No._____

IN THE UNITED STATES SUPREME COURT

Seth A. Weaver

Petitioner

VS.

PEOPLE OF THE STATE OF ILLINOIS

Respondant

ON PETITION FOR WRIT OF CERTIORARI TO THE

FOURTH DISTRICT COURT OF APPEALS OF THE STATE OF ILLINOIS

APPENDIX-VOLUME 1

Pro Se Petitioner

Seth A. Weaver

Taylorville Correctional Center

Reg No: R23304

1144 IL RT 29

Taylorville,IL 62568

APPENDIX-VOLUME 1

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2019 IL App (4th) 170462-U

NO. 4-17-0462

FILED
July 9, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SETH A. WEAVER, Defendant-Appellant.	)	Appeal from the Circuit Court of Champaign County No. 06CF1481 Honorable Thomas J. Difanis, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by denying defendant's petition for leave to file a successive postconviction petition.

¶ 2 In May 2017, defendant, Seth A. Weaver, filed a motion for leave to file a successive postconviction petition. In his motion, defendant asserted he was denied due process and effective assistance of counsel throughout the proceedings in this case because he was never informed he would have to serve a mandatory supervised release (MSR) term of three years to natural life. In June 2017, the Champaign County circuit court entered an order denying defendant's motion for leave to file a successive postconviction petition. Defendant appeals, contending the circuit court erred by denying him leave to file a successive postconviction petition. We affirm.

¶ 3 I. BACKGROUND

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¶ 4 In September 2006, the State charged defendant with one count of aggravated criminal sexual assault (count I) (720 ILCS 5/12-14(a)(2) (West 2006)) and one count of domestic battery with a prior domestic battery conviction (count II) (720 ILCS 5/12-3.2(a)(1) (West 2006)) for his actions on September 14, 2006. At a December 2006 hearing, defendant pleaded guilty to aggravated criminal sexual assault pursuant to a plea agreement, under which the State was to dismiss count II and recommend a sentence of no greater than 20 years in prison. In admonishing defendant, the circuit court stated, "[a]ny time in prison would be followed by three years of mandatory supervised release." The court later sentenced defendant to 20 years' imprisonment and did not mention MSR. The written sentencing judgment did not state an MSR term. Thereafter, defendant filed a motion to withdraw his guilty plea, alleging his plea was not knowing and voluntary because he was pressured and coerced into pleading guilty and believed he would receive less than 20 years' imprisonment by pleading guilty. During the postplea proceedings, defendant chose to proceed *pro se* on his motion to withdraw his guilty plea. In April 2008, the court denied defendant's motion to withdraw his guilty plea.

¶ 5 Defendant appealed and argued the circuit court erred by (1) not providing him with a transcript of his guilty-plea hearing prior to the hearing on his postplea motion and (2) denying his motion to withdraw his guilty plea because he did not knowingly and intelligently waive his right to counsel. This court affirmed the circuit court's judgment. *People v. Weaver*, 385 Ill. App. 3d 1149, 970 N.E.2d 137 (2008) (table) (unpublished order under Illinois Supreme Court Rule 23).

¶ 6 In September 2009, defendant filed a *pro se* postconviction petition, asserting he was denied the effective assistance of both trial and appellate counsel because neither counsel raised a claim regarding his three-year MSR term. Relying on *People v. Whitfield*, 217 Ill. 2d

177, 840 N.E.2d 658 (2005), defendant argued he did not receive the benefit of the bargain in his guilty plea because the 20-year sentence with the 3-year MSR term was a greater sentence than the one to which he agreed. On September 4, 2009, the circuit court entered a written order dismissing defendant's postconviction petition as frivolous and patently without merit. The court found defendant had been informed a Class X felony has a sentencing range of 6 to 30 years in prison followed by a 3-year MSR term, and thus defendant's *Whitfield* claim was meritless.

¶ 7 Defendant appealed the circuit court's dismissal of his postconviction petition, and this court affirmed the circuit court's dismissal. *People v. Weaver*, 405 Ill. App. 3d 1219, 997 N.E.2d 1018 (2011) (table) (unpublished order under Illinois Supreme Court Rule 23). We found defendant's allegation the circuit court failed to inform him of the three-year MSR term was completely contradicted by the record.

¶ 8 In May 2017, defendant filed his motion for leave to file a successive postconviction petition, which is at issue in this appeal. In his motion, defendant argued his due process rights were violated because he was not informed his MSR term was three years to natural life. Defendant further contended he was denied effective assistance of counsel by all of his prior attorneys because none of them informed him of the correct MSR term. Defendant claimed his plea agreement was illegal and involuntary and his sentence was void. Additionally, defendant noted he was not made aware of the three years to natural life MSR term until prison staff told him in December 2016. Defendant stated he would have filed his petition sooner if one of his attorneys had notified him of the correct MSR term.

¶ 9 The circuit court entered a written order on June 1, 2017, denying defendant leave to file his successive postconviction petition. The court noted defendant could have raised his

claim in his initial postconviction petition and this court decided the same issue in our 2011 Rule 23 order.

¶ 10 On June 16, 2017, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014). See Ill. S. Ct. R. 651(d) (eff. Feb. 6, 2013) (providing the procedure for appeals in postconviction proceedings is in accordance with the rules governing criminal appeals). Thus, we have jurisdiction of defendant's appeal under Illinois Supreme Court Rule 651(a) (eff. Feb. 6, 2013).

¶ 11 II. ANALYSIS

¶ 12 Defendant argues he did establish cause and prejudice for allowing him to file his successive postconviction petition. The State disagrees. When the circuit court has not held an evidentiary hearing, this court reviews *de novo* the denial of a defendant's motion for leave to file a successive postconviction petition. See *People v. Gillespie*, 407 Ill. App. 3d 113, 124, 941 N.E.2d 441, 452 (2010).

¶ 13 Section 122-1(f) of the Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1(f) (West 2016)) provides the following:

> "Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows

> prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process."

Thus, for a defendant to obtain leave to file a successive postconviction petition, both prongs of the cause-and-prejudice test must be satisfied. *People v. Guerrero*, 2012 IL 112020, ¶ 15, 963 N.E.2d 909.

¶ 14 With a motion for leave to file a successive postconviction petition, the court is just conducting "a preliminary screening to determine whether defendant's *pro se* motion for leave to file a successive postconviction petition adequately alleges facts demonstrating cause and prejudice." *People v. Bailey*, 2017 IL 121450, ¶ 24, 102 N.E.3d 114. The court is only to ascertain "whether defendant has made a *prima facie* showing of cause and prejudice." *Bailey*, 2017 IL 121450, ¶ 24. If the defendant did so, the court grants the defendant leave to file the successive postconviction petition. *Bailey*, 2017 IL 121450, ¶ 24.

¶ 15 Regarding cause, defendant contends he established cause because he was untrained in the law and did not know he was subject to an MSR term of up to natural life until he was advised by prison staff in December 2016 and received written confirmation of such in March 2017. In his motion for leave to file his successive postconviction petition, defendant alleges he would have brought his claim earlier if one of his attorneys would have told him the correct MSR term. Both of defendant's allegations are essentially claims of ignorance of law. However, as the State points out, our supreme court has held ignorance of law at the time of the initial postconviction petition can never establish cause for filing a successive postconviction petition. *People v. Evans*, 2013 IL 113471, ¶¶ 12-13, 989 N.E.2d 1096. We disagree with defendant's contention the supreme court's decision in *Evans* does not apply to this case simply

because he pleaded guilty and the defendant in *Evans* was found guilty after a trial.

¶ 16 In *Evans*, 2013 IL 113471, ¶ 5, the circuit court sentenced the defendant to 12 years' imprisonment and made no mention of any period of MSR. The defendant appealed his conviction and sentence and did not raise any issue regarding his MSR term. *Evans*, 2013 IL 113471, ¶¶ 3, 5. The defendant later filed his first postconviction petition and again did not raise any issue with respect to his MSR term. *Evans*, 2013 IL 113471, ¶¶ 4-5. In the defendant's motion for leave to file a successive postconviction petition, he alleged, for the first time, the circuit court did not mention or impose an additional term of MSR with the defendant's 12-year prison sentence. *Evans*, 2013 IL 113471, ¶ 5. The defendant argued the application of a 3-year MSR term was improper because it would result in a sentence longer than the 12-year sentence imposed by the circuit court. *Evans*, 2013 IL 113471, ¶ 5. As to "cause" for failing to raise the issue in his first postconviction petition, the defendant alleged the following: " 'The information about the M.S.R. was not yet discovered to me yet. And when I did learn about it more research need to be done. Also it was still being decided in appeals court, so no case were able to be used as evidence. Basically I Petitioner just discovered this.' " *Evans*, 2013 IL 113471, ¶ 5.

¶ 17 Our supreme court found the defendant's aforementioned allegation was insufficient to establish cause for the filing of a successive postconviction petition under the Postconviction Act. *Evans*, 2013 IL 113471, ¶¶ 12-13. The supreme court explained the defendant's allegation of cause was merely an allegation of his ignorance of the law which, as a matter of law, could never be cause for the filing of a successive postconviction petition. *Evans*, 2013 IL 113471, ¶¶ 12-13. It noted the defendant claimed "he only 'just discovered' that he would be subject to a three-year term of MSR," but at the time he was sentenced, as well as the time of his direct appeal and his initial postconviction petition, the Unified Code of Corrections

(Unified Code) expressly provided that, by operation of law, every Class X sentence must include a three-year term of MSR. *Evans*, 2013 IL 113471, ¶ 13. The supreme court concluded, "Defendant is presumptively charged with knowledge of this provision, and, as a matter of law, his subjective ignorance of it is not 'an objective factor that impeded' his ability to raise the MSR claim sooner." *Evans*, 2013 IL 113471, ¶ 13.

¶ 18 Here, defendant pleaded guilty to aggravated criminal sexual assault. At the time he did so and when he filed his initial postconviction petition, section 5-8-1(d)(4) of the Unified Code (730 ILCS 5/5-8-1(d)(4) (West 2006)) expressly required a sentence for aggravated criminal sexual assault include an indeterminate period of MSR from three years to natural life. In his initial postconviction petition, defendant contended he did not receive the benefit of the bargain with his negotiated plea agreement because of the additional three-year MSR term and argued ineffective assistance of trial and appellate counsel for not raising said issue. Defendant also noted an MSR term was not mentioned at all during his sentencing hearing and attached his written sentencing judgment, which did not include an MSR term. Additionally, we note defendant did not mention the circuit court's admonishments at his guilty plea hearing in his initial postconviction petition.

¶ 19 First, it is clear from his initial postconviction petition defendant was aware an MSR term applied to his sentence at the time he filed his initial postconviction petition. The *Evans* decision establishes that, when the defendant filed his first postconviction petition, he was presumptively charged with knowledge of the requirements of section 5-8-1(d) of the Procedure Code. *Evans*, 2013 IL 113471, ¶ 13. This case presents an even stronger reason for having the presumption since defendant raised an MSR issue in his initial postconviction petition.

¶ 20 Second, the fact the circuit court incorrectly admonished defendant about the

applicable MSR term does not render *Evans* inapplicable, as it did not impede his ability to raise a lifetime MSR argument. The record contains no suggestion defendant relied on the improper admonishment in making his MSR claim in his initial postconviction petition. Defendant did not reference the MSR admonishment in his initial postconviction petition. Moreover, the entire basis for his initial MSR argument was his lack of knowledge a three-year MSR term was part of his sentence under the plea agreement, and thus he was entitled to the benefit of his plea bargain.

¶ 21 Additionally, we note the circuit court's order and this court's order addressing defendant's initial postconviction petition do not affect what defendant knew or should have known when he filed his initial postconviction petition. However, in retrospect, we recognize this court should have noted defendant was arguing the incorrect MSR provision in addressing defendant's contention he was unaware of a "three-year MSR term" when he pleaded guilty.

¶ 22 The cases defendant cites in support of his argument he has alleged cause, *People v. Welch*, 376 Ill. App. 3d 705, 877 N.E.2d 134 (2007), and *People v. Gutierrez*, 2011 IL App (1st) 093499, 954 N.E.2d 365, were both appellate court cases decided before our supreme court's decision in *Evans*. Moreover, the *Welch* case is distinguishable from this one because the defendant in that case did not know an MSR term applied to his sentence when he filed his initial postconviction petition. *Welch,* 376 Ill. App. 3d at 709, 877 N.E.2d at 138. Likewise, in *Gutierrez*, 2011 IL App (1st) 093499, ¶ 14, the defendant was unaware he could possibly face deportation when he filed his first postconviction petition. In this case, the record is undisputable defendant was aware an MSR term applied to his sentence when he filed his initial postconviction petition.

¶ 23 Accordingly, we find that, as a matter of law, defendant's subjective ignorance of section 5-8-1(d)(4) was not an "objective factor that impeded" his ability to bring his ineffective

assistance of counsel claim when he filed his first postconviction petition. *Evans*, 2013 IL 113471, ¶ 13. Since defendant cannot establish the cause prong of the cause and prejudice test, the circuit court properly denied his motion for leave to file a successive postconviction petition.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the Champaign County circuit court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 26 Affirmed.

IN CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

CHAMPAIGN COUNTY, ILLINOIS

People of the State of Illinois, People,	)	
Vs.	)	06-CF-1481
Seth Weaver, Defendant.	)	

ORDER

The Defendant has filed a request for leave to file a successive post-conviction petition. In his request, he claims that he was not properly admonished concerning the appropriate period of mandatory supervised release. The Court may grant his request if he can satisfy the cause and prejudice test.

The Defendant could have claimed this problem when he filed his initial post-conviction petition. Also, the Fourth District Appellate Court decided this same issue in their order filed on the 22nd of February, 2011, People v. Weaver.

The Defendant's request is denied.

6/1/17
Date

Thomas J. Difanis
Thomas J. Difanis, Presiding Judge

Appendix B

Bendik

Received: 11/26/2019

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

November 26, 2019

In re: People State of Illinois, respondent, v. Seth A. Weaver, petitioner.
Leave to appeal, Appellate Court, Fourth District.
125166

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 12/31/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

Appendix C

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL DISTRICT
CHAMPAIGN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
vs.) 06-CF-1481
)
SETH A. WEAVER,)
Defendant.)

ORDER

The Defendant has filed on February 12, 2007, a motion to withdraw his guilty plea. Since he alleged problems with his court appointed counsel, Walter Ding was appointed to represent him. Mr. Weaver objected to Mr. Ding's appointment and wanted yet another attorney to represent him. That request was denied by the court.

A hearing was conducted on Mr. Weaver's motion to withdraw his plea of guilty. Since February 12, 2007, the Defendant has filed numerous motions requesting a judge other than Judge Clem to hear his motion to withdraw his plea of guilty. In these numerous filings the Defendant not only complains about Judge Clem, but also claims about Mr. Schmidt's representation. On February 15, 2008, this court conducted a hearing on the Defendant's motion to withdraw his guilty plea. Mr. Schmidt testified and the Defendant was given an opportunity to cross examine him.

The court finds that the Defendant was properly admonished by Judge Clem when he pled guilty. According to Mr. Schmidt's testimony, the Defendant was not coerced or forced into pleading. Mr. Schmidt felt that a 20 year cap was a very good agreement. Based on Judge Clem's comments at sentencing, Schmidt's advice seemed appropriate. The Defendant's motion to withdraw his plea of guilty is denied. The Defendant has 30 days to file a notice of appeal and, if he wishes, to request court appointed counsel on appeal.

Dated: 4/7/08

Thomas J. Difanis
Presiding Judge

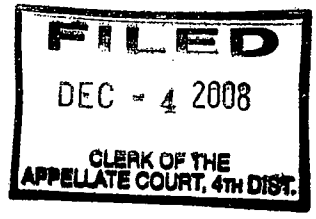
Appendix D

NO. 4-08-0340

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT



THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SETH A. WEAVER, Defendant-Appellant.	)	Appeal from Circuit Court of Champaign County No. 06CF1481 Honorable Thomas J. Difanis, Judge Presiding.

ORDER

In December 2006, defendant, Seth A. Weaver, pleaded guilty to aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2006)). In January 2007, the trial court sentenced him to 20 years' imprisonment. In April 2008, the court denied defendant's motion to withdraw his guilty plea. Defendant appeals, arguing (1) he was not provided with a transcript of his guilty-plea hearing prior to the hearing on his motion to withdraw his guilty plea and (2) because he did not knowingly and intelligently waive his right to counsel, the denial of his motion to withdraw his guilty plea should be reversed. We disagree and affirm.

I. BACKGROUND

In September 2006, the State charged defendant with aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2006)) (count I) and domestic-battery-with-a-prior-domestic-battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2006)) (count II). Champaign County Circuit Judge Harry E. Clem appointed the

Appendix E

public defender to represent defendant.

In October 2006, defense counsel requested, and the trial court granted, the appointment of a psychiatrist to examine defendant on the issue of fitness to stand trial and criminal responsibility at the time of the alleged crimes. In November 2006, the psychiatrist filed a report finding defendant fit to stand trial and found defendant was not presently suffering from a mental condition.

On December 12, 2006, immediately prior to jury selection, defendant pleaded guilty to count I in exchange for the dismissal of count II and the State's recommendation of a sentence no greater than 20 years' imprisonment. The trial court admonished defendant in accordance with Supreme Court Rule 402(a) (177 Ill. 2d R. 402(a)). The court also confirmed that defendant understood the nature of the plea agreement, that no one had threatened or forced defendant to plead guilty, and that no promises had been made, other than that the State would recommend no more than 20 years' imprisonment and would dismiss count II. The State provided a factual basis, and defense counsel admitted the State had evidence sufficient to sustain the charge at trial. Defendant also signed a waiver of a jury trial, and the court admonished defendant on that waiver as well. The court accepted the plea. In January 2007, the court sentenced defendant to 20 years' imprisonment.

On February 12, 2007, defendant filed a motion to withdraw his guilty plea. The motion alleged that defendant's

plea was not knowing and voluntary because he was pressured and coerced into pleading guilty and believed he would receive less than 20 years' imprisonment by pleading guilty. On February 21, 2007, on the motion of defense counsel, the trial court ordered that a transcript of the December 12, 2006, guilty-plea hearing be prepared.

On February 23, 2007, Assistant Public Defender Scott Schmidt filed a motion to withdraw as counsel. The motion alleged that defendant had informed counsel that he would seek to withdraw his guilty plea on the grounds of ineffective assistance of counsel, which raised a conflict of interest.

On March 9, 2007, the trial court granted defense counsel's motion to withdraw as counsel. The court appointed Walter Ding, a contract attorney, to represent defendant on his motion to withdraw his guilty plea.

On July 20, 2007, defendant, through his new counsel, filed a motion to withdraw guilty plea asserting, among other things, that defendant felt forced into pleading guilty and did not have sufficient time to discuss the ramifications and consequences of the plea with his attorney.

An October 16, 2007, docket entry noted that defendant requested transcripts of the proceedings on December 12, 2006 (the guilty-plea hearing), and January 12, 2007 (the sentencing hearing). The trial court directed the clerk to send those transcripts to defendant.

Also in October 2007, defendant filed several motions

pro se, including a request for substitution of judge, containing complaints about his former and current counsel. The trial court sent notice to all counsel and defendant and entered a docket entry provided that "[s]o long as [d]efendant is represented by counsel, the [c]ourt will not be considering any pro se pleadings filed by [d]efendant."

On November 13, 2007, defendant filed additional pro se pleadings, including a motion to compel defense counsel to withdraw as attorney of record and seeking to proceed pro se on his motion to withdraw guilty plea. Included with the pleadings was a copy of a letter defendant sent to attorney Ding in which defendant purported to terminate Ding's representation of defendant and indicating defendant's intent to proceed pro se. In November 2007, defendant refiled several of his previously filed pro se pleadings. The motions were transferred from Judge Clem to Champaign County Circuit Judge Thomas J. Difanis and were set for hearing on December 12, 2007.

At the hearing, the trial court noted that attorney Ding had that day filed a motion to withdraw as counsel asserting that defendant indicated he would report Ding to the Attorney Registration and Disciplinary Commission and that defendant expressed a desire to proceed pro se. When the court asked defendant if that was his intention, defendant requested appointed counsel other than attorney Ding because they had had a disagreement about the date Assistant Public Defender Schmidt filed the answer to discovery. The court refused to appoint

another attorney and expressed confidence in attorney Ding. The court informed defendant the court would not keep appointing attorneys until defendant found one he liked. The court gave defendant the option of either representing himself or continuing with attorney Ding. The court told defendant that when defendants represent themselves it "usually doesn't work out well" but that it was defendant's choice and that defendant was "obviously an intelligent individual." After a 10-minute recess, defendant decided to proceed pro se.

The trial court ordered the transcript of the plea hearing be prepared and directed that copies be sent to defendant. The court also directed the clerk of the court provide defendant with a copy of the common-law record. On January 11, 2008, the clerk filed a letter from defendant noting he had received the common-law record and the December 12, 2006, transcript but requesting the January 12, 2007, and December 12, 2007, transcripts be sent to him.

On February 15, 2008, the trial court held the hearing on defendant's motion to withdraw his guilty plea. During the hearing, defendant requested counsel. The court denied the request, noting defendant previously had appointed counsel, did not like that attorney, and defendant did not get to pick and choose his appointed counsel.

Assistant Public Defender Schmidt, who had represented defendant from September 2006 until March 2007, testified about his meetings and discussions with defendant. Attorney Schmidt

testified that on the day of trial, defendant agreed to accept the State's plea offer. Schmidt explained to defendant what an open plea with a cap meant but denied telling defendant he would only get a six-year sentence. Schmidt also denied intimidating defendant or trying to force defendant to plead guilty. According to Schmidt, defendant never indicated he felt forced or coerced prior to the plea or sentencing. Defendant was given the opportunity to cross-examine Schmidt but refused. No other testimony was presented.

Although some initial confusion arose whether the transcript of the December 12, 2006, guilty-plea hearing had been prepared, the trial court ultimately determined the transcript had been prepared and sent to defendant but was not contained in the court file. The judge told defendant he would make sure defendant got "another copy." The judge also indicated he would rule on the motion after reviewing all the transcripts.

On April 7, 2008, the trial court entered an order denying defendant's motion to withdraw guilty plea. The court found defendant had been properly admonished before the court accepted the plea. The court further found that defendant was not coerced or forced into pleading guilty.

This appeal followed.

II. ANALYSIS

On appeal, defendant argues (1) he was not provided with a transcript of his guilty-plea hearing prior to the hearing on his motion to withdraw guilty plea and (2) because he did not

knowingly and intelligently waive his right to counsel, the denial of his motion to withdraw his guilty plea should be reversed. Defendant asks this court to reverse the denial of his motion to withdraw his guilty plea, reinstate or allow defendant to file a new motion to withdraw guilty plea, and docket the motion for the appointment of counsel and further proceedings.

A. Record Reflects Defendant Was Provided With a Copy of the Guilty-Plea Hearing Transcript Prior to the Hearing on the Motion To Withdraw Guilty Plea

Defendant first argues he was not provided with a transcript of his guilty-plea hearing prior to the hearing on his motion to withdraw guilty plea.

Supreme Court Rule 604(d) (210 Ill. 2d R. 604(d)) requires that when an indigent defendant files a motion to withdraw his guilty plea, the trial court must order that a copy of the transcript be furnished to the defendant without cost. See People v. Denson, 243 Ill. App. 3d 55, 60, 611 N.E.2d 1230, 1233 (1993) (holding that the failure to provide the defendant with a transcript of the guilty-plea hearing prior to the hearing on the defendant's motion to withdraw his plea violated Supreme Court Rule 604(d)).

However, in this case, the record shows that defendant was provided with a copy of the transcript prior to the hearing. In his January 2008 letter to the clerk, defendant admitted receipt of the December 12, 2006, guilty-plea hearing. Moreover, at the February 2008 hearing, the trial court found that the guilty-plea hearing transcript had been prepared and sent to

defendant prior to the hearing.

B. Trial Court Did Not Err By Refusing To Appoint New Counsel for Defendant

Defendant next argues that because he did not knowingly and intelligently waive his right to counsel, the denial of his motion to withdraw his guilty plea should be reversed.

Whether a defendant effects a waiver of counsel is a question for the trial court, and the court's decision will be reversed only for abuse of discretion. People v. Jackson, 228 Ill. App. 3d 868, 874, 593 N.E.2d 760, 764 (1992). Moreover, "[a] trial court's finding that it is unnecessary to appoint new counsel will not be disturbed on appeal unless it is manifestly erroneous." People v. Young, 341 Ill. App. 3d 379, 382, 792 N.E.2d 468, 472 (2003) (involving whether the trial court conducted an adequate inquiry into the defendant's ineffective-assistance-of-counsel allegations).

In this case, defendant clearly had a right to counsel at the hearing on his motion. See Young, 341 Ill. App. 3d at 386, 792 N.E.2d at 475 (noting that the defendant had a "right to counsel on his posttrial motions"). However, an indigent defendant is not entitled to court-appointed counsel of his choice. People v. DeRossett, 262 Ill. App. 3d 541, 544, 634 N.E.2d 1257, 1259 (1994) (noting that "the sixth[-]amendment guarantee of counsel does not also guarantee a 'meaningful relationship' or rapport between an accused and his counsel"). Further, a defendant's right to counsel may not be used to "thwart indefinitely the administration of justice."

People v. Timmons, 233 Ill. App.3d 591, 596, 599 N.E.2d 162, 166 (1992).

Here, defendant used his right to counsel as a means to try to thwart the administration of justice. The trial court appointed attorney Ding after defendant raised an ineffective-assistance-of-counsel claim against Assistant Public Defender Schmidt. Defendant then indicated his intent to discharge attorney Ding and represent himself. At the hearing on defendant's motion to discharge attorney Ding, however, defendant no longer wanted to represent himself and asked the court to appoint yet another attorney. The court refused and gave defendant the option of proceeding pro se.

On appeal, defendant argues he was improperly forced to either represent himself or be represented by an attorney defendant believed could not adequately represent him. However, a "trial court can force a defendant to choose either representation by the public defender or self-representation." People v. Johnson, 123 Ill. App. 3d 128, 131, 462 N.E.2d 930, 932 (1984) (also holding that the defendant was entitled to Supreme Court Rule 401(a) admonishments before being allowed to represent himself at trial). Once the trial court told defendant that new counsel would not be appointed, defendant essentially waived his right to appointed counsel by choosing to represent himself. See Young, 341 Ill. App. 3d at 386-87, 792 N.E.2d at 475 (holding that the defendant effectively waived his right to appointed counsel by telling the trial court he did not want the public

defender to continue to represent him).

Moreover, this waiver did not require the Supreme Court Rule 401(a) admonishments because defendant had already been convicted and sentenced. See 134 Ill. 2d R. 401(a) (providing that a person accused of a crime punishable by imprisonment shall not waive counsel unless he has been admonished of the nature of the charge, the possible penalties, his right to counsel, and his right to have counsel appointed if he is indigent); see also Young, 341 Ill. App. 3d at 387, 792 N.E.2d at 475 (holding that the Supreme Court Rule 401(a) admonishments were required only for defendants "who are considering a waiver of counsel at the initial-appointment stage of the proceedings" and not defendants who had already been convicted and sentenced). Nonetheless, the court did advise defendant that he had the right to continued representation by attorney Ding and about the perils of proceeding pro se.

Notably, nothing in the record demonstrates ineffective assistance by attorney Ding, nor does defendant make that argument on appeal. Defendant only argues he lost confidence in attorney Ding's ability to represent him based on defendant's belief that attorney Ding lied to him concerning the importance of some evidentiary documents. The court apparently found this claim without merit, and such finding was not against the manifest weight of the evidence. See, e.g., People v. Bull, 185 Ill. 2d 179, 210, 705 N.E.2d 824, 839 (1998) (noting that if the trial court determines that the claim of ineffective assistance of

counsel lacks merit, it may deny the defendant's pro se posttrial motions without appointing new counsel).

Defendant also argues "it was obvious the defendant was not competent to represent himself." However, the record does not so reflect. Defendant was found fit to stand trial and filed numerous pleadings on his own behalf. Moreover, the trial court noted defendant was an "intelligent individual." Because defendant chose to proceed pro se rather than proceed with attorney Ding, he waived his right to counsel, and is not entitled to a new hearing on his motion to withdraw his guilty plea.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

Affirmed.

MYERSCOUGH, J., with TURNER and APPLETON, JJ., concurring.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL DISTRICT
CHAMPAIGN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
vs.	)	06-CF-1481
SETH A. WEAVER, Defendant.	)	

FILED

SEP 04 2009

CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

ORDER

The Defendant has filed a Petition for Post-Conviction Relief on September 1, 2009. The Defendant's first claim wrapped in a Strickland package involves the period of mandatory supervised release (MSR). When the Defendant plead guilty on December 12, 2006, Judge Clem informed the Defendant that a Class X felony calls for a sentencing range of not less than six years nor more than 30 years followed by a period of three years MSR. Therefore, the Defendant's claim of a Whitfield violation is without merit. The Defendant throws Appellate Counsel into his Strickland claim for not arguing a Whitfield violation that never occurred. Again, that claim is totally without merit.

The Defendant's second Strickland claim involves his trial counsel, Scott Schmidt. This Court held a hearing on April 7, 2008, and determined that Mr. Schmidt's performance was in no way deficient.

Therefore, the Defendant's Post-Conviction Petition is frivolous, patently without merit and is ordered dismissed.

Dated: 9/4/09

Thomas J. Difanis
Presiding Judge

Appendix F

NO. 4-09-0723

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SETH A. WEAVER, Defendant-Appellant.	)	Appeal from Circuit Court of Champaign County No. 06CF1481
	)	Honorable Thomas J. Difanis, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Justices Appleton and Pope concurred in the judgment.

ORDER

Held: Where the trial court properly admonished defendant at the guilty-plea hearing as to the appropriate term of mandatory supervised release (MSR), the court did not err in summarily dismissing his postconviction petition.

In December 2006, defendant, Seth A. Weaver, pleaded guilty to aggravated criminal sexual assault. In January 2007, the trial court sentenced him to 20 years in prison. In April 2008, the court denied his motion to withdraw guilty plea, and this court affirmed. In September 2009, defendant filed a *pro se* petition for postconviction relief, which the trial court summarily dismissed.

On appeal, defendant argues the trial court erred in summarily dismissing his postconviction petition. We affirm.

I. BACKGROUND

In September 2006, the State charged defendant with one count of aggravated criminal sexual assault (count I) (720 ILCS

Appendix G

5/12-14(a)(2) (West 2006)), alleging he committed a criminal sexual assault against P.S. in that by the use of force he placed his finger in her sex organ and in doing so caused bodily harm. The State also charged defendant with one count of domestic battery with a prior domestic-battery conviction (count II) (720 ILCS 5/12-3.2(a)(1) (West 2006)), alleging he knowingly caused bodily harm to P.S., a family or household member, in that he repeatedly punched, kicked, and bit P.S.

In December 2006, defendant indicated his desire to plead guilty to count I in exchange for the State dismissing count II and the State's recommendation of a sentence no greater than 20 years in prison. The trial court and defendant then engaged in the following exchange:

> "THE COURT: Possible sentence would be 6 to 30 years in the penitentiary, a fine from one dollar to $25,000, or some combination of time in prison and fine within those ranges.
>
> Any time in prison would be followed by three years of mandatory supervised release, and a community-based sentence is not an available sentencing option.
>
> You understand the possible sentences involved here, sir?
>
> THE DEFENDANT: Yes, I do, Your Honor.
>
> * * *

THE COURT: If you plead guilty, my understanding is there is no joint recommendation as to what sentence should be imposed. Instead, there would be a separate sentencing hearing.

***

At the hearing, the State's Attorney's representative could present evidence as to what an appropriate sentence should be. Although, it is my understanding that as part of the agreement is that they will recommend no more than 20 years[']incarceration in the Department of Corrections.

[Defense counsel] could present evidence on your behalf, and then the [c]ourt would select some order within the range of possibilities that I described to you a few moments ago.

Do you understand that that's the situation, sir?

THE DEFENDANT: Yes, I do, Your Honor."

Following the State's factual basis, the court accepted defendant's guilty plea.

In January 2007, the trial court conducted the sentencing hearing. The State recommended a sentence of 20 years, and the court sentenced defendant as stated. No mention of MSR

was made at the hearing.

In February 2007, defendant filed a motion to withdraw his guilty plea and vacate the judgment, claiming he was pressured into pleading guilty and he believed he would receive a sentence of less than 20 years. Defense counsel moved to withdraw, citing a conflict of interest. The court granted the motion to withdraw.

In July 2007, newly appointed counsel filed a motion to withdraw guilty plea. Defendant claimed he felt forced into pleading guilty, his trial counsel did not discuss possible defenses with him, and counsel did not present mitigation evidence at the sentencing hearing.

In December 2007, defense counsel moved to withdraw as counsel. At the hearing on the motion to withdraw guilty plea in February 2008, defendant proceeded *pro se*. In April 2008, the trial court entered a written order denying the motion to withdraw guilty plea.

Defendant appealed, arguing (1) he was not provided a transcript of his guilty-plea hearing prior to the hearing on the motion to withdraw guilty plea and (2) he did not knowingly and intelligently waive his right to counsel. This court affirmed. *People v. Weaver*, No. 4-08-0340 (December 4, 2008) (unpublished order under Supreme Court Rule 23).

In September 2009, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 through 122-8 (West 2008)). Defendant

alleged he was denied the effective assistance of counsel at trial and on direct appeal because neither counsel raised a claim regarding his three years of MSR. Relying on *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005), he argued he did not receive the benefit of the bargain in his guilty plea because the 20-year sentence and the 3-year MSR term were more than he agreed to.

The trial court found defendant had been informed of the proper sentencing range for a Class X felony along with the appropriate MSR term. The court dismissed the petition, finding it frivolous and patently without merit. This appeal followed.

II. ANALYSIS

Defendant argues the trial court erred in summarily dismissing his postconviction petition, arguing the petition presented the gist of a constitutional due-process claim when he did not receive the benefit of the bargain he made with the State in exchange for his guilty plea. We disagree.

A. Postconviction Petition

The Act "provides a means for a criminal defendant to challenge his conviction or sentence based on a substantial violation of constitutional rights." *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. The defendant must show he suffered a substantial deprivation of his federal or state constitutional rights.

People v. Caballero, 228 Ill. 2d 79, 83, 885 N.E.2d 1044, 1046 (2008).

The Act establishes a three-stage process for adjudicating a postconviction petition. *Beaman*, 229 Ill. 2d at 71, 890 N.E.2d at 509. Here, defendant's petition was dismissed at the first stage. At the first stage, the trial court must review the postconviction petition and determine whether "the petition is frivolous or is patently without merit." 725 ILCS 5/122-2.1(a)(2) (West 2008). Our supreme court has held "a *pro se* petition seeking postconviction relief under the Act for a denial of constitutional rights may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition lacks an arguable legal basis when it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16, 912 N.E.2d at 1212. A petition lacks an arguable factual basis when it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Hodges*, 234 Ill. 2d at 16-17, 912 N.E.2d at 1212.

"In considering a petition pursuant to [section 122-2.1 of the Act], the [trial] court may examine the court file of the proceeding in which the petitioner was convicted, any action taken by an appellate court in such proceeding[,] and any transcripts of such proceeding." 725 ILCS 5/122-2.1(c) (West 2008);

People v. Brown, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). The petition must be supported by "affidavits, records, or other evidence supporting its allegations," or, if not available, the petition must explain why. 725 ILCS 5/122-2 (West 2008). Our review of the first-stage dismissal of a postconviction petition is *de novo*. *People v. King*, 395 Ill. App. 3d 985, 987, 919 N.E.2d 958, 960 (2009).

B. Assistance of Counsel

Defendant concedes the MSR issue could have been raised in a posttrial motion and on direct appeal. By failing to do so, the issue is forfeited. *People v. Taylor*, 237 Ill. 2d 356, 372, 930 N.E.2d 959, 969 (2010) (issues that could have been raised on direct appeal, but were not, are considered forfeited). Defendant, however, argues the issue in his postconviction petition should not be forfeited because his appellate counsel was ineffective for not raising it in his direct appeal.

Claims of ineffective assistance of counsel may be raised in a postconviction petition. See *Brown*, 236 Ill. 2d at 185, 923 N.E.2d at 754 (citing *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)). In the petition, a defendant "must show counsel's performance was deficient and that prejudice resulted from the deficient performance." *Brown*, 236 Ill. 2d at 185, 923 N.E.2d at 754. A petition alleging ineffective assistance of counsel may not be dismissed at the first stage "if: (1) counsel's performance arguably fell below an objective standard of reasonableness; and (2) the petitioner

was arguably prejudiced as a result." *Brown*, 236 Ill. 2d at 185, 923 N.E.2d at 754. Claims that appellate counsel was ineffective are also evaluated under *Strickland*. *People v. Enis*, 194 Ill. 2d 361, 377, 743 N.E.2d 1, 11 (2000).

C. MSR Term

"A defendant's due-process rights may be violated where the defendant did not receive the 'benefit of the bargain' of his plea agreement with the State." *People v. Holt*, 372 Ill. App. 3d 650, 652, 867 N.E.2d 1192, 1194 (2007) (quoting *Whitfield*, 217 Ill. 2d at 186, 840 N.E.2d at 664). Prior to accepting a guilty plea, the trial court must admonish the defendant, *inter alia*, as to the nature of the charge and the minimum and maximum sentence prescribed by law. Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Although substantial compliance is sufficient to establish due process, "there is no substantial compliance with Rule 402 and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release term will be added to that sentence." *Whitfield*, 217 Ill. 2d at 195, 840 N.E.2d at 669.

In the case *sub judice*, defendant alleged in his petition that the trial court failed to inform him of the three-year MSR term in addition to his sentence. Defendant's allegation is completely contradicted by the record. At the guilty-plea hearing, the court admonished defendant that he was subject to a term of 6 to 30 years in prison and any prison sentence

would be followed by 3 years of MSR. Defendant indicated he understood. The court then noted the State had agreed to recommend no more than 20 years in prison and the court could select an order within the range of possibilities that it had described to defendant. Defendant again indicated he understood. As defendant was admonished as to the MSR term prior to pleading guilty, his postconviction claim is positively rebutted by the record. Thus, as no error occurred, defendant cannot establish ineffective assistance of counsel.

Even if it could be said that the trial court's admonishments as to MSR were deficient, defendant was not prejudiced. "Where the State only promises to recommend a sentence and the total sentence imposed, including subsequent [MSR] periods, is substantially less than the maximum sentence authorized by law, the court's failure to admonish defendant of the subsequent [MSR] period is not of a 'constitutional dimension.'" *Holt*, 372 Ill. App. 3d at 653, 867 N.E.2d at 1195 (quoting *Whitfield*, 217 Ill. 2d at 191, 840 N.E.2d at 667).

Here, the trial court informed defendant he could receive up to 30 years in prison plus 3 years of MSR regardless of the State's promise to recommend a maximum of 20 years. The State fulfilled its end of the bargain by recommending a 20-year sentence. The court's 20-year sentence plus the 3-year MSR term is 7 years below the 30-year maximum defendant could have received. As defendant cannot show a constitutional deprivation, his postconviction petition was frivolous and patently without

merit.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.

Received: 08/05/2019

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
201 W. MONROE STREET
SPRINGFIELD, IL 62704

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

August 5, 2019

RE: People v. Weaver, Seth A.
General No.: 4-17-0462
Champaign County
Case No.: 06CF1481

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Carla Bender
Clerk of the Appellate Court

c: Christofer Rudolf Bendik
James Ryan Williams
Patricia G. Mysza
State's Attorney's Appellate Prosecutor, Fourth District

Appendix H

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs,

-vs- 06 CF 1481

SETH A. WEAVER,
Defendant.

FILED
DEC 12 2006
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY ILLINOIS

JUDGMENT AND SENTENCING ORDER ON GUILTY PLEA

The People appear by Assistant State's Attorney, Adam Dill.
The Defendant appears personally and by counsel, Scott Schmidt
The Court, by addressing the Defendant personally in open court pursuant to the provisions of Supreme Court Rule 402, has informed the Defendant of the nature of the charge, of the possible consequences of the Court's accepting the Defendant's offer to plead guilty, and of the rights which the Defendant has and is waiving by the Defendant's offer to plead guilty.

THE COURT FINDS:

(1) That the Defendant understands all of the foregoing;
(2) That the Defendant understandingly, knowingly, and voluntarily waives those rights and persists in the offer to plead guilty;
(3) That there is a factual basis for the guilty plea;
(4) That the guilty plea is being made pursuant to an agreement between counsel as stated in open court;
(5) That no force or threats have been used on the Defendant to coerce the Defendant to plead guilty.

Accordingly, the Defendant's offer to plead guilty is accepted by the Court, and

THE COURT FURTHER FINDS that the Defendant committed the offense of Aggravated Criminal Sexual Assault, Class X felony, in the manner and form set forth in Count I of the information filed on September 14, 2006.

Based thereon, THE COURT ORDERS judgment in favor of the People of the State of Illinois and against the Defendant on that finding and for costs.

Appendix I

Based thereon, the Court hereby orders the Champaign County Court Services Department to complete and place on file the following:

__X__ Presentence Report

____ Summary Report ____ Specialized Drug Program Suitability Report

____ T.A.S.C. Suitability Report ____ Drug Court Suitability Report

The Defendant is ordered to report to Champaign County Court Services Department within _____ hours for the preparation of the above marked reports.

The State dismisses Count II.

The State agrees to cap its recommendation at 20 years in the Department of Corrections.

This cause is continued for sentencing until January 12, 2006, in Courtroom A at 3:30 p.m.

Date: December 12, 2006 Entered: Harry E. Clem
Circuit Judge

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

FILED
SIXTH JUDICIAL CIRCUIT
JAN 12 2007
Linda S. Franks
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) Case Number 2006 CF 1481
)
SETH A WEAVER)
Defendant

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The Court FINDS THAT:

1. The Defendant whose date of birth is 4/16/1980 is adjudged guilty of the offenses set forth below.
X 2. The Defendant is entitled to "Good Time" credit as follows:
___ None, until proof of participation and completion of substance abuse treatment program. 730 ILCS 5/3-6-3(a)(4.5).
___ Time served on periodic imprisonment for_____days.
X Other time actually served in custody of 121 days.
___ 3. The Defendant is convicted of a Class___offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-5-3(c)(8).
___ 4. The conduct leading to conviction for the offenses enumerated in Counts_____resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(2)(iii)).
___ 5. The Defendant is convicted of First Degree Murder and no good time credit shall be applied (730 ILCS 5/3-6-3(a)(2)(1) or (2.2)).

IT IS THEREFORE ORDERED as follows:

A. That the Defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
1	AGG CRIM SEX ASLT/BODILY HARM	9/14/2006	720 ILCS 5/12-14(a)(2)	X	20 yrs	Ms

B. That the sentence(s) imposed on Count(s)_____be (_____) the sentence imposed in case number_____in the Circuit Court of_____County; be (_____) the sentence imposed in case number_____in the Circuit Court of_____County; be (_____) the sentence imposed in case number_____in the Circuit Court of_____County.
C. That the Defendant is ordered to pay costs of prosecution herein.
D. That the Clerk of the Court deliver a copy of this order to the Sheriff.
E. That the Sheriff take the Defendant into custody and deliver him to the Department of Corrections which shall confine said Defendant until expiration of his sentence or until he is otherwise released by operation of law.
F. OTHER:_____

ENTERED: 1/12/2007

Harry E. Clem
H. E. Clem
Circuit Judge

Appendix J

CONSTITUTION OF THE UNITED STATES

We the People of the United States, In Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America

Amendment V

Section 1. Restrictions on Prosecutions

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

Section 1. Right to a Speedy Trial

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV

Section 1. Due Process and Equal Protection

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix K

CONSTITUTION OF THE STATE OF ILLINOIS

Adopted at special election on Dec. 15, 1970.

Preamble

We, the People of the State of Illinois — grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors — in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity — do ordain and establish this Constitution for the State of Illinois.

Article I — Bill of Rights

Section 1. Inherent and Inalienable Rights

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

Section 2. Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Section 8. Rights After Indictment

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed. *(As amended by the Eighth Amendment to the Constitution. Adopted at general election Nov. 8, 1994.)*

Section 12. Right to Remedy and Justice

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

Appendix L

2006 18 USCS § 3438

2006 United States Code Archive

UNITED STATES CODE SERVICE TITLE 18. CRIMES AND CRIMINAL PROCEDURE PART II. CRIMINAL PROCEDURE CHAPTER 221. ARRAIGNMENT, PLEAS AND TRIAL

§ 3438. Pleas--(Rule)

See Federal Rules of Criminal Procedure Plea of guilty, not guilty, or nolo contendere; acceptance by court; refusal to plead; corporation failing to appear, Rule 11.

Withdrawal of plea of guilty, Rule 32.

28 USCS § 1257

Current through Public Law 116-91, approved December 19, 2019. Some sections may be more current; please check the History segment.

United States Code Service TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE (§§ 1 — 5001) Part IV. Jurisdiction and Venue (Chs. 81 — 99) CHAPTER 81. Supreme Court (§§ 1251 — 1260)

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Appendix M

2006 720 ILCS 5/12-3.2

2006 Illinois Code Archive

ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 720. CRIMINAL OFFENSES CRIMINAL CODE CRIMINAL CODE OF 1961 TITLE III. SPECIFIC OFFENSES PART B. OFFENSES DIRECTED AGAINST THE PERSON ARTICLE 12. BODILY HARM

ILCS 5/12-3.2. Domestic Battery

Sec. 12-3.2. Domestic Battery. (a) A person commits domestic battery if he intentionally or knowingly without legal justification by any means:

(1) Causes bodily harm to any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended [725 ILCS 5/112A-3];

(2) Makes physical contact of an insulting or provoking nature with any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended [725 ILCS 5/112A-3].

(b) Sentence. Domestic battery is a Class A Misdemeanor. Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for domestic battery (Section 12-3.2) [720 ILCS 5/12-3.2] or violation of an order of protection (Section 12-30) [720 ILCS 5/12-30], or any prior conviction under the law of another jurisdiction for an offense which is substantially similar. Domestic battery is a Class 4 felony if the defendant has any prior conviction under this Code for first degree murder (Section 9-1) [720 ILCS 5/9-1], attempt to commit first degree murder (Section 8-4) [720 ILCS 5/8-4], aggravated domestic battery (Section 12-3.3) [720 ILCS 5/12-3.3], aggravated battery (Section 12-4) [720 ILCS 5/12-4], heinous battery (Section 12-4.1) [720 ILCS 5/12-4.1], aggravated battery with a firearm (Section 12-4.2) [720 ILCS 5/12-4.2], aggravated battery of a child (Section 12-4.3) [720 ILCS 5/12-4.3], aggravated battery of an unborn child (Section 12-4.4) [720 ILCS 5/12-4.4], aggravated battery of a senior citizen (Section 12-4.6) [720 ILCS 5/12-4.6], stalking (Section 12-7.3) [720 ILCS 5/12-7.3], aggravated stalking (Section 12-7.4) [720 ILCS 5/12-7.4], criminal sexual assault (Section 12-13) [720 ILCS 5/12-13], aggravated criminal sexual assault (12-14) [720 ILCS 5/12-14], kidnapping (Section 10-1) [720 ILCS 5/10-1], aggravated kidnapping (Section 10-2) [720 ILCS 5/10-2], predatory criminal sexual assault of a child (Section 12-14.1) [720 ILCS 5/12-14.1], aggravated criminal sexual abuse (Section 12-16) [720 ILCS 5/12-16], unlawful restraint (Section 10-3) [720 ILCS 5/10-3], aggravated unlawful restraint (Section

Appendix N

10-3.1) [720 ILCS 5/10-3.1], aggravated arson (Section 20-1.1) [720 ILCS 5/20-1.1], or aggravated discharge of a firearm (Section 24-1.2) [720 ILCS 5/24-1.2], or any prior conviction under the law of another jurisdiction for any offense that is substantially similar to the offenses listed in this Section, when any of these offenses have been committed against a family or household member as defined in Section 112A-3 of the Code of Criminal Procedure of 1963 [725 ILCS 5/112A-3]. In addition to any other sentencing alternatives, for any second or subsequent conviction of violating this Section, the offender shall be mandatorily sentenced to a minimum of 72 consecutive hours of imprisonment. The imprisonment shall not be subject to suspension, nor shall the person be eligible for probation in order to reduce the sentence.

(c) Domestic battery committed in the presence of a child. In addition to any other sentencing alternatives, a defendant who commits, in the presence of a child, a felony domestic battery (enhanced under subsection (b)), aggravated domestic battery (Section 12-3.3 [720 ILCS 5/12-3.3]), aggravated battery (Section 12-4 [720 ILCS 5/12-4]), unlawful restraint (Section 10-3 [720 ILCS 5/10-3]), or aggravated unlawful restraint (Section 10-3.1 [720 ILCS 5/10-3.1]) against a family or household member, as defined in Section 112A-3 of the Code of Criminal Procedure of 1963 [725 ILCS 5/112A-3], shall be required to serve a mandatory minimum imprisonment of 10 days or perform 300 hours of community service, or both. The defendant shall further be liable for the cost of any counseling required for the child at the discretion of the court in accordance with subsection (b) of Section 5-5-6 of the Unified Code of Corrections [730 ILCS 5/5-5-6]. For purposes of this Section, "child" means a person under 18 years of age who is the defendant's or victim's child or step-child or who is a minor child residing within or visiting the household of the defendant or victim. For purposes of this Section, "in the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting one of the offenses listed in this subsection.

2006 720 ILCS 5/12-14

2006 Illinois Code Archive

ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 720. CRIMINAL OFFENSES CRIMINAL CODE CRIMINAL CODE OF 1961 TITLE III. SPECIFIC OFFENSES PART B. OFFENSES DIRECTED AGAINST THE PERSON ARTICLE 12. BODILY HARM

ILCS 5/12-14. Aggravated Criminal Sexual Assault

Sec. 12-14. Aggravated Criminal Sexual Assault. (a) The accused commits aggravated criminal sexual assault if he or she commits criminal sexual assault and any of the following aggravating circumstances existed during, or for the purposes of paragraph (7) of this subsection (a) as part of the same course of conduct as, the commission of the offense:

(1) the accused displayed, threatened to use, or used a dangerous weapon, other than a firearm, or any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon; or

(2) the accused caused bodily harm, except as provided in subsection (a)(10), to the victim; or

(3) the accused acted in such a manner as to threaten or endanger the life of the victim or any other person; or

(4) the criminal sexual assault was perpetrated during the course of the commission or attempted commission of any other felony by the accused; or

(5) the victim was 60 years of age or over when the offense was committed; or

(6) the victim was a physically handicapped person; or

(7) the accused delivered (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance; or

(8) the accused was armed with a firearm; or

(9) the accused personally discharged a firearm during the commission of the offense; or

(10) the accused, during the commission of the offense, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) The accused commits aggravated criminal sexual assault if the accused was under 17 years of age and (i) commits an act of sexual penetration with a victim who was under 9 years of age when the act was

committed; or (ii) commits an act of sexual penetration with a victim who was at least 9 years of age but under 13 years of age when the act was committed and the accused used force or threat of force to commit the act.

(c) The accused commits aggravated criminal sexual assault if he or she commits an act of sexual penetration with a victim who was a severely or profoundly mentally retarded person at the time the act was committed.

(d) Sentence.

(1) Aggravated criminal sexual assault in violation of paragraph (2), (3), (4), (5), (6), or (7) of subsection (a) or in violation of subsection (b) or (c) is a Class X felony. A violation of subsection (a)(1) is a Class X felony for which 10 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(9) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(10) is a Class X felony for which 25 years or up to a term of natural life imprisonment shall be added to the term of imprisonment imposed by the court.

(2) A person who is convicted of a second or subsequent offense of aggravated criminal sexual assault, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted of the offense of criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted under the laws of this or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault, the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply.

History

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 38, para. 12-14]

Source:

P.A. 85-1392; 89-428, § 260; 89-462, § 260; 90-396, § 5; 90-735, § 5; 91-404, § 5; 92-434, § 5; 92-502, § 10; 92-721, § 5.

2006 725 ILCS 5/113-4

2006 Illinois Code Archive

ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 725. CRIMINAL PROCEDURE CODE OF CRIMINAL PROCEDURE OF 1963 TITLE V. PROCEEDINGS PRIOR TO TRIAL ARTICLE 113. ARRAIGNMENT

ILCS 5/113-4. Plea

Sec. 113-4. Plea. (a) When called upon to plead at arraignment the defendant shall be furnished with a copy of the charge and shall plead guilty, guilty but mentally ill, or not guilty.

(b) If the defendant stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea.

(c) If the defendant pleads guilty such plea shall not be accepted until the court shall have fully explained to the defendant the consequences of such plea and the maximum penalty provided by law for the offense which may be imposed by the court. After such explanation if the defendant understandingly persists in his plea it shall be accepted by the court and recorded.

(d) If the defendant pleads guilty but mentally ill, the court shall not accept such a plea until the defendant has undergone examination by a clinical psychologist or psychiatrist and the judge has examined the psychiatric or psychological report or reports, held a hearing on the issue of the defendant's mental condition and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.

(e) If a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence.

Appendix P

725 ILCS 5/122-1

Statutes current through P.A. 101-609 of the 2019 Regular Session of the 101st General Assembly

Illinois Compiled Statutes Annotated Chapter 725 CRIMINAL PROCEDURE (§§ 5/100-1 — 245/4) Code of Criminal Procedure of 1963 (Titles I — VIII) Title VI. PROCEEDINGS AT TRIAL (Arts. 115 — 122) Article 122. Post-Conviction Hearing (§§ 122-1 — 5/122-8)

725 ILCS 5/122-1 Petition in the trial court.

(a) Any person imprisoned in the penitentiary may institute a proceeding under this Article if the person asserts that:

(1) in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both;

(2) the death penalty was imposed and there is newly discovered evidence not available to the person at the time of the proceeding that resulted in his or her conviction that establishes a substantial basis to believe that the defendant is actually innocent by clear and convincing evidence; or

(3) (blank).

(a-5) A proceeding under paragraph (2) of subsection (a) may be commenced within a reasonable period of time after the person's conviction notwithstanding any other provisions of this Article. In such a proceeding regarding actual innocence, if the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order, specifying the findings of fact and conclusions of law it made in reaching its decision. Such order of dismissal is a final judgment and shall be served upon the petitioner by certified mail within 10 days of its entry.

(b) The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place a petition (together with a copy thereof) verified by affidavit. Petitioner shall also serve another copy upon the State's Attorney by any of the methods provided in Rule 7 of the Supreme Court. The clerk shall docket the petition for consideration by the court pursuant to Section 122-2.1 [725 ILCS 5/122-2.1] upon his or her receipt thereof and bring the same promptly to the attention of the court.

(c) Except as otherwise provided in subsection (a-5), if the petitioner is under sentence of death and a petition for writ of certiorari is filed, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari

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is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

When a defendant has a sentence other than death, no proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a petition for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence. If a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence.

This limitation does not apply to a petition advancing a claim of actual innocence.

(d) A person seeking relief by filing a petition under this Section must specify in the petition or its heading that it is filed under this Section. A trial court that has received a petition complaining of a conviction or sentence that fails to specify in the petition or its heading that it is filed under this Section need not evaluate the petition to determine whether it could otherwise have stated some grounds for relief under this Article.

(e) A proceeding under this Article may not be commenced on behalf of a defendant who has been sentenced to death without the written consent of the defendant, unless the defendant, because of a mental or physical condition, is incapable of asserting his or her own claim.

(f) Only one petition may be filed by a petitioner under this Article without leave of the court. Leave of court may be granted only if a petitioner demonstrates cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice results from that failure. For purposes of this subsection (f): (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process.

2006 730 ILCS 5/5-8-1

2006 Illinois Code Archive

ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 730. CORRECTIONS UNIFIED CODE OF CORRECTIONS CHAPTER V. SENTENCING ARTICLE 8. IMPRISONMENT

ILCS 5/5-8-1. Sentence of Imprisonment for Felony

Sec. 5-8-1. Sentence of Imprisonment for Felony. (a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

(1) for first degree murder,

(a) a term shall be not less than 20 years and not more than 60 years, or

(b) if a trier of fact finds beyond a reasonable doubt that the murder was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty or, except as set forth in subsection (a)(1)(c) of this Section, that any of the aggravating factors listed in subsection (b) of Section 9-1 of the Criminal Code of 1961 [720 ILCS 5/9-1] are present, the court may sentence the defendant to a term of natural life imprisonment, or

(c) the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the defendant,

(i) has previously been convicted of first degree murder under any state or federal law, or

(ii) is a person who, at the time of the commission of the murder, had attained the age of 17 or more and is found guilty of murdering an individual under 12 years of age; or, irrespective of the defendant's age at the time of the commission of the offense, is found guilty of murdering more than one victim, or

(iii) is found guilty of murdering a peace officer, fireman or emergency management worker when the peace officer, fireman, or emergency management worker was killed in the course of performing his official duties, or to prevent the peace officer or fireman from performing his official duties, or in retaliation for the peace officer, fireman, or emergency management worker performing his official duties, and the defendant knew or should have known that the murdered individual was a peace officer, fireman, emergency management worker, or

(iv) is found guilty of murdering an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, when the employee was killed in the course of performing his

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official duties, or to prevent the employee from performing his official duties, or in retaliation for the employee performing his official duties, or

(v) is found guilty of murdering an emergency medical technician -- ambulance, emergency medical technician -- intermediate, emergency medical technician -- paramedic, ambulance driver or other medical assistance or first aid person while employed by a municipality or other governmental unit when the person was killed in the course of performing official duties or to prevent the person from performing official duties or in retaliation for performing official duties and the defendant knew or should have known that the murdered individual was an emergency medical technician -- ambulance, emergency medical technician -- intermediate, emergency medical technician -- paramedic, ambulance driver, or other medical assistant or first aid personnel, or

(vi) is a person who, at the time of the commission of the murder, had not attained the age of 17, and is found guilty of murdering a person under 12 years of age and the murder is committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnaping, or

(vii) is found guilty of first degree murder and the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer. For the purpose of this Section, "community policing volunteer" has the meaning ascribed to it in Section 2-3.5 of the Criminal Code of 1961 [720 ILCS 5/2-3.5].

For purposes of clause (v), "emergency medical technician -- ambulance", "emergency medical technician -- intermediate", "emergency medical technician -- paramedic", have the meanings ascribed to them in the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/1 et seq.].

(d)

(i) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;

(ii) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;

(iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

(1.5) for second degree murder, a term shall be not less than 4 years and not more than 20 years;

(2) for a person adjudged a habitual criminal under Article 33B of the Criminal Code of 1961, as amended [720 ILCS 5/33B-1 et seq.], the sentence shall be a term of natural life imprisonment;

(2.5) for a person convicted under the circumstances described in paragraph (3) of subsection (b) of Section 12-13 [720 ILCS 5/12-13], paragraph (2) of subsection (d) of Section 12-14 [720 ILCS 5/12-14], paragraph (1.2) of subsection (b) of Section 12-14.1 [720 ILCS 5/12-14.1], or paragraph (2) of subsection (b) of Section 12-14.1 of the Criminal Code of 1961 [720 ILCS 5/12-14.1], the sentence shall be a term of natural life imprisonment;

(3) except as otherwise provided in the statute defining the offense, for a Class X felony, the sentence shall be not less than 6 years and not more than 30 years;

(4) for a Class 1 felony, other than second degree murder, the sentence shall be not less than 4 years and not more than 15 years;

(5) for a Class 2 felony, the sentence shall be not less than 3 years and not more than 7 years;

(6) for a Class 3 felony, the sentence shall be not less than 2 years and not more than 5 years;

(7) for a Class 4 felony, the sentence shall be not less than 1 year and not more than 3 years.

(b) The sentencing judge in each felony conviction shall set forth his reasons for imposing the particular sentence he enters in the case, as provided in Section 5-4-1 of this Code [730 ILCS 5/5-4-1]. Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such circumstances, as well as any other such factors as the judge shall set forth on the record that are consistent with the purposes and principles of sentencing set out in this Code.

(c) A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 30 days after the sentence is imposed. A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed within 30 days following the imposition of sentence. However, the court may not increase a sentence once it is imposed.

If a motion filed pursuant to this subsection is timely filed within 30 days after the sentence is imposed, the proponent of the motion shall exercise due diligence in seeking a determination on the motion and the court shall thereafter decide such motion within a reasonable time.

If a motion filed pursuant to this subsection is timely filed within 30 days after the sentence is imposed, then for purposes of perfecting an appeal, a final judgment shall not be considered to have been entered until the motion to reduce a sentence has been decided by order entered by the trial court.

A motion filed pursuant to this subsection shall not be considered to have been 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 of motion shall set the motion on the court's calendar on a date certain within a reasonable time after the date of filing.

(d) Except where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisonment. For those sentenced under the law in effect prior to February 1, 1978, such term shall be identified as a parole term. For those sentenced on or after February 1, 1978, such term shall be identified as a mandatory supervised release term. Subject to earlier termination under Section 3-3-8 [730 ILCS 5/3-3-8], the parole or mandatory supervised release term shall be as follows:

(1) for first degree murder or a Class X felony except for the offenses of predatory criminal sexual assault of a child, aggravated criminal sexual assault, and criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-715], 3 years;

(2) for a Class 1 felony or a Class 2 felony except for the offense of criminal sexual assault if committed on or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-715], 2 years;

(3) for a Class 3 felony or a Class 4 felony, 1 year;

(4) for defendants who commit the offense of predatory criminal sexual assault of a child, aggravated criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault, on or after the effective date of this amendatory Act of the 94th General Assembly [P.A. 94-715], the term of mandatory supervised release shall range from a minimum of 3 years to a maximum of the natural life of the defendant;

(5) if the victim is under 18 years of age, for a second or subsequent offense of aggravated criminal sexual abuse or felony criminal sexual abuse, 4 years, at least the first 2 years of which the defendant shall serve in an electronic home detention program under Article 8A of Chapter V of this Code [730 ILCS 5/5-8A-1 et seq.].

(e) A defendant who has a previous and unexpired sentence of imprisonment imposed by another state or by any district court of the United States and who, after sentence for a crime in Illinois, must return to serve the unexpired prior sentence may have his sentence by the Illinois court ordered to be concurrent with the prior sentence in the other state. The court may order that any time served on the unexpired portion of the sentence in the other state, prior to his return to Illinois, shall be credited on his Illinois sentence. The other state shall be furnished with a copy of the order imposing sentence which shall provide that, when the offender is released from confinement of the other state, whether by parole or by termination of sentence, the offender shall be transferred by the Sheriff of the committing county to the Illinois Department of Corrections. The court shall cause the Department of Corrections to be notified of such sentence at the time of commitment and to be provided with copies of all records regarding the sentence.

(f) A defendant who has a previous and unexpired sentence of imprisonment imposed by an Illinois circuit court for a crime in this State and who is subsequently sentenced to a term of imprisonment by another state or by any district court of the United States and who has served a term of imprisonment imposed by the other state or district court of the United States, and must return to serve the unexpired prior sentence imposed by the Illinois Circuit Court may apply to the court which imposed sentence to have his sentence reduced.

The circuit court may order that any time served on the sentence imposed by the other state or district court of the United States be credited on his Illinois sentence. Such application for reduction of a sentence under this subsection (f) shall be made within 30 days after the defendant has completed the sentence imposed by the other state or district court of the United States.

History

Source:

P.A. 85-1209; 85-1440; 87-921, § 2; 88-301, § 5; 88-311, § 15; 88-433, § 10; 88-670, § 2-66; 89-203, § 40; 89-428, § 280; 89-462, § 280; 90-396, § 10; 90-651, § 10; 91-279, § 5; 91-404, § 10; 91-953, § 10; 92-16, § 91; 94-165, § 5; 94-243, § 10; 94-715, § 5.

USCS Fed Rules Crim Proc R 11, Part 1 of 2

Current through changes received December 10, 2019.

USCS Federal Rules Annotated Federal Rules of Criminal Procedure Title IV. Arraignment and Preparation for Trial

Rule 11. Pleas

(a) Entering a Plea.

(1) *In general.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and

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(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement.* The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement.*

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) *Accepting a Plea Agreement.* If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) *Rejecting a Plea Agreement.* If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

USCS Fed Rules Crim Proc R 44

Current through changes received December 10, 2019.

USCS Federal Rules Annotated Federal Rules of Criminal Procedure Title IX. General Provisions

Rule 44. Right to and Appointment of Counsel

(a) Right to Appointed Counsel. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

(b) Appointment Procedure. Federal law and local court rules govern the procedure for implementing the right to counsel.

(c) Inquiry Into Joint Representation.

(1) *Joint Representation.* Joint representation occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) *Court's Responsibilities in Cases of Joint Representation.* The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

USCS Fed Rules Crim Proc R 52, Part 1 of 2

Current through changes received December 10, 2019.

USCS Federal Rules Annotated Federal Rules of Criminal Procedure Title IX. General Provisions

Rule 52. Harmless and Plain Error.

(a) Harmless error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

Appendix T

Ill. Sup. Ct., R 23

Illinois State Rules and Local Federal Rules Reflect Changes Received through November 15, 2019

IL - Illinois Local, State & Federal Court Rules ILLINOIS SUPREME COURT RULES ARTICLE I. GENERAL RULES

Rule 23. Disposition of Cases in the Appellate Court

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order.

(a) ***Opinions.*** A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied:

(1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or

(2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

(b) ***Written Order.*** Cases which do not qualify for disposition by opinion may be disposed of by a concise written order which shall succinctly state:

(1) in a separate introductory paragraph, a concise syllabus of the court's holding(s) in the case;

(2) the germane facts;

(3) the issues and contentions of the parties when appropriate;

(4) the reasons for the decision; and

(5) the judgment of the court.

(c) ***Summary Order.*** In any case in which the panel unanimously determines that any one or more of the following dispositive circumstances exist, the decision of the court may be made by summary order. A summary order may be utilized when:

(1) the Appellate Court lacks jurisdiction;

(2) the disposition is clearly controlled by case law precedent, statute, or rules of court;

(3) the appeal is moot;

(4) the issues involve no more than an application of well-settled rules to recurring fact situations;

(5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;

(6) no error of law appears on the record;

(7) the trial court or agency did not abuse its discretion; or

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(8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence.

When a summary order is issued it shall contain:

(i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;

(ii) a citation to controlling precedent, if any; and

(iii) the judgment of the court and a citation to one or more of the criteria under this rule which supports the judgment, *e.g.,* "Affirmed in accordance with Supreme Court Rule 23 (c)(1)."

The court may dispose of a case by summary order at any time after the case is docketed in the Appellate Court. The disposition may provide for dismissal, affirmance, remand, reversal or any combination thereof as appropriate to the case. A summary order may be entered after a dispositive issue has been fully briefed, or if the issue has been raised by motion of a party or by the court, *sua sponte,* after expiration of the time for filing a response to the motion or rule to show cause issued by the court.

(d) ***Captions.*** All opinions and orders entered under this rule shall bear a caption substantially conforming to the requirements of Rule 330. Additionally, an opinion or order entered under subpart (a) or (b) of this rule must clearly show the date of filing on its initial page.

(e) ***Effect of Orders.***

(1) An order entered under subpart (b) or (c) of this rule is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata,* collateral estoppel or law of the case. When cited for these purposes, a copy of the order shall be furnished to all other counsel and the court.

(2) An order entered under subpart (b) of this rule must contain on its first page a notice in substantially the following form:

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23 (e)(1).

(f) ***Motions to Publish.*** If an appeal is disposed of by order, any party may move to have the order published as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order. The appellate court shall retain jurisdiction to grant or deny a timely filed motion to publish irrespective of the filing of a petition for leave to appeal under Rule 315 and shall rule on the motion to publish within 14 days of its filing, prior to disposition by the Supreme Court of any petition for leave to appeal.

(g) ***Electronic Publication.*** In order to make available to the public all opinions and orders entered under subparts (a) and (b) of this rule, the clerks of the Appellate Court shall transmit an electronic copy of each opinion or order filed in his or her district to the webmaster of the Illinois Supreme and Appellate Courts' Web site on the day of filing. No opinion or order may be posted to the Web site that does not substantially comply with the Style Manual for the Supreme and Appellate Courts.

(h) ***Public-Domain Case Designators.*** An opinion or order entered under subpart (a) or (b) of this rule must be assigned a public-domain case designator and internal paragraph numbers, as set forth in the accompanying administrative order.

Ill. Sup. Ct., R 402

Illinois State Rules and Local Federal Rules Reflect Changes Received through November 15, 2019

IL - Illinois Local, State & Federal Court Rules ILLINOIS SUPREME COURT RULES ARTICLE IV. RULES ON CRIMINAL PROCEEDINGS IN THE TRIAL COURT PART A. WAIVERS AND PLEAS

Rule 402. Pleas of Guilty or Stipulations Sufficient to Convict

In hearings on pleas of guilty, or in any case in which the defense offers to stipulate that the evidence is sufficient to convict, there must be substantial compliance with the following:

(a) ***Admonitions to Defendant.*** The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:

(1) The nature of the charge;

(2) The minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) That the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) That if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he or she waives the right to a trial by jury and the right to be confronted with any witnesses against him or her who have not testified.

(b) ***Determining Whether the Plea is Voluntary.*** The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.

(c) ***Determining Factual Basis for Plea.*** The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

(d) ***Plea Discussions and Agreements.*** When there is a plea discussion or plea agreement, the following provisions, in addition to the preceding paragraphs of this rule, shall apply:

(1) The trial judge shall not initiate plea discussions. Upon request by the defendant and with the agreement of the prosecutor, the trial judge may participate in plea discussions. Prior to participating in the

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plea discussions, the trial judge shall admonish the defendant and inquire as to the defendant's understanding of the following:

That the defendant's attorney has requested that the trial judge participate in the conference to determine whether or not the charge(s) which is/are pending against the defendant can be resolved by a plea of guilty;

That during the course of the conference the prosecutor will be present and advise the judge of the facts of the case as contained in the police reports or conversations with witnesses, that the defendant's attorney will also be present and will advise the judge of any information the defendant may have concerning the circumstances which led to the defendant's arrest in the case.

That without the conference, the judge would not learn about this information unless the case proceeded to trial.

That the judge will also learn whether the defendant has a prior criminal history, his or her driving record, whether the defendant has any alcohol or drug problem, the defendant's work history, family situation, and other things which would bear on what, if any punishment should be imposed upon the defendant as a result of his or her plea of guilty to one or more of these charges.

That these are things that the judge would not learn about unless the case went to trial and the defendant was found guilty.

That at the end of the conference, the judge may make a recommendation as to what an appropriate sentence would be.

That the defendant or the prosecutor is free to accept or reject the judge's recommendation. However, if the defendant rejects the judge's recommendation and he or she wishes to have a trial on the charges, the defendant may not obtain another judge solely on the basis that the judge participated in the conference and is aware of the facts and circumstances surrounding the incident as well as the defendant's background. This means that the defendant will be waiving his or her right to request a substitution of judge based upon the judge's knowledge of the case.

That knowing all of these things the defendant still wishes that the judge participate in this conference.

(2) If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him or her of the tentative agreement and the reasons therefor in advance of the tender of the plea. At the same time the trial judge may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he or she will concur in the proposed disposition; and if the judge has not yet received evidence in aggravation or mitigation, he or she may indicate that his or her concurrence is conditional on that evidence being consistent with the representations made. If the judge has indicated his or her concurrence or conditional concurrence, the judge shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his or her concurrence or conditional concurrence, the judge shall so advise the parties and then call upon the defendant either to affirm or to withdraw his or her plea of guilty. If the defendant thereupon withdraws his or her plea, the trial judge shall recuse himself or herself.

(3) If the parties have not sought or the trial judge has declined to give his or her concurrence or conditional concurrence to a plea agreement, the judge shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his or her plea the disposition may be different from that contemplated by the plea agreement.

Illinois State Rules and Local Federal Rules Reflect Changes Received through November 15, 2019

Rule 413. Disclosure to Prosecution

(a) ***The Person of the Accused.*** Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, a judicial officer may require the accused, among other things, to:

(i) Appear in a lineup;

(ii) Speak for identification by witnesses to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under his fingernails;

(vii) Permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) Provide a sample of his handwriting; and

(ix) Submit to a reasonable physical or medical inspection of his body.

(b) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his release.

(c) ***Medical and Scientific Reports.*** Subject to constitutional limitations, the trial court shall, on written motion, require that the State be informed of, and permitted to inspect and copy or photograph, any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which defense counsel has in his possession or control, including a statement of the qualifications of such experts, except that those portions of reports containing statements made by the defendant may be withheld if defense counsel does not intend to use any of the material contained in the report at a hearing or trial.

(d) ***Defenses.*** Subject to constitutional limitations and within a reasonable time after the filing of a written motion by the State, defense counsel shall inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with the following material and information within his possession or control:

(i) The names and last known addresses of persons he intends to call as witnesses together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and record of prior criminal convictions known to him; and

(ii) Any books, papers, documents, photographs, or tangible objects he intends to use as evidence or for impeachment at a hearing or trial;

(iii) And if the defendant intends to prove an alibi, specific information as to the place where he maintains he was at the time of the alleged offense.

(e) ***Additional Disclosure.*** Upon a showing of materiality, and if the request is reasonable, the court in its discretion may require disclosure to the State of relevant material and information not covered by this rule.

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Dated 2.20.2020

/s/ _____

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Additional material from this filing is available in the Clerk's Office.