APPENDIX A

2021 IL App (1st) 181209-U

No. 1-18-1209

Order filed May 7, 2021

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 17 CR 10623
	)	
JUAN ALVARADO-GONZALEZ,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ODEN JOHNSON delivered the judgment of the court.
Presiding Justice Mikva and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the denial of defendant's motion to withdraw his guilty plea where the plea was entered knowingly and voluntarily and we found no plain error because the trial court substantially complied with Illinois Supreme Court Rule 402 admonishments (eff. July 1, 2012); defense counsel was not operating under a conflict of interest when she presented defendant's motion to withdraw his plea and thus was not ineffective for failing to withdraw as counsel; the trial court did not err by not inquiring into any alleged conflict of interest prior to accepting the plea; and, counsel was not ineffective where she failed to amend defendant's *pro se* pleading to include a meritless claim.

¶ 2 Defendant Juan Alvarado-Gonzalez entered a negotiated guilty plea to charges of predatory criminal sexual assault of a victim less than 13 years of age and grooming and was sentenced to an aggregate of 11 years. On appeal, defendant contends that: (1) his guilty plea was involuntary because the record corroborates his post-plea claim that he did not understand the plea proceedings and the trial court failed to substantially comply with Rule 402 (Ill. S. Ct. 402 (eff. July 1, 2012)); (2) this case should be remanded for further post-plea proceedings with new counsel because: (a) post-plea counsel was ineffective for failing to move to withdraw as counsel based on a conflict of interest and (b) this case should be remanded because the trial court erred in failing to determine, prior to ruling on defendant's motion to withdraw his plea, whether post-plea counsel had a conflict of interest; and (3) this cause should be remanded because post-plea counsel failed to strictly comply with Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2017)) and amend defendant's *pro se* motion to withdraw his plea to include an allegation that the trial court failed to substantially comply with Rule 402. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record reveals that defendant was arrested on June 19, 2017, in connection with allegations of sexually-related crimes involving victims under the age of 13. He was subsequently indicted on July 28, 2017, for multiple charges of predatory criminal sexual assault of a victim under the age of 13, aggravated criminal sexual abuse of a victim under the age of 13, and multiple charges of grooming.

¶ 5 At a hearing on August 22, 2018, defendant was initially represented by private counsel, Herb Elesh. A Spanish interpreter was appointed to translate for defendant, who did not speak English. At that time, defendant pleaded not guilty. At a subsequent status hearing on October 26,

2017, the State indicated that it tendered a plea offer to defense counsel at counsel's request. The court passed the matter to allow defendant to confer with his trial counsel. After the recess, defense counsel indicated that he was able to communicate with defendant through the interpreter and further that he had already spoken with defendant at least six times regarding the consequences of going to trial as opposed to pleading guilty. Defense counsel requested an additional three and one-half to four weeks for defendant to process it as well as a possible bond redetermination. The State agreed to keep the plea offer open until the next hearing date of November 28, 2017.

¶ 6 On November 28, 2017, Attorney Elesh indicated to the court that defendant told him that he wished to represent himself and orally moved to withdraw. The trial court addressed defendant, through the interpreter, inquiring whether or not he wanted Attorney Elesh to continue representing him. Defendant then indicated to the court that he wanted a two-week continuance in order to find another attorney. The trial court granted him the continuance but stated that if he did not have a new attorney and if he still did not want Attorney Elesh to represent him, it would allow Attorney Elesh to withdraw. Further, if defendant did not have an attorney, the public defender would be appointed to represent him. The trial court then asked defendant if he wanted a public defender appointed to represent him right then and defendant replied yes. At that point, the trial court allowed Attorney Elesh to withdraw and appointed Assistant Public Defender (APD) Ahuja to represent defendant. The court admonished defendant that at the next hearing he could still bring in another attorney.

¶ 7 At the next court date on January 3, 2018, defendant was represented by APD Ahuja and an interpreter was assigned to translate for him. APD Ahuja informed the trial court that they reached an agreement. The State then indicated that it would proceed on count one, predatory

criminal sexual assault, a Class X felony, and offered nine years on that count; and counts four and five, grooming, for which it offered one year each. APD Ahuja stated that the grooming counts would be served at 50% and the predatory criminal sexual account would be served at 85%. The State nol-prossed counts two and three in anticipation of the plea.

¶ 8 The trial court read the charge of predatory criminal sexual assault to defendant, as follows: on or about September 1, 2016, and continuing through November 30, 2016, defendant committed the offense of predatory criminal sexual assault of a child in that he was 17 years of age or older and that he knowingly committed an act of sexual penetration on a 13-year-old child, E.G. When the trial court asked defendant whether he understood the charge against him, defendant replied, in English, "yes." Defendant then pleaded guilty to that charge.

¶ 9 The trial court then informed defendant that the offense was a class X felony and that the sentencing range was 6 to 60 years, with a parole period (Mandatory Supervised Release (MSR)) of three years to life, and that he would have to register as a sex offender for the rest of his life. When the court asked defendant whether he understood all of that, defendant replied, in English, "yes." The trial court also informed defendant that it could fine him up to $25,000 but would not. When the court asked defendant whether he understood the possible penalties for the charge, defendant replied, "no," resulting in the following exchange:

> "THE COURT: You don't understand the possible penalties?
> THE DEFENDANT: (In English) Yes.
> THE COURT: Okay. Well, let me just make sure again.
> The possible penalties for this charge are 6 to 60 years in prison. Do you understand that?
> THE DEFENDANT: (In English) Yes.
> THE COURT: You will have to serve three years to life of MSR. Do you understand that? Also known as parole. Do you know what parole is, Mr. Alvarado?
> THE DEFENDANT: (In English) No.

THE COURT: Okay. I'll explain it to you. Parole is when you get out of prison. You'll have a parole officer, and that person will monitor you as to where you live, where you work, and make sure that you meet that person. And you have to stay out of trouble because you'll be on parole. Does that make sense to you?

THE DEFENDANT: How many years of parole?

THE COURT: It's up to them to decide, but at least three years, and they could decide to put you on parole for the rest of your life. But I don't know. But you have to understand, you have to know that before you plead guilty. Do you understand it?

THE DEFENDANT: (In English) Yes.

THE COURT: All right. Also, you have to register as a sex offender for the rest of your life. Do you understand that?

THE DEFENDANT: One question.

THE COURT: Go ahead.

THE DEFENDANT: What possibility- - what's to happen if I decide not to register?

THE COURT: Well, you'll be charged with a new felony if you don't register. You'll be arrested and charged. You must register. Do you understand?

THE DEFENDANT: (In English) Yes.

THE COURT: Okay. Knowing the possible penalties and the nature of this charge, do you still wish to plead guilty?

THE DEFENDANT: I don't have any other option.

THE COURT: You do, sir. You have the right to have a trial if you want a trial. So, you do not have to plead guilty. It is your decision to make.

THE DEFENDANT: But you're going to give me 60 years and I don't want that.

THE COURT: Sir, it's your decision. If you want more time to think about it, I can give you more time.

MS. AHUJA [(ASSISTANT PUBLIC DEFENDER)]: Judge, can I have just one second.

THE COURT: Yes.

MS. AHUJA: Judge, he wishes to keep going with the plea.

THE COURT: Okay, I'll ask you then, Mr. Alvarado: Do you understand the nature of the charge that I read to you?

THE DEFENDANT: (In English) Yes.

THE COURT: Do you understand the possible penalties?

THE DEFENDANT: (In English) Yes.

THE COURT: Okay. And knowing those things, do you still wish to plead guilty?

THE DEFENDANT: (In English) Yes.

THE COURT: All right. There are two other charges that I have to go through with you. * * *"

¶ 10 The trial court then read the second charge as follows: on or about September 1, 2016, continuing through November 30, 2016, in Cook County, defendant committed the offense of grooming in that he knowingly used a computer online service, internet service, local bulletin board service or any other device capable of electronic storage or transmission, specifically a laptop, to seduce, solicit, lure, entice or attempt to seduce or lure a child by showing child pornography to a child in order to commit any sex offense or otherwise engage in any unlawful sexual conduct which would be sexual penetration with the child or another person believed by defendant to be a child, namely E.G.

¶ 11 The following exchange then took place:

> "THE COURT: Do you understand that charge against you, sir?
> THE DEFNDANT: (In English) Yes.
> THE COURT: And the last charge is also - I'm sorry, strike that.
> You understood the last charge that I read to you. How do you plead to that charge, guilty or not guilty?
> THE DEFENDANT: To the last charge?
> THE COURT: Yes. The grooming charge. How do you plead, guilty or not guilty?
> THE DEFENDANT: Guilty."

¶ 12 The trial court then read the last charge to defendant, which was the same as the second charge, but with a different victim, C.G. The following exchange then took place:

> "THE COURT: Do you understand that last charge, sir?
> THE DEFENDANT: (In English) Yes.
> THE COURT: Please answer in Spanish so the record is clear; okay?
> THE DEFENDANT: Yes.
> THE COURT: And how do you plead to that last charge, guilty or not guilty?
> THE DEFENDANT: Guilty.
> THE COURT: All right. These last two grooming charges, sir, these are Class Four felonies.
> MR. SACKS [(ASSISTANT STATE'S ATTORNEY)]: He's not. He has no background.

THE COURT: All right. These charges carry a sentence of one to three years in prison, and the same fine structure. Do you understand the possible penalties for those charges?

THE DEFENDANT: Yes.

THE COURT: Knowing the nature of those charges and the possible penalties, do you still wish to plead guilty? As to those last two counts.

THE DEFENDANT: No.

THE COURT: You don't wish to plead guilty?

THE DEFENDANT: Not the last two charges.

THE COURT: Well, okay then. I guess you'll have to talk to your attorney. They are the least serious of the charges, sir.

MS. AHUJA: Judge, could you -

THE DEFENDANT: (In English) I - my -

MS. AHUJA: In Spanish.

THE DEFENDANT: This is the first time in my life, so I don't understand what happens. I apologize.

THE COURT: It's okay. There's no reason to apologize, sir. If you don't understand what's going on, you just have to say so. What did you not understand about what I read to you?

THE DEFENDANT: It's fine. Continue.

THE COURT: Do you wish to continue with your plea?

THE DEFENDANT: Yes.

THE COURT: All right. The last two charges that I read to you were the grooming charges. Did you understand those charges?

THE DEFENDANT: Yes.

THE COURT: And you plead guilty to those charges; is that correct?

THE DEFENDANT: Yes.

THE COURT: Knowing the nature and the specifics of the charges, and the possible penalties, do you still wish to plead guilty on those last two charges?

THE DEFENDANT: Yes.

THE COURT: Do you understand as to all of the charges, you have the right to a jury trial?

THE DEFENDANT: Yes.

THE COURT: If you don't, I can explain it. Do you know?

THE DEFENDANT: No.

THE COURT: Okay. Please, if you don't understand something, just say so. I don't mind, it's okay. I'll explain things. A jury trial is where your attorney and the Prosecutor would pick 12 people from the community. They'd sit in those chairs behind you in that box and they would listen to all the evidence against you at trial. They would make a decision if you were guilty or not guilty.

So that's what a jury trial is.

THE DEFENDANT: What happens if I - I lose the jury trial?

THE COURT: Then I will sentence you in the range that I've stated earlier, 6 to 60 years.

THE DEFENDANT: Are you serious?

THE COURT: Yes, I am serious. That's the law in the State of Illinois, sir. That is a possibility if you are found guilty by a jury.

THE DEFENDANT: (In English) I'm sorry.

THE COURT: Speak in Spanish, sir.

THE DEFENDANT: I understand.

THE COURT: Okay. You have a constitutional right to have a jury trial. But when you plead guilty; you're giving up your right to have a jury trial. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And is that what you wish to do?

THE DEFENDANT: Yes.

THE COURT: Is this your signature here, sir?

THE DEFENDANT: Yes.

THE COURT: When you signed this, did you understand, this is how you give up your jury trial, by pleading guilty?

THE DEFENDANT: Yes.

THE COURT: Okay. In addition to a jury trial, you are also entitled, by law, to have what is called a bench trial. A bench trial is where I would hear all of the evidence against you without a jury, and I would decide alone if you were guilty or not guilty. Do you understand what a bench trial would be?

THE DEFENDANT: Yes.

THE COURT: All right. Do you understand by pleading guilty, you also give up your right to have a bench trial?

THE DEFENDANT: Yes.

THE COURT: Okay. In addition to those rights, sir, you also give up other rights by pleading guilty. You give up the right to see and hear witnesses that would testify against you. You give up the right to present your own witnesses; cross-examine the State's witnesses; and you give up the right to testify in your own defense if you choose to do so. Do you understand that you're giving up all of those rights?

THE DEFENDANT: Yes.

THE COURT: You also give up the right to simply remain silent and say nothing, and make the State prove you guilty beyond a reasonable doubt. Do you understand that you're giving up that right?

THE DEFENDANT: (In English) Yes.

THE COURT: And you also give up the right to testify in your own defense. Do you understand that?

THE DEFENDANT: (In English) Yes.

THE COURT: Okay. Also, sir, the law requires me to tell you that as a result of your plea, you may find it more difficult to get or keep housing; employment; or a state occupational license if you ever tried to do that.

Do you understand those possibilities?

THE DEFENDANT: Yes.

THE COURT: Your attorney and the Prosecutor have agreed that the sentence on this case will be nine years on the first charge that I read you, and one year each on the second two charges. So, nine plus one plus one for a total of 11 years. The nine-year sentence is at 85%; the other two charges, one year each, are at 50%.

Do you understand the sentence so far?

THE DEFENDANT: Yes.

THE COURT: You also will be given credit against your sentence for 198 days. When you get out, you will be on parole, or MSR, for three years to life, to be determined by the Illinois Department of Corrections. And you will have to register as a sex offender for the rest of your life.

Do you understand all that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about the sentence, sir?

MS. AHUJA: Judge, he's asking that you mark the mitt to hospital. He'd like to go see a doctor in IDOC.

* * *

THE COURT: Okay. Mr. Alvarado, did you have any other questions about the sentence?

THE DEFENDANT: No."

¶ 13 The trial court then asked the State to present the factual bases for the pleas. The State presented the following stipulated facts for the charges. The offenses occurred between the dates of September 1, 2016, and November 30, 2016, in Chicago, at 2925 North Allen Avenue, apartment number one. The victims were E.G., who was between the ages of 11 and 12, and C.G., who was 10 years old. Defendant, who was 27 years old, was a family friend who had been visiting the victims' home since April 2016. During those dates, defendant brought a black laptop to the victims' home and showed pornography to both E.G., and C.G, and laughed as he showed pornography to C.G. The State continued that if the case proceeded to trial, it would show the

nature of the photographic pornographic images that were shown to the victims and that defendant sought to use that pornography to try and seduce each of the victims. Additionally, the State would show that defendant, while alone with E.G., in the kitchen, pulled down the victim's pants and underwear, got on his knees and licked the victim's penis. Defendant was arrested on June 19, 2017 and made admissions after receiving his *Miranda* rights.

¶ 14 The trial court found that defendant's pleas were given knowingly and voluntarily and further accepted the factual bases provided for the pleas.[1] The court subsequently entered findings of guilty and judgment for predatory criminal sexual assault of a child and two counts of grooming. The following exchange then occurred:

> "THE COURT: Mr. Alvarado, do you understand, before I officially sentence you, sir, you have the right to something called a presentence report, which is an investigation and report into your background and history.
>
> Do you understand you have the right to those things?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Is it your desire to give up those things and continue on with your plea now?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Is this your signature here?
>
> THE DEFENDANT: Yes.
>
> THE COURT: You understand that by signing that piece of paper, that's how you give up your presentence investigation and report?
>
> Do you understand that's how you give up your presentence report?
>
> THE DEFENDANT: No.
>
> THE COURT: Okay. Let's try again.
>
> THE DEFENDANT: (In English) I'm sorry.
>
> THE COURT: It's okay.
>
> A presentence report is where, basically, someone from probation will come and talk to you, and they would ask you all about your family history and your education; whether or not you use drugs; whether or not you were involved in a gang; all kinds of

[1] The common law record does not contain a written guilty plea, only the verbal plea as indicated in the report of proceedings.

deported, you could be denied admission to the US if you go out of it, and you could be denied citizenship to the United States if you applied for it. Those are all possible outcomes here.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And you still wish to plead guilty?

THE DEFENDANT: Yes.

THE COURT: All right. Is there anything – yes. Is there anything else you wish to say, sir, before I sentence you?

THE DEFENDANT: Is there a way in your heart that you are [sic] could give me less years?

THE COURT: No, sir. There is an agreement between your attorney. I agree with the agreement, I think it's a fair agreement. So, I could not give you less.

Is there anything else that you wish to say, sir?

THE DEFENDANT: No."

¶ 17 The trial court then sentenced defendant to consecutive terms of nine years on count one, one year on count four and one year on count five. Defendant also received 198 days credit, three years to life MSR, and lifetime sex offender registration. The trial court repeated that count one would be served at 85%, and the other two counts would be served at 50% and marked the mittimus to reflect that hospital treatment was ordered. The trial court then admonished defendant as to his appeal rights, informing him that before he could file an appeal, he would have to file a written motion to withdraw his guilty plea within 30 days and explain why he wanted to withdraw his plea. The court indicated to defendant that if the motion were granted, the guilty plea and sentence would be set aside, and the case would go to trial, with previously dismissed charges reinstated. If the motion were denied, defendant would have 30 days to file a written notice of appeal, and any issues that were not raised in the motion would be waived for appeal. Defendant indicated that he understood his appeal rights.

¶ 18 The record contains a number of *pro se* filings by defendant after his guilty pleas were entered. He filed an initial petition to withdraw his guilty plea and vacate sentence, dated January 26, 2018, that was received by the trial court on February 13, 2018.[2] Defendant argued in his petition that he was not appointed counsel that he could understand, and he did not in any way understand or know how to read English. He asserted that the court violated his constitutional right to a fair trial and had not been able to file a [posttrial motion] because he did not speak or read any English and was poor so he could not afford a lawyer.

¶ 19 The record reflects that defendant filed a second petition to withdraw guilty plea and vacate sentence dated February 1, 2018, in which defendant raised the same argument as in the first petition. Defendant subsequently filed a pleading captioned "petition for post conviction relief, appointment of counsel, applications to sue" dated February 12, 2018, and file stamped as received by the trial court on March 2, 2018. In that pleading, defendant again stated that he did not understand English, nor did he understand his attorney that was appointed from the public defender's office. He also stated that another inmate assisted him with his documents, namely Demetrius D. Moore.

¶ 20 On March 16, 2018, the trial court entered an order of *habeas corpus* for defendant to appear in court on March 30, 2018, at a hearing where APD Ahuja appeared on defendant's behalf. APD Ahuja indicated to the court that defendant's *pro se* motion to withdraw his plea was timely and requested a short date to review the transcript and revise the motion, as necessary. On March 30, 2018, APD Ahuja filed an amended motion to withdraw guilty plea on defendant's behalf,

[2] This petition satisfies the mailbox rule, which states that an incarcerated person's pleading is considered filed on the date he places it in the prison mail system, if a defendant provides proof of service that complies with Supreme Court Rule 12(b)(3) (eff. July 1, 2017). *People v. Shines*, 2015 IL App (1st) 121070, ¶¶ 31-33.

contending that he did not understand the plea and felt confused. APD Ahuja also filed a Rule 604(d) certificate. Defendant was present in court and a Spanish interpreter was appointed to assist him. The court noted that it "went over backwards" to make sure that defendant understood what was going on; answered defendant's questions; additionally, went beyond the normal admonishments; explained parole and MSR and registration as a sex offender; explained a jury trial; allowed him time to confer with his attorney and offered him more time to think about the plea, which he declined. The trial court found that the plea was proper, that defendant knew what he was doing and gave a knowing, voluntary and intelligent plea. The court then denied defendant's motion and admonished him of his appeal rights.

¶ 21 Defendant filed a *pro se* notice of appeal on April 23, 2018, which was received by the trial court on May 3, 2018. He subsequently filed a motion for discovery on May 4, 2018, received on May 14, 2018. The record indicates that on May 11, 2018, the trial court entered an order appointing the State Appellate Defender to represent defendant on his previously filed appeal in response to defendant's May 10, 2018, motion for free transcripts and common law record.

¶ 22 The record further indicates that on May 30, 2018, an order was entered dismissing defendant's March 6, 2018, postconviction petition because his claims were refuted by the record. On that date, the trial court noted that defendant continued to file things, including a postconviction petition that the court had only become aware of the day prior to the hearing. The trial court noted that the petition raised the same allegations as the various motions to withdraw the guilty plea and denied it in a written order which noted that: defendant's motion to withdraw his plea filed on February 3, 2018, was untimely; a Spanish interpreter was appointed for defendant who assisted him with his plea and further that defendant was properly admonished.

¶ 23 Defendant's motion for discovery was denied on June 7, 2018, from which defendant filed a motion for appeal on June 27, 2018. That motion was denied by the trial court in a written order on July 13, 2018, because the motion for discovery was not a final and appealable order. On October 12, 2018 (received by the trial court on October 24, 2018), defendant filed a motion for DNA testing of himself and the victim and also a motion alleging constitutional violations and actual innocence. That motion was classified as a postconviction petition by the trial court and dismissed in a written order on January 25, 2019. The order indicated that: defendant's motion to withdraw his plea was timely filed on February 3, 2018 and was previously denied on March 30, 2018; defendant could not file a postconviction petition alleging actual innocence after a constitutionally compliant guilty plea; his other constitutional claims were meritless; and defendant's request for DNA testing more than two years later could not possibly result in exculpatory evidence.

¶ 24 We note that defendant has multiple other appeals currently pending in this court: 19-0653, 19-1380, and 20-0781. This appeal involves only the March 30, 2018, denial of his motion to vacate guilty plea.

¶ 25 ANALYSIS

¶ 26 On appeal, defendant contends that: (1) his guilty plea was involuntary because the record corroborates his post-plea claim that he did not understand the plea proceedings and the trial court failed to substantially comply with Rule 402 (Ill. S. Ct. 402 (eff. July 1, 2012)); (2) this case should be remanded for further post-plea proceedings with new counsel because: (a) post-plea counsel was ineffective for failing to move to withdraw as counsel based on a conflict of interest and (b) this case should be remanded because the trial court erred in failing to determine, prior to ruling

on defendant's motion to withdraw his plea, whether post-plea counsel had a conflict of interest; and (3) this cause should be remanded because post-plea counsel failed to strictly comply with Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2017)) and amend defendant's *pro se* motion to withdraw his plea to include an allegation that the trial court failed to substantially comply with Rule 402.

¶ 27 A. Voluntariness of the Guilty Plea

¶ 28 1. Defendant's Understanding of the Proceedings

¶ 29 Defendant first contends that his inability to understand the English language rendered his guilty plea involuntary. He argues that the record supports his claim that he was confused throughout the proceedings and only pleaded guilty based on his misunderstanding of the relevant facts and the law.

¶ 30 A trial court's decision to grant or deny a motion to withdraw a guilty plea is within the trial court's sound discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). Therefore, we will not reverse the trial court's decision denying a motion to withdraw a guilty plea, unless the trial court clearly abused its discretion. *Id.* A court's ruling constitutes an abuse of discretion if it is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009).

¶ 31 The act of entering a guilty plea is considered "grave and solemn." *Brady v. United States*, 398 U.S. 742, 748 (1970). If a defendant were allowed to change his mind in order to have a jury hear his case, the guilty plea would become "a temporary and meaningless formality reversible at the defendant's whim." *United States v. Barker,* 514 F. 2d 208, 221 (D.C. Cir. 1975). Allowing a defendant to withdraw his plea is not automatic and should be based on a need to correct a

manifest injustice. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). The defendant bears the burden to demonstrate that it is necessary that he be allowed to withdraw his plea. *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (2011).

¶ 32 The trial court shall allow a plea to be withdrawn if: (1) the plea was entered on a misapprehension of fact or law, (2) there is doubt as to defendant's guilt, (3) the defendant has a meritorious defense, or (4) the ends of justice would be better served by submitting the case to a jury. *People v. Davis*, 145 Ill. 2d 240, 244 (1991).

¶ 33 Here, defendant contends that his inability to understand the English language led to his misapprehension of fact and law when he entered his guilty plea. Fundamental due process rights require a court to permit an interpreter to translate courtroom proceedings when a party does not fully understand English. *People v. Resendiz*, 2020 IL App (1st), 180821, ¶ 25. This is so because inherent in the nature of justice is the notion that those involved in litigation should understand and be understood. *Id.* When a defendant is not provided a complete translation of all proceedings, a defendant could be deprived of his or her rights to a fair hearing. *Id.* Moreover, "due process requires that the court accept defendant's guilty plea only upon an affirmative showing that the defendant entered his plea voluntarily and knowingly," and must admonish defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). *Id.*

¶ 34 In this case, defendant's argument that his plea was involuntary rests on his inability to understand the English language. He makes a separate, alternate argument that the trial court did not comply with Rule 402, which we will address separately below.

¶ 35 We initially note that defendant does not cite any cases to support his argument that his plea was involuntary because he did not understand English and was unable to understand what

was happening during the plea proceedings: nor does he contend that the interpreter failed to fully explain what was being said during the plea hearing. In fact, our review of the record on appeal rebuts defendant's assertion.

¶ 36 The record reveals that defendant was provided with a court-certified Spanish interpreter at each and every court appearance, from the pretrial proceedings to the plea and post-plea proceedings.[3] Court-certified interpreters are "subject to both statutory requirements as well as a code of ethics." *Resendiz*, 2020 IL App (1st) 180821, ¶ 45.

¶ 37 Section 1 of the Criminal Proceeding Interpreter Act provides:

> "Whenever a person accused of committing a felony or misdemeanor is to be tried in any court of this State, the court shall upon its own motion or that of defense or prosecution determine whether the accused is capable of understanding the English language and is capable of expressing himself in the English language so as to be understood directly by counsel, court or jury." 725 ILCS 140/1 (West 2018); *People v. Castellano*, 2020 IL App (1st) 170543, ¶ 70.

¶ 38 Section 2 provides that "the court shall enter an order of its appointment of the interpreter who shall be sworn to truly interpret or translate all questions propounded or answers given as directed by the court." 725 ILCS 140/2 (West 2018); *Castellano*, 2020 IL App (1st) 170543, ¶ 70.

¶ 39 Additionally, the Illinois Supreme Court provides a Code of Interpreter Ethics for interpreters working in our courts. *Castellano*, 2020 IL App (1st) 170543, ¶ 71. Canon 1 provides: "Interpreters shall render a complete and accurate interpretation or sight translation without

[3] The court proceedings were often held before different judges.

altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation." Ill. S. Ct. Code of Interpreter Ethics Canon 1, at 4 (eff. Oct. 4, 2014).

¶ 40 Further, in the case at bar, the record does not disclose a reason to believe that the interpreter violated these statutory and ethical obligations. See *id.* at ¶ 72. There was no indication during the proceedings, nor does defendant allege on appeal, that he had any trouble understanding the interpreter. In fact, the record instead reveals that, during the plea proceedings, as set forth above, defendant asked questions through the interpreter, answered some questions in English, and engaged with the trial court. In instances where the defendant indicated that he did not understand a concept stated by the trial court, the trial court stopped and explained things to defendant until he indicated that he understood. The record also shows that the trial court went beyond the basic admonishments and explained concepts regarding the pleas, sentences, and consequences very simply to defendant. While defendant at one point did state, through the interpreter, that he did not want to continue with the plea hearing and asked questions about the sentencing if he were to proceed to trial, he ultimately decided to continue with his pleas. The trial court also offered to give defendant additional time to consider the plea agreement, but defendant decided to continue with his pleas. The record further indicates that defendant apologized several times during the proceedings for his questions because it was his first time, and the proceedings were new to him. Finally, at the end of the sentencing portion of the hearing, defendant asked the trial court if there were any way he could get a lower sentence, and the trial court explained that the agreed-upon sentence was part of his plea agreement with the State.

¶ 41 In short, defendant has failed to assert any specific errors by the interpreter that contributed to him being unable to understand the proceedings other than that he spoke Spanish. To the

contrary, defendant's many post-plea filings indicate that he fully understood the admonishments from the trial court as were translated to him by the interpreter.

¶ 42 As defendant does not indicate any errors with the translation of the proceedings by the interpreter, and the record rebuts his claims, we find that defendant has not established that he was unable to understand the plea proceedings. Accordingly, we find that the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea on this basis.

¶ 43 2. Plea Admonishments

¶ 44 As an alternate argument, defendant contends that he should be allowed to withdraw his guilty plea because the trial court failed to substantially comply with Supreme Court Rule 402 (Ill. S. Ct. 402 (eff. July 1, 2012)). While acknowledging that this issue was not raised in his post-plea motion to withdraw his plea and is thus forfeited on appeal, defendant contends that this issue is reviewable under the second prong of the plain error doctrine because defendant's due process rights regarding proper admonishments are at issue.

¶ 45 When a defendant has forfeited appellate review of an issue, the reviewing court will consider only plain error. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). The plain-error doctrine is a narrow and limited exception. *People. v Hillier*, 237 Ill. 2d 539, 545 (2010). It bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances. *Thompson*, 238 Ill. 2d at 613. We will apply the plain-error doctrine when: "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the

closeness of the evidence." *Id.* Under the second prong of plain-error review, prejudice to the defendant is presumed because of the importance of the right involved, regardless of the strength of the evidence. *Id.*

¶ 46 The first step of plain-error review is determining whether any error occurred. *Id.* In plain-error review, the burden of persuasion rests with the defendant. *Id.* Here, defendant contends that the second prong of plain error applies to his claim that the trial court did not substantially comply with Rule 402, which affected the fairness of his plea proceedings and challenged the integrity of the judicial process.

¶ 47 We begin by reviewing Rule 402. Illinois Supreme Court Rule 402 (Ill. S. Ct. 402 (eff. July 1, 2012)[4] governs pleas of guilty or stipulations sufficient to convict. The pertinent sections of Rule 402 for our discussion are sections (a) and (b).

¶ 48 Section (a) requires that certain admonitions be made to defendant as follows:

> "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;

[4] The 2018 version of Rule 402 was in effect when defendant pled guilty; it has since been amended.

(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. Ill. S. Ct. R. 402(a) (eff. July 1, 2012).

¶ 49 Section 402(b), Determining Whether the Plea is Voluntary, states as follows:

"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.

¶ 50 This court has held that the purpose of Rule 402 admonishments is to ensure that the defendant understands the plea, the rights he is waiving by pleading guilty, and the consequences of his action. *People v. Dougherty*, 394 Ill. App. 3d 134, 138 (2009). It is well settled that Rule 402 requires substantial, not literal, compliance with its provisions. *Id.* "Substantial compliance requires 'an affirmative showing in the record that the defendant understood each of the required admonitions' and 'necessitates a reading of the entire record, including what transpired at earlier proceedings.'" *People v. Bailey*, 2021 IL App (1st) 190439, ¶ 27. Substantial compliance is determined by the admonishments provided to the defendant at the hearing where the plea of guilt

is received. *People v. Blankley*, 319 Ill. App. 3d 996, 1007 (2001). Illinois courts have found substantial compliance with Rule 402 where the record indicates that the defendant understandingly and voluntarily entered his plea, even if the trial court failed to admonish defendant as to a specific provision. *Dougherty*, 394 Ill. App. 3d at 138. A defendant's due process is violated if the trial court does not substantially comply with the required admonishments. *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005).

¶ 51 Failure to comply with all of the Rule 402 admonishments does not necessarily establish a due process violation or other grounds that would allow a defendant to withdraw his guilty plea. *Dougherty*, 394 Ill. App. 3d at 139. Defendant must establish that real justice was denied or that he was prejudiced by the inadequate admonishments. *Id.* It is a legal question that we review *de novo*. *Bailey*, 2021 IL App (1st) 190439, ¶ 27.

¶ 52 In this case, defendant specifically argues that the trial court failed to: (1) recite the Rule 402(b) admonishments; (2) inform defendant that he could receive probation on the grooming charges, and (3) ensure that defendant actually understood the sentencing ranges. He contends that such failures were in violation of Rule 402(a). We disagree with defendant's contentions.

¶ 53 We must first examine defendant's claims related to the trial court's compliance with Rule 402(b) and determine whether an error occurred. Illinois courts have held that a trial court's failure to provide Rule 402(b) admonishments- to determine if a defendant's plea was the result of promises- may constitute harmless error. *People v. Ellis*, 59 Ill. 2d 255, 257 (1974).

¶ 54 In the case at bar, our review of the record reveals that the trial court did not specifically ask defendant whether any force or threats or promises besides the plea agreement were used to obtain the plea. Thus, the trial court did not strictly comply with the requirements of Rule 402(b).

¶ 55 However, as we have previously noted, it is substantial compliance, not strict compliance that is required: thus, this is not the end of our inquiry. See *Dougherty*, 394 Ill. App. 3d at 138. Once we have determined that there was an error, we must determine whether the error was harmless or prejudicial.

¶ 56 When there has been an inadequate admonishment, whether reversal is required depends on whether real justice has been denied or whether defendant had been prejudiced by the inadequate admonishment. *People v. Dudley*, 58 Ill. 2d 57, 60-61 (1974). It is the defendant's burden to establish prejudice. *Dougherty*, 394 Ill. App. 3d at 139. If it can be determined from the entire record that the plea of guilty made under the terms of a plea agreement was voluntary, and was not made as the result of force, threats or promises other than the plea agreement, the error resulting from failure to strictly comply with Rule 402(b) is harmless. *Ellis*, 59 Ill. 2d at 257; *People v. Van Gilder*, 26 Ill. App. 3d 152, 153 (1975).

¶ 57 Here, our review of the entire record indicates that defendant's guilty pleas were voluntary. In reference to the Rule 402(b) admonishments, the record indicates that the trial court recited the terms of the plea agreement in open court as presented by defense counsel. Additionally, the trial court questioned defendant regarding the plea agreement, discussed each separate plea with him, and answered defendant's questions regarding the pleas. Earlier during the plea hearing, after the trial court told defendant the sentencing range for the offense of predatory criminal sexual assault, the trial court asked defendant whether he still wanted to continue with the plea. At this point, defendant engaged in a discussion with the court specifically about sentencing; asking if the trial court was "serious" regarding sentencing up to 60 years. Defendant stated to the court that he would continue with the plea because he had no other option, to which the court responded that he

did have another option: he could choose to plead not guilty. Defendant ultimately decided to continue with the plea, presumably because he did not want to face the possibility of a longer sentence. We find that the record as a whole establishes that defendant knowingly and voluntarily pleaded guilty in order to avoid the possibility of a longer sentence. As such, the failure of the trial court to inquire as to whether the plea was the result of force or threats was harmless because the record establishes that defendant made the choice to continue with his plea. Because we find that the error was harmless, no withdrawal of defendant's pleas is required.

¶ 58 We next turn our attention to defendant's contentions that the trial court erred by failing to ensure that he understood that the sentencing for predatory criminal sexual assault was between 6 and 60 years and by failing to admonish him that probation was available for the grooming charges. These arguments concern Rule 402(a) admonishments, and as they were not raised in his post-plea motion, defendant asks this court to apply the plain-error doctrine.

¶ 59 We first determine whether any error occurred. Rule 402(a) requires the trial court to admonish a defendant of the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which he or she may be subjected because of prior convictions or consecutive sentences. Ill. S. Ct. R. 402(a)(2) (eff. July 1, 2012); *People v. Chavez*, 2013 IL App (4th) 120259, ¶ 16. As previously stated, we review *de novo* whether the trial court properly admonished defendant and complied with Rule 402(a). *Chavez*, 2013 IL App (4th) 120259, ¶ 14.

¶ 60 The record establishes that the trial court substantially complied with Rule 402(a) in advising defendant of the sentencing range for predatory criminal sexual assault. At no time did the trial court only state the maximum term, instead the court reiterated several times that there was a range of sentencing available and that should defendant proceed to trial, he would be

sentenced within that range. Defendant's response to the sentencing range was to say, "are you serious?" This statement supports the inference that defendant clearly understood the range of sentence as stated by the trial court for that offense, defendant affirmatively indicated to the trial court that he understood the sentencing range, and he chose to continue with his plea and take the sentence of nine years for that offense. Hence, we find that there was no error in the trial court's admonishment to defendant regarding the sentencing range for predatory criminal sexual assault.

¶ 61 With respect to defendant's claim that the trial court failed to inform him that probation was available for the grooming charges, we agree with defendant that the record establishes that the trial court did not inform him that probation was an available sentence. The trial court only informed defendant that the sentencing range was one to three years, and that he would be subject to parole upon his release. However, we find that defendant was not prejudiced by this omission because he entered a negotiated plea where the one-year sentence for each count of grooming was agreed upon prior to the plea and he was sentenced in accordance with the plea agreement. Thus, such error is harmless and not prejudicial. See *People v. Thompson*, 375 Ill. App. 3d 488, 493 (2007) (whether imperfect admonishment requires reversal depends on whether real justice has been denied or whether the inadequate admonition prejudiced the defendant).

¶ 62 Moreover, defendant has not provided any support for his claim that the inadequate admonishment warrants the withdrawal of his plea. Specifically, in addition to providing no caselaw, defendant does not even argue that knowledge of probation as an alternate sentence would have changed his decision to accept the plea. As we have stated throughout this disposition, substantial compliance with Rule 402 establishes due process. *Id.* In the case at bar, defendant pleaded guilty in exchange for a specific sentence and received the benefit of the bargain. See

Dougherty, 394 Ill. App. 3d at 139 (there is no substantial compliance with Rule 402 and due process has been violated where a defendant pleads guilty in exchange for a specific sentence and does not receive the benefit of the bargain). We find that the trial court substantially complied with Rule 402(a)(2) (eff. July 1, 2012), and any error in failing to advise defendant of probation as a possible sentence was harmless error. As such, reversal is not required.

¶ 63 Defendant was granted leave to cite *People v. Bailey*, 2021 IL App (1st) 190439, as additional authority to support his contention that the trial court failed to substantially comply with Rule 402 and rebut the State's contention that he was required to show that he was prejudiced by the trial court's failure to comply with Rule 402. Briefly stated, *Bailey* involved a violation of probation on a guilty plea offense and a subsequent guilty plea, for which he received sentences on both offenses. *Id.* at ¶ 1. In that case, we noted two deficiencies with the trial court's admonishments under Rule 402A (eff. Nov. 1, 2003), namely that the trial court never told defendant the minimum sentence available for the offenses and further that the trial court did not mention MSR for either sentence. *Id.* at ¶ 28. We found that, in that instance, there was no substantial compliance with Rule 402A and further that defendant did not receive the benefit of his bargain, with respect to the MSR periods being part of his sentence. *Id.* at ¶ 32. For those reasons, we concluded that the prejudice requirement did not necessarily apply. *Id.* at ¶ 31.

¶ 64 The situation presented in *Bailey* is not the same as the circumstances in the case at bar. Here, the trial court did substantially comply with the Rule 402 admonishments: defendant was advised of the sentencing range available for each sentence (with the exception of probation for the grooming charge), the trial court explained the applicable MSR periods for the sentences and defendant was sentenced within the correct sentencing range. Additionally, defendant's guilty

pleas and sentencing were fully negotiated for a term of 11 years which is exactly what he received. Thus, the minor deficiencies in the trial court's admonishments did not deprive him of the benefit of the bargain made. Moreover, the decision in *Bailey* turned on two admonishment errors: the failure of the trial court to communicate any minimum sentence to the defendant and the failure to mention the applicable MSR term. See *id.* at ¶ 32. We have not found, nor has defendant cited, any case where the judgment was reversed, or a plea vacated solely where an available sentence of probation was not stated during admonishments. As Illinois courts have consistently held, the trial court's failure to properly admonish a defendant does not automatically establish grounds for reversing the judgment or vacating the plea; whether an imperfect admonishment requires reversal depends on whether real justice has been denied or whether the inadequate admonishment prejudiced the defendant. *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005); *People v. Petro*, 384, Ill. App. 3d 594, 599 (2008); *People v. Holborow*, 382 Ill. App. 3d 852, 862 (2008). Here, as defendant has made no such showing, the imperfect admonishments he received amounted to harmless error.

¶ 65 As we have concluded that each of defendant's claims related to the adequacy of the Rule 402 admonishments was either meritless or harmless error under the plain-error doctrine, we decline to address his alternate claims of ineffective assistance of counsel for counsel's failure to include these issues in the amended post-plea motion.

¶ 66 B. Ineffective Assistance of Counsel

¶ 67 Next, defendant contends that his case should be remanded for further post-plea proceedings with new counsel because: (a) defense counsel was ineffective for failing to move to withdraw based on her conflict of interest; and (b) alternately, the trial court erred by failing to

determine, prior to ruling on defendant's motion to withdraw his plea, whether defense counsel was operating under a conflict of interest. He argues that in his *pro se* motion to withdraw, he alleged that he was unable to understand the court-appointed attorney that represented him during the plea proceedings, and the same attorney represented him in the post-plea proceedings. Defendant further asserts that counsel filed an amended motion to withdraw which removed any reference to his inability to understand counsel, and defense counsel appeared on his behalf at the post-plea proceedings but did not present any witnesses or argument. In further support of his contention, defendant argues that because there was a substantial possibility that counsel would be called as a witness at the post-plea hearing, counsel had a professional and personal interest in convincing the court that the allegation was unfounded, which is why she did not include the allegation in the amended post-plea motion.

¶ 68 A defendant's sixth amendment right to the effective assistance of counsel includes the right to conflict-free representation. *People v. Peterson*, 2017 IL 120331, ¶ 102. In determining whether a defendant received ineffective assistance of counsel based on an alleged conflict of interest, we first determine whether counsel labored under a *per se* conflict. *People v. Sweet*, 2017 IL App (3d) 140434, ¶ 34. If a *per se* conflict in defense counsel representation exists, defendant is not required to show that counsel's actual performance was affected by the conflict, meaning that defendant is not required to show actual prejudice; instead, a *per se* conflict is grounds for an automatic reversal. *Id.*

¶ 69 A *per se* conflict of interest is one in which facts about a defense attorney's status gives rise to a disabling conflict, such as when a defendant's attorney has ties to a person or entity that would benefit from an unfavorable verdict for defendant. *Id.* at ¶ 35. Our supreme court has held

that a *per se* conflict of interest exists where defense counsel: (1) has a prior or contemporaneous association with the victim, prosecution, or entity assisting the prosecution; (2) contemporaneously represents a prosecution witness; or (3) was a former prosecutor who had been personally involved in the prosecution of the defendant. *Id.* (citing *People v. Hernandez*, 231 Ill. 2d 134, 143-44 (2008)).

¶ 70 Distinguishable from a *per se* conflict of interest is an actual conflict of interest. *Id.* at ¶ 36. An actual conflict of interest exists where the defendant can point to a specific defect in his counsel's strategy, tactics, or decision making that was attributable to a conflict. *Id.* We review *de novo* the issue regarding whether a conflict of interest existed. *People v. Miller*, 199 Ill. 2d 541, 544 (2002).

¶ 71 Defendant appears to be arguing that APD Ahuja had an actual conflict of interest because she did not withdraw once she was aware that his *pro se* motion to withdraw his plea indicated that he was unable to understand her during the plea proceedings. However, there is no *per se* rule that a defendant is entitled to a new attorney if he files a *pro se* motion challenging his trial attorney's representation. See *People v. Gabrys*, 2013 IL App (3d) 110912, ¶ 21; *People v. Perkins*, 408 Ill. App. 3d 752, 762 (2011); *People v. Allen*, 391 Ill. App. 3d 412, (2009) (citing *People v. Cabrales*, 325 Ill. App. 3d 1, 5 (2001)). This is particularly true when defendant did not request a new attorney. *People v. Jones*, 219 Ill. App. 3d 301, 304 (1991).

¶ 72 Moreover, defendant's single statement in his *pro se* motion to withdraw his guilty plea that he could not understand his attorney, without more, failed to plead a *bona fide* issue of ineffective assistance of counsel, as this issue neither raised any error in counsel's performance or prejudice from counsel's performance. *People v. Pena-Romero*, 2012 IL App (4th) 110780, ¶ 16.

Defendant did not specify any instance where he could not understand his attorney during the plea proceedings or state how it impacted his guilty pleas, nor does he point to any specific instances on appeal. Instead, our reading of defendant's *pro se* motion is that this statement appears to be an extension of his argument that his plea was involuntary because he did not understand the English language. Such statement, standing alone, was insufficient to raise a claim of ineffective assistance of counsel; nor was it sufficient to create an actual conflict of interest for APD Ahuja to continue to represent defendant during the post-plea proceedings.

¶ 73 As discussed earlier, we have already determined that defendant's plea was voluntary and knowingly made. The record reflects that during pretrial proceedings, defendant was represented by private counsel, and defendant told the trial court that he wished to find new counsel. The trial court asked defendant whether he wanted to have a court-appointed attorney until he secured other counsel. Defendant indicated yes, and APD Ahuja was appointed to represent him. Defendant did not secure other counsel and APD Ahuja continued to represent him during the plea proceedings. As we noted earlier, an interpreter was appointed to assist defendant in communicating with his attorney and the court throughout all stages of the proceedings, including post-plea. The record shows that defendant was allowed to confer with APD Ahuja during the plea proceedings, and further the record does not indicate that defendant alerted the trial court at any time that he could not understand his attorney with the assistance of the interpreter. Nor did defendant alert the trial court to any failure to understand during the post-plea proceedings, where he was again assisted by an interpreter. The record also indicates that APD Ahuja consulted with defendant prior to presenting the post-plea motion. We conclude that defendant's contention is without merit.

¶ 74 Because we find that APD Ahuja did not have a conflict of interest in representing defendant at the post-plea proceedings, it follows then that the trial court did not err in failing to inquire as to any conflict of interest.

¶ 75 C. Amendment of Motion to Withdraw to Include Allegations Related to Rule 402

¶ 76 We have previously concluded that the trial court substantially complied with the required admonishments of Rule 402 (eff. July 1, 2012), and that such claims are meritless. We therefore decline defendant's request to remand for new post-plea counsel to amend the motion to include such allegations.

¶ 77 CONCLUSION

¶ 78 For the foregoing reason, we affirm the judgment of the circuit court of Cook County.

¶ 79 Affirmed.

APPENDIX

Juan Alvarado-Gonzalez, Petitioner

Appellate Court Decision

Order Denying Petition for Rehearing

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 1-18-1209
	)	
JUAN ALVARADO-GONZALEZ,	)	
	)	
Defendant-Appellant.	)	

ORDER

THIS CAUSE having come on to be heard on the Defendant's Petition for Rehearing, and this Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Defendant's Petition for Rehearing is denied.

ENTER:

ORDER ENTERED

JUN 0 8 2021

APPELLATE COURT FIRST DISTRICT

/s/s Sharon Oden Johnson
Justice Sharon Oden Johnson

/s/ Mary L. Mikva
Presiding Justice Mary L. Mikva

/s/ Maureen E. Connors
Justice Maureen E. Connors

APPENDIX B 1-25 E18

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

v.

JUAN ALVARADO

No. 17CR-10623

ORDER

ALTHOUGH THE DEFENDANT IS CORRECT THAT HIS MOTION TO WITHDRAW HIS GUILTY PLEA FILED ON 2-3-2018 WAS TIMELY, A HEARING WAS HELD ON HIS MOTION ON 3-30-18 AND HIS MOTION WAS DENIED. THIS COURT HELD THAT THE PLEA ADMONISHMENTS WERE PROPER AND A SPANISH INTERPRETER WAS UTILIZED. THE DEFENDANT'S PLEA TAKEN ON 1-3-2018 WAS A KNOWING, INTELIGENT AND VOLUNTARY PLEA.

DEFENDANT ARGUES IT WAS ERROR FOR THIS COURT TO DISMISS HIS POST-CONVICTION PETITION FILED ON 3-6-2018, THE DEFENDANT ALSO MAKES A CONCLUSORY CLAIM OF ACTUAL INNOCENCE NOW. HOWEVER, HE CANNOT FILE A POST-CONVICTION PETITION BASED ON ACTUAL INNOCENCE AFTER A PROPER CONSITUTIONAL COMPLIANT GUILTY PLEA. SEE P.V. SIMMONS, 388 Ill.App 3d 599. HIS OTHER CLAIMS ARE MERITLESS. "THE DEFENDANT'S ALLEGATIONS IN SUPPORT OF HIS VIOLATION ILLINOIS CONSTITUTION AND UNITED STATE CONSITUTION CLAIM; POST-TRIAL MOTION" FILED 10-24-18 IS DISMISSED.

Attorney No.:

Name:

Atty. for:

Address:

City/State/Zip:

Telephone:

ENTERED:

Dated: 11/14/19

JUDGE MICHAEL McHALE-1927

Judge Judge's No.

JAN 25 2019

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPENDIX C

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

September 29, 2021

In re: People State of Illinois, respondent, v. Juan Alvarado-Gonzalez, petitioner. Leave to appeal, Appellate Court, First District.
127397

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 11/03/2021.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

PETITION FOR LEAVE TO APPEAL

PRAYER FOR LEAVE TO APPEAL

Juan Alvarado-Gonzalez, petitioner-appellant, hereby petitions this Court for leave to appeal, pursuant to Supreme Court Rules 315 and 612, from the judgment of the Appellate Court, First Judicial District, affirming his convictions for predatory criminal sexual assault and grooming and his sentence of 11 years imprisonment.

PROCEEDINGS BELOW

The Appellate Court affirmed Juan Alvarado-Gonzalez's conviction and sentence on May 7, 2021. *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U. Mr. Alvarado-Gonzalez filed a Petition for Rehearing on May 26, 2021. The Appellate Court denied the Petition for Rehearing on June 8, 2021. A copy of the Appellate Court's judgment and its order denying the Petition for Rehearing are appended to this petition.

COMPELLING REASONS FOR GRANTING REVIEW

Review should be granted to resolve the following issue: **Is an attorney required to withdraw from representing a defendant on a motion once it becomes apparent that the attorney will likely be required to testify at the hearing on the motion?**

In *People v. Norris*, 46 Ill. App. 3d 536, 541 (1st Dist. 1977), the appellate court found that counsel should have withdrawn from representing the defendant on his post-trial motion after the defendant alleged ineffective assistance of counsel. The basis for the court's decision was that resolving the truth of the defendant's allegation would have required counsel to testify at the hearing on the motion, which the court concluded would have been improper: an attorney "must withdraw when he learns, or it obvious that he or one in his office should be called as a witness on behalf of his client." *Id.; see also People v. Friend*, 341 Ill. App. 3d 139, 140-141 (2d Dist. 2003) (counsel should have moved to withdraw as soon as defendant criticized his performance in motion to withdraw guilty plea); *People v. Williams*, 176 Ill. App. 3d 73, 79 (1st Dist. 1988) (guilty plea attorney must withdraw and ask for appointment of new counsel if she knows that she should be called as a witness at the hearing on a motion to withdraw the guilty plea); *People v. Willis*, 134 Ill. App. 3d 123, 129-133 (2d Dist. 1985) (counsel should have withdrawn from representing defendant when he became aware that he might have to argue his own ineffectiveness at hearing on defendant's motion to withdraw his guilty plea).

In this case, appellant alleged, in his *pro se* motion to withdraw his guilty plea, that he could not understand plea counsel because he could not speak

English. On appeal, he contended that counsel should have withdrawn from representing him in seeking to withdraw his guilty plea because resolving the truth of this claim that he could not understand her would have required counsel to testify at the hearing on the motion to withdraw.

The appellate court rejected this argument, fining that counsel was not required to withdraw because, "[T]here is no *per se* rule that a defendant is entitled to a new attorney if he files a *pro se* motion challenging his trial attorney's representation." *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U, ¶ 71. The court cited to numerous appellate court decisions in support of this proposition. *Id., citing People v. Gabrys*, 2013 IL App (3d) 110912, ¶ 21; *People v. Perkins*, 408 Ill. App. 3d 752, 762 (1st Dist. 2011); *People v. Allen*, 391 Ill. App. 3d 412, 418 (3d Dist. 2009); *People v. Cabrales*, 325 Ill. App. 3d 1, 5 (2d Dist. 2001).

This Court should therefore grant leave to appeal to address a split in authority — between *Norris* and the other cases cited by appellant, on one hand, and the appellate court's decision and the cases it relied upon, on the other — regarding whether counsel is required to withdraw from representing a defendant on a post-trial motion once it becomes apparent that he or she will be required to testify at the hearing on the motion.

In addition, this Court should grant leave to appeal to determine whether a non-English speaking defendant is required to point so specific defects in an interpreter's performance in order to demonstrate that his guilty plea was involuntary due to his inability to speak English. On direct appeal, appellant alleged that his inability to speak

English rendered his guilty plea involuntary. In rejecting this claim, the appellate court observed that a Spanish interpreter was present for plea proceedings and that "Court-certified interpreters are 'subject to both statutory requirements as well as a code of ethics.'" *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U, ¶ 36, *citing People v. Resendiz*, 2020 IL App (1st) 180821, ¶ 45. In light of these requirements, the appellate court concluded that a defendant who does not speak English cannot challenge the voluntariness of his plea on this basis unless he can point to some specific way in which the interpreter violated his or her "statutory and ethical obligations." *Id.* at ¶¶ 40-41. Given the due process implications of this holding for non-English speaking defendants, this Court should grant review to clarify whether defendants, like appellant, who do not speak English must point to specific defects in an interpreter's performance in order to challenge the voluntariness of their guilty plea.

STATEMENT OF FACTS

Overview

On January 3, 2018, as part of a negotiated plea, Juan Alvarado-Gonzalez, who speaks only Spanish, pleaded guilty to one count of predatory criminal sexual assault and two counts of grooming. (C. 55, R. 34, 38). Pursuant to the terms of the plea, the court sentenced Alvarado-Gonzalez to nine years in prison on the predatory criminal sexual assault charge and one year in prison on each of the grooming charges, to be served consecutively with the sentence for predatory criminal sexual assault, for a total of 11 years in prison. (C. 55, R. 50).

On January 25, 2018, Alvarado-Gonzalez mailed a *pro se* motion to withdraw his guilty plea and vacate his sentence, in which he alleged that his guilty plea should be vacated because, due to his inability to speak English, he was unable to understand his plea counsel, who did not speak Spanish. (Sup. C. 24). Thereafter, on March 30, 2018, the same counsel who had represented Alvarado-Gonzalez during plea proceedings filed an amended motion to withdraw his guilty plea. (Sup. C. 33). Counsel did not call any witnesses or present any argument in support of the motion, and the court denied the motion. (R. 65).

Plea Proceedings

Through a Spanish interpreter, the trial court admonished Alvarado-Gonzalez, who does not speak English, on the consequences of pleading guilty. (R. 30-43). The court began by admonishing Alvarado-Gonzalez regarding the nature of the predatory criminal sexual assault charge, including the potential

sentencing range. (R. 30-31). The court told Alvarado-Gonzalez that the offense was a Class X felony, carrying a range of six to 60 years in prison, followed by mandatory lifetime sex offender registration and an indeterminate term of mandatory supervised release. (R. 31-33). When the court asked Alvarado-Gonzalez whether, knowing the potential penalties for this charge, he still wished to plead guilty, Alvarado-Gonzalez replied, "I don't have any other option." (R. 33). The court told Alvarado-Gonzalez that he could still choose a jury trial if he desired, to which Alvardo-Gonzalez responded, "But you're going to give me 60 years, and I don't want that." (R. 33). The court then took a break to allow Alvarado-Gonzalez more time to think about his decision. (R. 33-34). When the case was recalled, Alvarado-Gonzalez stated that he understood the nature of the charges and the possible penalties, and still wished to plead guilty. (R. 34).

The court next admonished Alvarado-Gonzalez regarding the grooming charges, explaining that these charges were Class 4 felonies with sentencing ranges of 1-3 years. (R. 37). The court did not, however, inform Alvarado-Gonzalez that he could receive probation on the grooming charges.

When the court asked Alvarado-Gonzalez whether, knowing the sentencing range for the grooming charges, he still desired to plead guilty, Alvarado-Gonzalez said "no." (R. 37). However, Alvarado-Gonzalez subsequently apologized, explained that this was the first time in his life that he had gone through his process, and stated that he would like to continue with the plea. (R. 37-38).

Next, the court explained the meaning of a jury trial to Alvarado-

Gonzalez. Alvarado-Gonzalez asked what would happen if he chose a jury trial and lost, and the court said it would sentence Alvarado-Gonzalez to anywhere from six to 60 years in prison. (R. 39). Alvarado-Gonzalez responded, "Are you serious?" and the court said, "Yes . . . that's the law in the State of Illinois, sir." (R. 39).

The court concluded its admonishments by informing Alvarado-Gonzalez that he had the right to plead not guilty and the right to a jury or bench trial, and that by giving up these rights he was also giving up his right to rely on the State's inability to prove him guilty beyond a reasonable doubt, to confront the witness against him, and to testify in his own defense. (R. 33, 39-41). The court also told Alvarado-Gonzalez that, as a consequence of pleading guilty, he could be deported. (R. 49). The court did not inquire as to whether Alvarado-Gonzalez's guilty plea was induced by any threats or promises.

The State then presented a factual basis for the guilty plea. (R. 43-45). Alvarado-Gonzalez pleaded guilty to all three counts, and the court found that his plea was knowing and voluntary. (R. 34, 38, 46). Pursuant to the plea agreement, the court sentenced him to an aggregate term of 11 years in prison.

Motion to Vacate Guilty Plea

On January 25, 2018, Alvarado-Gonzalez filed a timely *pro se* motion to withdraw his guilty plea and vacate his sentence. (Sup. C. 24). In the motion, Alvarado-Gonzalez asserted that he:

> Was not appointed counsel he could understand, he doesd (sic) not in any way understand english. and in anyway know how to read in english. Wich (sic) is why this court violated his constitutional rights to a fair trial. Petitioner have not been ablke (sic) to file a post because he does not speak or can not read any english and he is poor so he can not afford a lawye (sic).

(Sup. C. 24). On March 30, 2018 the same attorney who had represented Alvarado-Gonzalez during plea proceedings filed an amended motion to withdraw his guilty plea. (Sup. C. 33). The amended motion continued to allege that Alvarado-Gonzalez did not understand the plea proceedings and felt confused; it did not, however, include Alvarado-Gonzalez's allegation that he was unable to understand plea counsel. (Sup. C. 33). Counsel also filed a 604(d) certificate at this time. (Sup C. 34).

Counsel did not call any witness or present any argument in support of the motion. (R. 64). The court denied the motion, stating that it had "bent over backwards" to admonish Alvarado-Gonzalez on the consequences of pleading guilty. (R. 64-65).

Direct Appeal

On direct appeal, Alvarado-Gonzalez alleged, *inter alia*, that: 1) his guilty plea was involuntary because, due to his inability to speak English, he did not understand the plea proceedings; and 2) his plea counsel should have withdrawn from representing him in seeking to withdraw his guilty plea after she became aware, based on Alvarado-Gonzalez's claim in his *pro se* motion to withdraw his guilty that he could not understand her, that it was likely she would be called as a witness at the hearing on the motion. *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U, ¶¶ 29-42, 67-74. The appellate court rejected both arguments. As to the first argument, the court found that the presence of a Spanish interpreter during plea proceedings rebutted Alvarado-Gonzalez's claim that he could not understand the plea proceedings due to his inability to speak English. As to the second argument, the court observed that there "is no *per se*

rule that a defendant is entitled to a new attorney if he files a *pro se* motion challenging his trial attorney's representation." In addition, the court found that "defendant's single statement in his *pro se* motion to withdraw his guilty plea that he could not understand his attorney, without more, failed to plead a *bona fide* issue of ineffective assistance of counsel, as this issue neither raised any error in counsel's performance or prejudice from counsel's performance."

On June 9, 2021, the court denied Alvarado-Gonzalez's petition for re-hearing.

ARGUMENT

I. This Court should grant leave to appeal to resolve a split in appellate court authority regarding whether an attorney is required to withdraw from representing a defendant on a post-plea motion once it becomes apparent that the attorney will likely be required to testify at the hearing on the motion.

In *People v. Norris*, 46 Ill. App. 3d 536, 541-542 (1st Dist. 1977), the appellate court held that an "attorney must withdraw when he learns, or it is obvious that he or one in his office should be called as a witness on behalf of his client." Relying on this principle, appellant contended on direct appeal that counsel should have withdrawn from representing him in seeking to withdraw his guilty plea. *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U, ¶ 67. Specifically, appellant contended that counsel should have withdrawn after he alleged, in his *pro se* motion to withdraw his guilty plea, that he could not understand her, since resolving the truth of this claim would have likely required counsel to testify at the hearing on the motion to withdraw appellant's guilty plea. *Id.* Appellant further alleged that counsel was aware of this possibility, as evidenced by the fact that she removed appellant's claim that he could not understand her from the amended motion to withdraw appellant's guilty plea.

The appellate court found that counsel was not required to withdraw from representing appellant in seeking to withdraw his guilty plea. *Id.* at ¶ 74. The court observed, "[T]here is no *per se* rule that a defendant is entitled to a new attorney if he files a *pro se* motion challenging his trial attorney's representation." *Id.* at ¶ 71. Rather, according to the appellate court, an attorney is only required to withdraw when a defendant sets forth a "*bona fide*

issue of ineffective assistance of counsel." *Id.* at ¶ 72. Because appellant's claim that he could not understand counsel did not, in the court's view, pertain to counsel's performance, the court found that counsel was not ineffective for failing to withdraw. The cases cited by the court — *People v. Gabrys*, 2013 IL App (3d) 110912, ¶ 21; *People v. Perkins*, 408 Ill. App. 3d 752, 762 (1st Dist. 2011); *People v. Allen*, 391 Ill. App. 3d 412, 418 (3d Dist. 2009); *People v. Cabrales*, 325 Ill. App. 3d 1, 5 (2d Dist. 2001) — support the court's analysis in that, in each case, the appellate court held that a defendant who alleges ineffective assistance of counsel is only entitled to new counsel if the trial court determines that the defendant's allegations show possible neglect of his case on the part of counsel.

However, the court's analysis is in conflict with other decisions from the appellate court that hold an attorney must withdraw once it becomes clear that he or she may be called as a witness at a hearing on a post-trial or post-plea motion. To illustrate, in *People v. Norris*, 46 Ill. App. 3d 536, 542 (1st Dist. 1977), the appellate court found that, based on the defendant's criticism of his performance during plea proceedings, counsel should have withdrawn from representing the defendant on his motion to withdraw his guilty plea. As in this case, in *Norris*, the same attorney who represented the defendant during plea proceedings also represented him during the hearing on the motion to withdraw his guilty plea. *Id.* Citing to the then extant version of the Illinois Code of Professional Responsibility — the current version of which contains a corresponding provision — the appellate court held that an "attorney must withdraw when he learns, or it is obvious that he or one in his office should be

called as a witness on behalf of his client." *Id.* at 541-542; *see also* Ill. R. Prof'l Conduct R. 3.7 (2018) (Stating that a lawyer "shall not act as advocate at a trial in which the lawyer is likely to be necessary witness" except for in a very limited number of situations, none of which apply here).

Other Illinois cases have reached a similar conclusion as the *Norris* court. *See People v. Friend*, 341 Ill. App. 3d 139, 140-141 (2d Dist. 2003) (counsel should have moved to withdraw as soon as defendant criticized his performance in motion to withdraw guilty plea); *People v. Williams*, 176 Ill. App. 3d 73, 79 (1st Dist. 1988) (guilty plea attorney must withdraw and ask for appointment of new counsel if she knows that she should be called as a witness at the hearing on a motion to withdraw the guilty plea); *People v. Willis*, 134 Ill. App. 3d 123, 129-133 (2d Dist. 1985) (counsel should have withdrawn from representing defendant when he became aware that he might have to argue his own ineffectiveness at hearing on defendant's motion to withdraw his guilty plea).

Here, had she not removed it from appellant's amended motion to withdraw his guilty plea, counsel likely would have been required to testify regarding appellant's claim that he could not understand her during plea proceedings. After all, other than defendant, counsel was the only person capable of establishing the truth of this claim. Under *Norris*, counsel was therefore required to withdraw. However, according to the appellate court and the cases it relied on, it would have been proper for counsel to testify at the hearing on the motion to withdraw so long as the court first determined that counsel had not performed ineffectively. Accordingly, this Court should grant leave to appeal to address this split in authority.

II. Is a non-English speaking defendant required to point so specific defects in an interpreter's performance in order to demonstrate that his guilty plea was involuntary due to his inability to speak English?

In rejecting appellant's claim that his inability to speak English rendered his guilty plea involuntary, the appellate court relied primarily on the fact that an interpreter was present during plea proceedings. The court noted that interpreters are "subject to both statutory requirements as well as a code of ethics," including this Court's Code of Interpreter Ethics, which provides, "Interpreters shall render a complete and accurate interpretation or slight translation without altering, omitting, or adding to the meaning of what is stated or written, and without explanation." *People v. Alvarado-Gonzalez*, 2021 IL App (1st) 181209-U at ¶ 39, *citing* Ill. S. Ct. Code of Interpreter Ethics Canon 1, at 4 (eff. Oct. 4, 2014). The court found, in essence, that these requirements create a presumption that a non-English speaking defendant understood the proceedings in his case — a presumption that a defendant can only overcome by "pointing to specific errors by the interpreter that contributed to him being unable to understand the proceedings[.]" *Id.*; *see also People v. Resendiz*, 2020 IL App (1st) 180821 and *People v. Castellano*, 2020 IL App (1st) 170543. Here, because appellant could not point to specific errors made by the interpreter, the appellate court found that his confusion during plea proceedings did not render his guilty plea involuntary.

The appellate court's holdings in *Resendiz*, *Castellano*, and now this case place non-English speaking defendants in a Catch-22: How can a non-Enlgish speaking defendant point to specific defects in an interpreter's performance *when the very basis of his claim is that he did not understand the interpreter*?

Imposing such an impossible task on non-English speaking raises serious due process concerns. *See Peoplev. Hanson*, 212 Ill. 2d 212, 218 (2004) (defendant has a due process right to "understand the nature of the purpose of the criminal proceedings" against him). This Court should therefore grant leave to appeal to address this important issue.

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JUAN ALVARADO-GONZALEZ,	)	
	)	
Plaintiff,	)	No. 21 CH 00030 and 21 CH 1764 (consolidated)
	)	
v.	)	Hon. Allen Price Walker
	)	
CHICAGO POLICE DEPARTMENT,	)	
	)	
Defendant.	)	

AFFIDAVIT OF PATRICIA LITTLE

I, Patricia Little, do solemnly affirm and certify, under the penalties provided under Section 1-109 of the Illinois Code of Civil Procedure, that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. I, Patricia Little, am employed by the Chicago Police Department (CPD) in its Freedom of Information Act (FOIA) unit as a civilian FOIA Officer since September 3, 2019.

2. I previously worked for CPD as a Police Officer from August 1994 until September 2, 2019. I also earned a certificate in paralegal studies from Roosevelt University in March 2019.

3. Individuals working in CPD FOIA analyze the plain language of FOIA requests to determine if CPD maintains the documents requested, and if so, whether CPD is still in possession of the requested records, and finally, whether any portions of those records are exempt from disclosure pursuant to available FOIA exemptions. FOIA officers rely on their experience, background, and training to review and interpret requests, retrieve available records, and respond to requests.

4. The City's Department of Law reached out to me about the above-captioned lawsuit, where Mr. Gonzalez claims CPD did not respond to two separate requests he mailed to CPD, dated October 14, 2020 and October 27, 2020.

5. I conducted multiple searches of GovQA for Mr. Gonzalez's alleged requests. GovQA is a database CPD uses to manage its FOIA operations, including tracking incoming FOIA requests, CPD's responses, and records produced. It is the custom and practice of CPD FOIA officers that all requests are logged into the GovQA system.

6. I searched GovQA for requests by "Gonzalez, Juan" of 5835 State Rd, Route 184, Pinckneyville, IL 62274. My search produced four separate requests, including Mr. Gonzalez's October 14, 2020 request that is logged under file number P615221. The file numbers for Mr. Gonzalez's other remaining requests are P599431; P551746; P470653.

7. I also searched GovQA for requests by "Alvarado-Gonzalez, Juan" using the same address referenced in Paragraph 6. That search also produced the same four file numbers.

8. My searches of GovQA did not produce a FOIA request by Mr. Gonzalez that is dated October 27, 2020. Based on my searches of GovQA, CPD did not receive Mr. Gonzalez's alleged October 27, 2020 FOIA request.

9. Mr. Gonzalez's October 14, 2020 request sought [SIC throughout]:

> *Police Arrest Reports, Memorandus, case supplemental Reports, Reports General Offense, crime scene photos, witness statements, photo line ups both in person and photos Array's, General progress Reports, Inventory slips, Notes, Memoranda chicago police Dpt street Files, Investigative Alerts, Evidence technician Reports, Laboratory, Hospital Records DNA test, Warrant or probable cause report, waived Miranda Rights, Narratives, transcripts two Interviews 6-19-2017 and 6-20-2017. All photos case Filed, Juan Alvarado Gonzalez Birth 5-10-1989, Case Number: 17 CR 1062301 Date Arrest 6-19-2017, I support my request Apellate Court Order in: Arnold Day v. City of Chicago 388 Ill App 3d 70 902 NE2d1144(2009) I know under FOIA LAW your office only have 5 Business Day to respond to my request or Ask for one extension*
>
> A true and accurate copy is attached as ATTACHMENT 1.

10. At the time I was notified of this lawsuit, I was in the process of gathering and reviewing records to produce to Mr. Gonzalez. To locate responsive records, I consulted CPD's Mainframe system to determine the Records Division number (RD #) associated with Mr. Gonzalez's criminal case. The RD # refers to the unique identifier for a matter/investigation. Records about those matters contain the RD #. I determined that the RD # for Mr. Gonzalez's criminal case to be JA-175329.

11. I consulted the Photo Lab at CPD's Forensic Services Division to obtain photographs from JA-175329. The Photo Lab advised me it has no such records.

12. I also consulted CPD's inventory records for JA-175329 in its Mainframe system. Items for JA-175329 were inventoried under 13942156, and were turned over to the State's Attorney. I confirmed with CPD's Evidence Recovery and Property Section that CPD no longer possesses these items. I gathered the court order transferring the items, and the chain of custody report for 13942156, to produce to Mr. Gonzalez.

13. For the remaining records sought in Mr. Gonzalez's request, I consulted the Bureau of Detectives (BOD) to obtaining the investigative file for JA-175329. The investigative file contains CPD's records of its investigation for an RD #.

14. BOD returned a 68-page file containing general progress reports, the original case incident report, supplementary reports, interview photographs, arrest report, criminal history, felony minutes, criminal charges, documentation pertinent to preservation requests, complaint for and order issuing search warrant, child abuse hotline notifications, intake summaries, and interview sign-in sheets.

15. The Investigative File Inventory for RD # JA-175329 indicates that CPD's investigation did not include investigative alerts, arrest warrants, nor biological samples. A true and accurate copy of the Investigative File Inventory is attached as ATTACHMENT 2.

16. I forwarded the items I gathered for RD # JA-175329 to the Department of Law.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT.

By: Patricia Little
Patricia Little
FOIA Officer, Chicago Police Department

INVESTIGATIVE FILE INVENTORY
CHICAGO POLICE DEPARTMENT

Circle: VFL SPANISH CODIS IA

SIU# 17-329

RD NO. JA 175329

EXHIBIT	DESCRIPTION OF DOCUMENT	MDR	ENTERING MEMBER	DATE OF ENTRY
1.	HOTLINE	1	Rodriguez 20960	10 Aug 17
2.	GOCR	3		
3.	DISTRICT REPORTS	0		
4	CAC INTAKE DOCUMENTS	2		
5.	FI SIGN IN SHEET	2		
6	GPRS	10		
7.	PHOTO ARRAY/LINEUP ADVISORY FORM			
8.	PHOTO ARRAY			
9.	PHOTO IDENTIFICATION	3	Rodriguez 20960	10 Aug 17
10	ARREST REPORT	5		
11.	COMPLAINTS AND/OR FELONY 101	3		
12.	PROBABLE CAUSE STATEMENT FOR JUDICIAL DETERMINATION	0		
13.	CRIMINAL HISTORY SHEET Leads	4		
14.	HANDWRITTEN STATEMENTS	Ø		
15	E-TRACK INVENTORY LIST REPORT	1		
16	CONSENT TO COLLECT BIOLOGICAL SAMPLES	Ø		
17.	CONSENT TO SEARCH	Ø		
18.	CSA SUBMISSION FORM & CSA CERTIFICATION FORM	Ø		
19.	~~ISP LAB REPORTS~~ Preservation Facebook	~~Ø~~ 1		
20.	SUPPLEMENTARY REPORTS Closing	10		
21.	MEDICAL RECORDS	Ø		
22.	SEARCH WARRANT	17		
23	ARREST WARRANT	Ø		
24	INVESTIGATIVE ALERT	Ø		
25.	RCFL REPORTS	Ø		

RD NO. JA 175329

MDR: denotes Miscellaneous Document Repository. A check (V) will be placed in this box if a document has been placed in the MDR.

DISTRIBUTION: The original of this document is to remain attached to the Investigative File Case Folder. One copy of this document will be forwarded to the Records Division in the following three instances: (1) all homicide investigations; (2) cases in which a Detective is assigned, an offender is arrested and felony charges have been approved; (3) cases in which a Detective is assigned and a felony warrant has been issued.

CPD-23.121 (REV. 9/89)
COMPLETE SECOND PAGE WHEN NECESSARY

ATTACHMENT 2

Chicago Police Department - ARREST Report

CB #: 19496694

ALVARADO-GONZALEZ, Juan

ARREST REPORTING

ARRESTEE VEHICLE

NO ARRESTEE VEHICLE INFORMATION ENTERED

PROPERTIES

Confiscated Properties :

All confiscated properties are recorded in the e-Track System. This system can be queried by the inventory number to retrieve all official court documents related to evidence and/or recovered properties.

PROPERTIES INFORMATION FOR ALVARADO-GONZALEZ, Juan, NOT AVAILABLE IN THE AUTOMATED ARREST SYSTEM.

INCIDENT NARRATIVE

(The facts for probable cause to arrest AND to substantiate the charges include, but are not limited to, the following)

THIS IS A FAU FUGITIVE APPREHENSION UNIT/G.L.R.F.T.F. ARREST BY BEAT 5774/5773. A/O'S HAD KNOWLEDGE SUBJECT(GONZALEZ, JUAN LEONARDO) WAS WANTED FOR PREDATORY CRIMINAL SEXUAL ASSAULT UNDER RD# JA175329/JA194217. ABOVE ARRESTED IN THAT HE IS THE NAMED OFFENDER THAT WAS OVER 17 YRS OF AGE WHEN HE PLACED [redacted] OF TWO MINORS, ONE THAT WAS UNDER 17YRS OF AGE AND ONE THAT WAS UNDER 13 YRS OF AGE. ABOVE OFFENDER ALSO SHOWED A THIRD VICTIM THAT WAS UNDER 13YRS AGE PORNOGRAPHY. A/O'S RELOCATED TO 2634 N CENTRAL PARK AVE, ARRESTEE APPROACHED A/O'S ASKING IF WE WERE LOOKING FOR HIM. A/O'S ASKED SUBJECT'S NAME, HE REPLIED TO A/O'S HE WAS JUAN GONZALEZ. A/O'S PLACED SUBJECT IN CUSTODY AT ADDRESS OF ARREST. SUBJECT WAS TRANSPORTED TO THE 011TH DISTRICT FOR PROCESSING. NO G.I.P.P./GANG AFFILIATION. NO OTHER WANTS OR WARRANTS. DETECTIVE REYES #20969 NOTIFIED FOR FURTHER INVESTIGATION.

SEE WC COMMENTS SECTION FOR ADDITIONAL COMMENTS

COURT INFO

Desired Court Date:

Branch:

Court Sgt Handle? Yes

Initial Court Date: 21 June 2017

Branch: 66 2600 S CALIFORNIA - Room101

Docket #:

BOND INFO

BOND INFORMATION NOT AVAILABLE

REPORTING PERSONNEL

ATTESTING OFFICER:

I hereby declare and affirm, under penalty of perjury, that the facts stated herein are accurate to the best of my knowledge, information and/or belief.

Attesting Officer: #15739 LOPEZ, J [redacted] 19 JUN 2017 18:02

ARRESTING OFFICER(S):

			Beat
1st Arresting Officer:	#15739	LOPEZ, J [redacted]	5774
2nd Arresting Officer:	#11075	DELVALLE, R A [redacted]	5773

APPROVING SUPERVISOR:

Approval of Probable Cause : #236 SHOSHI, L M [redacted] 19 JUN 2017 18:08

Exhibit #B

Illinois Department of
DCFS
Children & Family Services

JB Pritzker
Governor

Marc D. Smith
Acting Director

January 22, 2020

Juan Alvarado Gonzalez Y26876
Pinckneyville Correction Center
5835 State Route 154
Pinckneyville, IL 62274

RE: SCR# 2293414A

Dear Juan Alvarado Gonzalez Y26876:

We have received your letter in which you are requesting a copy of the Unfounded case(s) involving your child(ren).

The materials you request are located in our Cook Field Office. I have forwarded your request to the appropriate Child Protection Supervisor so that they may provide you with a copy of the investigative file. Further inquiries regarding this request may be directed to Denyce Ellis at 312-492-3700 one week later from the above date.

Please contact this office at the address listed below if we can be of any further assistance.

Sincerely,

Gayle Hopper

Gayle Hopper
Administrator
State Central Register

Cc: DCP Supervisor, Region 6A12

GH/mj/102a

State Central Register
406 E. Monroe Street, Sta. 30 • Springfield, Illinois 62701
217-785-4010
www.DCFS.illinois.gov

12

Supervisory Note

Investigation Name:	Gonzalez, Juan
Investigation ID:	2293414A
Contact Date/Time:	03/22/2017 11:35 AM
Contact Type:	In Person
Worker Contacted:	DIAZ, ANGELY
Worker ID:	[redacted]
Supervisor:	ELLIS, DENYCE
Sub-Category:	Supervisory Consultation
Created By Worker:	ELLIS, DENYCE
Created Date/Time:	03/22/2017 12:09 PM

Initially it was reported to the child abuse hotline, an eleven year old male had been sexually abused by a family friend. The alleged victim had a Forensic Interview and denied anyone had touched him inappropriately. Review the report Review prior indicated and unfounded investigations. Complete LEADS, CANTS and Data checks on all household members 13 and older. Contact the reporter for additional information In-person examination of the child victim's environment. Interview all members of the household. Complete Home Safety Checklist Complete the Domestic Violence Screen, if history of Domestic Violence make a clinical referral. (CFS 399-6) Complete the Substance abuse Screen document after completion Contact PSA for any Critical decisions. Document well-being checks every 30 days while the investigation is pending. Document all investigative activities within 48-hours after they are completed.

B 2