982\)](#) At trial, the parties agreed to waive the presence of a court reporter and have the closing arguments recorded on a tape recorder which malfunctioned leaving no verbatim transcript of the arguments. A bystander's report was not certified because the trial judge had no recollection of the arguments. The lack of a transcript or bystander's report did not violate defendant's right to appellate review. The Court found that the bystander's report proposed by defendant did not show that any error had occurred, and that claims in the post-trial motion that pertained to the closing argument were not meritorious.

[People v. Stark, 33 Ill.2d 616, 213 N.E.2d 503 \(1966\)](#) Where testimony at a suppression hearing was essential for adequate review of the admissibility of a confession, and the transcript of the hearing was not available because the court reporter had lost her notes, the cause was remanded for a new suppression hearing.

[People v. Appelgren, 377 Ill.App.3d 137, 879 N.E.2d 843 \(2d Dist. 2007\)](#) When a court exhibit is missing from the record, the Court must determine who is at fault for the absence of a complete record and whether the ability to adequately review the issues has been compromised. If a defendant shows that he is not at fault and that the court's ability to adequately review the issues has been impaired, the State has the burden to show that an alternative to the missing exhibit will provide an effective appeal. Defendant was convicted of harassment by telephone. At trial, the State played and introduced an audiotape of three telephone messages left by the defendant on his son's answering machine. The recording could not be located for the appeal. Harassment by telephone occurs when a defendant makes a telephone call with the intent to abuse, threaten, or harass a person. The State sought to prove defendant's intent by playing the tape for the jury, and the prosecutor stressed during closing argument that the intent requirement was proven by the nature of the messages and the tone of the defendant's voice. Other than playing the tape in open court, there was no evidence of the content of the conversations. Defendant admitted that he left messages on the son's answering machine, but disputed the State's claims as to his intent. Under these circumstances, the tape was crucial to the State's case. Thus, the State had the burden to demonstrate that there was an adequate substitute. The State failed to carry its burden. Although Supreme Court Rule 321(c) provides for a bystander's report in the absence of a verbatim transcript and Rule 323(d) provides for an agreed statement of facts, the State cited no authority that either rule applies to physical evidence. It was also unlikely that the parties would agree on the contents of the missing tape, since the defendant disputed the question of intent at trial and expressed a belief that the recording had been altered.

[People v. Reed, 376 Ill.App.3d 121, 875 N.E.2d 167 \(3d Dist. 2007\)](#) Supreme Court Rule 608(a)(9) provides that in non-death cases, a court reporter shall take notes of the jury selection. However, those notes need not be transcribed unless a party designates jury selection proceedings to be included in the record on appeal. In [People v. Houston, 226 Ill.2d 135, 874 N.E.2d 23 \(2007\)](#), the Illinois Supreme Court found that defense counsel improperly waived a court reporter for voir dire, and remanded the cause with directions to reconstruct the voir dire record so the reviewing court could consider the defendant's claim of error in jury selection.

[People v. Spracklen, 335 Ill.App.3d 768, 781 N.E.2d 1184 \(3d Dist. 2002\)](#) Ordinarily, it is the duty of the appellant to provide a sufficient record by which issues can be reviewed. The absence of such a record usually requires that the trial court's actions be affirmed. Where the defendant supplied the transcript of the hearing on his motion to withdraw his jury waiver, however, and asserted that no hearing had occurred on the date the jury waiver was signed, "[i]t would be a logical absurdity for us to require the defendant to produce a record of a proceeding that he claims never took place." The Court elected to decide whether defendant should have been allowed to withdraw his jury waiver, despite the absence of a transcript concerning that waiver.

[In re R.A.B., 315 Ill.App.3d 620, 734 N.E.2d 179 \(2d Dist. 2000\)](#) The Court reached the issue of the adequacy of a jury waiver although transcripts for some hearings were not included in the record. After noting that the State did not contest the sufficiency of the record, the court stated that if the prosecution believes that a jury waiver was made on an occasion other than suggested by the record, it has the duty to supplement the record with the transcript in question.

[People v. Leon, 306 Ill.App.3d 707, 713 N.E.2d 1258 \(2d Dist. 1999\)](#) Where the State is the appellant, it has the duty to provide a complete record. See also, [People v. Boyer, 305 Ill.App.3d 374, 713 N.E.2d 655 \(3d Dist. 1999\)](#) (rejecting the State's argument that the trial court failed to look at the docket sheet where the record did not support the claim that the sheet was placed before the judge).

[People v. Ross, 303 Ill.App.3d 966, 709 N.E.2d 621 \(1st Dist. 1999\)](#) Reversible error occurred where, in the absence of defense counsel, the trial court interrupted deliberations to ask the jury whether it could reach a verdict that night. The Court accepted defendant's representation that a verdict was returned 16 minutes after the improper communication, despite the absence of any direct evidence on this point. Although arguments depending on facts not contained in the record are usually resolved against the appellant, the State not only failed to dispute defendant's representation but "affirmatively used that representation" to argue that no error occurred. Because the State's action was "virtually equivalent to a stipulation," the Court considered the matter "notwithstanding that it is de hors the record."

[People v. Ramos, 295 Ill.App.3d 522, 692 N.E.2d 781 \(1st Dist. 1998\)](#) Normally, it is the defendant's burden to provide a sufficient record to resolve the claims raised on appeal. Where, through no fault of her own, defendant was unable to obtain either a transcript or a bystander's report, and one of the issues (that the evidence was insufficient to prove guilt beyond a reasonable doubt) required a verbatim transcript, a new trial was required. Because the inability to obtain the record was due to defense counsel's failure to comply with the trial court's explicit instructions to file a notice of appeal, and counsel's failure deprived the appellate court of a transcript or bystander's report on which to decide the case, denying a new trial "would in effect deny defendant her constitutional right to a direct appeal."

[People v. Henderson, 2013 IL 114040 \(No. 114040, 5/23/13\)](#)

The court rejected the State's argument that the record was insufficient to determine whether a vehicle stop was improper, and that defendant should raise the issue in post-conviction proceedings so he could develop a more complete record. The court noted that in the Appellate Court the State conceded that the trial record was sufficient to reach the issue, and that it claimed the record was insufficient only after it lost the issue in the lower court. "[T]he State cannot assert a new theory inconsistent with the position it adopted in the appellate court."

In addition, during oral argument the State conceded that had defendant first challenged the legality of the traffic stop in a post-conviction petition, it would have sought dismissal of the petition on the ground that the issue should have been raised on direct appeal.

(Defendant was represented by Assistant Defender Brian Koch, Chicago.)

[People v. Patterson, 2014 IL 115102 \(No. 115102, 10/17/14\)](#)

To preserve an appellate claim concerning the denial of a request to admit evidence, a party is required to make a detailed and specific offer of proof if the record would otherwise be unclear.

In defendant's trial for aggravated criminal sexual assault, complainant testified that defendant forced her to have vaginal intercourse, while defendant claimed that there had been no intercourse. The treating physician, a State's witness, testified that complainant had some cervical redness consistent with sexual intercourse.

Defendant attempted to introduce evidence that sperm (which did not belong to defendant) was found in complainant's vagina to show that she had engaged in sexual intercourse with someone other than defendant in the days prior to the assault. Defendant argued that although such evidence would normally be barred by the rape shield statute, he had a constitutional right to introduce such evidence to refute the inference that complainant had recent sexual intercourse with defendant by presenting evidence that she had intercourse with someone else within 72 hours, which was about the amount of time, defense counsel asserted, that sperm lasts in the vagina.

The court held that defendant failed to provide an adequate offer of proof to create an appealable issue. The sole support for the proffered evidence was counsel's speculation that complainant's cervical inflammation occurred three days before the alleged assault because sperm could persist for 72 hours. Counsel offered no medical testimony to support his bare assertion about the longevity of sperm or about the general persistence of cervical inflammation.

The court rejected defendant's reliance on medical sources cited in the State's appellate brief indicating cervical inflammation can last three days. It was trial counsel's burden to provide a sufficiently detailed offer of proof at trial, not months or years later on appeal. When evaluating an evidentiary ruling for abuse of discretion, the reviewing court must evaluate that discretion in light of evidence actually before the trial judge.

Since defendant did not provide a sufficient offer of proof, his claim was not subject to appellate review.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

[People v. Dodds, 2014 IL App \(1st\) 122268 \(No. 1-12-2268, 2/27/14\)](#)

In an appeal from the denial of a §2-1401 challenge to a 10-year-old guilty plea, the court noted that the parties had been unable to locate the common law record from the original proceedings. The court elected to proceed solely on the limited record before it but limited its consideration to facts which were undisputed by the parties.

[People v. Henderson, 2011 IL App \(1st\) 090923 \(No. 1-09-0923, 11/17/11\)](#)

1. Courts generally will not review moot issues. The purpose of this rule is to avoid consideration

of cases where the parties no longer have a personal stake in the case's outcome. A case can become moot due to a change in circumstances while an appeal is pending.

There are three exceptions to the mootness doctrine: (1) the public-interest exception; (2) the capable-of-repetition-yet-evading-review exception; and the collateral-consequences exception. The public-interest exception permits a court to consider an otherwise moot issue when: (1) the question presented is of a public nature; (2) an authoritative determination is necessary for future guidance of public officers; and (3) a likelihood exists that the question will recur.

The defendant's appeal from the dismissal of his post-conviction petition became moot due to defendant's completion of service of his sentence, including his MSR term. The question of whether the trial court can summarily dismiss a *pro se* post-conviction petition due to an unnotarized verification affidavit nonetheless could be reached under the public-interest exception.

The question of whether the trial court can summarily dismiss a petition due to an unnotarized verification affidavit is a question of a public nature that affects a large number of criminal defendants who file petitions every year. An authoritative determination is necessary for the future guidance of trial court judges, who are public officers. A likelihood exists that the issue will arise in the future in light of the sheer volume of petitions being filed and "the fact that this is at least the second case this year in which the State has argued that this is an appropriate basis for first-stage dismissal."

2. A void judgment may be attacked directly or collaterally in any court at any time. Although a reviewing court is not vested with authority to consider the merits of a case merely because the dispute involves an order that is or is alleged to be void, the lack of standing to file a post-conviction petition is not a jurisdictional defect that deprives the court of the authority to consider the merits of an argument that a judgment is void.

3. Generally, it is appellant's burden to properly complete the record on appeal. Any doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court. This rule is relaxed where the defendant can prove that the record is incomplete due to no fault of his own, as well as demonstrate that there is a colorable need for the missing portion of the record in order to have appellate review. If defendant can establish both prongs, the State then must show that there are other means to afford adequate review.

The indictment was not included in the record on appeal and both parties' efforts to locate a copy of the indictment were unsuccessful. The indictment was relevant to defendant's argument that his criminal conviction was void as it did not allege an offense that was subject to transfer from juvenile to criminal court. However, the court concluded that defendant had not established a colorable need for the indictment as his claim that he was not charged with a transferable offense was based on speculation.

Defendant conceded that he did not know the exact language used in the indictment. He conceded that he may have committed a transferable offense. "Thus it appears from defendant's argument that it is equally probable that an error did or did not occur but he asks us to assume the former." Defendant's decision to waive reading of the indictment, and not to challenge his transfer to criminal court, even after it was questioned why defendant was before the criminal court, suggests that counsel's review of the indictment revealed no defects. "We will not equate defendant's fishing expedition with a colorable need for the indictment."

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

[People v. Hernandez, 409 Ill.App.3d 294, 949 N.E.2d 1139 \(2d Dist. 2011\)](#)

Generally, a reviewing court must resolve any doubt arising from the incompleteness of the record against the appellant. Both an agreed statement of facts and a bystander's report require the participation of both parties and therefore both parties bear responsibility for the report's accuracy. Accordingly, a court will presume that an agreed statement of facts or a bystander's report is materially complete on the points it addresses. If an appellee concludes that material facts are absent, it has the ability and responsibility to see that they are added.

Where there were no transcripts of the proceedings and the parties filed an agreed statement of facts that was insufficient with respect to a jury waiver, the court presumed that it had a proper record of any facts material to the issue of waiver of jury, rejecting the State's request that it presume that the defendant had validly waived his right to a jury trial.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

[People v. Hill, 2014 IL App \(3d\) 120472 \(Nos. 3-12-0472 & 3-12-0473, 3/13/14\)](#)

1. Defendant argued that the trial court improperly required him to pay a \$200 DNA analysis fee. The Appellate Court observed that defendant did not preserve the error in the trial court. Typically defendants avoid the consequences of forfeiture by arguing that the sentence is void, but defendant did not argue voidness in this case. Nonetheless, in the interest of maintaining a uniform body of law, the Court *sua sponte* considered whether the imposition of the DNA fee was void.

2. In arguing that the DNA fee was improperly imposed, defendant relied on an information sheet provided by the ISP Division of Forensic Services showing that defendant submitted a blood sample for analysis on July 11, 1995. The Court held that although this document was not presented to the trial court, it would take judicial notice of it as a public record. The Court therefore recognized that defendant submitted a DNA sample in 1995.

3. The Court refused to consider information from the website "judici.com," in deciding whether defendant was improperly assessed two DNA fees. Instead, the Court relied exclusively on the clerk's "payment status information," included in the common law record. The Court noted that printouts from "judici.com," were appended to the brief, but were not part of the record on appeal. The Court cautioned the parties against attempting to supplement the record with information from the internet without first obtaining leave of the Court.

(Defendant was represented by Assistant Defender Gabrielle Green, Chicago.)

[People v. Jackson, 2016 IL App \(1st\) 143025 \(No. 1-14-3025, 9/30/16\)](#)

In deciding whether a defendant has established cause and prejudice for filing a successive post-conviction petition, the Illinois Supreme Court has held that leave to file a successive petition should be denied when it is clear from a review of the successive petition and documentation submitted by the defendant that the claims fail as a matter of law. [People v. Smith, 2014 IL 115946](#). **Smith** left open the question of whether a court could consider the underlying record.

The Appellate Court held that until the Supreme Court resolves this issue, it would rely primarily on the petition and its supporting documentation, and would take judicial notice of its prior opinions and orders, in deciding whether a defendant has established cause and prejudice.

(Defendant was represented by Assistant Defenders Sharon Nissim, Chicago, and Yasemin Eken, Elgin.)

[People v. Jimerson, 404 Ill.App.3d 621, 936 N.E.2d 749 \(1st Dist. 2010\)](#)

Comparing the record on appeal of a co-defendant with defendant's record, the court inferred that all of the written instructions submitted to the jury were not contained in the record on appeal. Therefore, the court refused to conclude that the jury was given no written self-defense instructions merely because no such instructions were contained in the record on appeal.

The court orally instructed the jury on self-defense, but no written self-defense instructions appeared in the record on appeal. The defense argued that this inconsistency in the oral and written instructions confused the jury. The court noted that it appeared that neither the defendant's record nor the co-defendant's record contained a complete set of the written instructions. The co-defendant's record contained the written self-defense instruction, but did not contain a different instruction that was contained in defendant's record. This supported the inference that the jury left some of the instructions in the jury room when it returned its verdict.

(Defendant was represented by Assistant Defender Jessica Hunter, Chicago.)

[People v. Liekis, 2010 IL App \(2d\) 100774 \(No. 2-10-0774, 7/31/12\)](#)

1. Defendant's filing of a motion to modify the conditions of conditional discharge did not revest jurisdiction in the trial court. The motion had no effect on defendant's previously-filed timely notice of appeal from his conviction. A motion to modify the conditions of conditional discharge is not a motion to reconsider the sentence. The trial court retains jurisdiction to modify the conditions of conditional discharge. 730 ILCS 5/5-6-4(f).

2. The doctrine of invited error or acquiescence is a form of procedural default or estoppel. It provides that a party may not request the court to proceed in one manner and then argue on appeal that the requested action was error. The rationale of the doctrine is that it would be unfair to grant relief to a party based on error that the party introduced into the proceedings.

The State was not barred by the doctrine of invited error from arguing on appeal that the defense had not met its burden at the hearing on a motion to suppress. The defense and not the State argued that the defense had met its burden and that the burden shifted to the State. The State disagreed that the burden had shifted, and merely acquiesced to the court's judgment as to whether the defense had met its burden.

3. The appellant bears the burden of preserving and presenting an adequate record of the asserted error. Any doubts arising from the inadequacy of the record must be resolved against the appellant.

Where defendant claims that she did not waive the right to trial by jury in open court, she must present a record that sufficiently covers all proceedings that could have involved the waiver. Without an adequate record, the reviewing court must assume that the record indications of a jury waiver are indeed based on a valid waiver.

Defendant presented an incomplete record on the issue of jury waiver. The half sheet indicated that on the day that a stipulated bench trial was conducted, "jury trial [was] waived." The agreed statement of facts indicated that defense counsel moved for a stipulated bench trial and that a stipulated bench trial was conducted immediately following the court's denial of defendant's motion to reconsider. No report of proceedings for that date was included in the record. In the absence of a report of proceedings or acceptable substitute, the court assumed that the record indications of a jury waiver were based on a valid waiver.

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[People v. Pelo, 404 Ill.App.3d 839, 942 N.E.2d 463 \(4th Dist. 2010\)](#)

The Appellate Court declined to address the issue of whether defense counsel was ineffective for failing to offer a limiting instruction, finding that it was better pursued on post-conviction rather than direct appeal because the record was silent regarding counsel's strategy in failing to offer the instruction.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

[People v. Reed, 2013 IL App \(1st\) 113465 \(No. 1-11-3465, 12/31/13\)](#)

The record was insufficient to allow the Appellate Court to review the trial court's reasons for denying a motion for disclosure of the secret surveillance location of an officer who testified that he observed a drug offense. When the motion for disclosure was filed, the trial court held an *in camera* interview of the officer. That proceeding was not transcribed, however, and defendant failed to ask the trial court to clarify its reasoning or state its findings with greater specificity.

Although surveillance location cases often involve *in camera* proceedings and incomplete records, it is the burden of the appellant to provide the reviewing court with a record that is adequate to support any claims of error. In the absence of an adequate record, all doubts are resolved against the appellant. In such cases, the trial court's ruling is presumed to have a sufficient legal and factual basis.

(Defendant was represented by Assistant Defender Caroline Bourland, Chicago.)

[People v. Shines, 2014 IL App \(1st\) 121070 \(No. 1-12-1070, 2/4/15\)](#)

More than 30 days after he had been sentenced, defendant filed a *pro se* letter titled “motion of appeal” in the trial court alleging that counsel had been ineffective. The trial court took no action on the letter. The Illinois Supreme Court eventually granted defendant’s motion for supervisory order directing the Appellate Court to allow defendant’s letter “to stand as a validly filed notice of appeal.”

Defendant argued on appeal that the trial court failed to conduct a **Krankel** hearing on defendant’s *pro se* claims of ineffectiveness. The Appellate Court held that since defendant’s letter was filed more than 30 days after the final judgment, the trial court no longer had jurisdiction to rule on defendant’s claims. The trial court entered the final judgment on March 7 when it sentenced defendant and lost jurisdiction on April 6. Defendant filed his letter on April 9, more than 30 days after the final judgment had been entered.

Defendant argued that his letter was timely filed under the mailbox rule, which holds that pleadings are timely filed on the day an incarcerated defendant places them in the prison mail system. In support of his argument, defendant asked the Appellate Court to take judicial notice of an affidavit from a paralegal who averred that a manager at the prison where defendant was incarcerated informed her that defendant’s letter was mailed on April 3. Defendant attached the affidavit, which had originally been submitted with his motion for supervisory order, as an exhibit to his reply brief.

The court refused to take judicial notice of the affidavit. It held that it could not properly consider attachments to briefs that were not included in the record. Additionally, the content of the affidavit was entirely hearsay and thus insufficient to establish the date of mailing.

(Defendant was represented by Assistant Defender Jonathan Yeasting, Chicago.)

[People v. Sims, 403 Ill.App.3d 9, 931 N.E.2d 1220 \(1st Dist. 2010\)](#)

The Appellate Court dismissed defendant’s direct appeal of his conviction in March 1993 due to the failure of his counsel to file the record on appeal. In September 1993, defendant’s attorney signed for and received the common law record. Defendant learned in November 1994 that his appeal had been dismissed. In 1996, defendant filed a *pro se* motion to reinstate his appeal in the Appellate Court and a *pro se* motion to file a late notice of appeal in the Supreme Court. Both motions were denied. In 2006, defendant filed a *pro se* post-conviction petition, which ultimately led to his being permitted to file a late notice of appeal in 2009. At that point, the common law record and jury selection proceedings could not be located or reconstructed.

1. As a general rule, a defendant is obligated to provide a complete record for review of his appellate claims. This rule is relaxed where defendant is not at fault for the incompleteness and the missing record is material to meaningful review of his contentions on appeal. Defendant contended he was denied his right to meaningful appellate review where through no fault of his own the record on appeal was incomplete. The Appellate Court acknowledged that the incompleteness of the record was not the fault of the defendant and that the missing records could not be reconstructed. It denied any relief to defendant because he had not established that the missing records were material to meaningful review of his appeal. Defendant could not identify any specific error that occurred in the missing records. It was not enough that as a result of the missing record it could not be determined whether or not an error occurred.

2. Delay of an appeal can violate due process. To determine whether delay violates due process, courts utilize the four-part test of [Barker v. Wingo, 407 U.S. 514 \(1972\)](#), designed to address violations of defendant’s Sixth Amendment right to a speedy trial. Those factors are: (1) length of the delay; (2) reason for the delay; (3) defendant’s responsibility to assert his right; and (4) the resulting prejudice to defendant. Applying these factors, the court found no violation of defendant’s right to due process. The court acknowledged that the 17-year delay did merit further inquiry and the initial delay of the appeal was due to ineffective assistance of counsel. But the court also found that defendant was responsible for the delay from 1994 when defendant learned the appeal was dismissed, until 1996, when he filed *pro se* motions. The record was silent as to any action taken by defendant from 1996 until 1999, and from 2000 until 2006, during which times he took no action. Moreover, defendant suffered no prejudice. The loss of records did not interfere with meaningful appellate review of his conviction, and defendant endured no unlawful incarceration, as the court concluded no error occurred at his trial.

(Defendant was represented by Assistant Defender Carolyn Klarquist, Chicago.)

[People v. Viramontes, 2017 IL App \(1st\) 142085 \(No. 1-14-2085, 1/9/17\)](#)

[Illinois Supreme Court Rule 415\(f\)](#) provides a procedure for making documents reviewed *in camera* part of the appellate record. The rule states that a record shall be made of all *in camera* proceedings, and the entire record of such proceedings shall be sealed, impounded, and preserved in the record, to be made available to the Appellate Court if the case is appealed.

Prior to trial, defendant made a motion to produce all of the mental health records of a State's witness. Following an *in camera* review of the records, the trial court admitted some records and excluded others. On appeal, defendant argued that he was entitled to all of the records in order to adequately test the witness's credibility.

The Appellate Court held that defendant forfeited review of his issue by failing to include the mental health records on appeal. The appellant has the burden of presenting a complete record on appeal and any doubts arising from an incomplete record are construed against the appellant. The Court rejected defendant's argument that the records were not part of the record because they were never given to him. A defendant need only file a Rule 415(f) motion in the trial court to ensure that the contested documents become part of the record. Defendant's failure to follow this procedure and hence provide a complete record on appeal prevented the Court from reviewing his issue.

(Defendant was represented by Assistant Defender Grace Palacio, Chicago.)

Village of Mundelein v. Bogachev, ___ Ill.App.3d ___, ___ N.E.2d ___ (2d Dist. 2011) (No. 2-10-0346, 5/27/11)

To the extent that the record is incomplete, any resultant ambiguity is construed against the appellant.

The State as appellant challenged the trial court's order granting the defense motion to dismiss on speedy-trial grounds. The only transcript that the State included in the record was the transcript of the hearing on the defense motion to reconsider the trial court's original ruling on the defense motion to dismiss.

Because the Appellate Court lacked any transcripts that might shed light on why the court delayed the hearing on the defense pretrial motion to suppress, and the trial court had concluded that the hearing had been continued on the court's own motion, the Appellate Court found it had no basis to conclude that the delay in the processing of the motion should have been charged to defendant.

(Defendant was represented by Assistant Defender Darren Miller, Elgin.)

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§2-5(c)

Amendment or Correction

[People v. Allen, 109 Ill.2d 177, 486 N.E.2d 873 \(1985\)](#) The record showed that the trial judge gave an erroneous instruction to the jury. The State contended that the transcript was inaccurate, but its motion to supplement the record was denied. The Court remanded the cause to the trial court for a hearing to determine whether the transcript was accurate. At the hearing, the court reporter consulted her notes, testified that the erroneous instruction had not been given and explained the reason for the mistake in the record. The trial court held that this testimony supported a correction, and the transcript was amended. The Court upheld the correction of the record because it was based upon the original stenographic notes and the testimony of the court reporter, and was supported by the instruction marked "given" in the common law record.

[People v. Chitwood, 67 Ill.2d 443, 367 N.E.2d 1331 \(1977\)](#) Defendant was convicted following a bench trial, and alleged on appeal that the record failed to show a jury waiver. The State sought to amend the record on appeal with an affidavit stating that defense counsel, in defendant's presence, had waived a trial by jury. The trial judge verified that the statements in the affidavit were true, and defendant never challenged their accuracy. The Supreme Court held that the State should have been allowed to amend the record to show that a jury waiver occurred.

[People v. Patterson, 192 Ill.2d 93, 735 N.E.2d 616 \(2000\)](#) The Court held that counsel on direct appeal was not ineffective for failing to supplement the record with evidence supporting a claim that defendant's confession had been coerced. Because the evidence had not been presented in the trial court, Supreme Court Rule 329, which authorizes amendment of the record to correct omissions or inaccuracies, was inapplicable.

[People v. Thompkins, 181 Ill.2d 1, 690 N.E.2d 984 \(1998\)](#) Where the trial judge ordered material stricken from the record, defendant erred by placing those materials in the record on appeal. However, the Court held that the trial judge erred by excluding certain evidence, and remanded the cause with instructions to reopen the evidentiary hearing and consider defendant's offers of proof.

[People v. Sanchez, 329 Ill.App.3d 59, 768 N.E.2d 99 \(1st Dist. 2002\)](#) Under the unique circumstances of this case, the record should be supplemented with the record of an ARDC proceeding conducted after the defendant's trial. At trial, defendant waived his attorney's conflict of interest after he was told that on the previous night, counsel had been arrested on a controlled substance charge. Although the record of counsel's performance at trial is normally the only relevant consideration in determining whether defense counsel was ineffective, the ARDC record "reveals a heretofore undisclosed level of addiction and illness dating back to defendant's trial that could have compromised the attorney's professional abilities." Because there was no evidence that either the defendant or the trial judge was aware of this information, and because the Court could not predict the impact of such information on defendant's decision to waive any conflict, consideration of the ARDC record was appropriate although it had not been presented at trial.

[People v. Martinez, 361 Ill.App.3d 424, 857 N.E.2d 479 \(2d Dist. 2005\)](#) Although it was "disturbing" that a complete transcript of the proceedings was unavailable, the Court found that the common law record must be presumed to be correct in two assertions - that defendant was in court when the trial date was set and was properly admonished concerning the possibility of a trial in absentia. Although a report of proceedings is preferred over the common law record, it is only "where a conflict exists between the common-law record and the report of proceedings that we may find it necessary to give the reports of proceedings precedence."

[People v. Vincent, 165 Ill.App.3d 1023, 520 N.E.2d 913 \(1st Dist. 1988\)](#) The Court remanded because the record showed that an improper instruction may have been given. At a hearing, conflicting testimony was presented regarding what information had been conveyed to the jury but the trial judge ruled that the proper written instruction had been read to the jury. The Appellate Court held, however, that the evidence at the hearing was insufficient to prove an inaccuracy in the record which requires not merely oral testimony but "the production of some note or memorandum from the records of the court, or the judge's minutes, or the papers on file in the cause." The fact that an accurate instruction was found in the file does not show that the instruction was read correctly to the jury. To the contrary, the certified transcript is presumed to be correct until proven otherwise and the party seeking to establish a mistake in a transcript bears a substantial burden.

[People v. Smith, 197 Ill.App.3d 88, 554 N.E.2d 730 \(3d Dist. 1990\)](#) The State was allowed to supplement the record on appeal with a hearing omitted from the original record, even though an opinion had been issued. Where required by the interests of justice a record may be supplemented even after an opinion is filed.

[People v. Husar, 22 Ill.App.3d 758, 318 N.E.2d 24 \(1st Dist. 1974\)](#) On appeal, defendant raised defense counsel's ineffectiveness. Since the record did not disclose how long the public defender had consulted with defendant or what advice had been given, appellate counsel appended three affidavits to the brief. The Court held that it would not consider the extrinsic evidence; "the report of proceedings of the trial together with the clerk's mandatory record constitute the complete record on appeal, not supplementable by affidavits."

[People v. Leiker, 115 Ill.App.3d 752, 450 N.E.2d 37 \(3d Dist. 1983\)](#) The Court granted the State's motion to strike a sentence and an affidavit in defendant's brief because they related to matters not before the trial court. See also, [People v. Gholston, 124 Ill.App.3d 873, 464 N.E.2d 1179 \(1st Dist. 1984\)](#) (newspaper articles attached to defendant's brief were stricken).

[People v. Gonzalez, 268 Ill.App.3d 224, 643 N.E.2d 1295 \(1st Dist. 1994\)](#) At defendant's trial, a co-defendant testified for the State and admitted that in return for his testimony, he hoped to gain some consideration on an unrelated murder charge. In his opening brief, defense counsel argued that the witness had testified with the expectation of obtaining leniency. In his reply brief, defense counsel included documents showing that three months after defendant was convicted, the co-defendant's charge had been reduced from first to second degree murder. Although a party may request leave to supplement the record, only materials that were actually before the trial court may be considered on appeal. Because the co-defendant had not been sentenced when defendant was tried and sentenced, the record could not have been supplemented with the documents in question.

[People v. Granados, 172 Ill.2d 358, 666 N.E.2d 1191 \(1996\)](#) The Court rejected defendant's argument that he was entitled to application of Third District precedent that existed at the time of his offense even though that interpretation was later rejected by the Supreme Court. The Court held that "there is only one Illinois Appellate Court and that court's pronouncements on the present issue were unsettled at the time of the defendant's crimes. The defendant had no basis for relying upon only one of those conflicting views and ignoring the other view."

[People v. Jakupcak, 275 Ill.App.3d 830, 656 N.E.2d 442 \(3d Dist. 1995\)](#) The Northwestern University's traffic accident reconstruction manual could be considered on appeal, although it had not been introduced at trial. Scholarly works to which the parties and witnesses referred at trial are properly considered on appeal, even if they were not actually introduced. Here, the defense expert testified that he had written one of the chapters in the manual, and the State's expert conceded that the manual was an authoritative treatise.

Cumulative Digest Case Summaries §2-5(c)

[People v. Corredor, 399 Ill.App.3d 804, 927 N.E.2d 1231 \(2d Dist. 2010\)](#)

1. Under [People v. Shellstrom, 216 Ill.2d 45, 833 N.E.2d 863 \(2005\)](#), the trial court may recharacterize a *pro se* pleading as a post-conviction petition only after advising the petitioner that it intends to make the recharacterization, that any subsequent post-conviction petition will be subject to the restrictions on successive post-conviction petitions, and that the petitioner may elect to either withdraw or amend the pleading. The court concluded that the **Shellstrom** rule applies to the recharacterization of any *pro se* pleading, whether or not the initial filing is "cognizable" under Illinois law.

2. Alternatively, a motion for order *nunc pro tunc* to require DOC to grant sentencing credit that had been ordered by the trial court is "cognizable" under Illinois law. The trial court has limited continuing jurisdiction to conform the record to the judgment actually entered, and could do so through either a motion for an order *nunc pro tunc* or a motion to correct the mittimus.

(Defendant was represented by Assistant Defender Kim DeWitt, Elgin.)

[People v. Garvin, 2013 IL App \(1st\) 113095 \(No. 1-11-3095, 8/7/13\)](#)

Generally, attachments to briefs that were not included in the record on appeal are not properly before the reviewing court and cannot be used to supplement the record. Material omissions in the record may be corrected by using the procedures set forth in Supreme Court Rule 329.

The State attached to its brief a probation agreement signed by the defendant, which it contended constituted a waiver of any constitutional challenge to his conviction. The State contended that the defendant's failure to raise the constitutional challenge until appeal had prevented it from demonstrating that defendant had under the agreement voluntarily relinquished his right to assert the constitutional challenge.

While agreeing that the agreement was relevant to defendant's constitutional challenge, the Appellate Court refused to consider the agreement. If the State wanted the court to consider the agreement, it should have moved to have it properly included in the record on appeal. By failing to make the agreement a part of the record, the State precluded the court's consideration of it on review.

(Defendant was represented by Assistant Defender Darrel Oman, Chicago.)

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§2-6

Miscellaneous

§2-6(a)

Issues Reviewable

[Kansas v. Marsh, 548 U.S. 163, 126 S.Ct. 2516, 165 L.Ed.2d 429 \(2006\)](#) The Court found that it had jurisdiction to consider this death penalty case although defendant had been awarded a new trial on other grounds. [28 U.S.C. §1257](#) authorizes certiorari to review the final judgment of the highest state court concerning the validity of a State statute on federal constitutional grounds. Such review is allowed even if state court proceedings are not yet complete, if there has been a final decision on the federal claim and subsequent review will be unavailable even after the case is decided.

[Arkansas v. Sullivan, 532 U.S. 769, 121 S.Ct. 1876, 149 L.Ed.2d 994 \(2001\)](#) A State may not interpret federal constitutional law to impose greater restrictions on police activity than those adopted by the United States Supreme Court under the Federal Constitution. However, "a State is free as a matter of its own laws to impose greater restrictions on police activity than those this Court holds to be necessary."

[Lilly v. Virginia, 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed.2d 117 \(1999\)](#) Defendant's Confrontation Clause claim was not waived on the ground it had not been fairly presented in State court proceedings. Although in State court defendant based his argument on State hearsay law, in his opening brief he "expressly argued . . . that the admission of the statements violated his Sixth Amendment right to confrontation." In the reply brief defendant "expanded" his confrontation argument by citing two United States Supreme Court cases construing the Confrontation Clause. Such actions were sufficient to raise the federal issue, especially where the Virginia Supreme Court addressed the Confrontation Clause claim "without mentioning waiver."

[Lee v. Kemna, 534 U.S. 362, 122 S.Ct. 877, 151 L.Ed.2d 820 \(2002\)](#) Generally, the United States Supreme Court will not consider a question of federal law if the State court's decision rests on a State ground that is both independent of the federal question and adequate to support the judgment. The defendant's violation of firmly established and regularly followed State rules, including procedural rules, ordinarily forecloses review

of a claim in federal court.

[Coleman v. Thompson, 501 U.S. 722, 115 L.Ed.2d 640, 111 S.Ct. 2546 \(1991\)](#) Federal courts lack authority to review State court interpretations of federal law that also rest on a State ground which is: (1) independent of the federal issue, and (2) adequate to support the judgment. This prohibition against federal review applies to both direct review and federal habeas actions, and to both substantive or procedural questions.

[Arizona v. Evans, 514 U.S. 1, 131 L.Ed.2d 34, 115 S.Ct. 1185 \(1995\)](#) Supreme Court review was not barred on the ground that the Arizona court's holding was based on an "adequate and independent" state ground. A State court decision is presumed to have been based on federal law, and therefore subject to federal review, where it "fairly appears" to rest on or to be "interwoven" with federal law and the "adequacy and independence of any possible state law ground is not clear from the face of the opinion." The Court concluded that States are free to insulate rules adopted under State law from federal review by merely stating that independent state grounds exist, and that no further deference to State interests is appropriate.

[People v. Love, 199 Ill.2d 269, 769 N.E.2d 10 \(2002\)](#) The State was not barred from arguing in the Supreme Court that probable cause supported a search where it had discussed that issue in its petition for leave to appeal. In addition, the State "may raise an issue as an appellant which it did not raise before the Appellate Court as an appellee."

[People v. Fuller, 187 Ill.2d 1, 714 N.E.2d 501 \(1999\)](#) Under Supreme Court Rules 302 and 603, the Supreme Court has jurisdiction to hear an appeal in any case in which a statute has been held unconstitutional, without regard to whether the statute is declared unconstitutional "on its face" or "as applied."

[Arangold Corp. v. Zehnder, 187 Ill.2d 341, 718 N.E.2d 191 \(1999\)](#) Supreme Court Rule 302(a), which authorizes a direct appeal from final judgments in which an Illinois statute has been held unconstitutional, is intended to "preserve stability" by permitting immediate review of possibly flawed legislation. Therefore, it would be inappropriate for the Supreme Court to review the denial of summary judgment on a non-constitutional ground merely because the case is before it because a statute was held unconstitutional.

[People v. Carter, 194 Ill.2d 88, 741 N.E.2d 255 \(2000\)](#) [Art. VI, §6 of the Illinois Constitution](#) states that after a trial on the merits "there shall be no appeal from a judgment of acquittal." Therefore, a reviewing court can not reinstate a conviction once the trial court grants a motion for acquittal notwithstanding the verdict.

[People v. Cooper & Starnes, 194 Ill.2d 419, 743 N.E.2d 32 \(2000\)](#) The State as the appellee in the Supreme Court could "seek and obtain any relief warranted by the record without having filed a separate petition for leave to appeal." Under [People v. Schott, 145 Ill.2d 188, 582 N.E.2d 690 \(1991\)](#), where the trial court is reversed by the Appellate Court and the appellee in the lower court brings the case to the Supreme Court for further review, "he may raise any question properly presented by the record to sustain the trial court's judgment, even though that question was not raised or argued in the appellate court."

[People v. Williams, 193 Ill.2d 306, 739 N.E.2d 455 \(2000\)](#) A plain error argument is not waived because it is raised for the first time in the reply brief. The State is required to raise the waiver argument in the appellee's brief; otherwise, the argument would itself be waived. "Accordingly, we believe it would be unfair to require a defendant to assert plain error in his or her opening brief."

[People v. Wright, 194 Ill.2d 1, 740 N.E.2d 755 \(2000\)](#) Defendant did not waive his challenge to the

constitutionality of the statute under which he was convicted although he did not raise that challenge until the petition for rehearing in the Supreme Court. Under Illinois law, a challenge to the constitutionality of a criminal statute may be raised at any time.

[People v. Jackson, 182 Ill.2d 30, 695 N.E.2d 391 \(1998\)](#) Where a reviewing court remands the cause for further proceedings and the defendant appeals again, only issues that arose on remand may be reviewed.

[People v. Smith, 183 Ill.2d 425, 701 N.E.2d 1097 \(1998\)](#) Due process was violated where the Appellate Court substituted an uncharged attempt armed robbery for the armed robbery asserted in the trial court as the predicate for felony murder. "[I]t is as much of a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence." See also, [People v. Pendleton, 307 Ill.App.3d 966, 719 N.E.2d 320 \(3d Dist. 1999\)](#) (a conviction for which the evidence was insufficient would not be affirmed on an alternative theory of guilt that had not been charged or presented at trial; it would be "manifestly unfair to uphold a conviction based on a charge defendant was never given the opportunity to defend," and the prosecution "may not offer a new theory of guilt for the first time on appeal").

[In re E.H., 224 Ill.2d 172, 863 N.E.2d 231 \(2006\)](#) Reviewing courts should reach constitutional issues only if the case cannot be resolved on non-constitutional grounds. The court concluded that unnecessarily reaching constitutional issues "has become so untenable that we have recently taken the somewhat extraordinary step of adding to our rules a requirement that before deciding a case on constitutional grounds, the court must state, in writing, that its decision cannot rest on an alternate ground." Here, the Appellate Court held that certain hearsay statements were inadmissible because they failed to satisfy the requirements of [725 ILCS 5/115-10](#). On rehearing, the court "inexplicably deleted this analysis" and decided the issue on a constitutional ground - that admission of the evidence violated the confrontation clause under *Crawford v. Washington*. Because the case could have been decided on the ground that the statements did not satisfy the statutory requirements, the Appellate Court should have considered the constitutional issues only if it found that the requirements of §115-10 were satisfied or that the statute was violated but that the error was harmless. See also, [People v. Melchor, 226 Ill.2d 24, 871 N.E.2d 32 \(2007\)](#).

[In re Christopher K., 217 Ill.2d 348, 841 N.E.2d 945 \(2005\)](#) Generally, the "law-of-the-case" doctrine prohibits reconsideration of issues which were decided in a prior appeal, at least where there are no material factual changes. The underlying purposes of the doctrine are to avoid the indefinite relitigation of issues, obtain consistent results in a single proceeding, and ensure that lower courts follow reviewing court decisions. See also, [People v. McDonald, 366 Ill.App.3d 243, 852 N.E.2d 463 \(1st Dist. 2005\)](#) ("law of the case" doctrine is not applied where a higher reviewing court makes a subsequent, contrary ruling on the same issue, or where a reviewing court subsequently finds that its prior decision was "palpably erroneous.")

[In re Detention of Swope, 213 Ill.2d 210, 821 N.E.2d 283 \(2004\)](#) Where defense counsel and the State agreed to use depositions to obtain information from DHS treatment providers who refused to discuss the treatment of a sexually violent person with experts appointed under [725 ILCS 207/55](#), defendant acquiesced in the procedure used in the trial court and could not claim on appeal that due process required the providers to discuss the case with defense experts. "Swope may not now attack a procedure to which he agreed, even though that acceptance may have been grudging."

[People v. Breedlove, 213 Ill.2d 509, 821 N.E.2d 1176 \(2004\)](#) After defendant was convicted in a jury trial and sentenced, he was admonished - in accordance with the version of Supreme Court Rule 605(a) in effect at the time - that to appeal he was required to file a notice of appeal within 30 days of sentencing. The Court held that defendant was not entitled to a remand to receive the more complete admonishments that would

have been required by an amendment to Rule 605(a) that took effect two months after defendant's sentencing. Although the admonishments which defendant received were less thorough than those required by amended Rule 605(a), they were not "affirmatively" misleading. In addition, unlike a guilty plea defendant - whose failure to file an appropriate post-plea motion results in dismissal of the appeal - a defendant who is convicted after a trial may ask that error be reached under the plain error rule despite the failure to file a post-sentencing motion.

[People v. Caballero, 206 Ill.2d 65, 794 N.E.2d 251 \(2002\)](#) Under the doctrine of judicial estoppel, a party which takes a position in one proceeding is estopped from assuming a contrary position in subsequent proceedings. The doctrine rests on public policy concerns upholding the sanctity of the oath by barring statements and declarations that would contradict sworn testimony by the same party in other proceedings. The doctrine applies where the party to be estopped has, in separate judicial or quasi-judicial administrative proceedings, taken positions that are factually inconsistent, intending for the trier of fact to accept the truth of the facts previously alleged and having obtained some benefit in the first proceeding. The judicial estoppel doctrine did not apply where the State argued at a co-defendant's trial that the co-defendant was the most culpable of four participants in the offense, but at the evidentiary hearing in defendant's case argued that defendant was the most active participant. The court found that the State's positions did not involve "factual" assertions, but were merely statements of opinion and argument. In addition, because several years passed between the two proceedings, the State had been able to obtain additional evidence.

[People v. Campa, 217 Ill.2d 243, 840 N.E.2d 1157 \(2005\)](#) The Court refused to address the State's argument that release on electronic home monitoring is not "custody" for purposes of the speedy trial and sentence credit statutes. The Court noted that the State failed to comply with Supreme Court Rules 315 and 341, which require a party to raise arguments and cite legal authority in the petition for leave to appeal.

[People v. Campbell, 224 Ill.2d 80, 862 N.E.2d 933 \(2007\)](#) The validity of a waiver of counsel was not a moot issue, although defendant had completed his sentence and been released. "[W]hile the completion of a defendant's sentence renders moot a challenge to the sentence, it does not so render a challenge to the conviction. . . . This is because nullification of a conviction may hold important consequences for a defendant."

[People v. Carpenter, Garibaldi & Montes-Medina, 228 Ill.2d 250, 888 N.E.2d 105 \(2008\)](#), Decisions of the Appellate Court are binding precedent on all circuit courts regardless of locale. Until the Supreme Court rules otherwise, an applicable Appellate Court decision must be followed by every circuit court. Under Illinois Supreme Court precedent, the Appellate Court is required to resolve nonconstitutional issues and constitutional issues which do not involve the validity of the statute before considering whether a statute is unconstitutional.

[People v. Carter, 208 Ill.2d 309, 802 N.E.2d 1185 \(2003\)](#) The "invited error" doctrine precluded defendant from challenging the trial court's failure to give a lesser included offense instruction sua sponte. Under the doctrine, a party may not ask the trial court to proceed in a particular manner and then contend on appeal that the suggested course of action was erroneous.

[People v. Davis, 213 Ill.2d 459, 821 N.E.2d 1154 \(2004\)](#) Under Supreme Court Rules 341(e)(7) and 315(g), an issue is waived where a party fails to present arguments and citations of authority in the Appellate Court brief and petition for leave to appeal. Despite defendant's failure to raise an issue created by a Supreme Court decision that was issued while the case was pending in the Appellate Court, the court elected to reach the issue. See also, [People v. Phillips, 215 Ill.2d 554, 831 N.E.2d 574 \(2005\)](#).

[People v. Flowers, 208 Ill.2d 291, 802 N.E.2d 1174 \(2003\)](#) A motion to reconsider sentence filed 16 months after sentencing, during post-conviction proceedings, occurred well after trial court had lost jurisdiction to vacate the judgment or reconsider the sentence. Although the State failed to object in the trial court, the absence of subject matter jurisdiction is not subject to waiver and cannot be cured by the consent of the parties. Even if a withholding order imposed as part of defendant's sentence was void, the trial court lacked authority to reach that issue once it lost jurisdiction over the case. Although a void order may be challenged any time, "the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts." Thus, "if a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void."

[People v. Hampton, 225 Ill.2d 238, 867 N.E.2d 957 \(2007\)](#) The Court erred where it remanded the cause for an evidentiary hearing on a trial issue, but also reached sentencing issues. Because the defendant was no longer subject to a sentence after the Court vacated the conviction, and because it cannot be assumed that defendant will be convicted on remand, it was unnecessary for the Court to address a proportionate penalties issue.

[People v. Henderson, 211 Ill.2d 90, 809 N.E.2d 1224 \(2004\)](#) The Supreme Court granted leave to appeal from the holding of the Appellate Court - that the trial court erred by refusing to consider the merits of a negotiated plea agreement that was presented after the expiration of the judge's deadline for such agreements. Because it was not clear that the parties attempted to present a negotiated plea agreement after the deadline, however, the court held that the issue on which leave to appeal had been granted was not presented by the record.

[People v. Klepper, 234 Ill.2d 337, 917 N.E.2d 381 \(2009\)](#)

Supreme Court Rule 18 requires that when finding a statute to be unconstitutional, the trial judge must enter a written or transcribed order clearly identifying the portion of the statute which is unconstitutional, the constitutional provision upon which the finding is based, whether the statute is invalid on its face or as applied, whether the statute can be construed in the manner that could preserve its constitutionality, whether there is an alternative ground for the decision, and whether proper notice of the challenge has been served on the State.

[People v. Lyles, 217 Ill.2d 210, 840 N.E.2d 1187 \(2005\)](#) Where an appeal was dismissed for want of prosecution, a motion to reinstate was required to be filed within 21 days unless a motion for extension of time was granted. Because the Appellate Court lacks any supervisory authority over lower courts, it lost jurisdiction over the cause when neither a motion to reconsider nor a motion to extend the time for such a motion was filed within 21 days after the appeal was dismissed. In the exercise of its supervisory authority, however, the Supreme Court concluded the appeal should be reinstated. Rule 651 affords the defendant the reasonable assistance of appellate counsel when appealing from the dismissal of a post-conviction petition. The Court concluded that defendant did not receive reasonable assistance where counsel failed to file a brief and, after the appeal was dismissed for lack of prosecution, failed to file a timely motion to reinstate. The Court stressed, however, that the Appellate Court has no authority to excuse violations of Supreme Court Rules concerning appeals, even where the failure to follow the rule is due to ineffective assistance of counsel:

[People v. McCarty & Reynolds, 223 Ill.2d 109, 858 N.E.2d 15 \(2006\)](#) The Court concluded that the statute which imposes a sentence of 15 to 60 years for the manufacture of more than 900 grams of any substance containing methamphetamine, was intended to include byproducts of the manufacturing process in the weight calculation. This issue of statutory interpretation was not waived although one of the defendants failed to file a post-trial motion or raise the issue in the petition for leave to appeal. A challenge to the constitutionality of a statute may be raised at any time. Because the question concerning the intent of the statute was directly

related to the constitutional challenges, it could be raised for the first time on briefing in the Supreme Court. The rule of forfeiture is "an admonition to the parties, not a limitation on the jurisdiction" of the Supreme Court.

[People v. Pelt, 207 Ill.2d 434, 800 N.E.2d 1193 \(2003\)](#) The Court elected to reach an issue which the State failed to raise in its petition for leave to appeal. Although a party's failure to raise an argument in a petition for leave to appeal may waive that argument, the waiver rule is a limitation on the parties and not on the court.

[People v. Roberson, 212 Ill.2d 430, 819 N.E.2d 761 \(2004\)](#) Defendant's appeal, which sought credit for pretrial custody, was not moot although defendant had served his sentence by the time the case reached the Supreme Court. Although the mootness doctrine requires dismissal of an appeal where intervening events have made it impossible to grant relief, courts may review a moot issue that is of public interest, likely to recur, and on a point concerning which public officers need authoritative guidance. Because the issue of sentence credit potentially affects all persons subject to incarceration the Court elected to reach the issue.

[People v. Robinson, 223 Ill.2d 165, 860 N.E.2d 1101 \(2006\)](#) In [People v. Basler, 193 Ill.2d 545, 740 N.E.2d 1 \(2000\)](#), the Supreme Court declined to decide whether the defendant is entitled to a Frye hearing before HGN evidence can be admitted in a DUI case. The Court stated that it had granted leave to appeal to resolve conflicting appellate authority on this issue, but defendant failed to address the issue in his briefs. In the Court's view, the defendant instead presented issues that had not been raised in the petition for leave to appeal. Although these issues were "deserving of this court's attention," the Court declined to address them because it was unclear whether they had been raised in the trial court, they had not been raised in the petition for leave to appeal, and defendant had not argued the threshold question on which leave to appeal had been granted.

[People v. Thompson, 209 Ill.2d 19, 805 N.E.2d 1200 \(2004\)](#) A sentence that is unauthorized by statute is void, and can be challenged in any properly pending proceeding over which the court has jurisdiction. Thus, a post-conviction petitioner could challenge an unauthorized extended term in a post-conviction proceeding that was properly before the trial court, as well as by an appeal properly before the Appellate Court. Although the trial court would have had authority to impose an extended term in other circumstances, the Court rejected the argument that the unauthorized portion of the extended term sentence was merely "voidable." A sentence that does not conform to statutory authority is "void," not "voidable."

[People v. Whitfield, 228 Ill.2d 502, 888 N.E.2d 1166 \(2007\)](#) A defendant erroneously placed on a probation sentence for which he was ineligible was not entitled to have the trial court consider whether to grant him credit against his subsequent prison term for the time he was on probation. The Court declined to find that defendant waived his double jeopardy challenge to the lack of credit, although that issue was not raised in the Appellate Court until defendant's reply brief. The Court found that the argument was raised in response to an argument raised for the first time in the State's brief; "[i]t would be unfair for us to require an appellant, when writing his or her opening brief, to anticipate every argument that may be raised by an appellee."

[In re Randall M., 23 Ill.2d 122, 896 N.E.2d 309 \(2008\)](#) Because issues relating to the minor's pretrial detention were moot where the minor had pleaded guilty and been sentenced, the appeal was dismissed. The Court rejected requests to reach the issues under the "public interest" exception to the mootness doctrine, noting that the issues addressed by the lower courts and briefed by the parties concerned a statute which did not apply to this case.

[People v. Golden, 229 Ill.2d 277, 891 N.E.2d 860 \(2008\)](#) After their direct appeals were denied because

the record on appeal was insufficient to allow the Appellate Court to consider the claims, defendants filed post-conviction petitions arguing that appellate counsel was ineffective for failing to file a complete record. As relief, the petition sought to have the trial court order the Appellate Court to allow the defendants to supplement the record and resubmit their briefs. The trial court found that appellate counsel was ineffective, but that it had no authority to order the Appellate Court to act. The Appellate Court held that the cause should be remanded with instructions to allow petitioners to file successive post-conviction petitions restating their ineffective assistance claims and requesting some other relief. The Supreme Court held that once the Appellate Court concluded that the trial court correctly denied the post-conviction petitions, it lacked jurisdiction to remand the cause with instructions on possible additional proceedings. In effect, the Appellate Court's remand order was "an exercise of supervisory authority the appellate court does not possess." The court noted, however that "[T]he petitioners have every right to file whatever pleadings they wish - e.g., successive postconviction petitions . . . , petitions for relief from judgment under section 2-1401 . . . , and habeas corpus petitions " to have their claims heard.

[People v. Jackson, 28 Ill.2d 37, 190 N.E.2d 823 \(1963\)](#) In a direct appeal, review is limited to what appears in the record. See also, **[People v. Edwards, 74 Ill.2d 1, 383 N.E.2d 944 \(1978\)](#)**.

[People v. York, 29 Ill.2d 68, 193 N.E.2d 773 \(1963\)](#) The question before the reviewing court is the correctness of the result reached by the trial court, not the correctness of the reasoning upon which that result was reached. See also, **[People v. Nash, 173 Ill.2d 423, 672 N.E.2d 1166 \(1997\)](#)**.

[People v. Connor, 78 Ill.2d 525, 401 N.E.2d 513 \(1979\)](#) In determining whether the trial court's findings of fact on a motion to suppress are manifestly erroneous, the reviewing court may also consider testimony elicited at trial.

[People v. Locken, 59 Ill.2d 459, 322 N.E.2d 51 \(1974\)](#) A reviewing court is not bound by a confession of error by a party.

[People v. Murrell, 60 Ill.2d 287, 326 N.E.2d 762 \(1975\)](#) The appropriate remedy upon reversal of the Appellate Court is to remand the cause for consideration of the remaining questions. However, the Supreme Court could elect to decide the remaining issues, without briefing and argument, where the record was not lengthy, the Court had read the entire record and the applicable law was well settled.

[People v. Taylor, 76 Ill.2d 289, 391 N.E.2d 366 \(1979\)](#) A reviewing court errs when it reverses and remands a conviction without deciding defendant's challenge to the sufficiency of the evidence: "[w]hen an appellate court reverses a criminal conviction and remands the case for a new trial without deciding defendant's contention that the evidence at the first trial was insufficient, . . . the court risks subjecting the defendant to double jeopardy." See also, **[People v. Jones, 175 Ill.2d 126, 676 N.E.2d 646 \(1997\)](#)**.

[In re P.S. & People v. Kimery and Turner, 169 Ill.2d 260, 661 N.E.2d 329 \(1996\)](#) Where neither party to the appeal raises an issue that is raised by an amicus, the reviewing court is justified in refusing to consider the issue.

[People v. Sheehan, 168 Ill.2d 298, 659 N.E.2d 1339 \(1995\)](#) Where one of two appellees failed to file a brief, but the issues affecting both appellees arose from identical circumstances and involved the same considerations, the case could be decided on its merits as to all the parties.

[People v. Farmer, Myers, Henry, & Flores, 165 Ill.2d 194, 650 N.E.2d 1006 \(1995\)](#) Denial of a motion to dismiss is an interlocutory order that cannot be appealed by the defense.

[People v. Janes, 168 Ill.2d 382, 660 N.E.2d 980 \(1995\)](#) Defendant could not raise an issue of trial counsel's conflict of interest on appeal from a remand for a new hearing on a motion to withdraw his guilty plea. The Court held the issue waived because the same conflict of interest had existed at the first hearing on the motion, but had not been raised in the first appeal.

[People v. Turnage, 162 Ill.2d 299, 642 N.E.2d 1235 \(1994\)](#) Once a party has petitioned for leave to appeal, the Appellate Court can not issue further comments in the case. Here, the Appellate Court had to withdraw a concurring opinion issued after the State filed its petition for leave to appeal.

[People v. Stueve, 66 Ill.2d 174, 361 N.E.2d 579 \(1977\)](#) Defendant pleaded guilty to unlawful possession and attempt delivery of a controlled substance. He was placed on probation and did not appeal. The probation was subsequently revoked, and on appeal from the revocation the Appellate Court reversed the attempt delivery conviction because it was part of the same transaction as the possession charge. The Supreme Court held that the Appellate Court erred by considering the original judgments resulting from the guilty pleas when the defendant appealed from his probation revocation. The Court found that the Appellate Court may consider such prior judgments only if they were void.

[People v. Anderson, 112 Ill.2d 39, 490 N.E.2d 1263 \(1986\)](#) The defendant was convicted of obscenity and sentenced to four months incarceration and a fine. In the Appellate Court, the defendant unsuccessfully challenged both the conviction and the sentence. In his petition for leave to appeal defendant raised only the affirmance of his sentence. However, after the petition for leave to appeal was allowed defendant also challenged the validity of his conviction. The Supreme Court declined to consider the issue regarding the validity of defendant's conviction because that issue had not been raised in the petition for leave to appeal.

[People v. Arna, 168 Ill.2d 107, 658 N.E.2d 445 \(1995\)](#) Defendant raised issues concerning trial counsel's ineffectiveness, the sufficiency of the evidence and whether the trial court erred by denying a motion to reduce the sentences. The Appellate Court rejected these arguments, but held sua sponte that consecutive sentences were statutorily mandated. The Supreme Court held that the Appellate Court acted properly by remanding for the imposition of consecutive sentences. Although the State is prohibited from appealing a sentence and the Appellate Court can not increase a sentence on appeal, a sentencing order which fails to impose a statutorily mandated sentence is void and may be corrected at any time. See also, [People v. Medrano, 282 Ill.App.3d 887, 669 N.E.2d 114 \(1st Dist. 1996\)](#) (while the Appellate Court has authority to remand the cause for imposition of mandatory consecutive sentences, it is not required to do so).

[People v. Centeno, 333 Ill.App.3d 604, 777 N.E.2d 529 \(1st Dist. 2002\)](#) Where the State never asserted below that police had probable cause to arrest defendant before his confession, the Court refused to consider that argument when raised in oral argument. "The general rule that a prevailing party may raise, in support of a judgment, any reason appearing in the record does not apply when the new theory advanced is inconsistent with the position advanced below. . . . Because the State's probable cause argument is directly at odds with its position taken at the pretrial hearing, it will not be considered."

[People v. Gancarz, 369 Ill.App.3d 154, 859 N.E.2d 1127 \(2d Dist. 2006\)](#) The Court rejected the argument that it lacked jurisdiction to remand the cause for sentencing on a merged conviction on which no sentence had been imposed and which the defendant had not appealed. Supreme Court Rule 615(b)(2) and [People v. Dixon, 91 Ill.2d 346, 438 N.E.2d 180 \(1982\)](#), authorize a reviewing court to reach such a conviction when it vacates the merged conviction on which a sentence was entered.

[People v. Gargani, 371 Ill.App.3d 729, 863 N.E.2d 762 \(2d Dist. 2007\)](#) In [People v. Flowers, 208 Ill.2d 291,](#)

[802 N.E.2d 1174 \(2003\)](#), the Illinois Supreme Court found that subject matter jurisdiction cannot be conferred through consent of the parties. However, *Flowers* does not prevent the "revestment" of subject matter jurisdiction where the State actively participates without objection in proceedings that are "inconsistent with the merits of the prior judgment."

[People v. Mattis, 367 Ill.App.3d 432, 854 N.E.2d 1149 \(2d Dist. 2006\)](#) The Court concluded that it had jurisdiction to consider a State appeal from an order dismissing an indictment for prosecutorial misconduct. The Court reversed the dismissal order, finding that the prosecutor's conduct before the grand jury, if improper, was not so egregious as to justify dismissing the indictment.

[People v. Mazar, 333 Ill.App.3d 244, 775 N.E.2d 135 \(1st Dist. 2002\)](#) Where at the time of defendant's sentencing Supreme Court Rule 605(a) did not require that convicted defendants be admonished concerning the requirement to file a post-sentencing motion within thirty days in order to preserve sentencing issues for appeal, but while defendant's case was on appeal the Supreme Court amended the rule to require such admonishments, fundamental fairness mandates that the cause be remanded for proper admonishments and the opportunity to file a post-sentencing motion.

[People v. Montiel, 221 Ill.App.3d 661, 851 N.E.2d 725 \(2d Dist. 2006\)](#) Where the defendant's motion to reconsider the sentence was untimely, but the State fully participated in proceedings to resolve the merits of the motion, agreed with the trial court's modification of defendant's sentence, and declined the trial judge's invitation to raise a jurisdictional objection, jurisdiction revested in the trial court for purposes of ruling on the motion. The court rejected the argument that the Supreme Court abolished the revestment doctrine in [People v. Flowers, 208 Ill.2d 291, 802 N.E.2d 1174 \(2003\)](#); *Flowers* prohibited revestment based solely on consent of the parties, but did not affect the revestment doctrine where the State actively participates, without objection, in proceedings which would otherwise be barred for lack of jurisdiction.

[People v. Rajagopal, 381 Ill.App.3d 326, 885 N.E.2d 452 \(1st Dist. 2008\)](#) The State did not waive the issue of defendant's standing to file a post-conviction petition, although it failed to raise the issue in the trial court in its motion to dismiss. An appellee may urge any point in support of the judgment on appeal, even if not relied on by the trial court, so long as the factual basis for the argument was before the trial court.

[People v. Serio, 357 Ill.App.3d 806, 830 N.E.2d 749 \(2d Dist. 2005\)](#) The trial court has jurisdiction to rule on a successive post-judgment motion that is filed within 30 days after the ruling on a preceding post-judgment motion. Under such circumstances, jurisdiction does not vest in the Appellate Court until the trial court disposes of the successive motion and a timely notice of appeal is filed. Because defendant's pro se motion alleging ineffective assistance of counsel was filed within 30 days after the denial of defense counsel's motion to reconsider the sentence, the trial court had jurisdiction.

[People v. Drum, 321 Ill.App.3d 1005, 748 N.E.2d 344 \(4th Dist. 2001\)](#) The Court declined to consider the merits of the State's appeal from the denial of its motion in limine to present hearsay under [725 ILCS 5/115-10.2](#), which authorizes admission of hearsay statements where the declarant refuses to testify despite a court order. Because §115-10.2 authorizes admission of hearsay only where the declarant "persists in refusing to testify . . . despite an order of the court to do so," the trial judge erred by making a pretrial ruling when he did not yet know whether the witnesses would refuse a court order to testify.

[People v. Gonzalez, 326 Ill.App.3d 629, 761 N.E.2d 198 \(1st Dist. 2001\)](#) Defendant did not waive application of the plain error rule even if his brief failed to "demonstrate . . . why plain error should be applied." Although [People v. Nieves, 192 Ill.2d 487, 737 N.E.2d 150 \(2000\)](#) held that the failure to present an argument as to each element of the plain error rule waives a plain error argument, *Nieves* concerned a

defendant's brief that contained only a single sentence regarding plain error. Here, defendant "dedicated four pages of his brief to argue why the jury process was rendered unreliable based upon the improper jury instruction and why the evidence in his case was closely balanced."

[People v. Nestrock, 316 Ill.App.3d 1, 735 N.E.2d 1101 \(2d Dist. 2000\)](#) Although the defense failed to raise the issue on appeal, the Appellate Court found that the trial judge erred by admitting a tape-recorded conversation. The Court concluded that it need not ignore "grave errors" merely because the parties either overlooked or chose not to brief them.

[People v. Rokita, 316 Ill.App.3d 292, 736 N.E.2d 205 \(5th Dist. 2000\)](#) The Court rejected the State's attempt to argue several matters it had conceded in the trial court. "The State cannot deny on appeal a fact it admitted in the trial court."

[People v. Sparks & Nunn, 315 Ill.App.3d 786, 734 N.E.2d 216 \(4th Dist. 2000\)](#) In a State appeal from an order granting a motion to suppress, the Court granted the defendants' motion to strike portions of the State's reply brief which argued issues that had not been raised in prior proceedings.

[People v. Jackson, 299 Ill.App.3d 323, 702 N.E.2d 590 \(5th Dist. 1998\)](#) Where during the appeal new evidence conclusively established that the handgun admitted at trial was not the weapon used in the offense, the newly discovered evidence could be considered. Under [Art. VI, §6 of the Illinois Constitution](#), the Appellate Court "may exercise original jurisdiction when necessary to the complete determination of any case on review." Newly discovered evidence establishing that the weapon in question could not have been used to commit the offense is "one of those rare instances where the exercise of our original jurisdiction is proper."

[People v. Laugharn, 297 Ill.App.3d 807, 698 N.E.2d 219 \(4th Dist. 1998\)](#) The Court rejected the argument that a defendant must assert the plain error doctrine in her opening brief; "[w]e decline to apply any reply brief waiver rule in this situation, where it could not be expected that defendant would use the term 'plain error' in [her] original brief, and the State had an opportunity to discuss the underlying issue in its brief."

[People v. Bosley, 233 Ill.App.3d 132, 598 N.E.2d 355 \(2d Dist. 1992\)](#) When a case is remanded, the trial court may act only as authorized by the mandate. Where the Appellate Court vacated an extended term sentence and remanded the cause for imposition of a non-extended term, the trial court could not vacate the conviction and assign the cause to another judge for retrial, despite the judge's belief that he would never have accepted the guilty plea had he known an extended term was unavailable.

[People v. Homes, 274 Ill.App.3d 612, 654 N.E.2d 662 \(1st Dist. 1995\)](#) The State may not raise on appeal a theory of guilt that it never argued in the trial court.

[People v. Jones, 286 Ill.App.3d 777, 676 N.E.2d 1335 \(1st Dist. 1997\)](#) The defendant asked the Appellate Court to use its authority under Supreme Court Rule 615(b)(3) to reduce the conviction to simple possession of a controlled substance. The Court noted a conflict of authority concerning the scope of Rule 615(b)(3) but the Court concluded that it could reduce an offense "despite the presence of evidence sufficient to support a guilty verdict." However, where the evidence was sufficient to convict, the power to reduce an offense must be used with "caution" and not "purely out of merciful benevolence." Cases in which there was sufficient evidence to convict have relied on one of two factors: (1) an "evidentiary weakness" that, despite the existence of sufficient evidence to convict, creates a "grave concern about the reliability of the guilty verdict," or (2) the trial court's expression of dissatisfaction that a mandatory sentence was required.

Cumulative Digest Case Summaries §2-6(a)

[Florida v. Powell](#), [U.S.](#) , 130 S.Ct. 1195, 175 L.Ed.2d 1009 (2010) (No. 08-1175, 2/23/10)

1. The United States Supreme Court will decline to review a state court decision which rests on a State ground that is independent of the federal question and adequate to support the judgment. Where the state court decision fairly appears to rest primarily on federal law or to be interwoven with federal law, or when the adequacy and independence of a possible state ground is not clear from the face of the opinion, the Supreme Court will presume that the state court believed that it was required by federal law to decide the case the way it did.

By contrast, if the state court decision clearly and expressly states that it is alternatively based on a *bona fide* separate, adequate and independent ground, the Supreme Court will not grant review.

2. There was no independent and adequate state ground for the Florida Supreme Court's **Miranda** decision where the court invoked the Florida constitution but also treated State and federal law as interchangeable and interwoven. At no point did the Florida Supreme Court expressly state that State law gives a Florida citizen rights that are distinct from or broader than those afforded by the federal constitution.

Thus, the court had jurisdiction to consider the question. (See also **CONFESSIONS**, §10-3(a)).

[In re Brandon P.](#), 2014 IL 116653 (No. 116653, 5/22/2014)

The State conceded at trial, in the Appellate Court, and in the Illinois Supreme Court that the three-year-old complainant was unavailable to testify at trial for purposes of §115-10. (725 ILCS 5/115-10) Despite the State's concession of error, the Supreme Court specifically addressed the Appellate Court's refusal to accept the State's concession and its erroneous finding that the witness was available for cross-examination.

Although a reviewing court is not bound by a party's concession, the Appellate Court erred by rejecting the State's concession and addressing the issue *sua sponte*. The Appellate Court ignored settled law by conducting its own *de novo* review of the complainant's availability instead of reviewing the trial court's ruling for abuse of discretion. The Appellate Court also ignored direct precedent from the Supreme Court holding that fear and youth are relevant factors in deciding whether a child witness is available to testify under §115-10. **People v. Stechly**, 225 Ill. 2d 246 (2007).

The Supreme Court concluded that "[t]here is no question, based on the record in this case, that [the complainant] was unavailable to testify at respondent's trial based upon both her youth and fear." The Appellate Court thus erred in rejecting the State's concession and finding that the complainant was available.

(Respondent was represented by Assistant Defender Catherine Hart, Springfield.)

[People v. Aguilar](#), 2013 IL 112116 (No. 112116, modified 12/19/13)

To have standing to contest the constitutionality of a statute, the party bringing the challenge must show that he falls within the class of persons aggrieved by the alleged unconstitutionality. When the defendant argues that a statute is facially unconstitutional and cannot be enforced against anyone, he has standing to make that challenge if he has sustained or is in immediate danger of sustaining some direct injury as a result of enforcement of the statute.

Defendant challenged certain firearm statutes as unconstitutional because they facially violated the Second Amendment. Because defendant was convicted under the provisions of those statutes, he had standing to challenge their constitutionality.

(Defendant was represented by Assistant Defender David Holland, Chicago.)

[People v. Alcozer](#), 241 Ill.2d 248, 948 N.E.2d 70 (2011)

A party forfeits an issue that he has not raised in his petition for leave to appeal or before the Appellate Court. Where an issue is not specifically mentioned in a petition for leave to appeal, review is appropriate where the issue is inextricably intertwined with other matters properly before the court.

Where the challenge to the constitutionality of a statute depends on the construction of the statute, the construction of the statute is inextricably intertwined with the constitutional issue. Therefore, an argument on the interpretation of a statute directly related to a constitutional challenge is not forfeited even if it is not raised in the petition for leave to appeal.

(Defendant was represented by Assistant Defender Kerry Goettsch, Chicago.)

[People v. Bailey, 2014 IL 115459 \(No. 115459, 2/6/14\)](#)

1. Under the revestment doctrine, a court may regain jurisdiction after the time for filing a post-judgment challenge has expired. The revestment doctrine applies where the parties actively participate, without objection, in proceedings which are inconsistent with the merits of an earlier judgment.

The revestment doctrine is interpreted narrowly, and may apply if both parties seek to modify or overturn the prior judgment. However, the doctrine is inapplicable where a party opposes modification of the existing judgement, even if that party failed to object to the timeliness of a late challenge.

2. The revestment doctrine did not apply here. Although the State failed to object on timeliness grounds when defendant moved to vacate his plea more than three years after the plea was entered, it actively opposed any modification of the conviction and sentence. The court stated that the State's "attempt to defend the merits of the prior judgment cannot be viewed as being inconsistent with that judgment."

Because the State opposed the motion to withdraw the plea, it did not assert a position that was inconsistent with the merits of the prior judgment. Because the criteria for the revestment doctrine was not satisfied, the trial court should have dismissed the motion to withdraw the plea instead of considering it on the merits.

3. The court added that the Appellate Court erred by dismissing the appeal for lack of jurisdiction, because that order left intact the trial court's improper exercise of jurisdiction. Once the Appellate Court found that it lacked jurisdiction to consider the appeal, it should have vacated the trial court's judgment and ordered that the motion to withdraw the plea be dismissed.

4. The court rejected the State's argument that the revestment doctrine should be abolished in criminal cases because it conflicts with the need for finality in judgements and the rule establishing deadlines for filing jurisdictional post-judgment motions. The court found that the doctrine, which has been applied in criminal cases since at least 1983, should not be abolished in the absence of a demonstration of good cause or the identification of compelling reasons. "The inherent conflict between a rule and its exception does not meet that high standard."

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

[People v. Bartelt, 241 Ill.2d 217, 948 N.E.2d 52 \(2011\)](#)

1. After noting that the case presented an issue of first impression nationwide, the Supreme Court found that the only issue properly before it was whether a "set-up procedure," which was conducted before a canine sniff to make it easier for the dog to sniff outside a vehicle, constituted an illegal "search." The court refused to consider whether ordering the defendant to comply with the set-up procedure constituted an unreasonable "seizure."

The court interpreted the defendant's briefs as raising only a "search" issue, and stated that the "seizure" question would be held "for a case where the issue is properly before us and has been fully briefed and argued."

2. In a dissenting opinion by Justice Freeman, three justices (Freeman, Burke and Theis) noted that the defendant's brief expressly stated that the set-up procedure converted the traffic stop into an impermissible "seizure." The dissent also noted that the issue had been litigated in the suppression hearing and expressly ruled upon by the trial court. The dissent concluded that by treating the case as presenting only a "search" issue, "[t]he majority . . . answers a question not presented by this appeal, and declines to address the question squarely raised. . . ."

The dissent added that because the issue was novel and a matter of first impression, "it is . . . not

surprising that both parties - as well as the courts - have struggled in defining the precise contours of the proper arguments and analysis.” The dissenters also stated that drawing a strict waiver construction based on a distinction between “search” and “seizure” is especially inappropriate because the parameters of the Fourth Amendment are intentionally imprecise to allow a practical, case-by-case approach.

The trial court’s suppression order was reversed, and the cause was remanded for further proceedings.

(Defendant was represented by Assistant Defender Arden Lang, Springfield.)

[People v. Clark, 2014 IL 115776 \(No. 115776, 3/20/14\)](#)

Defendant did not waive an argument that the eavesdropping statute was overbroad under the First Amendment although he failed to raise that argument in the trial court. Generally, a constitutional challenge to a statute may be raised at any time. However, the State argued that a different rule should apply to First Amendment overbreadth arguments because such arguments are based on the possibility that the rights of third parties may be affected by an overbroad statute.

Noting that the State failed to cite any authority supporting its argument, the court declined to create a special rule for First Amendment overbreadth cases.

[People v. Dabbs, 239 Ill.2d 277, 940 N.E.2d 1088 \(2010\)](#)

Under Supreme Court Rule 341(h)(7), points raised but not argued are waived. The court found that the defendant abandoned an equal protection claim which he raised in the petition for leave to appeal but failed to argue in the opening or reply brief or at oral argument.

(Defendant was represented by Assistant Defender Michelle Zalisko, Mt. Vernon.)

[People v. Denson, 2014 IL 116231 \(No. 116231, 11/20/14\)](#)

1. In criminal cases, an issue is preserved for review if it is raised in either a motion *in limine* or a contemporaneous trial objection and is included in the post-trial motion. Where the State filed a motion *in limine* to admit co-conspirator statements as an exception to the hearsay rule, defendant filed a response, and the trial court granted the motion *in limine* after a full hearing, the issue was preserved although defendant did not file his own motion *in limine*. The court stressed that the forfeiture rule is intended to encourage defendants to raise issues in the trial court, ensure that the trial court has an opportunity to correct any errors before the case is appealed, and prevent defendant from obtaining a reversal through his or her own inaction. In light of these purposes, the critical consideration is not which party initiated the motion *in limine*, but whether the issue was in fact litigated in the trial court:

Under these circumstances, requiring defendant to recaption and refile his response to the State’s motion as a motion *in limine* of his own would accomplish precisely nothing, other than to clutter the record with duplicative pleadings. Because the trial court was given a full and fair opportunity to rule upon the issue through the State’s motion *in limine* and the defendant’s response, the issue was preserved when defendant placed it in his post-trial motion, without any need to file his own motion *in limine*.

2. Furthermore, where statements were admitted after the State’s motion *in limine* was granted, defendant was not required to offer a contemporaneous objection when the evidence was presented at trial. Instead, defendant preserved the issue by filing a response to the motion *in limine* and placing the issue in the post-trial motion.

The court acknowledged that in civil cases, a contemporaneous trial objection is required to preserve an issue that has been litigated in a motion *in limine*. In criminal cases, by contrast, the issue must be included in the post-trial motion but need not be the subject of a contemporaneous objection at trial. The court explained the difference in procedure by noting that a post-trial motion is required in all criminal cases

but may or may not be required in civil cases.

The court also criticized the State for taking inconsistent positions in the trial court and on appeal. In the lower court, the State indicated that its purpose in filing the motion *in limine* was to avoid having the defense raise an objection at trial that would require the trial to be interrupted. “Given this, we have some difficulty now entertaining the State’s argument that defendant forfeited review of the contested statements by failing to make a contemporaneous trial objection, when insulating those statements from a contemporaneous trial objection was the State’s express objective. . . .” The court added, “[W]e in no way can condone the State’s maneuvering in this case, and we strongly discourage the State from proceeding this way in the future.”

(Defendant was represented by Assistant Defender Chris McCoy, Elgin.)

[People v. Givens, 237 Ill.2d 311, 934 N.E.2d 470 \(2010\)](#)

1. Except for assuring that it has subject matter jurisdiction, a reviewing court should not search the record for unargued and unbriefed reasons to reverse a trial court judgment. Where defendant raised four arguments, the Appellate Court erred by reversing the conviction on an unbriefed issue - that trial counsel was ineffective for failing to challenge a consensual search on the ground that a tenant lacks authority to consent to a search of her bedroom while it is occupied by an overnight guest.

2. Although a reviewing court may sometimes raise and decide unbriefed issues to provide a just result and maintain a sound and uniform body of precedent (S. Ct. Rules 341(e)(7), 366(a)), this was not an appropriate case in which to do so. First, because the issue had not been presented at trial, the parties did not present evidence concerning the tenant’s authority to consent. The factual record that was created concerning other issues was not necessarily complete concerning the authority-to-consent issue, and both parties might have presented different evidence had the issue been joined.

In addition, where the defendant and his appellate attorney decline to raise an issue concerning trial counsel’s ineffectiveness, it is generally presumed that the record would not have supported the argument.

Second, the issue raised *sua sponte* by the Appellate Court was not obvious error supported by clear precedent. The precedent relied upon by the Appellate Court contained language contradicting the Appellate Court’s holding, and the State’s petition for rehearing cited several cases which called into question the correctness of the court’s reasoning.

The Appellate Court’s holding concerning ineffective assistance of counsel was vacated.

3. See also, **COUNSEL**, §13-4(b)(4) & **NARCOTICS**, §35-3(c)(1).

(Defendant was represented by former Assistant Defender Elizabeth Botti, Chicago.)

[People v. Hopkins, 235 Ill.2d 453, ___ N.E.2d ___ \(2009\) \(No. 106683, 12/17/09\)](#)

After the cause was remanded to the trial court for an attenuation hearing, the trial court found that defendant’s statement was attenuated from the illegal arrest. The Appellate Court agreed, and defendant’s leave to appeal was granted. The State then sought cross-relief and contended for the first time that in the first appeal, the Appellate Court had erroneously held that the police lacked probable cause for defendant’s arrest. The Supreme Court found that the State could raise the probable cause issue by cross-appeal, and that the Appellate Court erred by finding a lack of probable cause.

1. The State did not “waive” its right to challenge the Appellate Court’s finding of no probable cause by failing to file a petition for leave to appeal rather than proceeding with the attenuation hearing. Supreme Court Rule 318(b) provides that interlocutory review is not favored, and that failure to seek review of a non-final disposition by the Appellate Court does not waive the right to present any issue in an appropriate court thereafter. Because the Appellate Court remanded the cause for an attenuation hearing and suggested that the State “had a good chance of establishing attenuation” on remand, the State had no obligation to seek leave to appeal at that point.

2. Furthermore, the State did not waive its right to challenge the Appellate Court's probable cause determination on the first appeal by failing to file its own leave to appeal following the Appellate Court's resolution of the appeal from the finding on remand. Supreme Court Rule 318(b) provides that an appellee may seek any relief warranted by the record "without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal." Because the State was the appellee in defendant's appeal from the Appellate Court's second holding, it was under no obligation to file its own petition for leave to appeal or notice of cross-appeal.

3. Neither collateral estoppel nor the "law of the case" doctrine preclude the State from challenging the probable cause finding.

A. Collateral estoppel bars relitigation of an issue which has been decided in a prior case, and applies when: (1) a party participates in two separate and consecutive cases arising from separate causes of action, and (2) some controlling fact or question material to determination of both causes was adjudicated against that party in the former case. Collateral estoppel does not apply to multiple direct appeals after the cause has been remanded to the trial court – as there is but one cause of action.

Furthermore, the collateral estoppel doctrine requires a final judgment on the merits in the prior adjudication. There is no final judgment where a single cause of action is considered at different stages of the appellate process.

B. The "law of the case" doctrine, by contrast, bars relitigation of an issue which was previously decided by the same court in the same case. The "law of the case" doctrine does not prevent the Supreme Court from considering issues which were previously decided by the Appellate Court - the Supreme Court may consider all matters "properly raised and passed on in the course of the litigation."

4. Finally, the Appellate Court erred by finding that the officer lacked probable cause for the arrest. (See [SEARCH & SEIZURE, §§44-4\(b\), 44-6\(d\)](#)).

(Defendant was represented by Assistant Defender Doug Hoff, Chicago.)

[People v. Horrell, 235 Ill.2d 235, 919 N.E.2d 952 \(2009\)](#)

The State was not estopped from arguing in the Supreme Court that a probation sentence should be upheld, although in the Appellate Court it conceded that the sentence should be vacated. A reviewing court is not bound by a party's concession of an issue. Furthermore, a reviewing court may affirm the trial court's judgment on any basis contained in the record. (See also [SENTENCING, §45-9\(a\)](#)).

(Defendant was represented by Assistant Defender Bryon Kohut, Ottawa.)

[People v. Hunt, 234 Ill.2d 49, 914 N.E.2d 477 \(2009\)](#)

1. Neither the parties nor the reviewing court may alter the theory on which a case was tried in the trial court. Thus, the Appellate Court must refuse to consider new questions which could have been refuted had they been raised below. Here, the Appellate Court erred by *sua sponte* considering statutory and Fourth Amendment issues which had not been considered by the trial court or argued by the parties.

The court concluded, however, that it would reach the same issues because they had been fully briefed in the Supreme Court.

2. Because the record did not support the State's assertion that the trial court had suppressed only a portion of the defendant's statements, the Appellate Court reached only the issues reached by the trial court. Thus, the Appellate Court did not exceed the scope of permissible review on interlocutory appeal. The court noted that as the appellant, the State was responsible for presenting a sufficient record to support its claim of error. (See also [SEARCH & SEIZURE, §§44-1\(a\), \(b\)](#)).

Because the original issue raised by the parties – whether certain statements should have been suppressed on Fifth Amendment and Illinois constitutional grounds – was not reached by the Appellate Court, the cause was remanded for further consideration.

[People v. Jackson, 2013 IL 113986 \(No. 113986, 2/7/13\)](#)

In general, courts should not reach constitutional issues where a case may be resolved on nonconstitutional grounds. Because the parties agreed that a defendant charged with driving with a suspended license could present evidence of the circumstances under which a second driver's license had been obtained, and the trier of fact would be required to determine whether the defendant misled authorities into reinstating his driving privileges, the trial judge erred by finding that the driving while license suspended statute violated due process because it precluded defendant from introducing evidence that he had not committed fraud in obtaining the second license.

(Defendant was represented by Assistant Defender Dan Evers, Mt. Vernon.)

People v. Kennebrew, 2013 IL 113998 (No. 113998, 3/21/13)

1. Supreme Court Rule 615(b)(3) authorizes a reviewing court to reduce the degree of the offense of which the defendant was convicted. Rule 615(b)(3) is intended to allow the court to reduce a conviction to a lesser offense where the evidence is insufficient to prove an element of the greater offense beyond a reasonable doubt. The court concluded that the authority provided by Rule 615(b)(3) allows a reviewing court to reduce a conviction even where the lesser offense was not charged or the State failed to request an instruction on the lesser offense at trial.

2. After the Appellate Court reversed defendant's predatory criminal sexual assault conviction on reasonable doubt grounds, the State filed a petition for leave to appeal asking that the Appellate Court be directed to consider the possible application of Rule 615(b)(3) to reduce defendant's conviction to aggravated criminal sexual abuse. The court concluded that it had acted within its authority by issuing a supervisory order granting that request. The State had not forfeited the possible application of Rule 615(b)(3) by failing to ask the Appellate Court to apply Rule 615 and raising the issue for the first time in its petition for leave to appeal. The court concluded that there were sound policy reasons to find that the State had not waived the issue, because "it would be unjust" for a defendant to obtain a complete acquittal where the evidence, though insufficient to sustain the greater charge, would justify a conviction on a lesser offense.

3. The court concluded that the charging instrument approach applies when determining whether a crime is a lesser offense for purposes of Rule 615(b)(3), rejecting defendant's argument that the "abstract elements" test should be applied where the jury did not consider the lesser included offense at trial.

4. In dissent, Justice Theis concluded that the Supreme Court acted improperly by issuing a supervisory order directing the Appellate Court to consider whether Rule 615 should be applied. Because the State failed to raise any argument concerning Rule 615 until the petition for leave to appeal, the argument had been waived. Furthermore, the State's petition for leave to appeal failed to inform the Supreme Court that the State had not argued the lesser included offense to either of the lower courts. Justice Theis also noted that the Appellate Court believed that the State had forfeited the argument, but felt constrained by the supervisory order to consider it. Under these circumstances, the State had waived the argument and the Supreme Court should not have issued the supervisory order.

Justice Theis concluded:

The State had every opportunity to charge the defendant with a lesser included offense . . . as well as every opportunity to request an instruction on that offense. The State chose not to do so, opting instead for an all-or-nothing approach. This approach continued on appeal, and only gave way when the State lost and the appellate court vacated the defendant's conviction and sentence on count I. [Although] Rule 615(b)(3) allows us to reduce the degree of the offense in which the defendant has been convicted . . . our authority under that rule should be exercised with caution and circumspection, particularly where 'neither side desired to allow the jury to consider a lesser alternative to the charged violation.'"

Finally, Justice Theis stated that the majority's opinion should not be "construed as a cue to lower courts to begin scouring records, looking for uncharged lesser-included offenses of which the defendant may

be guilty.”

(Defendant was represented by Assistant Defender Marty Ryan, Springfield.)

[People v. McKown, 236 Ill.2d 278, 924 N.E.2d 941 \(2010\)](#)

1. Although the results of HGN testing are admissible if a sufficient foundation is established, the HGN evidence should not have been admitted in this case because there was not a sufficient foundation to establish that the officer followed the required protocol. (See **EVIDENCE**, §19-27(a)).

2. The court rejected the State’s argument that the issue had been waived. Although defendant failed to raise the issue at trial, she argued in the Appellate Court that the State failed to present an adequate foundation for the results of the HGN test. The State failed to bring the defendant’s alleged forfeiture to the attention of the Appellate Court, in effect “forfeit[ing] its ability to argue forfeiture by the defendant.”

3. The court also held that defendant did not waive the issue by failing to raise it in her petition for leave to appeal, which was filed before the remand for the **Frye** hearing. At that hearing, defendant attempted to introduce evidence that the officer failed to perform the HGN testing properly. When the State objected, defendant made an offer of proof.

Although an issue not raised in the petition for leave to appeal is usually waived, the court may elect to exercise review where the issue is “inextricably intertwined” with matters that are properly before the court. Whether the HGN test was performed properly was inextricably intertwined with the issue raised – whether HGN testimony is admissible at all. Thus, the court elected to review the issue.

Defendant’s conviction was reversed and the cause remanded for a new trial.

[People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 \(2010\)](#)

1. The Supreme Court affirmed defendant’s convictions for aggravated DUI and driving while license revoked. (See **VERDICTS**, §§55-3(a), (b)).

2. The State was not estopped from arguing an issue in the Supreme Court which it conceded in the Appellate Court; “a reviewing court is not bound by a party’s concession.”

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

[People v. Ousley, 235 Ill.2d 299, 919 N.E.2d 875 \(2009\)](#)

1. An issue is moot where intervening events have made it impossible for the reviewing court to grant effective relief. The reviewing court should not decide a case if its judgment would have only an advisory affect.

Where the issue in the lower court was whether the trial court had discretion to deny the State’s motion to grant use immunity, the appeal was not rendered moot by the fact that the witness to whom the immunity was to be granted (a co-defendant) had pleaded guilty. A defendant who pleads guilty waives his privilege against compulsory self-incrimination only for the offense for which he pleads. Because the witness had been charged with multiple offenses, most of which were dropped and which could be reinstated, and because the record did not reflect whether the conviction had become final, the defendant had not waived his Fifth Amendment rights. Therefore, the appeal was not moot.

2. See also **IMMUNITY**, Ch. 28.

[In re: Austin S., 2015 IL App \(4th\) 140802 \(No. 4-14-0802, 2/9/15\)](#)

The public interest exception to the mootness doctrine allows a court to consider a moot issue when: (1) the issue is of a public nature; (2) an authoritative decision is needed to guide public officers; and (3) the issue is likely to recur. There must be a clear showing of each element for the public interest exception to apply.

Here the issue was whether the trial court’s order requiring defendant to complete a Juvenile Detention Center Treatment Program was impermissible because it violated the 30-day limitation on detention under 705 ILCS 405/5-710(1)(a)(v). By the time the case reached the Appellate Court, defendant

had completed his sentence and both parties agreed the issue was moot. The court nonetheless reached the issue under the public interest exception, holding that all three elements of the exception were satisfied.

First, the issue was of a public nature since it involved a question about the permissible length that a minor may be detained. Second, an authoritative decision was needed because it was an issue of first impression and it implicated the minor's liberty interest. Third, the issue was likely to recur because minors will continue to be sentenced to the treatment program at issue.

(Defendant was represented by Assistant Defender Janieen Terrance, Springfield.)

[In re C.C., 2015 IL App \(1st\) 142306 \(No. 1-14-2306, 1/6/15\)](#)

Under the extended juvenile jurisdiction statute (705 ILCS 405/5–810), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

If the minor commits a new offense, the adult sentence must be implemented. In addition, if the juvenile violates the conditions of the juvenile sentence in some way other than by committing a new offense, the trial court has discretion to revoke the juvenile sentence and implement the adult sentence.

Defendant was committed to Department of Juvenile Justice until he was 21, with a conditional adult sentence of 45 years in the Department of Corrections. He appealed, arguing that the 45-year-sentence violated the Eighth Amendment and the proportionate penalties provision of the Illinois Constitution.

The court concluded that because the State had not filed a petition to revoke the stay on the adult sentence or accused the minor of violating the conditions of his juvenile sentence, the minor had not suffered any injury due to the adult sentence. Therefore, he lacked standing to challenge that sentence.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

[In re Henry P., 2014 IL App \(1st\) 130241 \(No. 1-13-0241, 5/30/14\)](#)

Since defendant did not file a notice of appeal within 30 days of the final judgment, the Appellate Court did not have jurisdiction to consider her claim that the Juvenile Court Act's minimum mandatory sentence of five years' probation violated the equal protection clause.

The court rejected defendant's argument that it had jurisdiction to review her claim because it involved a constitutional attack on a statute which, if successful, would render the underlying judgment void. Although a void judgment may be attacked at any time, a judgment is void only where the court that entered the judgment lacked jurisdiction. Even if the Juvenile Court Act violated equal protection, the probation order was entered by a court of competent jurisdiction, and hence the order was merely voidable, not void.

(Defendant was represented by Assistant Defender Megan Ledbetter, Chicago.)

[In re Omar M., 2012 IL App \(1st\) 100866 \(No. 1-10-0866, 6/29/12\)](#)

To have standing to challenge the constitutionality of a statute, a person must have suffered or be in immediate danger of suffering a direct injury as a result of enforcement of the challenged statute. The purpose of standing is to ensure that courts decide actual, specific controversies and not abstract or moot issues. For a plaintiff to have standing, his claimed injury: (1) must be fairly traceable to respondent's actions; (2) must be substantially likely to be prevented or redressed by the grant of the requested relief; and (3) must consist of a distinct and palpable injury.

The minor had standing to challenge the constitutionality of the Extended Jurisdiction Juvenile Prosecutions (EJJ) statute on vagueness grounds. The claimed injury is directly traceable to the State's imposition of an adult sentence under the EJJ prosecution. The claimed injury would be redressed if the statute were found unconstitutional. The minor's injury is both distinct and palpable because if the statute is vague, he will live in fear that he may unknowingly revoke the stay of his adult sentence through his conduct. Therefore, the minor had standing to challenge the EJJ statute because he was in immediate danger of sustaining harm by enforcement of the allegedly unconstitutional provision.

(Respondent was represented by Assistant Defender Heidi Lambros, Chicago.)

[People v. Aguilar, 408 Ill.App.3d 136, 944 N.E.2d 816 \(1st Dist. 2011\)](#)

1. Under Illinois law, courts give effect to a clear expression of legislative intent concerning whether a statute is to be applied retroactively. Where there is no clear expression of legislative intent, procedural amendments are generally applied retroactively, while substantive amendments are applied prospectively.

Amendments to the definition of the offense of aggravated unlawful use of a weapon were not intended to apply retroactively to conduct which occurred before the effective date. Because the public act ([P.A. 96-742](#)) stated that it would be effective upon becoming a law, the court concluded that it contained an unambiguous statement of legislative intent that the new provisions were to be applied prospectively.

The court acknowledged that where the legislature amends a statute shortly after a controversy concerning the meaning of the statute, it is presumed that the amendment was intended as a legislative interpretation of the original legislation. However, a subsequent amendment does not replace the plain language of the statute as the best evidence of the legislature's original intent. In addition, the amendment here went further than would have been necessary to correct any possible belief by the legislature that the courts had misinterpreted legislative intent.

2. Only the Illinois Supreme Court has authority to overrule its decisions. Thus, the Appellate Court lacked authority to reconsider Illinois Supreme Court precedent interpreting the Illinois state constitution, even where it seems that such precedent is no longer valid under U.S. Supreme Court case law.

(Defendant was represented by Assistant Defender David Holland, Chicago.)

[People v. Anderson, 402 Ill.App.3d 186, 931 N.E.2d 773 \(3d Dist. 2010\)](#)

The trial court's order imposing an enhanced four-year mandatory supervised release term under [730 ILCS 5/5-8-1\(d\)\(5\)](#), and imposing fines, was "voidable" rather than "void." A judgment is void only if entered by a court which lacks jurisdiction. Defendant challenged only the specific term of MSR and the amount of the fines, and did not challenge the authority of the court to impose such sentences. Because the sentencing order was clearly within the court's jurisdiction, the order was merely "voidable."

(Defendant was represented by Assistant Defender Tom Karalis, Ottawa.)

[People v. Barghout, 2013 IL App \(1st\) 112373 \(No. 1-11-2373, 12/20/13\)](#)

To determine whether a first-stage post-conviction petition states the gist of a constitutional claim, the Appellate Court must review the entire petition in light of the trial record. The court's review is not limited to those claims raised on appeal. Where the court on its own review of the record discovers a clear and obvious error not raised by appellate counsel, the court may properly request that the parties brief the issue.

Here, the court determined that defendant's post-conviction petition raised a meritorious claim that he rejected a plea bargain based on erroneous advice of his trial counsel. Since this claim had not been raised by appellate counsel, the court ordered the parties to brief the issue. The court rejected the State's argument that it had overstepped its authority by requesting briefing on this issue. After examining the Illinois Supreme Court's decisions in **Coleman**, 183 Ill.2d 366 (1998), **Edwards**, 197 Ill. 2d 239 (2001), and **Hodges**, 234 Ill. 2d 1 (2009) (all discussing the appropriate standards for reviewing first-stage dismissals), the Appellate Court concluded that nothing in those decisions limited review to those parts of the petition argued on appeal. Instead, those decisions allow the Appellate Court to address any issues it discovers during its own review of the record. A reviewing court has the authority to address unbriefed issues where a clear and obvious error exists in the lower court's proceedings.

(Defendant was represented by Assistant Defender Robert Hirschhorn, Chicago.)

[People v. Bernard, 2014 IL App \(2d\) 130924 \(No. 2-13-0924, mod. op. 2/10/15\)](#)

Other than deciding whether it has jurisdiction, a reviewing court normally will not search the record for unargued and unbriefed reasons to reverse the trial court. Instead, courts normally only decide questions

presented by the parties. But under Illinois Supreme Court Rule 366(a)(5), a reviewing court “may, in its discretion, and on such terms as it deems just...make any other or further orders and grant any relief, including a remandment...that the case may require.”

Here, the trial court denied defendant’s motion to withdraw her guilty plea and defendant appealed. The Appellate Court remanded the case back to the trial court because of a Rule 604(d) violation. Although defendant filed a new motion to withdraw, the trial court again denied the defendant’s motion because the original motion had not been timely filed.

Defendant did not raise any issue about the trial court erroneously denying the post-remand motion based on reasons that would only apply to the original motion. The Appellate Court, however, addressed the issue on its own, stating that it had “no confidence in a decision that is so obviously based on a confused and incorrect understanding of the status of the case.” The case was remanded for a new hearing on the motion to withdraw.

[People v. Blalock, 2012 IL App \(4th\) 110041 \(No. 4-11-0041, 9/10/12\)](#)

1. Under Illinois Supreme Court Rule 12(b)(3), where a document is filed by mail or by a commercial delivery service, proof of service must be by an attorney’s certificate or by the affidavit of the non-attorney who deposited the document in the mail or delivered it to the commercial service. The affidavit is required to state the time and place of mailing, the complete address to which the documents were mailed, and the fact that the proper postage or delivery charge was prepaid.

2. The defendant, who was incarcerated, filed a *pro se* motion for reduction of sentence after he was sentenced on a probation revocation. The court concluded that the proof of service filed by the defendant was insufficient to comply with Rule 12(b)(3).

The circuit clerk’s office file-stamped defendant’s motion one day after it was due. However, the envelope in which the motion was mailed showed a postmark three days before the due date. Accompanying the petition was a single sheet of paper which contained: (1) a sworn statement that the allegations of the motion were true, (2) the notice of filing, and (3) the proof of service. The only notarization on this sheet was located at the top, directly under the sworn statement and above the notice of filing and proof of service. The notarization was dated one day before the postmark on the envelope.

The court rejected the claim that the notarization at the top of the page could be interpreted as applying to the proof of service. “[S]tatements in a writing not sworn to before an authorized person cannot be considered affidavits.”

The court also rejected the argument that because the documents were stapled together in the court file, they should be viewed as a single document that was mailed on the date of the postmark and placed in the prison mail system on that date or on the date of the notarization. The court stressed that in Rule 12(b)(3), the Supreme Court chose to require a certificate or an affidavit rather than rely on the date of the postmark. The Appellate Court lacks authority to excuse compliance with the rule.

Because the document did not show that the proof of service was notarized as required by Rule 12(b)(3), the motion for reduction of sentence was considered to have been filed as the date it was file-stamped by the clerk’s office. Because this date was one day after the due date, the motion was untimely.

3. However, the court concluded that the trial court was revested with jurisdiction despite the fact that the motion was untimely. Parties may revest the trial judge with “jurisdiction” if: (1) the court has general jurisdiction over the matter and personal and subject-matter jurisdiction over the cause; (2) the parties actively participate without objection in proceedings directed at the prior judgement; and (3) the proceedings are inconsistent with the merits of that judgment. If a trial court is revested with jurisdiction, a notice of appeal timely filed within 30 days after the ruling on an untimely post-judgment motion allows the Appellate Court to hear an appeal.

The court noted precedent holding that the revestment document does not apply to post-plea motions. Here, however, the court concluded that the revestment doctrine applied because the motion to reduce sentence was filed after probation was revoked and a new sentence imposed. Although the original

conviction was pursuant to a guilty plea, “defendant's motion for reduction of sentence is more akin to an appeal following a jury or bench trial . . . than a guilty plea.”

The court also concluded that the three requirements of the revestment doctrine were satisfied. The trial court had general, personal, and subject-matter jurisdiction of the case, the State actively participated without objection at the hearing on the untimely motion to reduce sentence, and those proceedings were inconsistent with the prior judgment because defendant was requesting reduction of his sentence. Because the trial court was revested with jurisdiction, the Appellate Court had jurisdiction to consider the appeal.

(Defendant was represented by Supervisor Arden Lang, Springfield.)

[People v. Bozarth, 2015 IL App \(5th\) 130147 \(No. 5-13-0147, 1/26/15\)](#)

The Illinois Constitution authorizes appeals in final judgements and permits the Supreme Court to provide for appeals of orders that are not final. Supreme Court Rule 604(b) provides that a defendant may appeal from an order of supervision and may seek review of the conditions of supervision, the finding of guilt, or both. Thus, the Appellate Court had jurisdiction to hear an appeal where after a stipulated bench trial defendant was sentenced to one year of court supervision.

(Defendant was represented by Assistant Defender Maggie Heim, Mt. Vernon.)

[People v. Burnett, 2016 IL App \(3d\) 140837 \(No. 3-14-0837, 12/9/16\)](#)

When defendant pled guilty, the circuit court did not mention or discuss any fines, and neither the sentencing order nor the mittimus included any fines. The deputy circuit clerk later issued a document called the “Case Transactions Summary” which included 11 fines totaling \$1046.50.

On appeal from the first-stage dismissal of his post-conviction petition, defendant argued for the first time that the fines should be vacated. The Appellate Court agreed. The imposition of a fine is a judicial act and the circuit clerk has no authority to impose fines. Fines imposed by the clerk are void from their inception.

The court rejected the State’s argument that it lacked jurisdiction to review this claim in an appeal from the dismissal of a post-conviction petition since defendant’s claim did not involve a constitutional deprivation cognizable in post-conviction proceedings. The viability of a challenge to a void assessment does not depend on the procedural mechanism used to raise the issue. A void order may be attacked at any time in any court.

The court vacated defendant’s fines.

(Defendant was represented by Assistant Defender Sean Conley, Ottawa.)

[People v. Chirchirillo, 393 Ill.App.3d 916, 913 N.E.2d 635 \(2d Dist. 2009\)](#)

The court rejected the State’s argument that defendant could be convicted of unlawful possession of a weapon by a felon because she constructively possessed a weapon that was in the possession of the principal. The State failed to present such a theory at trial, and “cannot, after advancing an accountability theory at trial . . . , advance a different theory of guilt on appeal.” (See also **ACCOUNTABILITY**, §1-1).

(Defendant was represented by Panel Attorney Lawrence Fischer, Cary.)

[People v. Coleman, 2013 IL App \(1st\) 130030 \(No. 1-13-0030, 12/18/13\)](#)

The State forfeited an alternative argument which it made in the Supreme Court where it failed to raise the argument in the trial court and expressly stated in that court that it was taking a more limited position.

[People v. Daniels, 2016 IL App \(1st\) 142130 \(No. 1-14-2130, 6/20/16\)](#)

1. A *nolle prosequi* is the formal entry by the State declaring that it is unwilling to prosecute certain charges. It terminates those charges against the defendant and leaves the matter as it was before charges were filed. A *nolle prosequi* is not a final disposition of the case and will not bar another prosecution for the same

offense. But where the State “causes the entrance of an unconditional *nolle prosequi*,” the proceeding is terminated and the same indictment cannot be reinstated at a subsequent term. The State may only reinstate a *nolled* charge by asking the trial court to vacate the *nolle* order before jeopardy attaches. Alternatively, the State may file a new charge to initiate separate proceedings against a defendant.

2. The State charged defendant with multiple counts of aggravated unlawful use of a weapon (AUUW) and unlawful use of a weapon by a felon. As part of negotiated guilty plea, the State *nolled* all the charges except one count of AUUW and defendant pled guilty to that count. After serving his sentence, defendant filed a 2-1401 petition challenging his conviction because it was based on a statute held facially unconstitutional in **Aguilar**, 2013 IL 112116. The trial court denied the petition.

3. On appeal, the State conceded that defendant’s conviction should be vacated but asked the Appellate Court to remand the case to the trial court to reinstate six of the *nolled* charges. The Appellate Court vacated defendant’s conviction but denied the State’s request to reinstate the charges.

The court first noted that the State never asked the trial court to reinstate the charges nor did it file new charges to initiate a separate proceeding. The appeal related solely to the dismissal of defendant’s 2-1401 petition, which was an altogether new proceeding, not a continuation of defendant’s criminal case. That case ended when defendant pled guilty. The Appellate Court thus lacked jurisdiction to address issues related to the *nolled* counts.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

[People v. Douglas, 2014 IL App \(4th\) 120617 \(No. 4-12-0617, 7/2/14\)](#)

1. On appeal from the dismissal of his post-conviction petition, defendant argued that the trial court improperly sent a letter to the Department of Corrections stating that defendant’s petition was frivolous and patently without merit. The Appellate Court declined to rule on this issue, noting that “defendant did not raise, nor could he have raised” any argument in his post-conviction petition regarding the trial court’s letter.

Relying on **People v. Jones**, 213 Ill. 2d 498 (2004), which held that an issue not raised in a post-conviction petition may not be raised for the first time on appeal from the dismissal of the petition, the Appellate Court held that it would not rule on the propriety of the trial court’s letter. The Appellate Court also noted that the record did not establish that the Department of Corrections took any action against defendant because of the letter and thus the issue was potentially moot.

2. The Appellate Court, however, did address defendant’s argument that he was improperly sentenced to 10 years’ imprisonment as a Class X offender, even though he did not raise this issue in his post-conviction petition. **Jones** does not apply to allegations that a defendant’s sentence is void. If defendant was ineligible to be sentenced as a Class X offender, the trial court had no authority to impose the 10-year Class X sentence, and hence his sentence would be void and capable of being challenged for the first time on appeal from the dismissal of his post-conviction petition.

(Defendant was represented by Deputy Defender Jackie Bullard, Springfield.)

[People v. Dunmore, 2013 IL App \(1st\) 121170 \(No. 1-12-1170, 12/24/13\)](#)

Defendant entered a negotiated guilty plea to an unlawful use of a weapon charge, and was sentenced to 18 months’ probation and ordered to pay fines and fees. After his probation was revoked for committing another offense, he was sentenced to two years in prison. Defendant had completed his sentence by the time of this appeal, and challenged only the revocation of probation and the assessment of fees and fines.

1. While the appeal was pending, the Supreme Court issued **People v. Aguilar**, 2013 IL 112116, which held that the statute to which defendant pleaded guilty (5/24-1.6(a)(1), (a)(3)(A)) was unconstitutional on its face. The court rejected defendant’s request that it leave the conviction intact and limit its consideration to the revocation of probation and payment of fees and fines.

Once **Aguilar** held that the section of the Criminal Code on which the plea rested was facially unconstitutional, the statute was rendered void *ab initio*. In addition, judicial decisions declaring a statute unconstitutional apply to cases pending on direct review. Because defendant’s conviction was void and

courts have an independent duty to vacate void orders, **Aguilar** required that the void conviction be vacated once it came before the court.

2. The State sought a remand to reinstate charges which had been dismissed as part of the plea agreement, and asked the court to review the constitutionality of the unlawful use of weapon and aggravated unlawful use of weapon charges which it might seek to reinstate. The court declined to consider whether **Aguilar** would render unconstitutional charges which had not yet been reinstated. Reviewing courts should not consider abstract questions or render advisory opinions.

(Defendant was represented by Assistant Defender Jean Park, Chicago.)

[People v. Evans, 2015 IL App \(3d\) 140753 \(No. 3-14-0753, 8/17/15\)](#)

The filing of a valid notice of appeal divests the lower court of jurisdiction and attaches appellate jurisdiction *instantly*. On remand from the reviewing court, the trial court regains jurisdiction only when it files the reviewing court's mandate. Actions taken by the lower court when it lacks jurisdiction are null and void.

In a previous appeal, the cause was remanded for strict compliance with Supreme Court Rule 604(d). On September 25, 2014, counsel filed a new motion to reconsider the sentence and a Rule 604(d) certificate. The trial court denied the motion and directed the clerk to file a notice of appeal and an order appointing appellate counsel.

The mandate from the Appellate Court was not received by the trial court until October 9, and was not filed until October 16. Because the motion to reconsider was denied some three weeks before the mandate was filed, the trial court's action was null and void for lack of subject matter jurisdiction.

The court rejected the State's argument that although the trial court lacked jurisdiction, defendant invited the error by presenting the motion to reconsider before the trial court regained jurisdiction. A lack of subject matter jurisdiction is not subject to waiver and may not be cured by consent of the parties.

The court also rejected the State's argument that because the cause had been remanded three previous times for compliance with Rule 604(d), judicial economy would be served by refusing to remand yet again. The court stated that unlike **People v. Shirley**, 181 Ill.2d 359, 692 N.E.2d 1189 (1998), where the Supreme Court declined to remand a third time for compliance with Rule 604(d), a reviewing court lacks discretion to refuse to remand a cause where the trial court's action was performed without jurisdiction.

The trial court's order was vacated and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Sean Conley, Ottawa.)

[People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 \(2d Dist. 2010\)](#)

1. Ordinarily, the trial court loses jurisdiction over a matter 30 days after final judgment is entered, unless a timely post-judgment motion is filed. Under the reversion doctrine, however, parties may reversion a court which has general jurisdiction with both personal and subject matter jurisdiction after the 30-day period has run.

The reversion doctrine applies when the parties actively participate, without objection, in proceedings that are inconsistent with the merits of the prior judgment. Conduct is inconsistent with a prior judgment if such conduct can be reasonably construed as showing that a party does not regard a prior order as final and binding.

If jurisdiction is reversioned in the trial court, a timely notice of appeal may be filed within 30 days after a ruling is issued on an untimely post-judgment motion.

2. The parties reversioned the trial court with jurisdiction where the State actively participated, without objection, in a hearing on defendant's untimely post-judgment motion. Both defense counsel and the trial court stated that the motion was untimely, but the State's Attorney actively participated in the proceedings without objecting and argued that the motion should be denied on its merits.

(Defendant was represented by Assistant Defender Vicki Kouros, Elgin.)

[People v. Gonzalez, 407 Ill.App.3d 1026, 944 N.E.2d 834 \(2d Dist. 2011\)](#)

On remand, the trial court lacks authority to act beyond the scope of the mandate. If specific instructions are given by the reviewing court, the lower court must comply with those instructions. If no specific instructions were given, the lower court must examine the opinion or order and proceed consistently.

Where the cause was remanded for an evidentiary hearing on the defendant's post-conviction petition, which contained a single allegation of constitutional error, the trial judge did not exceed the scope of the mandate by allowing the defendant to amend the petition to raise a new claim. The mandate directed the trial court to consider whether newly discovered evidence was of such conclusive character as to probably change the result of a retrial, but did not otherwise dictate the scope of the hearing.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[People v. Guillen, 2014 IL App \(2d\) 131216 \(No. 2-13-1216, 11/25/14\)](#)

The State appealed the trial court's dismissal of charges against defendant based on double jeopardy. Defendant's appellate attorney was allowed to withdraw because he had not been retained for appeal and defendant filed no appellate brief responding to the State's arguments. The Appellate Court agreed that it could nonetheless consider the merits of the appeal, but split three ways on the rationale for doing so with no controlling opinion.

In **First Capitol Mortgage Corp. v. Talandis Construction Corp.**, 63 Ill. 2d 128 (1976), the Supreme Court set out three options available to the reviewing court when an appellee does not file a brief: (1) the court may, if justice requires, serve as an advocate for the appellee and search the record for reasons to affirm the judgment being appealed; (2) the court may decide the case on the merits if the record is simple and the issues easily decided even without an appellee's brief; or (3) the court may reverse the judgment below if the appellant's brief demonstrates *prima facie* reversible error and the record supports the appellant's contentions.

1. Justice Schostok delivered the judgment of the court reversing the trial court, and writing for herself alone selected the second **Talandis** option. She contended that the record was simple since there were no disputed factual issues and, although she admitted that principled persons may disagree with her decision (as shown by the dissenting opinion), the legal issue was simple enough for the court to decide the case without the aid of an appellee's brief. Accordingly, Justice Schostok determined based on the appellant's brief alone that the trial court had improperly dismissed the charges on double jeopardy grounds.

2. Justice Zenoff agreed with the judgment reversing the trial court, but disagreed with Justice Schostok's use of the second **Talandis** option. Although the record was simple, the double jeopardy issue was not easily decided, as shown by the dissenting opinion, the length and complexity of Justice Schostok's analysis, and the fact that this was an issue of first impression in Illinois.

Justice Zenoff also disagreed with Justice Hudson, who in dissent selected the first option from **Talandis**. That option is available only if justice so requires, which was not true here. The court allowed defendant's private counsel to withdraw and defendant did not retain new counsel or appear *pro se*. Justice thus did not compel the court to advocate on defendant's behalf.

Instead, Justice Zenoff selected the third **Talandis** option. That option allows the court to reverse the trial court if the appellant's brief shows *prima facie* reversible error supported by the record. *Prima facie* means "at first sight" or "on the face of it." Here, the State established what appeared to be error "at first sight," and thus Justice Zenoff would reverse on that basis.

3. Justice Hudson dissented from the judgment reversing the trial court. He agreed with Justice Zenoff that the issue was not simple and thus the second **Talandis** option should not apply. Instead, he selected the first option and acted as an advocate for defendant. He disagreed with Justice Zenoff's contention that the first option did not apply because defendant did not retain new counsel or appear *pro se*. Although this might show a lack of diligence, the record was unclear as to why defendant failed to do this, and it would be unfair to attribute dispositive weight to this single factor.

The more important factor was the nature of the right at issue and here there was a violation of a

fundamental constitutional protection. Thus the court had an obligation to serve as an advocate for defendant and, having done so, Justice Hudson would have found that the trial court properly dismissed the charges on double jeopardy grounds.

[People v. Hall, 2014 IL App \(1st\) 122868 \(No. 1-12-2868, 10/20/14\)](#)

Defendant was convicted of violating the Sex Offender Registration Act (730 ILCS 150/6) because he failed to register after having been convicted of aggravated criminal sexual assault and of a prior failure to register. As charged, the offense was a Class 2 felony. The trial court imposed a Class X sentence based on two prior convictions - the same aggravated criminal sexual assault conviction that was an element of the offense, and a prior DUI conviction.

The court concluded that the legislature did not intend for a single conviction to be used both as an element of the offense of failing to register as a sex offender and as a reason to enhance the sentence. Thus, the Class X sentence was void and could be challenged for the first time on appeal from the denial of a post-conviction petition.

The court rejected the argument that the issue was moot because defendant had completed the term of imprisonment. The court noted that defendant was serving a three-year-period of mandatory supervised release on the Class X conviction, and that if he was resentenced on a Class 2 felony he would be subject to only a two-year MSR term. Thus, relief could be granted in the form of a shorter MSR term.

(Defendant was represented by Assistant Defender Lauren Bauser, Chicago.)

[People v. Hammond, Gaither, & Donahue, ___ Ill.App.3d ___, ___ N.E.2d ___ \(4th Dist. 2009\) \(Nos. 4-08-0651, 0652 & 4-09-0214, 12/21/09\)](#)

The court declined to consider the State's argument concerning the separation of powers doctrine, because the argument differed from the argument raised in the trial court and in the State's brief. The State raised its assertion for the first time in the middle of the "Argument" section of the State's brief in the Supreme Court, and "we do not want to run the risk that defendants would be confused or blind-sided by a new theory that the State slipped into the body of its argument." (See also **PROBATION**, §40-5(a)).

(Defendants were represented by Assistant Defender Catherine Hart, Springfield.)

[People v. Hansen, ___ Ill.App.3d ___, ___ N.E.2d ___ \(2d Dist. 2011\) \(No. 2-08-1226, 5/27/11\)](#)

Under Supreme Court Rule 272, if a party is required to draft an order to reflect the judgment reached by the court, the order is effective when the signed judgment is filed. Where no signed judgment is required, the judge or the clerk should make a notation of the judgment and enter the judgment of record promptly. The judgment becomes effective when it is entered.

Where defendant's motion for reconsideration of the denial post-conviction relief was scheduled to be heard on November 10, but on November 5 the trial court entered a written order denying the motion, the order became effective on November 10, when it was announced to the parties. To hold otherwise would create an untenable result by possibly forcing a defendant to lose his right to appeal even though he was unaware of the trial court's order.

Because the order denying reconsideration took effect November 10, defendant had 30 days from that date to file a notice of appeal.

(Defendant was represented by Assistant Defender Larry Wells, Mt. Vernon.)

[People v. Henderson, 2011 IL App \(1st\) 090923 \(No. 1-09-0923, 11/17/11\)](#)

1. Courts generally will not review moot issues. The purpose of this rule is to avoid consideration of cases where the parties no longer have a personal stake in the case's outcome. A case can become moot due to a change in circumstances while an appeal is pending.

There are three exceptions to the mootness doctrine: (1) the public-interest exception; (2) the capable-of-repetition-yet-evading-review exception; and the collateral-consequences exception. The public-

interest exception permits a court to consider an otherwise moot issue when: (1) the question presented is of a public nature; (2) an authoritative determination is necessary for future guidance of public officers; and (3) a likelihood exists that the question will recur.

The defendant's appeal from the dismissal of his post-conviction petition became moot due to defendant's completion of service of his sentence, including his MSR term. The question of whether the trial court can summarily dismiss a *pro se* post-conviction petition due to an unnotarized verification affidavit nonetheless could be reached under the public-interest exception.

The question of whether the trial court can summarily dismiss a petition due to an unnotarized verification affidavit is a question of a public nature that affects a large number of criminal defendants who file petitions every year. An authoritative determination is necessary for the future guidance of trial court judges, who are public officers. A likelihood exists that the issue will arise in the future in light of the sheer volume of petitions being filed and "the fact that this is at least the second case this year in which the State has argued that this is an appropriate basis for first-stage dismissal."

2. A void judgment may be attacked directly or collaterally in any court at any time. Although a reviewing court is not vested with authority to consider the merits of a case merely because the dispute involves an order that is or is alleged to be void, the lack of standing to file a post-conviction petition is not a jurisdictional defect that deprives the court of the authority to consider the merits of an argument that a judgment is void.

3. Generally, it is appellant's burden to properly complete the record on appeal. Any doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court. This rule is relaxed where the defendant can prove that the record is incomplete due to no fault of his own, as well as demonstrate that there is a colorable need for the missing portion of the record in order to have appellate review. If defendant can establish both prongs, the State then must show that there are other means to afford adequate review.

The indictment was not included in the record on appeal and both parties' efforts to locate a copy of the indictment were unsuccessful. The indictment was relevant to defendant's argument that his criminal conviction was void as it did not allege an offense that was subject to transfer from juvenile to criminal court. However, the court concluded that defendant had not established a colorable need for the indictment as his claim that he was not charged with a transferable offense was based on speculation.

Defendant conceded that he did not know the exact language used in the indictment. He conceded that he may have committed a transferable offense. "Thus it appears from defendant's argument that it is equally probable that an error did or did not occur but he asks us to assume the former." Defendant's decision to waive reading of the indictment, and not to challenge his transfer to criminal court, even after it was questioned why defendant was before the criminal court, suggests that counsel's review of the indictment revealed no defects. "We will not equate defendant's fishing expedition with a colorable need for the indictment."

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

[People v. Hill, 2014 IL App \(3d\) 120472 \(Nos. 3-12-0472 & 3-12-0473, 3/13/14\)](#)

1. Defendant argued that the trial court improperly required him to pay a \$200 DNA analysis fee. The Appellate Court observed that defendant did not preserve the error in the trial court. Typically defendants avoid the consequences of forfeiture by arguing that the sentence is void, but defendant did not argue voidness in this case. Nonetheless, in the interest of maintaining a uniform body of law, the Court *sua sponte* considered whether the imposition of the DNA fee was void.

2. In arguing that the DNA fee was improperly imposed, defendant relied on an information sheet provided by the ISP Division of Forensic Services showing that defendant submitted a blood sample for analysis on July 11, 1995. The Court held that although this document was not presented to the trial court, it would take judicial notice of it as a public record. The Court therefore recognized that defendant submitted a DNA sample in 1995.

3. The Court refused to consider information from the website “judici.com,” in deciding whether defendant was improperly assessed two DNA fees. Instead, the Court relied exclusively on the clerk’s “payment status information,” included in the common law record. The Court noted that printouts from “judici.com,” were appended to the brief, but were not part of the record on appeal. The Court cautioned the parties against attempting to supplement the record with information from the internet without first obtaining leave of the Court.

(Defendant was represented by Assistant Defender Gabrielle Green, Chicago.)

[People v. Hobson, 2014 IL App \(1st\) 110585 \(No. 1-11-0585, 3/12/14\)](#)

The Appellate Court rejected the State’s argument that in an appeal from the second stage dismissal of a post-conviction petition, the court “stepped outside of its proper role as neutral arbiter” by asking the parties to brief an issue which had been raised in the post-conviction petition but not included in the original brief on appeal. In reviewing an order dismissing a post-conviction petition at the second stage, the Appellate Court is required to review the entire petition and all supporting documents to determine whether, in light of the trial record, the petitioner has made a substantial showing of a constitutional violation. Because a reviewing court has authority to address unbriefed issues *sua sponte*, it necessarily has authority to request supplemental briefs instead. Therefore, the court did not act improperly by asking the parties to brief an issue that was presented by the post-conviction petition.

In a concurring opinion, Justice Hyman stated that while a reviewing court should act with restraint in using its discretionary power to reach new issues, in criminal cases the desire for restraint must be informed with regard for the defendant’s right to a fair trial. Justice Hyman also noted that the defendant presented the issue to the trial court, the trial court ruled on the issue, the issue was preserved for appeal, and both parties received notice of the court’s interest in the issue and could file supplemental briefs. Thus, the procedure assured a fair and just review and fulfilled the fundamental demands of procedural due process.

In a specially concurring opinion, Justice Mason disputed the court’s decision to ask for briefing on an additional issue and stated that “competent counsel are in the best position to decide which of several issues raised in the trial court should be pursued on appeal.

(Defendant was represented by Assistant Defender Autumn Fincher, Chicago.)

[People v. Jake, 2011 IL App \(4th\) 090779 \(No. 4-09-0779, 8/15/11\)](#)

In a criminal appeal, the Appellate Court lacks jurisdiction to consider issues arising from the circuit clerk’s imposition of a late fee and a collection fee for unpaid fines and fees. The court concluded that the fees, which are authorized by statute, “are in the nature of a separate civil penalty which must be challenged by a cause of action separate from the criminal case.”

The court also noted that the fees were imposed several months after the notice of appeal was filed. A reviewing court has jurisdiction to consider only the judgments specified in the notice of appeal.

The court also stated that if the defendant chooses to contest the civil penalties, he will be required to either act *pro se* or hire an attorney rather than relying on court-appointed counsel.

(Defendant was represented by Assistant Defender Amber Gray, Springfield.)

[People v. Liekis, 2010 IL App \(2d\) 100774 \(No. 2-10-0774, 7/31/12\)](#)

1. Defendant’s filing of a motion to modify the conditions of conditional discharge did not revest jurisdiction in the trial court. The motion had no effect on defendant’s previously-filed timely notice of appeal from his conviction. A motion to modify the conditions of conditional discharge is not a motion to reconsider the sentence. The trial court retains jurisdiction to modify the conditions of conditional discharge. 730 ILCS 5/5-6-4(f).

2. The doctrine of invited error or acquiescence is a form of procedural default or estoppel. It provides that a party may not request the court to proceed in one manner and then argue on appeal that the requested action was error. The rationale of the doctrine is that it would be unfair to grant relief to a party

based on error that the party introduced into the proceedings.

The State was not barred by the doctrine of invited error from arguing on appeal that the defense had not met its burden at the hearing on a motion to suppress. The defense and not the State argued that the defense had met its burden and that the burden shifted to the State. The State disagreed that the burden had shifted, and merely acquiesced to the court's judgment as to whether the defense had met its burden.

3. The appellant bears the burden of preserving and presenting an adequate record of the asserted error. Any doubts arising from the inadequacy of the record must be resolved against the appellant.

Where defendant claims that she did not waive the right to trial by jury in open court, she must present a record that sufficiently covers all proceedings that could have involved the waiver. Without an adequate record, the reviewing court must assume that the record indications of a jury waiver are indeed based on a valid waiver.

Defendant presented an incomplete record on the issue of jury waiver. The half sheet indicated that on the day that a stipulated bench trial was conducted, "jury trial [was] waived." The agreed statement of facts indicated that defense counsel moved for a stipulated bench trial and that a stipulated bench trial was conducted immediately following the court's denial of defendant's motion to reconsider. No report of proceedings for that date was included in the record. In the absence of a report of proceedings or acceptable substitute, the court assumed that the record indications of a jury waiver were based on a valid waiver.

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[People v. Love, 2013 IL App \(2d\) 120600 \(No. 2-12-0600, 12/19/13\)](#)

Defendant filed a *pro se* post-conviction petition while his direct appeal was pending. That petition was summarily dismissed on the same day his direct appeal was decided. The ground for the dismissal was that the defendant failed to raise a constitutional issue and argued only that a statutory provision had been violated.

Defendant did not appeal the summary dismissal, but subsequently filed a second post-conviction petition and an amended second post-conviction petition. The trial court treated the amended petition as a successive post-conviction petition and denied leave to file it.

On appeal, defendant argued that because the petition filed during his direct appeal did not raise a constitutional issue, it should have been characterized as a §2-1401 petition even though it was labeled a post-conviction petition. Thus, defendant contended that his second filing was his first post-conviction petition and that leave to file was not required.

The court concluded that it lacked jurisdiction to address issues concerning defendant's first petition, including whether the trial court should have characterized it as a §2-1401 motion instead of a post-conviction petition. To preserve review of a judgement entirely disposing of a post-conviction proceeding, the party seeking review must file a notice of appeal within 30 days of the entry of judgement or an order disposing of a timely filed motion attacking the judgement. The trial court treated the first filing as a post-conviction petition, and entered a summary dismissal. Because that dismissal was a final judgement resolving all of the issues that were raised in the petition, defendant had 30 days to file either a notice of appeal or a motion attacking the judgement. By failing to act, defendant deprived the Appellate Court of jurisdiction to consider any issues arising from the initial petition, including whether it should have been treated as a post-conviction or §2-1401 proceeding.

(Defendant was represented by Assistant Defender Emily Filpi, Chicago.)

People v. McNeal, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2010) (No. 1-08-2264, 9/30/10), superceded by [405 Ill.App.3d 647, 955 N.E.2d 32](#)

A reviewing court should not search the record for unargued and unbriefed reasons to reverse the judgment of a trial court. A court may address an unbriefed issue when a clear and obvious error exists in the trial court proceedings and addressing the error is necessary to provide for a just result and for the maintenance of a sound and uniform body of precedent.

Following that rationale, the dissent (Gordon, R., J.) would reverse defendant's aggravated criminal sexual assault conviction based on evidence that he forced complainant to insert her finger in her vagina, where that conduct does not meet the statutory definition of penetration. See also **SEX OFFENSES** §46-2(a).

(Defendant was represented by Assistant Defender Gilbert Lenz, Chicago.)

[People v. Medrano, 2014 IL App \(1st\) 102440 \(No. 1-10-2440, 4/16/14\)](#)

A void sentence can be corrected at any time and is not subject to waiver or forfeiture. But the issue of voidness must be raised in a proceeding that is properly pending before a court that has jurisdiction. If the court lacks jurisdiction, it cannot confer any relief, even from a void judgment.

Here, defendant argued for the first time on appeal from the second-stage dismissal of his post-conviction petition that the sentence imposed on his guilty plea was void, and therefore he should be allowed to withdraw his guilty plea. The State, relying on **People v. Flowers**, 208 Ill. 2d 291 (2003), argued that since defendant filed his post-conviction petition well beyond the three-year statute of limitations period, the voidness issue was procedurally barred.

In **Flowers**, defendant filed an untimely Rule 604(d) motion arguing that her sentence was void. The trial court denied the motion as being untimely, but the Appellate Court reversed, holding that the timeliness requirements of Rule 604(d) were not jurisdictional and could be excused when considering a void sentence. The Illinois Supreme Court reversed the Appellate Court, holding that the only matter properly before the Appellate Court was the trial court's lack of jurisdiction over the untimely 604(d) motion. Because strict compliance with Rule 604(d) is a condition precedent to an appeal on the merits, the Appellate Court had no authority to vacate the void sentence.

The court held that **Flowers** did not apply to the present case. Unlike Rule 604(d), which divests the trial court of jurisdiction after 30 days, the time limits on filing a post-conviction petition are not jurisdictional. Instead, they act as a statute of limitations that the State can waive or forfeit. The trial court thus had jurisdiction to address the issues raised in defendant's petition, and since defendant filed a timely appeal, the Appellate Court had jurisdiction to address the trial court's judgment.

Since the Appellate Court had jurisdiction to address the lower court's judgment, it could address the issue of whether the sentence was void, even though the issue was not raised below, since void judgments "can be challenged on collateral review for the first time on appeal."

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

[People v. Molidor, 2012 IL App \(2d\) 110006 \(No. 2-11-0006, 5/25/12\)](#)

A motion for return of bond is governed not by Supreme Court [Rule 604\(d\)](#), but by [725 ILCS 5/110-7\(f\)](#), which authorizes the return of 90% of the bond deposit when the conditions of bond have been performed and the defendant has been discharged from all obligations. Because § 110-7(f) does not establish a time limitation for moving for return of the bond, the Appellate Court did not lack jurisdiction to consider an appeal from denial of a motion to return bond although the defendant failed to file his motion within 30 days of sentencing.

(Defendant was represented by Assistant Deputy Defender Bruce Kirkham, Elgin.)

[People v. Neely, 2013 IL App \(1st\) 120043 \(No. 1-12-0043, 11/12/13\)](#)

Defendant argued that his conviction for aggravated unlawful use of a weapon violated the Second Amendment and must be vacated. The court concluded that the challenge was not properly before the court because the AUUW conviction had been merged with a conviction for unlawful use of a weapon, a sentence had been imposed only on the latter conviction, and that conviction and sentence had been affirmed. Because there is no final judgment in a criminal case until sentence is imposed and no sentence was imposed for AUUW, the conviction could not be reviewed.

(Defendant was represented by Assistant Defender Lauren Bauser, Chicago.)

[People v. Newlin, 2014 IL App \(5th\) 120518 \(No. 5-12-0518, 9/23/14\)](#)

On defendant's direct appeal challenging the sentence for his first degree murder conviction, the Appellate Court concluded that it lacked jurisdiction to consider the State's attempt to raise the trial court's failure to impose mandatory fines. First, the court noted that the record failed to support the argument that mandatory fines had not been imposed, rejecting the State's attempt to use a printout of the circuit clerk's online records to show what assessments were allegedly made. Second, the court stated that the failure to impose mandatory fines is not a matter which can be appealed by the State under Supreme Court Rule 604(a).

The court concluded:

What the State is essentially trying to do . . . is to piggyback an appeal on defendant's appeal. We can find no authority for such practice and will not allow the State to raise the issue of fines in such a manner.

(Defendant was represented by Assistant Defender Duane Schuster, Springfield.)

[People v. Peterson, 397 Ill.App.3d 1048, 923 N.E.2d 890 \(3d Dist. 2010\)](#)

The defendant lacked authority to cross-appeal from the State's interlocutory appeal under Supreme Court [Rule 604\(d\)](#). [Rule 604](#) provides only limited authority to appeal interlocutory rulings, and none of the defendant's issues fell within the limitations of the rule. (See also **DISCOVERY**, §15-1).

[People v. Ramirez, 2015 IL App \(1st\) 130022](#) (No. 1-13-022, modified upon denial of rehearing 5/27/15)

Defendant argued on appeal that the trial court considered improper factors at sentencing. Defendant conceded that the issue was forfeited, but argued in a single paragraph that it should be considered under the plain-error rule "because consideration of an improper sentencing factor is plain error." Defendant cited **People v. James**, 255 Ill. App. 3d 516 (1st Dist. 1993) for the proposition that the consideration of improper factors at sentencing is plain error.

The Appellate Court held that defendant waived his plain error argument on appeal by failing to "expressly argue, much less develop the argument that either prong of the doctrine is satisfied." The court also noted that the holding of **James**, that every sentencing error involving the consideration of improper factors is plain error, would swallow the rule of forfeiture. The Court thus declined to conduct a plain error analysis and affirmed defendant's sentence.

(Defendant was represented by Assistant Defender Allison Shah, Chicago.)

People v. Salcedo, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2011) (No. 1-08-3148, 6/9/11)

1. Unless a timely post-judgment motion is filed, the trial court loses jurisdiction 30 days after final judgment is entered. In a criminal case, the sentence is the final judgment. Thus, the trial court retains jurisdiction only if the defendant files a motion to reconsider the sentence or a notice of appeal within 30 days of sentencing.

2. Without deciding whether the trial court has authority to grant an extension of time in which to file a post-sentencing motion, the court found that the motion which the judge granted was merely a continuance of the hearing on such a motion, if one was timely filed. The court noted that defense counsel's motion stated that because he was involved in another trial, he would be unavailable for "any evidentiary trial or hearing."

3. The court concluded, however, that the parties revested the trial court with jurisdiction to consider an untimely post-sentencing motion. Under the revestment doctrine, parties revest the trial court with personal and subject matter jurisdiction by actively participating in proceedings which are inconsistent with the merits of a prior judgment. Conduct is deemed inconsistent with a prior judgment where it could be construed as an indication that the parties do not view the prior judgment as final and binding. Active participation, rather than mere consent, is required to revest jurisdiction.

If jurisdiction is revested in the trial court, the filing of a notice of appeal within 30 days after the ruling on an untimely post-judgment motion vests the Appellate Court with jurisdiction.

Here, the State revested the trial court with jurisdiction when it affirmatively argued that defendant's untimely motion to reconsider the sentence should be denied on its merits. "By participating rather than objecting to the hearing, the State essentially acknowledged that the previous sentencing judgment should be revisited." The court rejected the argument that jurisdiction is revested only where both parties specifically seek to set aside the judgment; the revestment doctrine applies where a party challenges a prior judgment and the opposing party acts in a manner that is inconsistent with the final and binding nature of that judgment.

Defendant's convictions for first degree murder and aggravated battery with a firearm were affirmed. (Defendant was represented by Assistant Defender Michael Soukup, Chicago.)

[People v. Shaw, 2016 IL App \(4th\) 150444 \(No. 4-15-0444, 4/29/16\)](#)

725 ILCS 5/113-3.1 authorizes the trial court to order the defendant to pay a reasonable sum to reimburse the county or State for the cost of court-appointed counsel. On appeal, defendant argued that the trial court erred by ordering a public defender fee without providing notice or conducting a hearing to determine defendant's ability to pay. The State conceded the issue and argued that the cause should be remanded for a hearing on the appropriateness of a public defender fee.

Although neither party raised the issue, the court found on its own motion that it lacked jurisdiction to consider the issue. Defendant filed the notice of appeal December 19, 2012, and indicated that he was appealing the judgement that was entered December 17, 2012. Because the public defender fee was not ordered until nearly two months later, and defendant failed to file an amended notice of appeal, the court concluded that it lacked jurisdiction to consider the public defender fee.

A notice of appeal confers jurisdiction to review only the judgments or parts thereof that are specified in the notice of appeal. Although notices of appeal are to be construed liberally, the notice of appeal here did not fairly and adequately set out the assessment of a public defender fee as a ground for the appeal.

(Defendant was represented by Assistant Defender Erica Nichols Cook, Springfield.)

[People v. Thomas, 2014 IL App \(2d\) 121001 \(No. 2-12-1001, 9/26/14\)](#)

1. A claim that has not been raised in a *pro se* post-conviction petition may not be raised for the first time on appeal from the first-stage dismissal of that petition. **People v. Jones**, 213 Ill. 2d 498 (2004). In determining whether an issue has been forfeited for not being raised below, courts should afford the petition a liberal construction allowing borderline cases to proceed. A *pro se* petitioner is unlikely to be aware of the precise legal basis for his claim, and hence need only allege enough facts to make an arguable claim. The pleading must, however, bear some relationship to the issue raised on appeal.

2. At trial, the court precluded evidence that another man, N.H., confessed to the police and to a jail pastor that he had committed the offense. The trial court ruled that the confession to the pastor was barred by clergy-penitent privilege. On direct appeal, defendant's counsel argued that the court erred in precluding evidence of N.H.'s confession to the police, but raised no issue about N.H.'s confession to the jail pastor. The court rejected defendant's argument and affirmed his conviction.

3. In his *pro se* petition, defendant argued that his direct appeal counsel was ineffective for failing to raise an issue about trial counsel's failure to investigate and present facts showing that N.H. confessed to the murder. In support of this claim, defendant referenced various facts about N.H.'s confessions, including his confession to the pastor. Defendant also claimed that trial counsel failed to take any steps to corroborate N.H.'s confession to the police.

4. On appeal from the first-stage dismissal of his petition, defendant argued that his direct appeal counsel was ineffective for failing to raise an issue that the trial court erred in precluding N.H.'s confession to the jail pastor based on clergy-penitent privilege. The State argued that defendant forfeited this claim by failing to include it in his *pro se* petition. According to the State, although defendant argued appellate

counsel's ineffectiveness both below and on appeal, defendant's post-conviction petition focused on trial counsel's failure to investigate and present facts supporting the admission of N.H.'s confession to the police, while his claim on appeal focused on the trial court's error in precluding evidence of N.H.'s confession to the pastor.

The Appellate Court rejected the State's forfeiture argument. The court pointed to language in **People v. Hodges**, 234 Ill. 2d 1 (2009) and **People v. Edwards**, 197 Ill. 2d 239 (2001), stating that a *pro se* petition should be liberally construed and need not present a completely pled or fully stated claim since a *pro se* litigant may be unaware of the legal basis for his claim. Here, defendant's petition and his appellate argument both alleged ineffectiveness based on omissions related to the same underlying issue of the admissibility of N.H.'s confession. Under the liberal standards appropriate to *pro se* petitions, the two claims are sufficiently related, and hence defendant did not forfeit his appellate argument.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

[People v. Veach, 2016 IL App \(4th\) 130888 \(No. 4-13-0888, 3/11/16\)](#)

1. Where a reviewing court must consider matters outside the record in order to decide whether trial counsel provided ineffective assistance, the issue is more appropriately addressed in post-conviction proceedings. To help clarify which cases raising ineffectiveness may be appropriately addressed on direct appeal, the Appellate Court suggested dividing such cases into three categories.

Category A: cases that the court should decline to address. These are cases where the appellate record is not adequate to determine whether counsel was ineffective. The record will typically be missing information about the communication between counsel and defendant and about counsel's trial strategy and tactics.

When faced with this type of case, the reviewing court should decline to address the issue, affirm the lower court's judgment, and indicate that defendant may raise the issue in a post-conviction petition.

Category B: cases that the court may address because they are clearly groundless. On rare occasions, the claim clearly has no merit and thus there is no need to examine the information that is typically missing from the direct appeal record.

Category C: cases that the court may address because trial counsel's errors were so egregious that the reviewing court can determine that trial counsel was ineffective without seeing further evidence. In such cases, the court must be able to conclude that no justifiable explanation for counsel's error could possibly exist.

2. Here, trial counsel agreed that video recordings should be admitted even though they contained prior consistent statements and bad character evidence. The court held that even though "at first blush" it was not clear why trial counsel agreed to admit this evidence, this was a Category A case that should not be addressed on direct appeal. The record contained no information about why counsel agreed to admit the evidence and since this was not a case where no justifiable explanation for counsel's action could possibly exist, the court would need to improperly guess at counsel's motivation to resolve the issue.

The court thus declined to address defendant's claim, affirmed his convictions, and noted that defendant may raise his claim in a post-conviction petition.

3. The dissent believed that the record on appeal showed ineffective assistance of counsel and that delaying the claim until a post-conviction proceeding was improper.

(Defendant was represented by Assistant Defender Jack Hildebrand, Elgin.)

[People v. Vinokur, 2011 IL App \(1st\) 090798 \(No. 1-09-0798, 8/24/11\)](#)

A void order may be attacked at any time, directly or collaterally, but the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts.

Defendant's post-conviction petition was not properly before the trial court because he lacked standing to file the petition. As the dismissal of the petition was proper, he could not challenge his sentence as void on appeal from the dismissal of the petition. The Appellate Court only had the authority to review

the correctness of the ruling that defendant lacked standing.

(Defendant was represented by Assistant Defender Rachel Kindstrand, Chicago.)

[People v. Wallace, 405 Ill.App.3d 984, 938 N.E.2d 573 \(2d Dist. 2010\)](#)

Dismissal of a 2-1401 petition for relief from judgment due to defendant's failure to serve the petition on the State was a final and appealable order. The finality of a judgment of dismissal is dependent on whether the dismissal prejudices the filer. Because the limitations period for the filing of a 2-1401 petition expired two days after the court dismissed the petition, and before the court heard defendant's motion for reconsideration, defendant was prejudiced by the dismissal such that the dismissal was a final and appealable order.

(Defendant was represented by Assistant Defender Jack Hildebrand, Elgin.)

[People v. Walton, 2013 IL App \(3d\) 110630 \(No. 3-11-0630, 5/29/13\)](#)

Under Supreme Court Rule 615(b)(3), an Appellate Court may enter judgment of conviction for any uncharged offense that: (1) is a lesser-included offense of the charged offense; and (2) has been proved beyond a reasonable doubt.

The charging-instrument approach governs whether a charging instrument has properly charged an uncharged offense. Under this approach, an uncharged offense is considered a lesser-included offense of a charged offense if every element of the uncharged offense is contained in the charging instrument or if any element not listed in the charging instrument can be reasonably inferred from the charging instrument's allegations.

Under the charging-instrument approach, theft under subsection (a)(1) of the theft statute (720 ILCS 5/16-1(a)(1)) is a lesser included of theft under subsection (a)(4) (720 ILCS 5/16-1(a)(4)). Defendant was charged with a violation of subsection (a)(4), which requires that: (1) she obtained control over stolen property; and (2) she either knew that the property was stolen or reasonably should have known that it was stolen. Subsection (a)(1) requires that: (1) defendant obtained or exerted control over property of the owner; and (2) the control was unauthorized. Charging that defendant obtained control over stolen property is included within the element of (a)(1) that defendant obtain or exert control over the property. It can be reasonably inferred from the allegation that defendant obtained the property knowing that it was stolen that the control obtained or exerted by defendant was unauthorized.

Because the State proved that defendant committed all of the elements of the lesser-included offense of subsection (a)(1), the Appellate Court reduced defendant's felony theft conviction under subsection (a)(4) to a felony conviction under subsection (a)(1).

(Defendant was represented by Assistant Deputy Defender Larry Wells, Mt. Vernon.)

[People v. Ware, 2014 IL App \(1st\) 120485 \(No. 1-12-0485, 3/14/14\)](#)

A notice of appeal confers jurisdiction on a reviewing court to consider only the judgments or parts thereof specified in the notice of appeal. Here, the Appellate Court found that because the notice of appeal was limited to defendant's current conviction for armed robbery, the Court did not have jurisdiction to determine whether defendant's previous convictions for aggravated unlawful use of a weapon (AUUW), introduced as aggravation at sentencing, were unconstitutional under **People v. Aguilar**, 2013 IL 112116.

Although the Illinois Supreme Court found that the Class 4 form of AUUW was void in **Aguilar**, that fact alone did not give the Appellate Court jurisdiction over defendant's prior convictions. The Appellate Court is not vested with authority to consider the merits of a case simply because it involves a void judgment. If defendant wants to challenge his prior convictions he must file the appropriate pleadings.

Additionally, since **Aguilar** implied that the Class 2 form of AUUW remains in effect, it is not necessarily true that defendant's prior AUUW convictions are void. The Court rejected defendant's request for resentencing.

(Defendant was represented by Assistant Defender Kathleen Hill, Chicago.)

[People v. Wynn, 2013 IL App \(2d\) 120575 \(No. 2-12-0575, 12/26/13\)](#)

A criminal defendant for whom counsel has been appointed may be ordered to pay a reasonable sum to reimburse the county or State for the cost of appointed counsel. 725 ILCS 5/113-3.1(a). Before ordering reimbursement, the trial court must conduct a hearing concerning the defendant's financial resources and ability to pay.

Where defendant failed to appeal when he was placed on probation and ordered to pay a public defender fee, the Appellate Court lacked jurisdiction to review the public defender fee when defendant appealed after his probation was revoked. A defective order requiring a public defender fee is voidable rather than void, and may be challenged only if the defendant files a timely notice of appeal from the order imposing the fee.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

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§2-6(b)

Mootness

[People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 \(1952\)](#) The function of the court is to decide controverted issues. When a reviewing court has notice of facts which show that only moot questions or mere abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal will be dismissed. An exception to this rule, occurs when the issue presented is of substantial public interest. See also, [Radzewski v. Cawley, 159 Ill.2d 372, 639 N.E.2d 141 \(1994\)](#) (failure to hold discharge hearings within 30 days not moot, though hearings had been held by time of appeal, because the liberty interest protected by affording prompt hearings to insanity acquittees is a public concern, circuit courts do not follow uniform practices in scheduling release hearings, and the issue is likely to recur)).

[Holly v. Montes, 231 Ill.2d 153, 896 N.E.2d 267 \(2008\)](#) An appeal is rendered moot when intervening events preclude a reviewing court from granting effective relief. Under the "recurrence" exception to the mootness doctrine, the court may review a moot issue where there is a reasonable expectation that the complaining party will be subject to the same action again, but the action will be of such short duration that an appeal cannot be fully litigated. The "public interest" exception to the mootness doctrine allows review of moot questions of a substantial public nature if there is a need for an authoritative decision and the situation is likely to recur. The court held that the issue raised by the petitioner in a mandamus action - whether the Prisoner Review had authority to order electronic home confinement as a condition of MSR - was moot because the Board had vacated the condition during the litigation. However, the court concluded that the "public interest" exception applied because all felons except those serving life or capital sentences are required to serve mandatory supervised release and a large number of felons will be exposed to the possibility that the Board will impose home monitoring as a part of MSR.

[People v. Mata, 217 Ill.2d 535, 842 N.E.2d 686 \(2005\)](#) After defendant was sentenced to death, she filed an appeal claiming that the death penalty eligibility factor - that the offense was committed in a cold, calculated and premeditated matter - was not supported by the evidence. While the case was on appeal, defendant filed a clemency petition which resulted in a commutation of the death sentence to natural life imprisonment. Defendant subsequently argued that she was entitled to a new sentencing hearing, despite the commutation order, because a natural life sentence was authorized only if the aggravating factor was proven beyond a reasonable doubt. When defendant contended that the death penalty eligibility factor had not been proven beyond a reasonable doubt, she was raising a due process argument that the evidence was insufficient to support a conviction for first degree murder with an authorized sentence of natural life. The Court rejected

the State's argument that defendant was estopped from challenging the natural life sentence because she had sought a commutation from the governor. The doctrine of "judicial estoppel" provides that a person who takes a particular position in a legal proceeding may not take a contrary position in subsequent proceedings. Defendant did not take contrary positions in her petition for commutation and on appeal - although she requested that the death sentence be commuted, she did not request a natural life sentence or concede that such a sentence would have been authorized.

[People v. Jackson, 199 Ill.2d 286, 769 N.E.2d 21 \(2002\)](#) An appeal is moot where events since the conviction make it impossible for the reviewing court to render effective relief. An appeal is not moot where the court's decision could directly impact the rights and duties of the parties. Because of the potential sentence the defendant might face if she violated the conditions of her release, a sentencing challenge was not moot although defendant had been placed on mandatory supervised release.

[Madison Park Bank v. Zagel, 91 Ill.2d 231, 437 N.E.2d 638 \(1982\)](#) "This Court will not review cases merely to establish a precedent or guide future litigation." Exceptions to the mootness doctrine include: the need to act quickly to prevent irreversible harm in similar cases, the need to address important questions affecting public health, and the need to settle a controversy which is likely to recur but unlikely to last long enough to allow appellate review.

[In re Dexter L., 334 Ill.App.3d 557, 778 N.E.2d 371 \(2d Dist. 2002\)](#) The public interest exception to the mootness doctrine applied where a minor whose probation was revoked had been sentenced to thirty days detention in the county jail, but by the time the case reached the Appellate Court the minor had served the sentence and was an adult. The court stressed the issue was likely to arise again and involved a matter of public concern.

[People v. Palacio & Dey, 240 Ill.App.3d 1078, 607 N.E.2d 1375 \(4th Dist. 1993\)](#) The "public interest" exception to the mootness rule applies where the issue concerns a question of public concern, authoritative guidance is needed by the lower courts, and the question is likely to recur without the possibility of timely review.

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[Cordrey v. Illinois Prisoner Review Board, 2014 IL 117155 \(No. 117155, 11/20/14\)](#)

Defendant filed a *mandamus* complaint alleging that due process and equal protection were violated because due to his indigency, he was denied release on MSR after he was unable to find a suitable place to live. The court concluded that the public interest exception to the mootness doctrine applied. Thus, the case was not moot although defendant had completed his MSR term by the time the appeal was decided.

The public interest exception to the mootness doctrine applies where: (1) a question is of a substantial public nature; (2) there is a need for an authoritative decision to provide future guidance; and (3) the situation is likely to recur. Because every convicted felon who is not serving a natural life term is subject to MSR, and because the practice of violating inmates who do not have an appropriate host site has been the subject of extensive litigation, the public interest exception was satisfied.

[In re Commitment of Hernandez, 239 Ill.2d 195, 940 N.E.2d 1082 \(2010\)](#)

The respondent was adjudicated sexually dangerous in 2004. In 2007, the trial court granted conditional release and ordered the Department of Human Services to submit a conditional release plan. The State filed a notice of appeal after the trial court granted conditional release but before the trial court approved the conditional release plan.

The Appellate Court found that the notice of appeal was untimely because it was filed before the judgement was final. The State appealed. The Supreme Court found that the issue was moot because while the cause was on appeal, the trial court had revoked conditional release.

1. An appeal is moot when intervening events make it impossible for a reviewing court to grant effective relief. Because the State had already received the relief it sought - the return of the respondent to the custody of DHS - any opinion which the court might enter would be purely advisory. Thus, the issue was moot.

2. The public interest exception to the mootness doctrine allows a reviewing court to consider a moot issue where there is a clear showing that the question is of a substantial public nature, an authoritative determination is needed to guide lower courts and the bar, and the issue is likely to recur. In determining whether an authoritative determination is needed, the court examines whether the law is in disarray or there is conflicting precedent.

If any of the three factors are absent, the public interest exception is inapplicable. The court concluded that the State could not establish the second factor – that an authoritative determination was required - because the Appellate Court’s holding was based on well-settled law concerning the finality of judgements, there was no conflicting precedent, and the State could not direct the court to any Illinois case which had adopted the rule it sought in this case. Furthermore, there was *no* precedent in Illinois on the narrow issue of the timeliness of the notice of appeal in a sexually dangerous person case; instead of issuing an opinion as a matter of first impression, the Appellate Court should have dismissed the appeal as moot because the respondent’s conditional release had been revoked by the time the Appellate Court considered the case.

The Appellate Court’s judgment was vacated and the appeal dismissed.

[People v. Hill, 2011 IL 110928 \(No. 110928, 10/27/11\)](#)

1. An appeal is rendered moot when intervening events preclude a reviewing court from granting effective relief. Because Supreme Court Rule 416(c) requires the State to file a statement of intent to seek a death sentence within 120 days of arraignment, the trial court erred by allowing the State to file such notice 247 days after arraignment. However, the Supreme Court concluded that it was unable to grant effective relief because: (1) defendant received a 60-year-prison-term rather than a death sentence, and (2) there was no reason to believe that the sentencing court was influenced by defendant’s eligibility for the death penalty. Therefore, the issue was moot.

2. Under the “public interest exception” to the mootness doctrine, a reviewing court may consider an otherwise moot issue which involves a question of public importance which is likely to recur, if there is a need for an authoritative determination to guide lower courts and authorities. Because the death penalty has been abolished in Illinois, it is unlikely that issues are likely to arise concerning the untimely filing of a statement of intent to seek a death sentence. Similarly, there is no need for an authoritative determination from the Supreme Court. Under these circumstances, the “public interest” exception is inapplicable.

(Defendant was represented by former Assistant Defender Steve Becker, Chicago.)

[People v. Holt, 2014 IL 116989 \(No. 116989, 11/20/14\)](#)

Defendant argued on appeal that trial counsel rendered ineffective assistance by failing to argue that she was fit to stand trial. Although defendant was found unfit in the trial court, by the time the case was on appeal she had been restored to fitness, making the issue moot. The Supreme Court nonetheless addressed the issue under the public interest exception to the mootness doctrine.

The public interest exception has three requirements: (1) the issue must be public rather than case-specific; (2) an authoritative decision is needed to guide public officers; and (3) the issue is likely to recur. This case presented the court with “the opportunity to begin building a body of law, where none exists” giving guidance to defense counsel regarding how best to represent a client’s interests when counsel believes the client is unfit but the client opposes that position. The court also found that this type of issue, or variants

of it, would be likely to recur. The public interest exception was thus satisfied.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

[In re Christopher P., 2012 IL App \(4th\) 100902 \(No. 4-10-0902, 9/12/12\)](#)

1. An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible for the reviewing court to grant effectual relief to the complaining party. Generally, a reviewing court will not resolve a moot question solely to establish precedent or govern future litigation.

A moot issue can be addressed under the public-interest exception, which requires: (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur. The existence of conflicting authority is not a requirement of the public-interest exception.

The Appellate Court concluded that the question of whether sentencing credit was available for a county treatment program for delinquent minors could be reached even though the issue was moot. The issue of sentencing credit is undeniably a question of public importance. The issue is likely to recur if county public officials believe that the program does not qualify for sentencing credit. Even though the issue is one of first impression, an authoritative determination to guide public officers is desirable.

2. When no direct appeal is taken from an order of probation, and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of that order in an appeal from a subsequent revocation of probation, unless the underlying judgment of conviction is void.

Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was timely filed, the Appellate Court had jurisdiction to consider the issue.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Darius L., 2012 IL App \(4th\) 120035 \(No. 4-12-0035, 9/12/12\)](#)

1. An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible for the reviewing court to grant effectual relief to the complaining party. Generally, a reviewing court will not resolve a moot question solely to establish precedent or govern future litigation.

A moot issue can be addressed under the public-interest exception, which requires: (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur. The existence of conflicting authority is not a requirement of the public-interest exception.

The Appellate Court concluded that the question of whether sentencing credit was available for a county treatment program for delinquent minors could be reached even though the issue was moot. The issue of sentencing credit is undeniably a question of public importance. The issue is likely to recur if county public officials believe that the program does not qualify for sentencing credit. Even though the issue is one of first impression, an authoritative determination to guide public officers is desirable.

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Respondent appealed from an order denying him sentencing credit upon his commitment to the Department of Juvenile Justice following revocation of probation. Because this order was entered when a new sentence was imposed upon revocation of probation, and the appeal from the resentencing order was timely filed, the Appellate Court had jurisdiction to consider the issue.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Jabari C., 2011 IL App \(4th\) 100295 \(No. 4-10-0295, 12/2/11\)](#)

A question is moot when no actual controversy exists or when intervening events occur that render

it impossible for the court to grant effectual relief to the complaining party. Generally, where the only relief sought is to set aside a sentence, the question of its validity becomes moot when the sentence has been served.

Respondent complained on appeal that he was entitled to an additional day of credit against his sentence of commitment to the Department of Corrections, Juvenile Division for 364 days or upon attaining the age of 21, whichever comes first. Although more than 364 days had elapsed before respondent filed his brief, the issue was not moot. Respondent had been released on parole before serving the entire sentence and was still subject to revocation of parole and recommitment for the remainder of his unserved sentence.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[In re Shelby R., 2012 IL App \(4th\) 110191 \(No. 4-11-0191, 8/22/12\)](#)

An appeal is moot where events occurring after the filing of the appeal render it impossible to grant effectual relief to the complaining party. Where the relief sought is to set aside a sentence, the question of the validity of its imposition is moot when the sentence has been served.

A public-interest exception exists which requires: (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will reoccur.

The public-interest exception was satisfied where the issue on appeal was a question of first impression: whether a minor may be incarcerated in the Department of Juvenile Justice for unlawful consumption of alcohol. How long a minor should be incarcerated presents a question of public importance. Resolution of the issue will provide needed guidance to public officials. The issue is likely to recur when public officials believe that committing a minor to the Department for unlawful consumption of alcohol is statutorily authorized, but will continue to evade review due to the shortness of the sentence.

The Appellate Court rejected the State's argument that cases of first impression never qualify under the public-interest exception because where no precedent exists, no authoritative resolution is needed. The existence of conflicting precedent is not an element of the public-interest exception.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[People v. Henderson, 2011 IL App \(1st\) 090923 \(No. 1-09-0923, 11/17/11\)](#)

1. Courts generally will not review moot issues. The purpose of this rule is to avoid consideration of cases where the parties no longer have a personal stake in the case's outcome. A case can become moot due to a change in circumstances while an appeal is pending.

There are three exceptions to the mootness doctrine: (1) the public-interest exception; (2) the capable-of-repetition-yet-evading-review exception; and the collateral-consequences exception. The public-interest exception permits a court to consider an otherwise moot issue when: (1) the question presented is of a public nature; (2) an authoritative determination is necessary for future guidance of public officers; and (3) a likelihood exists that the question will recur.

The defendant's appeal from the dismissal of his post-conviction petition became moot due to defendant's completion of service of his sentence, including his MSR term. The question of whether the trial court can summarily dismiss a *pro se* post-conviction petition due to an unnotarized verification affidavit nonetheless could be reached under the public-interest exception.

The question of whether the trial court can summarily dismiss a petition due to an unnotarized verification affidavit is a question of a public nature that affects a large number of criminal defendants who file petitions every year. An authoritative determination is necessary for the future guidance of trial court judges, who are public officers. A likelihood exists that the issue will arise in the future in light of the sheer volume of petitions being filed and "the fact that this is at least the second case this year in which the State has argued that this is an appropriate basis for first-stage dismissal."

2. A void judgment may be attacked directly or collaterally in any court at any time. Although a reviewing court is not vested with authority to consider the merits of a case merely because the dispute

involves an order that is or is alleged to be void, the lack of standing to file a post-conviction petition is not a jurisdictional defect that deprives the court of the authority to consider the merits of an argument that a judgment is void.

3. Generally, it is appellant's burden to properly complete the record on appeal. Any doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court. This rule is relaxed where the defendant can prove that the record is incomplete due to no fault of his own, as well as demonstrate that there is a colorable need for the missing portion of the record in order to have appellate review. If defendant can establish both prongs, the State then must show that there are other means to afford adequate review.

The indictment was not included in the record on appeal and both parties' efforts to locate a copy of the indictment were unsuccessful. The indictment was relevant to defendant's argument that his criminal conviction was void as it did not allege an offense that was subject to transfer from juvenile to criminal court. However, the court concluded that defendant had not established a colorable need for the indictment as his claim that he was not charged with a transferable offense was based on speculation.

Defendant conceded that he did not know the exact language used in the indictment. He conceded that he may have committed a transferable offense. "Thus it appears from defendant's argument that it is equally probable that an error did or did not occur but he asks us to assume the former." Defendant's decision to waive reading of the indictment, and not to challenge his transfer to criminal court, even after it was questioned why defendant was before the criminal court, suggests that counsel's review of the indictment revealed no defects. "We will not equate defendant's fishing expedition with a colorable need for the indictment."

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

[People v. Hill, 402 Ill.App.3d 903, 934 N.E.2d 43, 2010 WL 2675077 \(1st Dist. 2010\)](#)

The Appellate Court held that it was not a moot question whether the State violated Supreme Court Rule 416(c) by failing to notify the defense within 120 days of arraignment that it intended to seek the death penalty. The circuit court found defendant death eligible, but declined to sentence defendant to death, instead sentencing him to the maximum term of 60 years' imprisonment. Although defendant did not receive a death sentence, the circuit court may have imposed a lesser term of imprisonment had it not found defendant death eligible. This error was capable of being remedied by a new sentencing hearing.

(Defendant was represented by Assistant Defender Steven Becker, Chicago.)

[People v. Holt, 2013 IL App \(2d\) 120476 \(No. 2-12-0476, 10/29/13\)](#)

An otherwise moot case may be considered by a reviewing court where the appellant was found unfit to stand trial because of a mental condition, the appeal is moot because the appellant was subsequently found to be fit, and the finding of unfitness "could return to plague the [defendant] in some future proceedings or could affect other aspects of the [defendant's] life." Where defendant was found unfit to stand trial but during the course of the appeal was adjudicated fit to stand trial, the court reached the issue raised on appeal - whether defense counsel was ineffective during the fitness proceeding. The court stated, "Beyond the stigma attached to the finding and treatment order, defendant could suffer adverse legal consequences including, for instance, limitations on her right to own firearms."

(Defendant was represented by Assistant Defender Christopher White, Elgin).

[People v. Horsman, 406 Ill.App.3d 984, 943 N.E.2d 139 \(2d Dist. 2011\)](#)

The public interest exception allows a reviewing court to reach the merits of an issue that might otherwise be moot where: (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question. The public interest exception is narrowly construed and requires a clear showing of each criterion.

The public interest exception allowed the court to decide whether electronic home monitoring could satisfy the requirement of a sentence of at least 180 days' imprisonment for anyone convicted of a fourth or subsequent violation of driving on a revoked license, where the revocation was due to a conviction for DUI or leaving the scene of an accident involving death or personal injury. [625 ILCS 5/6-303\(d-3\)](#). The issue involves statutory construction, which is of broad public interest, and therefore of a public nature. There is a need for an authoritative determination of the issue as it is an issue of first impression. There is also a likelihood of recurrence of the question as two circuit court judges have ruled differently on the issue in separate cases.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

[People v. Jones, 2012 IL App \(1st\) 093180 \(No. 1-09-3180, 5/1/12\)](#)

A post-conviction petition that is timely filed while the petitioner is serving any sentence imposed, including any period of mandatory supervised release, does not become moot when the petitioner has fully served his sentence. The court disagreed with the contrary holding of [People v. Henderson, 2011 IL App \(1st\) 090923](#), which reasoned that because defendant no longer needed the assistance of the Post-Conviction Hearing Act to secure his liberty, he lost standing under the Act.

1. Proceedings under the Post-Conviction Hearing Act are civil in nature. A statutory civil cause of act that is timely filed cannot be declared moot by subsequent events.

2. Post-conviction petitions frequently experience delays not found in other categories of cases before they receive final review. They can be filed after the conclusion of direct review. The full litigation of the petition can entail one or more appeals. Public offices charged with representing parties in these proceedings suffer from understaffing and underfunding, which predicably result in severe backlogs.

3. The Illinois Supreme Court has declined to narrowly construe the Act, a remedial statute, to preclude a post-conviction remedy in every case in which the petition is not filed and the hearing completed before the petitioner has fully served his sentence, mindful of the "obvious advantages in purging oneself of the stigma and disabilities which attend a criminal conviction."

4. "It would frustrate justice to shut the door on the one avenue for Illinois prisoners to obtain relief from a criminal conviction on constitutional grounds because the State and Appellate Defender's office delayed, through no fault of their own, the petitioner's case for so long that he eventually serves his entire sentence and is released."

[People v. McCoy, 2014 IL App \(2d\) 130632 \(No. 2-13-0632, 12/22/14\)](#)

1. An appeal is moot where it presents no actual controversy and intervening events make it impossible for the reviewing court to grant effective relief. Reviewing courts do not decide moot issues unless an exception to the mootness doctrine applies.

Although defendant had been restored to fitness by the time the Appellate Court considered his appeal concerning his right to demand a jury determination of fitness, the court found that two exceptions to the mootness doctrine applied. Therefore, the court elected to reach the issue.

2. First, a court may elect to reach moot issues that are capable of repetition yet evade review. This exception applies where: (1) the challenged action is of such short duration that it cannot be litigated before the action ceases, and (2) there is a reasonable expectation that the complaining party will be subjected to the same action again. This exception generally does not apply where factual issues are raised, but does apply where purely legal questions are at issue.

Here, a purely legal issue was involved - whether an arguably unfit defendant is entitled to demand a jury determination of fitness. In addition, the court found that it was unlikely defendant could bring a timely challenge to the trial court's refusal to allow a jury determination of fitness.

Finally, because the defendant had exhibited mental health issues, there is a reasonable expectation that questions regarding his fitness will recur and that the trial court will continue to ignore defendant's demands for a jury. Under these circumstances, the exception to the mootness doctrine for issues that are

capable of repetition yet evade review applies.

3. Second, the public interest exception to the mootness doctrine applies. Review of an otherwise moot issue is permitted under this exception where the question presented is of a public nature, an authoritative determination is desirable for guidance of public officers, and the question is likely to recur. The court noted that there is no authoritative precedent concerning whether an arguably unfit defendant may demand a jury determination of fitness, and that the issue is one of public interest. In addition, the court held that the question would likely recur in view of defendant's mental health history.

(Defendant was represented by Assistant Defender Paul Rogers, Elgin.)

[People v. Saleh, 2013 IL App \(1st\) 121195 \(No. 1-12-1195, 8/14/13\)](#)

A challenge to the validity of a sentence becomes moot once the entire sentence has been served. But service of the sentence does not moot a challenge to the validity of a conviction. Nullification of a conviction may hold important consequences for a defendant, as a conviction may trigger severe legal, social, employment and financial repercussions.

Defendant's appeal from the revocation of his supervision did not become moot when he completely served the sentence imposed upon the revocation of supervision. An order of supervision is not a final judgment of conviction. If a defendant successfully completes supervision, the charges are dismissed. If supervision is not completed successfully, defendant may be found guilty and sentenced. Defendant's challenge to the revocation of his supervision is therefore a challenge to the final judgment of conviction entered upon revocation of supervision, not just to the sentence imposed when supervision was revoked.

(Defendant was represented by Assistant Defender Philip Payne, Chicago.)

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**§2-6(c)
Costs**

[People v. Nicholls, 71 Ill.2d 166, 374 N.E.2d 194 \(1978\)](#) The State's Attorney is authorized by statute to seek fees, in the Appellate Court, as costs against an unsuccessful criminal appellant. These costs may be assessed though the defendant is partially successful in obtaining reversal on some but not all counts. In addition costs and fees may be assessed against an indigent defendant, and a cash bail deposit constitutes a fund from which a judgment for costs may be satisfied, regardless whose money was deposited.

[People v. Agnew, 105 Ill.2d 275, 473 N.E.2d 1319 \(1985\)](#) The statute which provides that State's Attorneys shall be entitled to a \$25 fee for "each day actually employed in the trial of a case," is applicable to proceedings in the Appellate Court. Thus, a fee of \$25 may be assessed against a defendant for the State's oral argument in the Appellate Court.

[People v. Compton, 77 Ill.App.3d 1008, 397 N.E.2d 187 \(5th Dist. 1979\)](#) Costs may be assessed against a defendant not only when the defendant is the unsuccessful appellant, but also when the State takes a successful appeal from an adverse trial court ruling.

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[In re Shelby R., 2013 IL 114994 \(No. 114994, 9/19/13\)](#)

An appeal is moot if no controversy exists or if events have occurred which foreclose the reviewing court from granting effective relief. Where an appeal involves the validity of a sentence, the appeal is rendered moot if the sentence has been completed.

Generally, courts will not decide moot questions. However, several exceptions to the above rule have been recognized, including the “public interest” exception. This exception allows a reviewing court to consider an otherwise moot issue upon a clear showing that: (1) the question presented is of a public nature, (2) an authoritative determination is needed for future guidance of public officers, and (3) the question is likely to recur. Application of the public interest exception is narrowly construed.

The court rejected the State’s argument that the second factor - a need for an authoritative determination of the question - is satisfied only if there is conflicting precedent on a question or some other circumstance makes an authoritative determination “especially useful” to public officers. Although the existence of conflicting case law is a factor to be considered in determining whether the public interest exception applies, there may be a need for an authoritative determination even in the absence of a conflict in case law.

Here, the court found that there was a need for an authoritative determination of an issue of first impression - whether a juvenile may be committed to the Department of Corrections for underage drinking. The court noted that the issue involves the liberty interests of minors, and found that guidance was necessary for juvenile court judges, prosecutors, and defense attorneys.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[People v. Williams, 235 Ill.2d 286, 920 N.E.2d 1060 \(2009\)](#)

1. In counties of less than 3,000,000 population, the State’s Attorney is entitled to a fee of \$50 for prosecuting or defending an appeal, unless the defendant prevails on all issues. Thus, unless an appeal results in the conviction being vacated, the \$50 fee is to be assessed.

2. The court declined to reach defendant’s alternative argument – that the State’s Attorney is not entitled to the \$50 fee where the appeal is prosecuted or defended by the State’s Attorney’s Appellate Prosecutor. The court found that the issue was forfeited because it had not been raised in the Appellate Court or in the petition for leave to appeal.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

[People v. Clark, 404 Ill.App.3d 141, 935 N.E.2d 1147 \(2d Dist. 2010\)](#)

55 ILCS 5/4-2002(a) authorizes a \$50 fee to the State’s Attorney for each appeal “prosecuted or defended by him.” The court rejected the argument that the State’s Attorney does not “prosecute or defend” an appeal, and is therefore not entitled to the fee, when the case is handled by the State’s Attorney’s Appellate Prosecutor.

Because SAAP operates only at the direction and pleasure of the State’s Attorney (725 ILCS 210/4.01), the court found that an appeal is “prosecuted or defended by” the State’s Attorney even when SAAP is involved. Furthermore, the State’s Attorney ultimately pays for representation by SAAP through a fund made up of contributions from the counties and used exclusively for SAAP’s expenses. (725 ILCS 210/9).

(Defendant was represented by Assistant Deputy Defender Nancy Vincent, Springfield.)

[People v. Hible, 2016 IL App \(4th\) 131096 \(No. 4-13-1096, 4/26/16\)](#)

Under 55 ILCS 5/4-2002, the State is entitled to collect a statutory fee where it defends an appeal. Thus, if on appeal any part of the judgment is in favor of the State, the reviewing court can assess the statutory fee directly against the defendant. To avoid having the statutory fee assessed, the defendant must be successful in every aspect of relief he seeks.

Where all of the parties agreed that the issues raised by defendant were meritorious, so that the State was not “defending” any claims, the statute did not permit imposition of the State’s Attorney’s fee. “[T]he State has failed to successfully ‘defend’ any issue before this court and we deny its request for the statutory fee as costs.”

(Defendant was represented by Assistant Defender Erica Nichols Cook, Springfield.)

[People v. Montalvo, 2016 IL App \(2d\) 140905 \(No. 2-14-0905, 9/23/16\)](#)

An appeal is moot when events which occurred after the appeal was filed make it impossible for the reviewing court to provide effective relief. Where a defendant has been released from prison but remains on mandatory supervised release, a reduction in his prison sentence will affect how long he can be reincarcerated for a violation of MSR. Accordingly, a challenge to the length of a prison term is not moot if it is brought before the defendant completes his MSR term.

(Defendant was represented by Deputy Defender Tom Lilien, Elgin.)

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§2-6(d)

Briefs

[People v. Franklin, 167 Ill.2d 1, 656 N.E.2d 750 \(1995\)](#) Under Supreme Court Rule 341(e), a party waives points raised in a brief not supported by relevant authority. See also, [People v. Sanchez, 169 Ill.2d 472, 662 N.E.2d 1199 \(1996\)](#) (defendant waived issues presented in footnotes to brief without any argument or authority).

[People ex rel. Aldworth v. Dutkanych, 112 Ill.2d 505, 493 N.E.2d 1037 \(1986\)](#) Arguments that contain no citation of authority are "bare contentions [that] do not merit consideration on appeal."

[People v. Sheehan, 168 Ill.2d 298, 659 N.E.2d 1339 \(1995\)](#) Where one of two appellees failed to file a brief, but the issues affecting both appellees arose from identical circumstances and involved the same considerations, the case could be decided on its merits as to all the parties.

[People v. Thomas, 116 Ill.2d 290, 507 N.E.2d 843 \(1987\)](#) An issue not raised in an initial brief, but raised for the first time in a reply brief, is deemed waived. See also, [People v. Accardo, 139 Ill.App.3d 813, 487 N.E.2d 664 \(1985\)](#)

[People v. Nakajima, 294 Ill.App.3d 809, 691 N.E.2d 153 \(4th Dist. 1998\)](#) Defendant waived an issue where he failed to present sufficient argument or relevant authority in his brief.

[People v. Adams, 318 Ill.App.3d 539, 742 N.E.2d 1256 \(2d Dist. 2001\)](#) Where a brief fails to comply with applicable Supreme Court Rules, the appeal need not be dismissed "if a reading of the entire brief makes it possible for the court to determine the questions or issues sought to be raised." Despite defendant's violations of Supreme Court Rule 341 concerning the contents of briefs, "we are fully capable of understanding his arguments." The Court also noted that a defendant who represents himself must comply with the procedural rules required of attorneys.

[People v. Stork, 305 Ill.App.3d 714, 713 N.E.2d 187 \(2d Dist. 1999\)](#) After considering this appeal, the Court stated that it "must remark upon the inexcusable poor quality of the briefs filed by both parties." The Court stressed that "[s]trict adherence to Supreme Court rules is necessary to expedite and facilitate the administration of justice," and admonished both parties for failing to comply with the applicable rules.

[People v. Kinsloe, 281 Ill.App.3d 799, 666 N.E.2d 872 \(1st Dist. 1996\)](#) Defendant did not waive his reasonable doubt argument when he failed to provide citations to relevant authority. Reasonable doubt arguments are an exception to the rule that authority must be cited in support of every argument on appeal.

[Sherman v. Wingren, 169 Ill.App.3d 161, 523 N.E.2d 220 \(2d Dist. 1988\)](#) A statement of facts that contains argument and comment violates Rule 341 (e)(6). See also, [Midland v. Donnelly, 149 Ill.App.3d 53, 501 N.E.2d 1280 \(1st Dist. 1986\)](#).

[People v. Gonzalez, 268 Ill.App.3d 224, 643 N.E.2d 1295 \(1st Dist. 1994\)](#) Although a party may request leave to supplement the record, only materials that were before the trial court may be considered on appeal. Because a co-defendant had not been sentenced when defendant was sentenced, the record on appeal could not be supplemented with documents relating to the co-defendant's sentence.

[People v. Webb, 267 Ill.App.3d 954, 642 N.E.2d 871 \(1st Dist. 1994\)](#) The Court observed that the appendix to the defendant's brief lacked a copy of the judgment and the notice of appeal, as required by Supreme Court Rule 342, and held that compliance with Supreme Court Rules concerning the content of briefs "is not a matter of little or no import." Although a reviewing court has inherent authority to dismiss an appeal where the brief violates applicable Supreme Court Rules, dismissal was unwarranted here because the issue was straightforward and the brief otherwise complied with the relevant rules.

[People v. Wrobel, 266 Ill.App.3d 761, 641 N.E.2d 16 \(1st Dist. 1994\)](#) A reviewing court has inherent power to dismiss an appeal where the appellant's brief fails to comply with applicable Supreme Court Rules.

[People v. Kraft, 277 Ill.App.3d 221, 660 N.E.2d 114 \(1st Dist. 1995\)](#) The failure to provide a court of review with a brief in compliance with the rules needlessly complicates and extends the appeal process by burdening the court with satellite issues not relevant to the substantive ones on appeal. In addition where an appellant deems it unnecessary to provide the court with the requisite appendix, judicial resources are further wasted as judges and their clerks are forced to sojourn through voluminous records without so much as a table of contents for a guide.

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[People v. Dabbs, 239 Ill.2d 277, 940 N.E.2d 1088 \(2010\)](#)

Under Supreme Court Rule 341(h)(7), points raised but not argued are waived. The court found that the defendant abandoned an equal protection claim which he raised in the petition for leave to appeal but failed to argue in the opening or reply brief or at oral argument.

(Defendant was represented by Assistant Defender Michelle Zalisko, Mt. Vernon.)

[People v. English, ___ Ill.App.3d ___, ___ N.E.2d ___ \(3d Dist. 2011\) \(No. 3-10-0764, 6/27/11\)](#)

Questions not raised by appellants in the original brief cannot be raised in the reply brief. A contrary practice would permit appellants to argue questions in their reply briefs as to which counsel for appellees would have no opportunity to reply. Therefore, such arguments need not be considered.

Appellant's reply brief raised for the first time the issue of ineffective assistance of appellate counsel to circumvent an argument that the doctrine of *res judicata* barred consideration of the underlying claim of defendant's post-conviction petition. Therefore, this claim need not be considered.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

[People v. Falletti, 2012 IL App \(4th\) 120107 \(No. 4-12-0107, 10/11/12\)](#)

The State appealed from an order discharging defendant due to the violation of his statutory right to a speedy trial. The Appellate Court refused to consider the arguments made by the State in its brief, finding that those arguments were forfeited by the State's failure to make them in the circuit court. With respect to the argument that the State did make in the circuit court, the Appellate Court found it had been

abandoned by the State's failure to include it in its brief. Supreme Court Rule 341(h)(7) ("[p]oints not argued are waived").

(Defendant was represented by Assistant Defender Allen Andrews, Springfield.)

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§2-6(e)

Effect of Decisions

[Rogers v. Tennessee, 532 U.S. 451, 121 S.Ct. 1693, 149 L.Ed.2d 697 \(2001\)](#) The ex post facto clause, which prohibits retroactive application of legislation adversely affecting a criminal defendant, applies only to actions by the legislative branch. However, due process prohibits retroactive application of a judicial construction adversely affecting a defendant if that construction was "unexpected and indefensible by reference to the law which had been expressed prior" to the defendant's acts.

[Texas v. Cobb, 532 U.S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321 \(2001\)](#) [Brewer v. Williams, 430 U.S. 387 \(1977\)](#) did not implicitly hold that the right to counsel attaches to a factually related offense on which no formal charge has been filed; instead, Brewer "simply did not address the significance of the fact that the suspect had been arraigned" on only one charge. "Constitutional rights are not defined by inferences from opinions which did not address the question at issue."

[Dickerson v. U.S., 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 \(2000\)](#) Citing considerations of stare decisis, the Supreme Court declined to overrule [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#). The court found that Miranda gives clear guidelines to law enforcement and has "become embedded in routine police practice to the point where the warnings have become part of our national culture." In addition, subsequent decisions "have reduced the impact on legitimate law enforcement" while reaffirming the decision's core ruling.

[Hohn v. U.S., 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 \(1998\)](#) Stare decisis should not be applied where precedent reached an "erroneous" conclusion that has been widely "disregarded" in subsequent opinions. It is unlikely that Congress placed "significant reliance" on a decision that was ignored by subsequent cases and subjected to widespread criticism by legal commentators.

[Marks v. U.S., 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 \(1977\)](#) Where no single position commands a concurrence of a majority of the Court's members the holding is to be interpreted as the position taken by the justices who concurred in the judgement on the narrowest grounds.

[Powell v. Nevada, 511 U.S. 79, 114 S.Ct. 1280, 128 L.Ed.2d 1 \(1994\)](#) Generally, a new rule of criminal procedure applies to all criminal cases, State and Federal, that are pending on direct review or not yet final.

[Nudell v. Forest Preserve District of Cook County, 207 Ill.2d 409, 799 N.E.2d 260 \(2003\)](#) The Court discussed the distinction between obiter dictum and judicial dictum: The term "dictum" is generally used as an abbreviation of obiter dictum, which means a remark or opinion uttered by the way. Such an expression or opinion as a general rule is not binding as authority or precedent within the stare decisis rule. On the other hand, an expression of opinion upon a point in a case argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the cause, . . . is a judicial dictum. . . [J]udicial dictum is entitled to much weight, and should be followed unless found to be erroneous. . . Even obiter dictum of a court of last resort can be tantamount to a decision and therefore binding in the absence of a contrary decision of that court.

[People v. Colon, 225 Ill.2d 125, 866 N.E.2d 207 \(2007\)](#) The doctrine of stare decisis is intended to ensure that the law develops in a principled, intelligible fashion. A court will not depart from precedent merely because it might have decided the question differently in the first instance. A departure from stare decisis must be "specially justified" by factors such as an unworkable or badly reasoned analysis or a serious detriment to the public interest. See also, [People v. Hernandez, 231 Ill.2d 134, 896 N.E.2d 297 \(2008\)](#)

[People v. Glisson, 202 Ill.2d 499, 782 N.E.2d 251 \(2002\)](#) Although defendant's conviction was on appeal when the General Assembly repealed the statute which criminalized her conduct, and the legislation failed to include a clause providing that convictions obtained while the prohibition was in effect were to be continued, defendant was not entitled to have her conviction overturned. The Court applied the general savings clause ([5 ILCS 70/4](#)), which provides that only procedural amendments may be applied retroactively. Because a statute repealing a crime is substantive rather than procedural, the repeal could not be applied to previous conduct. In the course of its opinion, the Court noted that appellate opinions issued before 1935 "have no binding force on Illinois courts." See also, [Bryson v. New America Publications Inc., 174 Ill.2d 77, 672 N.E.2d 1207 \(1996\)](#).

[People v. Jones, 207 Ill.2d 122, 797 N.E.2d 640 \(2003\)](#) Overruling [People v. Klingenberg, 172 Ill.2d 276, 65 N.E.2d 1370 \(1996\)](#), which held that verdicts acquitting of a predicate offense and convicting of a compound offense are legally inconsistent, the court adopted the U.S. Supreme Court's holding in [U.S. v. Powell, 469 U.S. 57 \(1984\)](#) and concluded that neither legal nor logical consistency in verdicts is required. The Court acknowledged that the decision represents a departure from stare decisis, but found that Klingenberg was based on a fundamental misstatement of the law and should be reconsidered.

[People v. Lampitok, 207 Ill.2d 231, 798 N.E.2d 91 \(2003\)](#) Where the Appellate Court decision consisted of three separate opinions, holdings on which the concurring and dissenting justices agreed, although not included in the principal opinion, constitute the holding of the Appellate Court.

[People v. Phillips, 217 Ill.2d 270, 840 N.E.2d 1194 \(2005\)](#) Supervisory orders from the Supreme Court are nonprecedential. A supervisory order remanding for reconsideration of specified precedent does not necessarily imply that a different result is warranted. Reconsideration may "simply be desirable to account" for a recent decision or to "ensure a uniform body of law." When a case has been remanded under the Supreme Court's supervisory authority, the Appellate Court is expected to exercise its independent judgment in reviewing the case.

[People v. Mitchell, 189 Ill.2d 312, 727 N.E.2d 254 \(2000\)](#) The Supreme Court sua sponte overruled caselaw holding that due process is violated where a defendant on psychotropic medication is denied the statutory right to a fitness hearing. Although the stare decisis doctrine would "[n]ormally" require adherence to established precedent, one purpose of the stare decisis doctrine is to insure that the law "will develop in a principled and intelligible fashion." The Court stated: "[n]o reasonable observer of this court's jurisprudence could argue that the law in this area has been developing in a principled and intelligible fashion." In addition, the Court's "most important duty, . . . to which all other considerations are subordinate, is to reach the correct decision under the law." Therefore, stare decisis "should not preclude us from admitting our mistake, interpreting the statute correctly, and bringing some stability and reason to this area of the law."

[People v. Linder & Rice, 186 Ill.2d 67, 708 N.E.2d 1169 \(1999\)](#) Unless the court directs otherwise, a Supreme Court decision is to be applied to cases pending on direct appeal when the decision is announced.

[People v. Nance, 189 Ill.2d 142, 724 N.E.2d 889 \(2000\)](#) An interpretation of an Illinois statute by a lower

federal court is not binding on Illinois courts where the "federal court's decision is being invoked as precedent on a point of law." However, if the federal decision "constitutes a valid judgment by a duly-constituted tribunal on the same question presented in state court and prohibits the same prosecuting officials involved in the state case from enforcing the same statute against the same class of defendants," collateral estoppel and principles of State and federal comity bar State court relitigation of the same issues.

[People v. Ortiz](#), 196 Ill.2d 236, 752 N.E.2d 410 (2001) Under [Article VI, §5 of the Illinois Constitution](#), the concurrence of a majority of an Appellate Court panel is necessary for a valid decision. A decision which lacks the concurrence of two members of the Court is void. Until an opinion is actually filed, any judge is free to change his or her vote. In addition, a deceased justice's authority to act terminates upon death. Thus, the "prefiling concurrence" of a justice who dies before the opinion is issued cannot be used to provide a majority.

[In re A.A.](#), 181 Ill.2d 32, 690 N.E.2d 980 (1998) The Court noted that the trial court "inexplicably" failed to follow an Appellate Court decision that was on point, and stated, "It is the absolute duty of the circuit court to follow the decisions of the Appellate Court." See also, [People v. Caban](#), 318 Ill.App.3d 1082, 743 N.E.2d 600 (1st Dist. 2001) (decisions of one appellate court district are not binding on other appellate districts, but are binding on trial courts throughout the state); [People v. Corrie](#), 294 Ill.App.3d 496, 690 N.E.2d 128 (4th Dist. 1998) (the mere fact that Appellate Court authority is conflicting does not justify following the authority in the district in which the case arose - where the Appellate Court's holdings on an issue are unsettled, "the defendant has no basis for allegedly relying upon only one of those conflicting views and ignoring the other view").

[People v. Lopez](#), 222 Ill.2d 617, 862 N.E.2d 237 (2008) In the absence of a majority opinion, the holding of the United States Supreme Court is the position taken by the members who concurred on the narrowest grounds. See also, [People v. Montgomery](#), 375 Ill. App. 3d 1120, 875 N.E. 2d 671 (5th Dist.2007)

[Meyer Proctor v. Upjohn Co.](#), 175 Ill.2d 394, 677 N.E.2d 918 (1996) The concurrence of at least two Appellate Court justices is required to issue an opinion. Where one of two justices in the majority retired before the opinion was issued, a valid opinion could not be issued.

[People ex rel. Daley v. Schreier](#), 92 Ill.2d 271, 442 N.E.2d 185 (1982) The mandate of the reviewing court permits the lower court to take only such action as conforms to the mandate. Any other order issued by the trial court is void for lack of jurisdiction. Here, on remand the trial judge was only authorized to "resentence defendants in accordance with the law." See also, [People v. Baker](#), 85 Ill.App.3d 661, 406 N.E.2d 1152 (2d Dist. 1980) (where a reviewing court reverses without remanding the cause to the court below, there is nothing for the lower court to determine; thus, the trial court did not have jurisdiction to reinstate judgments it had previously vacated).

[People v. DelVecchio](#), 129 Ill.2d 265, 544 N.E.2d 312 (1989) Until the U.S. Supreme Court has spoken, decisions of lower Federal courts are not conclusive on State courts except insofar as the decision of a lower Federal court may have become the law of the case. See also, [People v. Fields](#), 135 Ill.2d 18, 552 N.E.2d 791 (1990).

[People v. Dean](#), 175 Ill.2d 244, 677 N.E.2d 947 (1997) Defendant was convicted of the aggravated criminal sexual assault of his stepdaughter and the State presented the stepdaughter's testimony by way of closed circuit television. While defendant's case was on appeal, the Supreme Court found that the statute authorizing children to testify by closed circuit television violated the State constitutional right to confront witnesses "face-to-face." ([People v. Fitzpatrick](#), 158 Ill.2d 360, 633 N.E.2d 685 (1997)). The Illinois

Constitution was subsequently amended to eliminate the right to "face-to-face" confrontation and the statute authorizing the use of closed circuit television was reenacted. The Appellate Court acknowledged that under Fitzpatrick, defendant's conviction had been obtained unconstitutionally. However, the majority held that in light of the constitutional amendment and reenactment of the statute, the error had been "cured by the subsequent legislative activity and rendered harmless beyond a reasonable doubt." The Supreme Court reversed the conviction and remanded the cause for a new trial. [People v. Fitzpatrick](#) should be applied retroactively to cases on appeal at the time it was decided. Judicial opinions announcing new constitutional rules in criminal cases are applied to all cases pending on direct review when the new constitutional rule is declared. A constitutional amendment operates prospectively from its effective date unless its language clearly expresses an intent for retroactive application. Here, neither the statutory language, the proposed schedule for implementation nor the ballot by which the electorate approved the amendment expressed any intent to apply the provision retroactively.

[Aleckson v. Village of Roundlake Park, 176 Ill.2d 82, 679 N.E.2d 1224 \(1997\)](#) The Supreme Court held that the Appellate Court has authority to apply its decisions prospectively only. In determining whether a previous opinion should be applied prospectively only, the court should first determine whether the decision in question established a new principle of law "either by overruling clear past precedent or by deciding an issue of first impression whose resolution was not clearly foreshadowed." If this requirement is satisfied, the question of prospective application depends on two factors: (1) whether operation of the new rule will be retarded or promoted by a prospective application, and (2) whether prospective application is mandated by the "balance of equities."

[People v. Moore, 177 Ill.2d 421, 686 N.E.2d 587 \(1997\)](#) Under [Teague v. Lane, 489 U.S. 288 \(1989\)](#), decisions which announce "new rules" are not to be applied retroactively to cases pending on collateral review. Although it may be difficult to determine when a case announces a "new" rule, in general a new rule is one which "breaks new ground or imposes a new obligation on the State of federal government." "Put differently, 'a case announces a new rule if the result was not dictated by precedent existing at the time defendant's conviction became final.'" On the other hand, a case does not announce a new rule if it "simply applied a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered."

[In re Dominique F., 145 Ill.2d 311, 583 N.E.2d 555 \(1991\)](#) It is fundamental that the decisions of the Appellate Court are binding precedent on all circuit courts. A trial judge cannot refuse to follow binding precedent because he disagrees with it.

[People v. Flores, 378 Ill.App.3d 493, 882 N.E.2d 1051 \(2d Dist. 2008\)](#) Noting a conflict in appellate court precedent, the Second District concluded that a defendant may raise a sentence credit issue for the first time on appeal from the dismissal of a post-conviction proceeding. The Court elected to treat the defendant's request for credit as a motion to amend the mittimus, which may be raised at any time. In support of its holding, the Court noted that in denying a petition for leave to appeal, the Supreme Court has directed the Appellate Court to consider the merits of a request for additional sentence credit, although that request had been raised for the first time on appeal. (See [People v. Brown, 222 Ill.2d 579 \(2006\)](#)).

[People v. Gilbert, 379 Ill.App.3d 106, 882 N.E.2d 1140 \(1st Dist. 2008\)](#) At the time of trial, Supreme Court Rule 431(b) stated that "[i]f requested by the defendant," the trial court must question the jury venire about the presumption of innocence, the reasonable doubt standard, the principle that defendant need not offer any evidence, and the requirement that the failure to testify cannot be held against the defendant. While the case was on appeal, Rule 431(b) was amended to delete the requirement that the defense must request such questioning. The Court acknowledged that Rule 431(b), as amended, imposes a duty on the trial court to

question each potential juror *sua sponte*, whether or not the defendant makes a request. The Court concluded, however, that the amended rule does not apply retroactively. In [People v. Brown, 225 Ill.2d 188, 866 N.E.2d 1163 \(2007\)](#), the Court held that the legislature's express provision of a delayed effective date indicates the legislature's intent that the statute have prospective application. The Court concluded that the same rule applies to amendments to Supreme Court Rules. Because the amendment to Rule 431(b) was adopted by the Illinois Supreme Court on March 21, 2007, but with an effective date of May 1, 2007, the Supreme Court intended that the amended rule be applied prospectively only.

[People v. Montgomery, 375 Ill.App.3d 1120, 875 N.E.2d 671 \(5th Dist. 2007\)](#) In the absence of a majority opinion, the holding of the United States Supreme Court is the position taken by the members who concurred on the narrowest grounds.

[People v. Spears, 371 Ill.App.3d 1000, 864 N.E.2d 758 \(1st Dist. 2007\)](#) Under [People v. Shellstrom, 216 Ill.2d 45, 833 N.E.2d 863 \(2005\)](#), a pleading not labeled a post-conviction petition may be so recharacterized only if the pro se litigant is given notice and an opportunity to withdraw or amend the pleading. The Court found that because **Shellstrom** states that it is to be applied to cases brought "in the future," the petitioner was not entitled to the benefit of the rule where his petition for State habeas corpus relief was recharacterized before **Shellstrom** was decided. See also, [People v. Escobedo, 377 Ill.App.3d 82, 878 N.E.2d 767 \(1st Dist. 2007\)](#), (although *Shellstrom* does not apply retroactively to cases in which the direct appeal process was completed it does apply to cases that were on direct appeal on July 21, 2005 - the date of the *Shellstrom* opinion).

[People v. Stone, 364 Ill.App.3d 930, 848 N.E.2d 223 \(2d Dist. 2006\)](#) Illinois Supreme Court decisions apply to all cases that are pending when the decision is announced, unless the court directs otherwise. Thus, [People v. Lander, 215 Ill.2d 577, 831 N.E.2d 596 \(2005\)](#), which held that an attorney appointed for post-conviction purposes must file a Rule 651 certificate even if there is an issue as to whether the petition was untimely, should be applied to defendant's case. The court noted that in [Lander](#), the Supreme Court did not state that the decision should be applied prospectively only.

[People v. Sutton, 375 Ill.App.3d 889, 874 N.E.2d 212 \(1st Dist. 2007\)](#) The Court discussed the "law of the case" doctrine before deciding that the trial court did not abuse its discretion by refusing to hold an evidentiary hearing before finding that defendant's post-hypnotic testimony was inadmissible.

[People v. Johnson, 305 Ill.App.3d 102, 711 N.E.2d 787 \(3d Dist. 1999\)](#) [People v. Childress, 158 Ill.2d 275, 633 N.E.2d 625 \(1994\)](#), which held that burglary and residential burglary are mutually exclusive offenses and that a defendant cannot be convicted of burglary for entering a residence, did not announce a "new rule." Instead, it merely applied existing law to a particular set of facts. Therefore, *Childress* applies in post-conviction proceedings although the conviction was affirmed on direct appeal before *Childress* was decided.

[People v. Worden, 299 Ill.App.3d 836, 702 N.E.2d 611 \(2d Dist. 1998\)](#) Under the *stare decisis* doctrine . . . when a rule of law has been settled, the rule ought to be followed . . . unless it can be shown that serious detriment is likely to arise that will prejudice the public interest." Thus, "[a]bsent compelling reasons for doing so, courts are reluctant to abandon or modify an earlier decision of the court soon after its adoption."

[People v. Alberts, 383 Ill.App.3d 374, 890 N.E.2d 1208 \(4th Dist. 2008\)](#) A "new rule" is one which places certain kinds of primary, private individual conduct beyond the power of the criminal lawmaking authority to proscribe, or which requires the observance of procedures that are implicit in the concept of ordered liberty. A new substantive rule must be applied retroactively to cases on collateral review if the rule narrows

application of a substantive criminal statute. A new procedural rule is applied retroactively if it satisfies the requirements of [Teague v. Lane, 489 U.S. 288 \(1989\)](#); however, Teague does not apply to substantive rules. [People v. Hari, 218 Ill.2d 275, 843 N.E.2d 349 \(2006\)](#), which expanded the Illinois involuntary intoxication defense to include an unexpected adverse reaction to medications taken at a doctor's direction, applies retroactively. The Court found that Hari constituted a substantive rule because it broadened the scope of an affirmative defense and should be applied retroactively because it had the same practical effect as a decision limiting the conduct proscribed by a criminal statute.

[People v. Spahr, 56 Ill.App.3d 434, 371 N.E.2d 1261 \(4th Dist. 1978\)](#) Decisions of the Illinois Supreme Court are binding on all Illinois courts. The decision of any division of the Appellate Court is binding on all circuit courts, but not on other branches of the Appellate Court. See also, [People v. Gordon, 115 Ill.App.3d 1036, 451 N.E.2d 1032 \(5th Dist. 1983\)](#)

Cumulative Digest Case Summaries §2-6(e)

[Chaidez v. United States, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 2013 WL 610201 \(No. 11-820, 2/20/13\)](#)

A case announces a new rule inapplicable to convictions that were final when the rule was announced if it breaks new ground or imposes a new obligation. **Teague v. Lane**, 489 U.S. 288 (1989). To put it differently, a case announces a new rule when the result was not dictated by precedent existing at the time the defendant's conviction became final. A holding is not so dictated unless it would have been apparent to all reasonable jurists.

A case does not announce a new rule when it merely applies a principle governing a prior decision to a different set of facts. A court will rarely state a new rule for **Teague** purposes when all that it does is apply a general standard to the kind of factual circumstances that the standard was meant to address.

Padilla v. Kentucky, 559 U.S. 356 (2010), which held that the Sixth Amendment requires defense attorneys to inform non-citizen clients of the deportation consequences of guilty pleas, announced a new rule. **Padilla** did not merely apply the general standard of **Strickland v. Washington**, 466 U.S. 668 (1984), to a different factual situation.

Before deciding whether the failure to provide advice about deportation consequences fell below **Strickland**'s objective standard of reasonableness, **Padilla** considered the threshold question whether advice about deportation was categorically removed from the scope of the Sixth Amendment. **Padilla** had to develop new law establishing that the Sixth Amendment applied before it could assess the performance of **Padilla**'s lawyer under **Strickland**. Because **Padilla** asked *whether* the **Strickland** test applied before asking *how* it applied, the Court's answer required a new rule. **Padilla** answered a question about the Sixth Amendment's reach that had been left open and in a way that altered the law of most jurisdictions. No existing precedent dictated the answer. **Padilla**'s holding would not have been, and in fact was not, apparent to all reasonable jurists prior to the decision in **Padilla**.

[Davis v. United States, ___ U.S. ___, 131 S.Ct. 2419, ___ L.Ed.2d ___, 2011 WL 2369583 \(2011\)](#) (No. 09-11328, 6/16/11)

Retroactivity jurisprudence is concerned with whether a new rule is available on direct review as a potential ground for relief. Retroactive application does not determine what appropriate remedy, if any, the defendant should obtain for a constitutional violation.

Retroactive application of a new rule of Fourth Amendment law thus raises the question of whether a suppression remedy applies; it does not answer that question. Although [Arizona v. Gant, 556 U.S. ___, 129 S.Ct. 1710, ___ L.Ed.2d ___ \(2009\)](#), applies retroactively to all cases in which defendant's conviction was not final when **Gant** was decided, suppression of evidence does not automatically follow from **Gant**'s

application.

[People v. Clemons, 2012 IL 107821 \(No. 107821, 4/19/12\)](#)

1. The doctrine of *stare decisis* expresses the policy of the courts to stand by precedents and not to disturb settled points. A question once deliberately examined and decided should be closed to further argument, ensuring that the law will develop in a principled, intelligent fashion, immune from erratic changes. Any departure from *stare decisis* demands special justification. Prior decisions will not be overruled absent good cause or compelling reasons. Good cause exists, for example, where the decisions are unworkable or poorly reasoned.

[People v. Hauschild, 226 Ill. 2d 63, 871 N.E.2d 1 \(2007\)](#), held that the sentence for armed robbery while armed with a firearm violates the proportionate penalties clause of the Illinois Constitution because the sentence for that offense is more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or II weapon.

2. When **Hauschild** was decided, the armed violence statute excluded armed robbery, but not robbery as a predicate offense. Subsequent to **Hauschild**, [P.A. 95-688](#) amended the armed violence statute to delete the reference to armed robbery and exclude as a predicate offense “any offense that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range.”

The court agreed with the State that under the amended statute, robbery may no longer serve as a predicate offense. The court disagreed that [P.A. 95-688](#) was a clarifying amendment that should be treated as a legislative declaration of the meaning of the prior statute. An amendment can serve to clarify the legislature’s original intent only where it is adopted prior to a court’s construction of the preamended statute. While the General Assembly prospectively change a judicial construction of a statute if it believes that the judicial interpretation is at odds with legislative intent, it cannot effect a change in that construction by a later declaration of what it had originally intended.

3. Armed violence is a broader offense compared to the more specific offense of armed robbery with a firearm in that it can be committed with weapons other than a firearm. But the identical-elements test has never required that the two offenses be equally specific. It is enough that the elements of armed robbery with a firearm and armed violence based on robbery with a category I or II weapon are identical. **Hauschild** did not misapply the identical-elements test.

4. The identical-elements test is supported by the constitutional text of the Illinois Constitution of 1970, which provides that “[a]ll penalties shall be determined [] according to the seriousness of the offense.” The test provides a method for determining whether the legislature satisfied that constitutional requirement. If the legislature determines that the exact same elements merit two different penalties, then one of these penalties has not been set in accordance with the seriousness of the offense because the legislature has made two different judgments about the seriousness of one offense.

5. The Illinois proportionate-penalties clause is not synonymous with the cruel-and-unusual-punishments clause of the eighth amendment as it contains a requirement that all penalties be set with the objective of restoring the offender to useful citizenship. In any event, the United States Supreme Court has never addressed the question whether the eighth amendment permits different penalties for identical offenses.

6. The Illinois Supreme Court adopted the identical-elements test because it found it illogical that identical offenses could result in different penalties. Reliance on common sense and sound logic does not render the identical-elements test of questionable origin as argued by the State. “Common sense and sound logic need not be strangers to the law.”

7. The identical-elements test does not invade the province of the legislature to set penalties for offenses because a key feature of the test is objectivity. The court does not make a subjective determination of the gravity of an offense or the severity of the penalty imposed. Therefore, there is no risk that the court will second-guess the legislature.

8. In response to the State’s argument that **Hauschild** created a new disparity because the sentence

for armed violence predicated on robbery with a category I or II weapon (15 to 30 years) is now greater than the sentence for armed robbery with a firearm (6 to 30 years), the court disagreed that the mere opportunity for a new constitutional attack means that the test is unworkable.

9. The State complained that prosecutors can no longer obtain an enhanced penalty for armed robbery with a firearm because **Hauschild** rendered that enhancement void *ab initio*, and the legislature eliminated robbery as a predicate offense to armed violence when it enacted [P.A. 95-688](#), but did not re-enact the armed-robbery enhancements. This problem does not implicate the workability of the identical-elements test. The solution is for the legislature to engage in more careful drafting.

Because the State had not demonstrated good cause or identified compelling reasons for departing from *stare decisis*, the court declined to overrule **Hauschild** or abandon the identical-elements test.

(Defendant was represented by Assistant Defender Susan Wilham, Springfield.)

[People v. Price, 2016 IL 118613 \(No. 118613, 12/30/16\)](#)

During trial, the court denied defendant's request for separate verdict forms for each of the State's theories of first degree murder (intentional, knowing, and felony). The jury returned a general verdict finding defendant guilty of first degree murder. Years later, defendant filed an untimely 2-1401 petition arguing that the trial court erred in denying his request for separate verdict forms under [People v. Smith, 233 Ill. 2d 1 \(2009\)](#). Defendant further argued that the statutory time bar on 2-1401 petitions did not apply because the instructional error created a void judgment under the void sentence rule. By the time defendant's case reached the Illinois Supreme Court, the Court had abolished the void sentence rule in [People v. Castleberry, 2015 IL 116916](#).

Defendant argued that the decision in [Castleberry](#) should not be applied retroactively to his case, leaving the void sentence rule intact and allowing defendant to raise his issue in an untimely 2-1401 petition. Specifically defendant argued that the rule announced in [Castleberry](#) did not qualify as a new substantive rule or watershed rule of criminal procedure under [Teague v. Lane, 489 U.S. 288 \(1989\)](#) and thus did not apply retroactively.

The Supreme Court rejected defendant's argument and held that **Castleberry** applied retroactively to defendant's case and thus he could not use the void sentence rule as a way to raise his issue in an untimely 2-1401 petition. The Court held that **Teague** did not control the retroactivity question in this case. **Teague's** analysis only applies in situations where a new rule could have made a difference in the outcome of a criminal trial. The rule adopted in **Castleberry**, however, has no effect on the outcome of a trial. Neither the void sentence rule nor its absence impacts the accuracy of a defendant's conviction or the fairness of his trial.

In situations where **Teague** does not apply, the general rule of retroactivity holds that appellate decisions apply to all cases pending when the decisions are announced. **Castleberry** thus applies to defendant's case. Since defendant's 2-1401 petition was untimely and he provided no reason other than the void sentence rule for excusing his failure to timely file the petition, the Court affirmed the judgment of the trial court dismissing defendant's petition.

(Defendant was represented by Assistant Defender Todd McHenry, Chicago.)

[People v. Anderson, 2015 IL App \(2d\) 140444 \(No. 2-14-0444, 10/20/15\)](#)

1. Under the law-of-the-case doctrine, rulings made on points of law by a reviewing court are binding on the trial court on remand and on subsequent appeals to the same reviewing court. There are two exceptions to this doctrine: (1) where a higher court makes a contrary ruling on the same issue after the lower court's decision; and (2) where a reviewing court determines that its prior decision was palpably erroneous.

2. Defendant filed an initial post-conviction petition arguing that his trial counsel was ineffective for failing to file a timely notice of appeal. The trial court denied the petition and following an appeal and further proceedings in the trial court, defendant was allowed to file a late notice of appeal. After his direct appeal was affirmed, defendant filed a motion for leave to file a successive post-conviction petition in the trial court, attaching a post-conviction petition alleging various claims. The trial court denied the motion,

ruling that defendant had failed to show cause and prejudice.

On appeal, defendant filed a motion for summary remand arguing that since his first post-conviction petition allowed him to file a direct appeal, his second petition should have been treated as an initial petition. Furthermore, since the trial court failed to dismiss his petition as frivolous and patently without merit within 90 days, the cause should be remanded for second-stage proceedings. The State agreed that the second petition should have been treated as defendant's first petition, but argued that since defendant filed a motion for leave to file a successive petition, the petition itself was never filed and the 90-day period never began to run. Accordingly, the cause should be remanded for first-stage proceedings.

The Appellate Court granted defendant's motion in part, issuing a minute order that remanded the cause to the trial court for first-stage proceedings. The trial court dismissed defendant's petition at the first stage as frivolous and patently without merit. On appeal, defendant argued that the trial court's first-stage dismissal was void because it failed to rule on the merits of his petition within 90 days.

3. The Appellate Court held that this issue was controlled by the law-of-the-case doctrine. In defendant's prior appeal, he argued that his petition should have been remanded for second-stage proceedings since the trial court had not ruled on his petition within 90 days. The Appellate Court, however, explicitly remanded the case for first-stage proceedings, and by doing so issued a binding decision on the issue currently before the court. Neither of the two exceptions applied: (1) there was no contrary decision from the Illinois Supreme Court; and (2) the court's earlier decision was not palpably erroneous. The Appellate Court thus refused to reconsider the issue.

(Defendant was represented by Assistant Defender Lauren Bauser, Chicago.)

[People v. Craighead, 2015 IL App \(5th\) 140468 \(No. 5-14-0468, 9/11/15\)](#)

The court rejected the State's request to hold its decision in abeyance because the United States Supreme Court has accepted *certiorari* in a case concerning the same issue. The court noted that the Illinois Supreme Court has definitively resolved the issue in the defendant's favor, and the Appellate Court is required to follow that precedent until it is withdrawn or modified.

(Defendant was represented by Assistant Defender Alex Muntges, Mt. Vernon.)

[People v. Kines, 2015 IL App \(2d\) 140518 \(No. 2-14-0518, 7/24/15\)](#)

1. Defendant was convicted of a 1988 first degree murder based on being accountable for strangling the victim with the sleeve of a blouse. Defendant was identified as being one of three offenders by an 11-year old acquaintance. At trial, defendant denied being involved.

In 2002, defendant filed an initial petition for DNA testing of the blouse sleeve, the victim's clothing and other evidence recovered at the scene pursuant to 725 ILCS 5/116-3. At that time, the DNA testing statute required defendant to show that the requested testing was not available at the time of trial. 116-3(a). The trial court denied defendant's petition on the basis that the requested testing had been available at the time of trial, and the Appellate Court affirmed.

Defendant filed a second petition for DNA testing in 2013. By this time, the DNA testing statute had been amended to only require defendant to show that the evidence was not subject to the testing now requested. 116-3(a)(1). The trial court nevertheless denied defendant's second petition finding in part that it was barred by *res judicata*.

2. The Appellate Court held that defendant's second petition was not barred by *res judicata*. *Res judicata* is an equitable doctrine that bars relitigation of issues that were raised and adjudicated, or could have been raised and adjudicated, in a prior proceeding. But *res judicata* is "first and foremost an equitable doctrine which may be relaxed where justice requires." A well-established exception to the doctrine exists where the earlier judgment was "plainly inconsistent with the equitable implementation of a statutory scheme."

The statutory scheme here, 116-3(a), had changed in a dispositive manner between the first and second petitions. The statute applicable to the first petition required a showing that the testing procedures

were unavailable at the time of trial, a showing defendant could not make. The statute applicable to the second petition merely required a showing that the evidence had not been previously subject to the testing procedures, a showing defendant could make. Given the change in the statute, the court declined to hold that the earlier decision constituted a *res judicata* bar against filing the second petition.

[People v. Morris & Holborow, 236 Ill.2d 345, 925 N.E.2d 1069 \(2010\)](#)

1. Under [People v. Whitfield, 217 Ill.2d 177, 840 N.E.2d 658 \(2005\)](#), due process is violated where a defendant is not advised that a mandatory supervised release term will be added to the sentence negotiated under a plea agreement. The court concluded that **Whitfield** created a “new” rule for purposes of retroactivity analysis.

In general, a case announces a “new” rule when the result is not dictated by precedent existing at the time the conviction became final. A court considering a case on collateral review has the obligation to determine, as a threshold matter, whether granting the relief sought would create a “new” rule. A court should refrain from issuing “new” rules in cases that are on collateral review.

2. “New” constitutional rules of criminal procedure are inapplicable to cases in which the conviction was final on the date the new rule was announced, unless the rule: (1) places certain kinds of primary, private individual conduct beyond the power of the criminal-law-making authority to prescribe, or (2) the new rule is a “watershed” rule of criminal procedure (i.e., one that is implicit in the concept of ordered liberty and without which the likelihood of an accurate conviction is seriously diminished).

Because the **Whitfield** holding satisfies neither of these two exceptions to the non-retroactivity rule, the court erred in **Whitfield** by announcing a new rule that could not be applied on collateral review. Therefore, it will not be applied in post-conviction proceedings where the conviction became final before December 20, 2005, the date of the **Whitfield** opinion.

3. See also **GUILTY PLEAS**, §24-6(d).

The orders denying post-conviction relief were affirmed.

(Defendant Morris was represented by Assistant Defender Rebecca Levy, Chicago.)

(Defendant Holborow was represented by Assistant Defender Michael Delcomyn, Springfield.)

[People v. Sanders, 238 Ill.2d 391, 939 N.E.2d 352 \(2010\)](#)

For purposes of determining the retroactivity of a decision, a case announces a new rule when it breaks new ground or imposes a new obligation on the states or federal government. The result must not be dictated by precedent existing at the time defendant’s conviction became final. The fact that a decision is within the logical compass of an earlier decision or is controlled by an earlier decision is not conclusive. The standard is whether a court considering defendant’s claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule was required by the constitution. [Teague v. Lane, 489 U.S. 288 \(1989\)](#).

The court determined that [People v. Strain, 194 Ill.2d 467, 742 N.E.2d 315 \(2000\)](#), announced a new rule that does not apply retroactively to convictions that were final when **Strain** was decided. **Strain** held that where gang evidence is integral to defendant’s trial, the defense must have the opportunity to question prospective jurors regarding gang bias. **Strain** was a clear break from precedent, which held in accordance with Supreme Court Rule 431 that the scope and extent of *voir dire* is within the discretion of the trial court. It was not enough that **Strain** was an extension of prior precedent, where no court would have felt compelled by that precedent to reach the conclusion reached by **Strain**.

[People v. Aguilar, 408 Ill.App.3d 136, 944 N.E.2d 816 \(1st Dist. 2011\)](#)

1. Under Illinois law, courts give effect to a clear expression of legislative intent concerning whether a statute is to be applied retroactively. Where there is no clear expression of legislative intent, procedural amendments are generally applied retroactively, while substantive amendments are applied prospectively.

Amendments to the definition of the offense of aggravated unlawful use of a weapon were not

intended to apply retroactively to conduct which occurred before the effective date. Because the public act ([P.A. 96-742](#)) stated that it would be effective upon becoming a law, the court concluded that it contained an unambiguous statement of legislative intent that the new provisions were to be applied prospectively.

The court acknowledged that where the legislature amends a statute shortly after a controversy concerning the meaning of the statute, it is presumed that the amendment was intended as a legislative interpretation of the original legislation. However, a subsequent amendment does not replace the plain language of the statute as the best evidence of the legislature's original intent. In addition, the amendment here went further than would have been necessary to correct any possible belief by the legislature that the courts had misinterpreted legislative intent.

2. Only the Illinois Supreme Court has authority to overrule its decisions. Thus, the Appellate Court lacked authority to reconsider Illinois Supreme Court precedent interpreting the Illinois state constitution, even where it seems that such precedent is no longer valid under U.S. Supreme Court case law.

(Defendant was represented by Assistant Defender David Holland, Chicago.)

[People v. Avery, 2012 IL App \(1st\) 110298 \(No. 1-11-0298, 6/21/12\)](#)

1. A new constitutional rule of criminal procedure is not applied retroactively to convictions that were final when the rule was adopted, unless it falls within one of two narrow exceptions. **Teague v. Lane**, 489 U.S. 288 (1989). A case announces a new rule when it breaks new ground or imposes a new obligation on state or federal government. The fact that a court says that its decision is within the "logical compass" of an earlier decision or is "controlled" by a prior decision is not conclusive of whether the current decision announces a new rule. The test is whether a court considering the claim at the time that the conviction became final would have felt compelled by existing precedent to conclude that the rule was constitutionally required.

Illinois has adopted the **Teague** definition of a "new rule." Illinois courts have explained that if there was a significant difference of opinion on the issue in the lower courts prior to a rule being adopted, this would indicate that the decision is a new rule and not merely an application of an earlier decision to a different set of facts. Virtually no case that prompts a dissent on the relevant legal point could be said to be "dictated" by prior decisions.

2. **People v. White**, 2011 IL 109616, announced a new rule that cannot be applied to convictions, such as defendant's, that were final when **White** was announced. **White** held that where a defendant pleads guilty to a charge with a firearm enhancement and the factual basis for the plea establishes that a firearm was used in the commission of the offense, a sentence that does not include the firearm enhancement is void because it is not authorized by statute, and the plea must be vacated.

Prior to **White**, there was "confusion as to whether the State could, in its discretion, negotiate pleas that did not include the firearm enhancement for first degree murder, even where the factual basis for the plea included the use of a firearm in the commission of the offense, since it was within the State's discretion to determine what charges to pursue." That confusion was evidenced by the decision in defendant's direct appeal, which rejected his argument that his guilty plea was void, reasoning that it was the understanding of the parties that defendant was pleading guilty to first degree murder without the enhancement. **White** changed the law and represented a "sharp departure from existing case law" by holding that the firearm enhancement is automatically triggered when it is part of the factual basis for the underlying offense, regardless of whether the State intends to pursue it as an aggravating factor.

After concluding that neither **Teague** exception applied, the Appellate Court affirmed defendant's conviction and sentence.

(Defendant was represented by Assistant Defender Maria Harrigan, Chicago.)

[People v. Denson, 407 Ill.App.3d 1039, 946 N.E.2d 933 \(2d Dist. 2011\)](#)

[55 ILCS 5/4-2002\(a\)](#) authorizes a \$50 fee for the State's Attorney for each appeal "prosecuted or defended by him." Under [People v. Williams, 235 Ill.2d 286, 920 N.E.2d 1060 \(2009\)](#), the State's Attorney

is entitled to the fee even when the defendant is partially successful on appeal.

The Appellate Court concluded that the State's Attorney did not "defend" the appeal where the prosecution confessed error to the only issue which defendant raised. The State's request for the \$50 fee was denied.

(Defendant was represented by Assistant Defender Barbara Paschen, Elgin.)

[People v. Dunmore, 2013 IL App \(1st\) 121170 \(No. 1-12-1170, 12/24/13\)](#)

Defendant entered a negotiated guilty plea to an unlawful use of a weapon charge, and was sentenced to 18 months' probation and ordered to pay fines and fees. After his probation was revoked for committing another offense, he was sentenced to two years in prison. Defendant had completed his sentence by the time of this appeal, and challenged only the revocation of probation and the assessment of fees and fines.

1. While the appeal was pending, the Supreme Court issued **People v. Aguilar**, 2013 IL 112116, which held that the statute to which defendant pleaded guilty (5/24-1.6(a)(1), (a)(3)(A)) was unconstitutional on its face. The court rejected defendant's request that it leave the conviction intact and limit its consideration to the revocation of probation and payment of fees and fines.

Once **Aguilar** held that the section of the Criminal Code on which the plea rested was facially unconstitutional, the statute was rendered void *ab initio*. In addition, judicial decisions declaring a statute unconstitutional apply to cases pending on direct review. Because defendant's conviction was void and courts have an independent duty to vacate void orders, **Aguilar** required that the void conviction be vacated once it came before the court.

2. The State sought a remand to reinstate charges which had been dismissed as part of the plea agreement, and asked the court to review the constitutionality of the unlawful use of weapon and aggravated unlawful use of weapon charges which it might seek to reinstate. The court declined to consider whether **Aguilar** would render unconstitutional charges which had not yet been reinstated. Reviewing courts should not consider abstract questions or render advisory opinions.

(Defendant was represented by Assistant Defender Jean Park, Chicago.)

[People v. Hodges, 2011 IL App \(2d\) 110165 \(No. 2-11-0165, 12/12/11\)](#)

In **People v. Madrigal**, 241 Ill.2d 463, 948 N.E.2d 591 (2011), the Illinois Supreme Court held that subsection (a)(7) of the identity-theft statute ([720 ILCS 5/16G-15\(a\)\(7\)](#)) was facially unconstitutional because it lacked a culpable mental state and thus potentially punished innocent conduct. In the course of its decision, the court distinguished subsection (a)(7) from other subsections, including subsection (a)(4), which it stated "also require the additional element of criminal intent or knowledge," and therefore "are not at issue in this case and clearly do not fall within the parameters of the line of cases that deal with statutes that potentially punish innocent conduct."

The Appellate Court held that this statement by the Supreme Court precluded any challenge to the constitutionality of subsection (a)(4), even though it was "not at issue in the case and the court's statement appears to be *obiter dictum*." Even *obiter dictum* of a court of last resort can be tantamount to a decision, and therefore binding in the absence of a contrary decision of that court. No exception to this rule appears in existing case law. No decision exists contrary to **Madrigal**. Therefore, the Appellate Court was bound by the *obiter dictum* of **Madrigal**.

McLaren, J., dissented. The reference in **Madrigal** to subsection (a)(4) was not required for either the logical analysis of the merits of the appeal or the holding, and thus constituted *obiter dictum*. Generally, such comments are not binding. Moreover, **Madrigal** merely identified references to criminality in subsections (a)(1) through (a)(5). The court's analysis did not explain how the language in subsection (a)(4) made the proscribed actions criminal. Therefore, the *obiter dictum* of **Madrigal** should not control. The rationale and holding of **Madrigal** should control, which the dissent submitted supported the conclusion that subsection (a)(4) was unconstitutional.

(Defendant was represented by Assistant Defender Mark Levine, Elgin.)

[People v. Robinson, 2015 IL App \(1st\) 130837 \(No. 1-13-0837, 6/26/15\)](#)

In **People v. Jolly**, 2014 IL 117142, the Illinois Supreme Court held that where the State's participation in a **Krankel** hearing is "anything more than *de minimis*," there is an unacceptable risk that the hearing will be turned into an adversarial proceeding, where both the State and trial counsel oppose the defendant. It is reversible error if the State is allowed to participate in an adversarial manner.

The Appellate Court held that the decision in **Jolly** applied retroactively since it did not announce a new rule of criminal procedure, but instead simply applied a well-established principle to the facts of Jolly's case.

(Defendant was represented by Assistant Defender Kristen Mueller, Chicago.)

[People v. Stafford, 2016 IL App \(4th\) 140309 \(No. 4-14-0309, 9/1/16\)](#)

Noting a conflict in Appellate Court authority, the Fourth District Appellate Court held that **People v. Castleberry, 2015 IL 116916** did not create a new rule and therefore applies retroactively. Because **Castleberry** abolished the void sentence rule, the previous rule is reinstated. Thus, a sentence can be challenged as void only if the court lacked personal or subject matter jurisdiction.

(Defendant was represented by Appellate Court James Williams, Springfield.)

[People v. Stephens, 2012 IL App \(1st\) 110296 \(No. 1-11-0296, 10/26/12\)](#)

A trial court must obey the clear and unambiguous directions in a mandate issued by a reviewing court. A reviewing court has the inherent authority to compel compliance with its orders.

On direct appeal, the Appellate Court vacated defendant's concurrent sentences and remanded for resentencing to consecutive terms. On remand, the trial court issued a corrected mittimus providing that defendant's previously-imposed sentences run consecutively. It did not conduct a new sentencing hearing.

The defendant did not appeal from that order. He subsequently filed a post-conviction petition but did not complain in that petition that the trial court had not complied with the Appellate Court's mandate. On appeal from dismissal of that petition, exercising its inherent authority to compel compliance with its mandate, the Appellate Court again vacated defendant's sentences and remanded to the trial court for resentencing.

(Defendant was represented by Assistant Defender Jessica Pamon, Chicago.)

[People v. Thomas, 2014 IL App \(3d\) 120676 \(No. 3-12-0676, 10/27/14\)](#)

Defendant argued that his felony conviction for resisting arrest should be reduced to a misdemeanor because in his stipulated bench trial he did not stipulate that a police officer had been injured (which was the basis for making his conviction a felony). The State argued that since defendant stipulated that the evidence was sufficient to convict, he could not now argue that the evidence was insufficient.

The court rejected the State's argument. In defendant's first appeal, the court held that the stipulated bench trial had not been tantamount to a guilty plea. Accordingly, under the law of the case doctrine, defendant was not precluded from arguing in his second (current) appeal that the State failed to prove him guilty of felony resisting arrest.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

[People v. Tripp, 407 Ill.App.3d 813, 944 N.E.2d 405 \(1st Dist. 2011\)](#)

New constitutional rules of criminal procedure do not apply to convictions that were final when the new rule was announced. A case announces a new rule when it breaks new ground or imposes a new obligation on the states or federal government. A decision constitutes a new rule unless a state court considering the claim at the time the conviction became final would have felt compelled by existing precedent to conclude that the rule was required by the constitution.

Two exceptions to this rule of non-retroactivity exist: (1) the new rule places certain kinds of

primary, private individual conduct beyond the power of the criminal law-making authority to proscribe; or (2) the new rule requires the observance of those procedures that are implicit in the concept of ordered liberty. Under this second exception, the new rule must represent a watershed rule of criminal procedure implicit in the concept of ordered liberty and central to the accuracy of the conviction. It is not enough that the new rule is based on a bedrock right or is fundamental in the abstract sense. It must constitute a previously-unrecognized bedrock procedural element that is essential to the fairness of a proceeding.

[Arizona v. Gant](#), [U.S.](#), [129 S.Ct. 1710](#), ___ L.Ed.2d ___ (2009), constitutes a new rule. Prior to **Gant**, police were permitted to search the passenger compartment of an arrestee's automobile contemporaneous to an arrest, so long as the arrestee was a recent occupant of the vehicle. In contrast, **Gant** limits an officer's ability to search a vehicle incident to a recent occupant's arrest to where: (1) the arrestee is within reaching distance of the passenger compartment at the time of the search; or (2) it is reasonable to believe that the vehicle contains evidence of the offense of the arrest.

Neither exception to the rule of non-retroactivity applies to **Gant**. **Gant** does not legalize primary, private individual conduct and does not reinterpret a statute. While important, **Gant** is not a watershed rule of criminal procedure implicit in the concept of ordered liberty. It merely introduced a new rule regarding the already-existing limitations placed on officers when conducting a search incident to an arrest.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

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§2-6(f)

Juvenile Proceedings

[In re J.W.](#), [204 Ill.2d 50](#), [787 N.E.2d 747](#) (2003) Supreme Court [Rule 604\(d\)](#), which regulates appeals from guilty pleas, applies to juvenile proceedings in which the minor entered an admission. ([In re A.G.](#), [195 Ill.2d 313](#), [746 N.E.2d 732](#) (2001)) However, A.G. left open whether a juvenile's failure to file a post-admission motion under Supreme Court [Rule 604\(d\)](#) bars an appeal. The Court concluded that it need not reach that issue because the minor's challenge was to the constitutionality of the probation conditions and not to the imposition of probation itself. Furthermore, the minor did not waive his challenges although he did not raise them in the trial court. In general, constitutional challenges to criminal statutes can be raised at any time.

[In re Matthew M.](#), [335 Ill.App.3d 276](#), [780 N.E.2d 723](#) (2d Dist. 2002) The State may ask the trial court to designate a juvenile proceeding as an extended jurisdiction juvenile (EJJ), which authorizes the trial court, upon finding the minor guilty, to impose both a juvenile and a conditional adult sentence. If the minor violates the conditions of the juvenile sentence or commits a new offense, the adult sentence must be served. The Court rejected several challenges to the EJJ statute. However, the court also rejected the State's argument that the issues were not ripe for consideration because any adult sentence would be stayed on the condition that the respondent not violate the provisions of his juvenile sentence. A controversy is ripe where the facts permit an intelligent and useful decision by the reviewing court. Although the respondent had not yet been required to serve an adult sentence, the parties had presented the relevant facts required to resolve the issue and the harm to the respondent if required to serve an adult sentence "is clearly known".

[In re J.T.](#), [221 Ill.2d 338](#), [851 N.E.2d 1](#) (2006) Where a minor failed to challenge a probation order by filing either a timely Notice of Appeal, a written motion to withdraw the plea or reconsider the sentence, or a motion for leave to file late Notice of Appeal, the Appellate Court lacked jurisdiction to consider issues arising from the guilty plea or the sentence. The Appellate Court lacks jurisdiction to consider issues arising from a guilty plea where the appellant fails to file a motion that vests jurisdiction in the Appellate Court, even if the trial court failed to give proper admonishments under Rule 605.

In re A.T., 303 Ill.App.3d 531, 708 N.E.2d 529 (2d Dist. 1999) If a minor is transferred to adult court on charges giving rise to a rebuttable presumption of transfer, but is subsequently convicted only of offenses that do not give rise to such a presumption, the trial court has discretion to return the case to juvenile court for sentencing. Where the trial court determines that such a case should be returned to juvenile court, the State has the right to appeal under Supreme Court [Rule 604\(a\)\(1\)](#).

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In re B.C.P., 2013 IL 113908 (No. 113908, 6/20/13)

Supreme Court Rule 660(a), governing appeals in delinquent minor cases, incorporates the criminal appeals rules, but only as to final judgments. Supreme Court Rule 662 allows for certain interlocutory appeals in juvenile cases, but an order granting a motion to suppress is not one of them. Therefore, the provision of Supreme Court Rule 604(a)(1) allowing the State to appeal from an order granting a motion to suppress does not apply to juvenile cases under existing appellate rules.

Exercising its rulemaking authority, the Illinois Supreme Court held that Rule 660(a) should be modified to allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. Since the adoption of Rule 660(a), the General Assembly has radically altered the Juvenile Court Act to make the juvenile adjudicatory process more criminal in nature. As a consequence, juveniles receive many of the same protections that criminal defendants receive. In light of this shift, the State has the same interests in appealing a suppression order in a juvenile case that it does in a criminal case: obtaining correction of errors that would otherwise be precluded by the double jeopardy clause; avoiding unfairness in allowing errors favoring the State to be corrected while not allowing correction of errors favoring the defense, resulting in distortion of the development of the law; and eliminating frustration of the primary purpose of a trial – to ascertain the truth of the charges.

Given the compelling case for the need for interlocutory review of suppression orders in juvenile cases, the Supreme Court saw no need to defer the matter to the rules committee. Extending the expedited appeal process provided by Supreme Court Rule 660A to State appeals from suppression orders adequately addressed any concern that delays caused by appeals could interfere with the rehabilitation of the minors.

(Respondent was represented by Assistant Defender Gabrielle Green, Ottawa.)

In re Michael D., 2015 IL App (1st) 143181 (No. 1-14-3181, 3/20/15)

Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 (5th Dist. 2010)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. [705 ILCS 405/5-615\(a\)](#) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an

appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court [Rule 604\(b\)](#) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

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§2-7

Standard of Review

§2-7(a)

Generally

Note: Supreme Court Rule 341(e)(3) provides that the appellant's brief must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.

[People v. Coleman, 183 Ill.2d 366, 701 N.E.2d 1063 \(1998\)](#) The "abuse of discretion" and "manifestly erroneous" standards of review apply only where the trial court is in a superior position to determine the issue. Where only legal issues are involved the reviewing court "has the same capability as does a circuit court in the first instance to look to the allegations and construe them liberally in favor of the petition and as set forth in light of the trial record." The "manifestly erroneous" standard applies where the reviewing court is required to "review . . . factual and credibility determinations," but not where only legal issues are involved. "Abuse of discretion" is the standard of review most deferential to the lower court's findings, and is "traditionally reserved . . . for those decisions of the lower court which deserve great deference on review, i.e., decisions made by the trial judge in overseeing his or her courtroom or in maintaining the progress of the trial."

[In re Commitment of Simons, 213 Ill.2d 523, 821 N.E.2d 1184 \(2004\)](#) Under [Frye v. U.S., 293 F. 1013 \(D.C. Cir. 1923\)](#), scientific evidence is admissible only if the methodology or scientific principle on which it is based is sufficiently established to have gained general acceptance in the particular field to which it belongs. The trial court's decision concerning whether an expert witness is qualified to testify and will offer relevant testimony may be reviewed only for an abuse of discretion. However, the trial court's determination whether the **Frye** standard has been satisfied is reviewed *de novo*. In reviewing a **Frye** ruling, a court of review may consider both the trial court record and "appropriate" sources from outside the record.

[People v. Bunch, 207 Ill.2d 7, 796 N.E.2d 1024 \(2003\)](#) Where disposition of a motion to suppress depends on factual determinations and/or credibility assessments, the trial court's ruling will not be disturbed unless it is manifestly erroneous. Where no dispute exists as to facts or credibility, however, the trial court's ruling is reviewed *de novo*. Because the trial judge's determination concerning the arresting officer's credibility was not manifestly erroneous, the court applied *de novo* review "under the officer's versions of events."

[People v. Cox, 202 Ill.2d 462, 782 N.E.2d 275 \(2002\)](#) A motion to suppress evidence generally presents mixed questions of law and fact. The reviewing court "accords great deference to the factual findings of the trial court," but applies *de novo* review to the ultimate determination to grant or deny the motion.

[People v. Deleon, 227 Ill.2d 322, 882 N.E.2d 999 \(2008\)](#) At the time of defendant's conviction, the law mandated consecutive sentences for multiple offenses during which there was no substantial change in the

nature of the criminal objective, if one of the offenses was a Class X or Class 1 felony and the defendant inflicted "severe bodily injury." Whether a particular injury is "severe" is a question of fact, and the trial court's determination may be reversed only if it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence.

[People v. Harris, 228 Ill.2d. 222,886 N.E.2d 947 \(2008\)](#) In reviewing the trial court's ruling on a motion to suppress the reviewing court must apply a two-part standard of review. The trial court's findings of fact are to be affirmed unless they are against the manifest weight of the evidence. However, the ultimate ruling as to whether the suppression is warranted is reviewed de novo. See also, [People v. Jones, 215 Ill.2d 261 , 830 N.E.2d 541 \(2005\)](#).

[People v. Hood, 213 Ill.2d 244, 821 N.E.2d 258 \(2004\)](#) The trial court's decision of an appropriate sanction for a discovery violation is reviewed for an abuse of discretion.

[People v. Johnson, 206 Ill.2d 348, 794 N.E.2d 294 \(2002\)](#) De novo review is applied where a post-conviction petition is dismissed without an evidentiary hearing, but the manifest error standard is applied where the petition was denied following an evidentiary hearing. Where an evidentiary hearing was held but no live testimony presented, the standard of review should not be based solely on the procedural posture of the case (i.e., whether the ruling was on a motion to dismiss or after an evidentiary hearing), but also on whether the question is one of law or fact and the degree to which the lower court was required to assess credibility, weigh facts and draw inferences. Here the Court applied de novo review to a claim which, although denied after an evidentiary hearing, could be resolved as a matter of law. However, the Court applied the manifest error standard to issues concerning the performance of trial counsel and whether defendant had been fit to plead guilty.

[People v. Lander, 215 Ill.2d 577, 831 N.E.2d 596 \(2005\)](#) De novo review is applied to a post-conviction petition which was dismissed without an evidentiary hearing.

[People v. Luedemann, 222 Ill.2d 530, 857 N.E.2d 187 \(2006\)](#) In reviewing the trial court's ruling on a motion to suppress, a two-part standard of review is applied. First, findings of historical fact are reviewed only for clear error, with the reviewing court giving due weight to any inferences drawn from those facts by the trier of fact. Factual findings are to be reversed only if against the manifest weight of the evidence. However, the reviewing court applies de novo review to the trial court's ultimate legal ruling whether suppression was warranted.

[People v. Morales, 209 Ill.2d 340, 808 N.E.2d 510 \(2004\)](#) Where the facts are undisputed, the de novo standard of review is applied in determining whether a per se conflict of interest exists.

[People v. Morgan, 212 Ill.2d 148, 817 N.E.2d 524 \(2004\)](#) To establish actual innocence based on newly discovered evidence, a post-conviction petitioner must show that the evidence was not available at his original trial and could not have been obtained through due diligence. In addition, the new evidence must be material, noncumulative, and of such conclusive character as to likely change the result on retrial. The trial court's rulings on the effect of newly-discovered evidence and the credibility of recanted testimony will be reversed only if manifestly erroneous.

[People v. Ortega, 209 Ill.2d 354, 808 N.E.2d 496 \(2004\)](#) The Sixth Amendment right to counsel of choice is subject to certain limits, including the trial court's "substantial latitude" to refuse to accept a waiver of a potential or actual conflict of interest. The trial court's decision to disqualify defendant's chosen counsel may

be reversed only for a clear abuse of discretion which occurs when the court's decision is so fanciful, arbitrary or unreasonable that no reasonable person would agree with it.

[People v. Rivera, 227 Ill.2d 1, 879 N.E.2d 876 \(2007\)](#) Where the trial court raises a Batson violation sua sponte, a bifurcated standard of review applies. The trial court's findings of fact, including any specific observations made on the record concerning demeanor and credibility, are accepted unless they are contrary to the manifest weight of the evidence. However, the ultimate legal determination based on such findings is reviewed de novo.

[People v. Shum, 207 Ill.2d 47, 797 N.E.2d 609 \(2003\)](#) An order denying a request for DNA testing is reviewed de novo.

[People v. Thompson, 222 Ill.2d 1, 853 N.E.2d 378 \(2006\)](#) Although the federal constitution requires only that a death sentence be reviewed for an abuse of discretion, Illinois applies neither the abuse of discretion nor the de novo standard of review. The Illinois Supreme Court affords less deference to the sentencer in death cases than when reviewing other sentences, giving "some deference to the trial court or jury on matters involving factual and credibility determinations" but "subjecting the record to intense scrutiny to ensure that only those deserving of the ultimate penalty are so sentenced." The Court also noted it has authority to overturn a "fundamentally unjust" death sentence. Thus, "[w]hen requested to do so, this Court reviews the evidence . . . to determine whether death is the appropriate penalty, even in the absence of trial error."

[People v. Whitfield, 217 Ill.2d 177, 840 N.E.2d 658 \(2005\)](#) A post-conviction petitioner is entitled to relief only if his petition demonstrates that in the proceedings which produced the conviction or sentence, a substantial deprivation of constitutional rights occurred. Issues which could have been raised on direct appeal, but were not, are procedurally defaulted, and issues which have been previously decided are barred by res judicata. Dismissal of a post-conviction petition at the second stage, after counsel has been appointed and given an opportunity to amend the pro se petition, is reviewed de novo. .

[In re Commitment of Sandry, 367 Ill.App.3d 949, 857 N.E.2d 295 \(2d Dist. 2006\)](#) The court concluded that penile plethysmography has obtained sufficient acceptance in the relevant scientific field to satisfy Frye. Under [725 ILCS 207/60\(d\)](#), a person committed under the Sexually Violent Persons Commitment Act may petition the trial court for conditional release. To prevent conditional release, the State must prove by clear and convincing evidence that the petitioner has not made sufficient progress to justify conditional release. As a matter of first impression, the court concluded that the trial court's order concerning conditional release should be reversed only if it is contrary to the manifest weight of the evidence.

[People v. Bryant, 383 Ill.App.3d 327, 889 N.E.2d 710 \(4th Dist. 2008\)](#) When reviewing the sufficiency of the evidence presented to show probable cause for a search warrant, great deference must be given to the issuing magistrate's determination that probable cause existed. The deferential standard of review should be applied not only by the reviewing court, but also by a trial judge considering a motion to suppress based on a lack of probable cause.

[People v. Allen, 222 Ill.2d 340, 856 N.E.2d 349 \(2006\)](#) The trial court has discretion to decide whether to restrain a defendant at trial. A new trial is warranted only if that discretion is abused.

[People v. Wayman, 379 Ill.App.3d 1043, 885 N.E.2d 416 \(5th Dist. 2008\)](#) The offense of "child pornography" includes taking a "lewd" photograph of a person under the age of 18. When the photographs are available, a de novo standard of review applies because the reviewing court is able to examine the visual depiction itself. The Court concluded that where no photographs are available and the Court is reviewing the

trial court's finding based upon testimonial descriptions, the standard of review should be that of any case challenging the sufficiency of the evidence - whether viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the evidence sufficient to convict.

[People v. Anderson, 303 Ill.App.3d 1050, 709 N.E.2d 661 \(1st Dist. 1999\)](#) "Our decision today is not a deprecation of the salutary manifest weight of the evidence standard. We do not second-guess the trial court when it determines factual matters. On the other hand, the manifest weight standard is not a rubber stamp. It does not require mindless acceptance in the reviewing court. It is not our desire to usurp the role of the trial judge as factfinder. It is our desire to provide a reminder that credulity has its limits. We need not abdicate our responsibility to examine factual findings with a view toward determining whether "the opposite conclusion is clearly evident."

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[People v. Absher, 242 Ill.2d 77, 950 N.E.2d 659 \(2011\)](#)

When reviewing a trial court's ruling on a motion to suppress evidence, the reviewing court must accept factual findings that are not contrary to the manifest weight of the evidence. However, the ultimate legal question is reviewed *de novo*.

(Defendant was represented by Assistant Defender Larry O'Neill, Mt. Vernon.)

[People v. Radojcic, 2013 IL 114197 \(Nos. 114197, 114214, 11/21/13\)](#)

At defendant's trial for several offenses related to a mortgage fraud scheme, the trial court determined that the crime-fraud exception to the attorney-client privilege did not apply. In the course of reversing the trial court's holding, the Supreme Court ruled that the *de novo* standard of review applied.

Generally, the abuse of discretion standard applies when reviewing trial court rulings, because the trial court is in a superior position to weigh witness credibility and resolve conflicts in testimony. Because the State offered no live testimony, however, and only introduced transcripts of grand jury testimony, the trial court and reviewing courts were in the same position in evaluating the evidence. Under these circumstances, *de novo review* was appropriate.

(Defendant was represented by Emily Wood of Chicago.)

[People v. Chambers, 2014 IL App \(1st\) 120147 \(No. 1-12-0147, 5/27/14\)](#)

In reviewing a trial court's denial of a hearing pursuant to **Franks v. Delaware**, 438 U.S. 154 (1978), there is a presumption of validity concerning the affidavit supporting a search warrant, and a reviewing court will not disturb the trial court's judgment if it is exercised within permissible limits. The standard of review is thus whether the trial court abused its discretion.

(Defendant was represented by Assistant Defender Tom Gonzalez, Chicago.)

[People v. Chestnut, 398 Ill.App.3d 1043, 921 N.E.2d 811 \(4th Dist. 2010\)](#) (No. 4-09-0338, 1/12/10)

When reviewing the trial court's order on a motion to suppress, a reviewing court will reject the trial court's factual findings only if they are contrary to the manifest weight of the evidence. A finding is contrary to the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence.

The court found that two of the trial judge's factual findings were contrary to the manifest weight of the evidence. However, the trial court did not err by granting the motion to suppress. (See **CONFESSIONS**, §§10-3(c), (d) & **SEARCH & SEIZURE**, §§44-4(b), 44-8(b), 44-11(b)).

People v. Dixon, 2015 IL App (1st) 133303 (No. 1-13-3303, 12/22/15)

1. Generally, the trial court's factual findings are accorded deference on review and reversed only if against the manifest weight of the evidence. This rule of deference is based on the trial court's superior position to weigh testimony, determine credibility, and resolve conflicts in the evidence. The court concluded that where the State presented no evidence concerning the weight or composition of a weapon and the trial court based the conclusion that the weapon was capable of being used as a bludgeon on its interpretation of a videotape, deference to the trial court's factual findings was not required.

2. After viewing the videotape, the Appellate Court concluded that it was unable to determine whether the firearm in question was of such weight and composition that it could be used as a bludgeon. Therefore, the evidence was insufficient to establish beyond a reasonable doubt that defendant or his co-defendant was armed with "a dangerous weapon that could be used as a bludgeon."

(Defendant was represented by Assistant Defender Rachel Kindstrand, Chicago.)

See also, **People v. Harris**, 2015 IL App (1st) 133892 (No. 1-13-3892, 12/22/15) (in the co-defendant's appeal, the conviction for armed robbery was reversed and the cause remanded for entry of a conviction for robbery because the evidence failed to show that the weapon was capable of being used as a bludgeon).

(Defendant was represented by Assistant Defender Ginger Odom, Chicago.)

[People v. Maldonado](#), 402 Ill.App.3d 411, 930 N.E.2d 1104 (1st Dist. 2010)

The court noted a conflict between appellate districts concerning whether the *de novo* or "abuse of discretion" standard applies when reviewing the prosecution's closing argument at trial. The court declined to resolve the conflict, however, finding that under either standard the prosecutor's single ambiguous remark was insufficient to cause substantial prejudice.

(Defendant was represented by Assistant Defender Levi Harris, Chicago.)

[People v. Rivera](#), 409 Ill.App.3d 122, 947 N.E.2d 819 (1st Dist. 2011)

Ordinarily, great deference is accorded to jury determinations. Where the evidence at issue does not involve credibility determinations or observations of demeanor, the deference afforded is logically less.

In a prosecution for child pornography, the evidence primarily consisted of a video clip of a female performing fellatio on a male. The jury was in no better position to view the video clip than the court. The court concluded that a simple viewing of the video clip itself created a reasonable doubt of defendant's guilt, as the female in the video was not obviously adolescent or juvenile in appearance, and reversed the conviction.

[People v. Rubio](#), 392 Ill.App.3d 914, 911 N.E.2d 1216 (2d Dist. 2009)

1. Noting that the Illinois Supreme Court has found that the "manifest weight of the evidence" standard of review, in which reviewing courts defer to the trial court, is based solely on the trial court's superior position to assess credibility, the Appellate Court concluded that the *de novo* standard of review applies where a trial court finding is based solely on documentary evidence rather than live testimony. Because the trial court's factual rulings appeared to have been based solely on the contents of a video recording of defendant's interrogation, and all defense arguments on appeal concerned matters portrayed in the video, the cause was reviewed *de novo*.

However, applying the *de novo* standard, the Appellate Court affirmed the trial court's ruling that defendant made a knowing waiver of his *Miranda* rights.

2. See also **CONFESSIONS**, §10-4(d).

(Defendant was represented by Assistant Defender Kathleen Hamill, Elgin.)

[People v. Shaw](#), 2015 IL App (1st) 123157 (No. 1-12-3157, 9/17/15)

A trial court is in no better position than the Appellate Court in evaluating evidence that is not live

testimony. Reviewing courts thus give less deference to a trial court's determinations of fact when they are based on evidence other than live testimony. Here, the trial court found that surveillance videos corroborated the victim's account of his interactions with defendant and supported the essential elements of the offense. The Appellate Court disagreed, finding that the videos contradicted the victim's account and, along with other contradictions and inconsistencies in the evidence, rendered the State's evidence insufficient to convict defendant beyond a reasonable doubt.

(Defendant was represented by Assistant Defender Chris Gehrke, Chicago.)

[People v. Valle, 405 Ill.App.3d 46, 939 N.E.2d 10, 2010 WL 4230364 \(2d Dist. 2010\)](#)

If live testimony plays a role in the trial court's resolution of disputed issues of fact, review of the trial court's judgment is not *de novo*.

At the hearing on defendant's motion to suppress his statements, the trial court heard live testimony related to a disputed issue of fact, i.e., defendant's susceptibility to aggressive or deception interrogation techniques. A full video record existed of defendant's interrogation sessions. Because the videos did not resolve all disputed issues of fact, deference had to be given to the trial court's factual findings on the issue of the voluntariness of defendant's statements.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

[People v. Wilson, 2012 IL App \(1st\) 092910 \(No. 1-09-2910, 2/9/12\)](#)

The court concluded that the "abuse of discretion" standard of review applied to the trial court's denial of a motion *in limine* to admit evidence of bias and motive to falsify. The evidence consisted of an Independent Police Review Authority investigation of the arresting officers' conduct during the events leading to the charges against the defendant.

The Appellate Court viewed the trial court's ruling as merely denying the motion *in limine* concerning the IPRA investigation, but allowing the defense to cross-examine on all relevant matters, including interest or bias based on evidence other than the IPRA records. Rulings on motions *in limine* are generally left to the trial court's discretion, as are matters involving the admission of evidence. Furthermore, the trial court has discretion to limit the scope of cross-examination.

(Defendant was represented by Assistant Defender Scott Main, Chicago.)

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§2-7(b)

Examples

[Snyder v. Louisiana, ___ U.S. ___, 128 S.Ct. 1203, 170 L.Ed.2d 175 \(2008\)](#) [Batson v. Kentucky, 476 U.S. 79 \(1986\)](#) provides a three-step process for adjudicating a claim that a peremptory challenge has been exercised on the basis of race. The trial court's ruling on a Batson issue must be sustained unless it is clearly erroneous.

[Lilly v. Virginia, 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed.2d 117 \(1999\)](#) Whether a hearsay statement is sufficiently trustworthy to satisfy the Confrontation Clause is a "fact-intensive, mixed" question that is to be reviewed *de novo*.

[People v. Bywater, 223 Ill.2d 477, 861 N.E.2d 989 \(2006\)](#) The construction of a statute is a question of law which is reviewed *de novo*.

[Beacham v. Walker, 231 Ill.2d 51, 896 N.E.2d 327 \(2008\)](#) The trial court's ruling on a motion to dismiss

a habeas corpus petition is reviewed de novo.

People v. Beaman, 229 Ill.2d 56, 890 N.E.2d 500 (2008) Because an argument under Brady v. Maryland, 373 U.S. 83 (1963) involves factual findings, the "manifest error" standard of review applies to the trial court's ruling.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) In reviewing a trial court's ruling on a motion to rescind a summary suspension of a driver's license, a reviewing court should apply the two-part standard of review outlined in Ornelas v. United States, 517 U.S. 690 (1996). Thus, findings of historical fact will be upheld unless clear error is demonstrated, but the lower court's "ultimate legal ruling" is reviewed de novo.

People v. Mohr, 228 Ill.2d 53, 885 N.E.2d 1019 (2008) Instructions are proper if there is some evidence to justify them. Instructions which are not supported by either the evidence or the law should not be given. In determining whether an instruction error occurred, the relevant question is whether the instructions, considered as a whole, fully and fairly announced the law applicable to the theories of the parties. The proper standard of review for instruction issues is whether the trial court abused its discretion. Here, the trial court abused its discretion by giving an instruction defining "provocation" where the State conceded that provocation existed, and there was no issue to be decided. See also, People v. Parker, 223 Ill.2d 494, 861 N.E.2d 936 (2006) In determining whether jury instructions are erroneous, the issue is whether the instructions, taken as a whole, fairly and fully apprise the jury of the relevant legal principles. Whether jury instructions accurately convey the applicable law is subject to de novo review.

People v. Morgan, 197 Ill.2d 404, 758 N.E.2d 813 (2001) The trial court's factual findings concerning a motion to suppress a confession will be reversed only if against the manifest weight of the evidence. However, de novo review is applied to the ultimate question of whether the confession was voluntary.

People v. Sorenson, 196 Ill.2d 425, 752 N.E.2d 1078 (2001) When reviewing the ruling on a motion to suppress involving a question of probable cause or reasonable suspicion, the reviewing court will give great deference to the trial court's factual findings but review de novo the "ultimate question of the defendant's legal challenge to the denial of his motion to suppress."

People v. Crane, 195 Ill.2d 42, 743 N.E.2d 555 (2001) A reviewing court must uphold the trial court's factual findings on a speedy trial claim unless those findings are contrary to the manifest weight of the evidence. Because the "trial court is in no better position than the reviewing court to balance the competing concerns," however, de novo review is applied to the ultimate issue of whether a speedy trial violation occurred. See also, People v. Battles, 311 Ill.App.3d 991, 724 N.E.2d 997 (5th Dist. 2000) (trial court's determination whether the State has exercised sufficient diligence to obtain extension of speedy trial period to obtain DNA analysis is reviewed for an abuse of discretion).

People v. Smith, 188 Ill.2d 335, 721 N.E.2d 553 (1999) A trial court's decision to hold a trial in absentia is reviewed under the abuse of discretion standard; however, the validity of a ruling to proceed in absentia "must be viewed from the perspective of the court at the time the ruling is made."

In re R.A.B., 197 Ill.2d 358, 757 N.E.2d 887 (2001) Because there were no factual questions, the Court applied de novo review to whether there was a knowing and voluntary waiver of the right to a jury trial.

People v. Bellmyer, 199 Ill.2d 529, 771 N.E.2d 391 (2002) The trial court's ruling on a motion to dismiss on double jeopardy grounds is reviewed de novo.

[People v. Sypien, 198 Ill.2d 334, 763 N.E.2d 264 \(2001\)](#) Trial court's holding that a statute is unconstitutional is reviewed de novo. See also, [People v. Whitney, 188 Ill.2d 91, 720 N.E.2d 225 \(1999\)](#) (trial court's construction of a statute is to be reviewed de novo).

[People v. Caffey, 195 Ill.2d 558, 754 N.E.2d 1287 \(2001\)](#) Evidentiary rulings are generally within the sound discretion of the trial court and an abuse of discretion will be found only where the trial court's ruling was arbitrary, fanciful or unreasonable, or where no reasonable person would have taken the trial court's view. Although reviewing courts consider some evidentiary rulings de novo, such review is normally limited to cases in which the trial court's discretion "has been frustrated by an erroneous rule of law." See also, [People v. Williams, 193 Ill.2d 306, 739 N.E.2d 455 \(2000\)](#) (trial court's decision to admit evidence under statute which permits certain hearsay testimony concerning statements by a child who is under the age of 13, is reviewed under the abuse of discretion standard); [People v. Howard, 305 Ill.App.3d 300, 712 N.E.2d 380 \(2d Dist. 1999\)](#) (admission of expert testimony is reviewed for an abuse of discretion); [In re N.W., 293 Ill.App.3d 794, 688 N.E.2d 855 \(1st Dist. 1997\)](#) (the business record exception is reviewed for an abuse of discretion).

[People v. Placek, 184 Ill.2d 370, 704 N.E.2d 393 \(1998\)](#) The trial court's decision to admit other crimes evidence will be overturned only if there is a clear abuse of discretion.

[People v. Williams, 188 Ill.2d 365, 721 N.E.2d 539 \(1999\)](#) Whether the subsequent use of a guilty plea in a trial for murder is a "direct consequence" of the plea poses an issue of law, and should be reviewed de novo. Although the ruling on a motion in limine is usually reviewed under the "abuse of discretion" standard, "[w]here a trial court's exercise of discretion has been frustrated by an erroneous rule of law, appellate review is required to permit the exercise of discretion consistent with the law."

[People v. Kirchner, 194 Ill.2d 502, 743 N.E.2d 94 \(2000\)](#) A reviewing court will not overrule the trial judge's ruling on the scope of cross-examination unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant.

[People v. Garcia, 188 Ill.2d 265, 721 N.E.2d 574 \(1999\)](#) The trial court's decision to instruct on a lesser included offense is reviewed under the abuse of discretion standard. See also, [People v. Majors, 308 Ill.App.3d 1021, 721 N.E.2d 753 \(4th Dist. 1999\)](#) (abuse of discretion standard applies to review of trial court's decision whether to give a tendered jury instruction); [People v. Pinkney, 322 Ill.App.3d 707, 750 N.E.2d 673 \(1st Dist. 2000\)](#) (trial court's refusal to issue a specific jury instruction is reviewed under the abuse of discretion standard). Compare [People v. Dunlap, 315 Ill.App.3d 1017, 734 N.E.2d 973 \(1st Dist. 2000\)](#) (although instructed the jury generally rests within the sound discretion of the trial court, whether the defendant introduced sufficient evidence to obtain an instruction on an affirmative defense presents a question of law which is reviewed de novo).

[People v. Andrews, 364 Ill.App.3d 253, 845 N.E.2d 974 \(2d Dist. 2006\)](#) Where a mistrial is declared over the defendant's objection, double jeopardy permits a retrial if there was a manifest necessity for the mistrial. The trial court's determination of a manifest necessity is reviewed under an abuse of discretion standard. Whether a manifest necessity for a mistrial existed in a particular case depends on the facts of that case.

[People v. Vaden, 336 Ill.App.3d 893, 784 N.E.2d 410 \(3d Dist. 2003\)](#) Evidentiary rulings properly rest upon the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the party who opposed admission.

[People v. Bingham, 364 Ill.App.3d 642, 847 N.E.2d 903 \(4th Dist. 2006\)](#) The constitutional right of the assistance of counsel includes the right to counsel of choice. However, a defendant may not use the right to

counsel of choice to thwart the administration of justice or delay the proceedings. In ruling on a motion to continue the cause in order to substitute counsel of choice, the trial court must balance the defendant's right to choose his attorney against the efficient and effective administration of justice. The trial court's ruling on a motion for a continuance will be overturned only for an abuse of discretion.

[People v. Blackman, 359 Ill.App.3d 1013, 836 N.E.2d 101 \(1st Dist. 2005\)](#) A reviewing court will reverse the trial court's use of a discovery sanction only if the sanction failed to cure the prejudice of a discovery violation.

[People v. Burtron, 376 Ill.App.3d 856, 877 N.E.2d 87 \(5th Dist. 2007\)](#) To obtain a retrial after a mistrial is ordered over the defendant's objection, the State has the "heavy" burden of demonstrating a manifest necessity for the mistrial. The abuse of discretion standard applies to the trial court's determination that a mistrial was manifestly necessary. Here the trial court did not abuse its discretion by ordering a mistrial after defense counsel stated, in the jury's presence, that defendant was willing to take a polygraph examination. The statement was the "last in a series" of defense counsel's "blatant indiscretions," including repeated attempts to "abuse the rules of trial procedure" Because the trial judge had dealt with defense counsel's "many indiscretions in a patient, calm, and professional manner," the judge did not abuse his discretion by declaring a mistrial.

[People v. Calhoun, 351 Ill.App.3d 1072, 815 N.E.2d 492 \(4th Dist. 2004\)](#) A reviewing court will not reverse the decision to deny a post-conviction claim after an evidentiary hearing unless that ruling is manifestly erroneous. A decision is manifestly erroneous if it contains error that is "clearly evident, plain, and indisputable."

[People v. Childress, 338 Ill.App.3d 540, 789 N.E.2d 330 \(1st Dist. 2003\)](#) The trial court's ruling on the admissibility of other crimes evidence is subject to the abuse of discretion standard of review.

[People v. Coleman, 358 Ill.App.3d 1063, 835 N.E.2d 387 \(3d Dist. 2005\)](#) Although the merits of the trial court's dismissal of a §2-1401 petition is reviewed for an abuse of discretion, whether the trial court has followed the applicable statutory procedure governing such petitions is reviewed de novo.

[People v. Derr, 346 Ill.App.3d 823, 806 N.E.2d 237 \(5th Dist. 2004\)](#) The abuse of discretion standard of review applies to questions about the adequacy of the trial court's response to jury inquiries concerning the law.

[People v. Diggins, 379 Ill.App.3d 994, 888 N.E.2d 129 \(3d Dist. 2008\)](#) The trial court's failure to give a requested instruction is reviewed under the abuse of discretion standard.

[People v. Downin, 357 Ill.App.3d 193, 828 N.E.2d 341 \(3d Dist. 2005\)](#) The trial court's decision to admit a document is reviewed under the abuse of discretion standard.

[People v. Gibson, 357 Ill.App.3d 480, 828 N.E.2d 881 \(4th Dist. 2005\)](#) The trial court's decision to deny a motion for forensic testing under [725 ILCS 5/116-3](#) is reviewed de novo.

[People v. Henderson, 343 Ill.App.3d 1108, 799 N.E.2d 682 \(1st Dist. 2003\)](#) Under [725 ILCS 5/116-3](#), a defendant may, under certain circumstances, obtain forensic testing which was not available at the time of trial. The trial court's ruling on a §116-3 motion is reviewed de novo; the trial court's decision is based not on its assessment of credibility, but on a review of the pleadings and trial transcripts.

[People v. Hunt, 381 Ill.App.3d 790, 886 N.E.2d 409 \(1st Dist. 2008\)](#) A partly inaudible sound recording is inadmissible if the inaudible portions are so substantial as to render the recording untrustworthy as a whole. Whether a partially audible recording should be admitted is a matter of the trial court's discretion.

[People v. Kohl, 364 Ill.App.3d 495, 847 N.E.2d 150 \(2d Dist. 2006\)](#) The trial court's conclusion that a weapon was within the definition of "metal knuckles" was a legal determination to which de novo review applied. The Court rejected the State's argument that the finding was a factual determination entitled to deference.

[People v. Lang, 346 Ill.App.3d 677, 805 N.E.2d 1249 \(2d Dist. 2004\)](#) A trial court order denying a motion for appointment of a special prosecutor is reviewed under the "abuse of discretion" standard.

[People v. Exson, 384 Ill.App.3d 794, 896 N.E.2d 844 \(1st Dist. 2008\)](#) Generally, an in-custody defendant is entitled to be tried within 120 days of the date of his arrest. The 120-day-period may be extended once, by up to 60 days, if: (1) despite due diligence the State has been unable to obtain evidence, and (2) there are reasonable grounds to believe that the evidence will be available at a later date. The decision to extend the speedy trial period beyond 120 days lies within the discretion of the trial court, whose decision will not be disturbed absent clear abuse. The Court refused to consider the State's argument, made for the first time in its Petition for Rehearing, that the 120-day speedy trial period had not run because the defense moved to suppress evidence several months before the speedy trial motion was filed, causing delay which should be charged to the defense. The State conceded in both the trial and appellate courts that the speedy trial period would have expired had the trial court not granted an extension, and could not argue a contrary position on rehearing.

[People v. Hopkins, 382 Ill.App.3d 935, 889 N.E.2d 1149 \(1st Dist. 2008\)](#) A confession obtained after an unlawful arrest need be suppressed only if it is a fruit of the illegal arrest. A statement that is sufficiently attenuated from the taint of an illegal arrest may, therefore, be admitted. A mixed standard of review applies in addressing the propriety of a trial court finding that a confession was sufficiently attenuated to be admitted. The trial court's findings of fact may be reversed only if against the manifest weight of the evidence. However, the ultimate question - whether the evidence should have been suppressed - is reviewed de novo.

[People v. McCarter, 385 Ill.App.3d 919, 897 N.E.2d 265 \(1st Dist. 2008\)](#) Under [People v. Krankel, 102 Ill.2d 181, 464 N.E.2d 1045 \(1984\)](#), the trial court must conduct a primary inquiry to examine the factual basis of a pro se claim of ineffective assistance of counsel at trial. If the claim lacks merit or concerns only trial strategy, the court may deny the motion without appointing counsel. However, if the pro se claim points to possible neglect of the case, new counsel must be appointed. The trial court's refusal to appoint new counsel should be overturned on appeal only if the decision is manifestly erroneous.

[People v. Romero, 387 Ill.App.3d 954, 901 N.E.2d 399 \(2d Dist. 2008\)](#) Where the defendant argues that he presented sufficient evidence to prove a mitigating factor in a first or second degree murder case, the standard of review is whether, viewing the evidence most favorably to the prosecution, any rational trier of fact could have found that the mitigating factors were not present.

[People v. Wheat, 383 Ill.App.3d 234, 889 N.E.2d 1195 \(2d Dist. 2008\)](#) Any findings of fact made by the trial court concerning the discharge of the jury and the defendant's request to poll the jury are to be accepted by the reviewing court unless against the manifest weight of the evidence. The "manifest weight" standard is applied because the trial court is in a superior position to determine such matters as whether there was an adequate opportunity to request a poll and whether the defendant made a timely request.

[People v. McCoy](#), 378 Ill.App.3d 954, 881 N.E.2d 621 (3d Dist. 2008) Whether the prosecution's closing argument constitutes reversible error is a question of law that is reviewed de novo.).

[People v. Miller](#), 345 Ill.App.3d 836, 803 N.E.2d 610 (4th Dist. 2004) On a motion to suppress, the defendant has the burden of proving that the search and seizure were unlawful. Once the defendant makes a prima facie showing, the State has the burden to produce evidence justifying the intrusion.

[People v. Mitchell](#), 353 Ill.App.3d 838, 819 N.E.2d 1252 (2d Dist. 2004) A stipulated bench trial is tantamount to a guilty plea where the defendant stipulates to the admissibility of evidence and the sufficiency of the evidence to convict. If a stipulated bench trial is tantamount to a guilty plea, the trial court must admonish the defendant pursuant to Supreme Court Rule 402. Whether a stipulation amounts to a guilty plea is reviewed de novo.

[People v. Morris](#), 335 Ill.App.3d 70, 779 N.E.2d 504 (1st Dist. 2002) The trial court's dismissal of a post-conviction petition at the second stage of the proceedings, without an evidentiary hearing, is reviewed de novo.

[People v. Munoz](#), 348 Ill.App.3d 423, 810 N.E.2d 65 (1st Dist. 2004) Generally, the "abuse of discretion" standard of review applies to evidentiary rulings of the trial court. De novo review is appropriate, however, where the trial court's ruling was based solely on the submission of documents or the trial court's exercise of discretion was frustrated by an erroneous rule of law.

[People v. O'Quinn](#), 339 Ill.App.3d 347, 791 N.E.2d 1066 (5th Dist. 2003) Both the Federal and State Constitutions afford a criminal defendant the right to attend all critical stages of the proceedings. The due process right to be present is violated, however, only where the absence of the defendant results in the denial of a fair trial. The trial court's holding concerning defendant's constitutional right to attend a proceeding is reviewed de novo.

[People v. Prather](#), 379 Ill.App.3d 763, 887 N.E.2d 44 (4th Dist. 2008) Under Supreme Court [Rule 604\(d\)](#), an attorney representing a defendant on a motion to reconsider the sentence or to withdraw a guilty plea must file a certificate indicating that he or she has consulted with the defendant to ascertain the contentions of error in the sentence or the guilty plea, examined the trial court file and report of proceedings of the guilty plea, and made any amendments to the motion necessary to adequately present the issues. Strict compliance with [Rule 604\(d\)](#) is required. In determining whether defense counsel strictly complied with [Rule 604\(d\)](#), de novo review applies.

[People v. Price](#), 345 Ill.App.3d 129, 801 N.E.2d 1187 (2d Dist. 2003) Under [725 ILCS 5/116-3](#), a defendant who has been convicted of a crime may, under certain circumstances, move for fingerprint or forensic DNA testing of evidence that "was secured in relation to the trial which resulted in his or her conviction," but for which the requested testing was not available at trial. The trial court's ruling on a motion for testing is reviewed de novo.

[People v. Scott](#), 366 Ill.App.3d 638, 852 N.E.2d 531 (1st Dist. 2006) The Court applied *de novo* review to the trial court's finding that the taint of an illegal arrest was attenuated from defendant's statements.

[People v. Simmons](#), 372 Ill.App.3d 735, 867 N.E.2d 507 (1st Dist. 2007) To establish that a suspect's statement is sufficiently attenuated from the effect of an illegal arrest to be admitted, courts examine several factors. The trial court's finding concerning attenuation will not be overturned unless it is manifestly

erroneous.

[People v. Slywka, 365 Ill.App.3d 34, 847 N.E.2d 780 \(1st Dist. 2006\)](#) De novo review applies when determining whether collateral estoppel precludes an adult prosecution for attempt murder. Here, the defendant was asserting a legal issue as to whether the prosecution was legally barred, not challenging the sufficiency of the evidence.

[People v. Smith, 341 Ill.App.3d 729, 793 N.E.2d 719 \(1st Dist. 2003\)](#) The constitutional right to a trial includes the right to a fair trial by impartial jurors. A person is not competent to serve on a jury if her state of mind or mental attitude is such that the defendant will not receive a fair and impartial trial. The trial court's determination of a juror's impartiality will not be set aside on review unless it is against the manifest weight of the evidence.

[People v. Spicer, 379 Ill.App.3d 441, 884 N.E.2d 675 \(1st Dist. 2007\)](#) When reviewing a claim that the admission of hearsay violated the Sixth Amendment, the Appellate Court should defer to the trial court's evidentiary ruling unless the lower court's exercise of discretion was "frustrated by an erroneous rule of law."

[People v. Sutton, 349 Ill.App.3d 608, 812 N.E.2d 543 \(1st Dist. 2004\)](#) Absent an abuse of discretion, the trial court's choice of a discovery sanction will not be reversed on appeal.

[People v. Turner, 375 Ill.App.3d 1101, 875 N.E.2d 175 \(3d Dist. 2007\)](#) When a defense attorney representing co-defendants raises a conflict of interest, the trial court must either appoint new counsel or perform a factual inquiry to determine whether an actual conflict of interest exists. If the trial court fails to appoint new counsel or investigate the potential conflict, reversal is automatic without any showing of prejudice. The adequacy of the trial court's investigation into a potential conflict of interest is reviewed for an abuse of discretion.

[People v. Walton, 357 Ill.App.3d 819, 829 N.E.2d 396 \(2d Dist. 2005\)](#) Illinois law provides that a defendant shall not be sentenced for a felony before the trial court considers a written presentence report, except that a negotiated plea including a specific sentence may be accepted if there is a finding of the defendant's history of delinquency or criminality. Whether the trial court complied with this law is a question of law which is reviewed de novo.

[People v. Wilburn, 338 Ill.App.3d 1075, 789 N.E.2d 797 \(3d Dist. 2003\)](#) Generally, a reviewing court will not disturb a trial court's ruling on whether a delay in filing a post-conviction petition was the result of culpable negligence, unless that determination is manifestly erroneous. Where the trial court's decision was based not on a factual or credibility determination, however, but on the lower court's application of the law to established facts, the Appellate Court applied de novo review.

[People v. Young, 355 Ill.App.3d 317, 822 N.E.2d 920 \(2d Dist. 2005\)](#) A post-conviction petitioner is entitled to an evidentiary hearing if the petition's allegations, supported by the trial record or affidavits attached to the petition, make a substantial showing that constitutional violations occurred in the proceedings leading to the petitioner's conviction. In deciding whether an evidentiary hearing is required, the trial court must accept all well-pleaded facts as true. Review of the trial court's determination is *de novo*.

[People v. Coleman, 307 Ill.App.3d 930, 718 N.E.2d 1074 \(2d Dist. 1999\)](#) A trial judge has inherent authority to dismiss an indictment when failing to do so would result in a deprivation of due process or a miscarriage of justice. Where there is no dispute as to facts or credibility and only issues of law are raised, the trial court's ruling on a motion to dismiss should be reviewed *de novo*.

[People v. Hawkins, 311 Ill.App.3d 418, 723 N.E.2d 1222 \(4th Dist. 2000\)](#) Whether uncontested facts constitute a substantial step toward the commission of a criminal offense, and thus constitute an attempt, is an issue of law to which the *de novo* standard of review applies.

[People v. Hall, 311 Ill.App.3d 905, 726 N.E.2d 213 \(4th Dist. 2000\)](#) A vindictive prosecution claim presents both legal and factual questions. The trial court's legal conclusions are reviewed *de novo*, but factual findings will be reversed only if clearly erroneous.

[People v. Stafford, 325 Ill.App.3d 1069, 759 N.E.2d 115 \(1st Dist. 2001\)](#) Whether the State should have been allowed to proceed at a retrial on charges that had been dismissed on the State's motion before the first trial, and not reinstated by indictment, is a legal question to which *de novo* review applies.

[People v. Boyd, 307 Ill.App.3d 991, 719 N.E.2d 306 \(3d Dist. 1999\)](#) Whether multiple convictions may properly stand is a question of law and subject to *de novo* review.

[People v. Crowe, 327 Ill.App.3d 930, 764 N.E.2d 1174 \(1st Dist. 2002\)](#) The trial court's decision to disqualify defendant's counsel of choice will be overruled only if there is a clear abuse of discretion. The Court rejected defendant's argument that the *de novo* standard should apply; *de novo* review is appropriate only where there are no factual or credibility issues or the trial court's exercise of discretion "has been frustrated by an erroneous rule of law."

Cumulative Digest Case Summaries §2-7(b)

[People v. Chapman, 2012 IL 111896 \(No. 111896, 3/22/12\)](#)

The trial court's ruling on the admissibility of other crimes evidence will not be disturbed absent a clear abuse of discretion.

(Defendant was represented by Assistant Defender Bob Burke, Mt. Vernon.)

[People v. Radojcic, 2013 IL 114197 \(Nos. 114197, 114214, 11/21/13\)](#)

At defendant's trial for several offenses related to a mortgage fraud scheme, the trial court determined that the crime-fraud exception to the attorney-client privilege did not apply. In the course of reversing the trial court's holding, the Supreme Court ruled that the *de novo* standard of review applied.

Generally, the abuse of discretion standard applies when reviewing trial court rulings, because the trial court is in a superior position to weigh witness credibility and resolve conflicts in testimony. Because the State offered no live testimony, however, and only introduced transcripts of grand jury testimony, the trial court and reviewing courts were in the same position in evaluating the evidence. Under these circumstances, *de novo review* was appropriate.

(Defendant was represented by Emily Wood of Chicago.)

[People v. Taylor, 2011 IL 110067 \(No. 110067, 10/6/11\)](#)

The admissibility of videotapes and photographs is left to the trial court's discretion. Thus, the "abuse of discretion" standard of review applies to the trial court's decision to admit video recordings. An abuse of discretion occurs when the trial court's ruling is fanciful, unreasonable or such that it would not be adopted by a reasonable person.

(Defendant was represented by Assistant Defender Jack Hildebrand, Elgin.)

[People v. Brown, 2014 IL App \(2d\) 121167 \(No. 2-12-1167, 5/30/14\)](#)

The issuance of a search warrant is reviewed to determine whether there was a substantial basis for the magistrate to conclude that probable cause existed. Even where the trial court did not hear testimony and there are no facts in dispute, the *de novo* standard of review is not appropriate. Instead, if the complaint for a search warrant provided a substantial basis for the issuing judge to determine that probable cause existed, the denial of a motion to suppress will be affirmed.

(Defendant was represented by Assistant Defender Paul Glaser, Elgin.)

[People v. Clark, 2013 IL App \(2d\) 120034 \(No. 2-12-0034, 3/29/13\)](#)

The court noted that Illinois law is unclear concerning the standard of review to be applied to the trial court's order requiring that an informant's identity be disclosed. The court declined to resolve the uncertainty, however, finding that under either the abuse of discretion or *de novo* standard of review the trial court's order was erroneous.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

[People v. Coleman, 2015 IL App \(4th\) 131045 \(No. 4-13-1045, 1/6/15\)](#)

In reviewing the denial of post-conviction relief after a third-stage hearing, the court noted that claims of ineffective assistance are considered under a hybrid standard of review in which the Appellate Court defers to the trial court's factual findings but makes an independent determination of the ultimate legal issue.

(Defendant was represented by Assistant Defender Allen Andrews, Springfield.)

[People v. Davis, 2012 IL App \(4th\) 110305 \(No. 4-11-0305, 3/5/12\)](#)

Under most circumstances, the trial court's ruling on a §2-1401 petition is reviewed for abuse of discretion. However, *de novo* review is appropriate where the petition is based on an interpretation of the Supreme Court Rules or is dismissed without a response by the State and is therefore equivalent to a dismissal for failing to state a cause of action.

Here, the abuse of discretion standard of review applied because neither of the two exceptions listed above applied and because the dispute on appeal concerned a factual issue.

[People v. Day, 2011 IL App \(2d\) 091358 \(No. 2-09-1358, revised op. 10/27/11\)](#)

The trial court's determination of a schedule for paying restitution is reviewed for abuse of discretion.

(Defendant was represented by Assistant Defender Deepa Punjabi, Chicago.)

People v. Dixon, 2015 IL App (1st) 133303 (No. 1-13-3303, 12/22/15)

1. Generally, the trial court's factual findings are accorded deference on review and reversed only if against the manifest weight of the evidence. This rule of deference is based on the trial court's superior position to weigh testimony, determine credibility, and resolve conflicts in the evidence. The court concluded that where the State presented no evidence concerning the weight or composition of a weapon and the trial court based the conclusion that the weapon was capable of being used as a bludgeon on its interpretation of a videotape, deference to the trial court's factual findings was not required.

2. After viewing the videotape, the Appellate Court concluded that it was unable to determine whether the firearm in question was of such weight and composition that it could be used as a bludgeon. Therefore, the evidence was insufficient to establish beyond a reasonable doubt that defendant or his co-defendant was armed with "a dangerous weapon that could be used as a bludgeon."

(Defendant was represented by Assistant Defender Rachel Kindstrand, Chicago.)

See also, **People v. Harris**, 2015 IL App (1st) 133892 (No. 1-13-3892, 12/22/15) (in the co-defendant's appeal, the conviction for armed robbery was reversed and the cause remanded for entry of a conviction for robbery because the evidence failed to show that the weapon was capable of being used as a

bludgeon).

(Defendant was represented by Assistant Defender Ginger Odom, Chicago.)

[People v. Munoz, 398 Ill.App.3d 455, 923 N.E.2d 898 \(1st Dist. 2010\)](#)

The trial court's evidentiary rulings on the admissibility of hearsay are reviewed under the "abuse of discretion" standard. (See also **EVIDENCE**, §§19-10(a), 19-20)).

[People v. Rubio, 392 Ill.App.3d 914, 911 N.E.2d 1216 \(2d Dist. 2009\)](#)

1. Noting that the Illinois Supreme Court has found that the "manifest weight of the evidence" standard of review, in which reviewing courts defer to the trial court, is based solely on the trial court's superior position to assess credibility, the Appellate Court concluded that the *de novo* standard of review applies where a trial court finding is based solely on documentary evidence rather than live testimony. Because the trial court's factual rulings appeared to have been based solely on the contents of a video recording of defendant's interrogation, and all defense arguments on appeal concerned matters portrayed in the video, the cause was reviewed *de novo*.

However, applying the *de novo* standard, the Appellate Court affirmed the trial court's ruling that defendant made a knowing waiver of his *Miranda* rights.

2. See also **CONFESSIONS**, §10-4(d).

(Defendant was represented by Assistant Defender Kathleen Hamill, Elgin.)

[People v. Slover, 2011 IL App \(4th\) 100276 \(No. 4-10-0276, 9/9/11\)](#)

[725 ILCS 5/116-3](#) authorizes post-conviction forensic testing when several requirements are met, including that the testing has the scientific potential to produce new, noncumulative evidence that is materially relevant to an assertion of actual innocence. Generally, *de novo* review is applied to the trial court's disposition of a §116-3 motion.

The Appellate Court held, however, that *de novo* review was inappropriate where the trial court conducted an evidentiary hearing on the motion and based its ruling in part on its assessment of witness credibility. Finding that review of a §116-3 proceeding in which an evidentiary hearing was held is analogous to review of a third stage post-conviction proceeding, the court held that the same "manifestly erroneous" standard of review should be utilized. The court also noted that in this case the conclusion would be the same under either the "manifestly erroneous" standard or the two-part standard of review urged by the defendant, which would have reviewed the trial court's factual findings under the manifest weight of the evidence standard but applied *de novo* review to the judge's ultimate ruling.

[People v. Sullivan, 2011 IL App \(4th\) 100005 \(No. 4-10-0005, 9/21/11\)](#)

The trial court's ruling concerning the admissibility of evidence that would impeach the jury's verdict is reviewed for abuse of discretion.

(Defendant was represented by Assistant Defender Michael Delcomyn, Springfield.)

[People v. Tolefree, 2011 IL App \(1st\) 100689 \(No. 1-10-0689, 8/12/11\)](#)

The standard of review of a defendant's *pro se* post-trial claim of ineffective assistance of counsel depends on whether the trial court determined the merits of defendant's claims. If the court made no determination on the merits, the standard of review is *de novo*. If the court made a determination on the merits, a reviewing court will reverse only if the trial court's decision was manifestly erroneous.

(Defendant was represented by Assistant Defender Jennifer Bontrager, Chicago.)

[People v. Valle, 405 Ill.App.3d 46, 939 N.E.2d 10, 2010 WL 4230364 \(2d Dist. 2010\)](#)

If live testimony plays a role in the trial court's resolution of disputed issues of fact, review of the trial court's judgment is not *de novo*.

At the hearing on defendant's motion to suppress his statements, the trial court heard live testimony related to a disputed issue of fact, i.e., defendant's susceptibility to aggressive or deception interrogation techniques. A full video record existed of defendant's interrogation sessions. Because the videos did not resolve all disputed issues of fact, deference had to be given to the trial court's factual findings on the issue of the voluntariness of defendant's statements.

(Defendant was represented by Assistant Defender Christopher White, Elgin.)

[People v. Wilson, 2012 IL App \(1st\) 092910 \(No. 1-09-2910, 2/9/12\)](#)

The court concluded that the "abuse of discretion" standard of review applied to the trial court's denial of a motion *in limine* to admit evidence of bias and motive to falsify. The evidence consisted of an Independent Police Review Authority investigation of the arresting officers' conduct during the events leading to the charges against the defendant.

The Appellate Court viewed the trial court's ruling as merely denying the motion *in limine* concerning the IPRA investigation, but allowing the defense to cross-examine on all relevant matters, including interest or bias based on evidence other than the IPRA records. Rulings on motions *in limine* are generally left to the trial court's discretion, as are matters involving the admission of evidence. Furthermore, the trial court has discretion to limit the scope of cross-examination.

(Defendant was represented by Assistant Defender Scott Main, Chicago.)

[People v. Wuebbels, ___ Ill.App.3d ___, 919 N.E.2d 1122 \(4th Dist. 2009\)](#) (No. 4-09-0461, 12/15/09)

De novo review applies where the trial judge "enters a judgment on the pleadings or a dismissal in a §2-1401 proceeding." (See also **COLLATERAL REMEDIES**, §§9-2(a), (k) & **SENTENCING**, §45-9(a)).

(Defendant was represented by Assistant Defender Marty Ryan, Springfield.)

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