

SUPREME COURT OF ILLINOIS

WEDNESDAY, JANUARY 26, 2022

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

126057 - Jamal Shehadeh, petitioner, v. Sheriff Michael Downey, respondent.  
Leave to appeal, Appellate Court, Third District. 3-17-0158  
Petition for Leave to Appeal Denied.

127102 - People State of Illinois, petitioner, v. Philip Johnson, respondent.  
Leave to appeal, Appellate Court, Third District. 3-18-0357  
Petition for Leave to Appeal Denied.

In the exercise of this Court's supervisory authority, the Appellate Court, Third District, is directed to vacate its judgment in People v. Johnson, case No. 3-18-0357 (02/26/21). The appellate court is directed to consider the effect of this Court's opinion in People v. Jones, 2021 IL 126432, on the issue of whether defendant's sentence violates the eighth amendment of the United States Constitution and determine if a different result is warranted.

Carter, J. took no part.

127220 - People State of Illinois, respondent, v. Jesse R. Perez, petitioner.  
Leave to appeal, Appellate Court, Third District. 3-19-0101  
Petition for Leave to Appeal Denied.

Carter, J. took no part.

127225 - People State of Illinois, respondent, v. Alonzo Bell, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0366  
Petition for Leave to Appeal Denied.

127257 - Janet Bedin, petitioner, v. Northwestern Memorial Hospital, respondent.  
Leave to appeal, Appellate Court, First District. 1-19-0723  
Petition for Leave to Appeal Denied.

- 127407 - Doris Martinez, Special Adm'r, etc., petitioner, v. Holly M. Loud, etc., et al., respondents. Leave to appeal, Appellate Court, Second District. 2-20-0414  
Petition for Leave to Appeal Denied.
- 127431 - People State of Illinois, respondent, v. Deandre Brown, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0368  
Petition for Leave to Appeal Denied.
- 127441 - Frances Endencia, petitioner, v. Adtalem Global Education, Inc., et al., respondents. Leave to appeal, Appellate Court, Second District. 2-20-0378  
Petition for Appeal as a Matter of Right Denied.  
  
Michael J. Burke, J. took no part.
- 127480 - Latonia Mallett, petitioner, v. The Human Rights Commission et al., respondents. Leave to appeal, Appellate Court, First District. 1-19-2397  
Petition for Leave to Appeal Denied.
- 127541 - People State of Illinois, respondent, v. Rondale Parker, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0823  
Petition for Leave to Appeal Denied.
- 127577 - People State of Illinois, respondent, v. Ryan H.J. O'Neal, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0014  
Petition for Leave to Appeal Denied.
- 127590 - Metropolitan Water Reclamation District of Greater Chicago, respondent, v. Copperfields, Inc., et al., etc. (Zafar Sheikh, petitioner). Leave to appeal, Appellate Court, First District. 1-21-0056  
Petition for Leave to Appeal Denied.
- 127654 - People State of Illinois, petitioner, v. Maurice Andrew Davis, respondent. Leave to appeal, Appellate Court, Third District. 3-18-0146  
Petition for Leave to Appeal Denied.

- 127666 - People State of Illinois, petitioner, v. Michael Wilson, respondent. Leave to appeal, Appellate Court, Third District. 3-20-0181  
Petition for Leave to Appeal Allowed.
  
- 127706 - People State of Illinois, respondent, v. Patrick Williams, petitioner. Leave to appeal, Appellate Court, Second District. 2-20-0332  
Petition for Leave to Appeal Denied.
  
- 127710 - Ed Smith, etc., respondent, v. Miomed Orthopaedics, Inc., petitioner. Leave to appeal, Appellate Court, First District. 1-18-2148, 1-18-2423  
Petition for Leave to Appeal Denied.
  
- 127712 - Ayesha Chaudhary, respondent, v. The Department of Human Services et al., etc., petitioners. Leave to appeal, Appellate Court, Second District. 2-20-0364  
Petition for Leave to Appeal Allowed.
  
- 127725 - David L. Mackel, petitioner, v. Greg Scott, etc., respondent. Leave to appeal, Appellate Court, Fifth District. 5-19-0316  
Petition for Leave to Appeal Denied.
  
- 127730 - The Bank of New York Mellon Corporation etc., respondent, v. Farhat Akhter etc., et al., petitioners. Leave to appeal, Appellate Court, First District. 1-20-0157, 1-20-0158  
Petition for Leave to Appeal Denied.
  
- 127732 - People State of Illinois, respondent, v. Samuel Sauls, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0667  
Petition for Leave to Appeal Allowed.
  
- 127734 - People State of Illinois, respondent, v. Michelle R. Dawes, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0506  
Petition for Leave to Appeal Denied.
  
- 127735 - Jean Ann Downey, etc., respondent, v. Downey+Rippe, LLC, et al., petitioners. Leave to appeal, Appellate Court, Second District. 2-20-0572  
Petition for Leave to Appeal Denied.

- 127736 - People State of Illinois, respondent, v. Marchello DeShawn Johnson, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0770  
Petition for Leave to Appeal Denied.
- 127737 - People State of Illinois, respondent, v. Robert D. May Jr., petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0893  
Petition for Leave to Appeal Denied.
- 127739 - People State of Illinois, respondent, v. Gabriel Reeves, petitioner. Leave to appeal, Appellate Court, First District. 1-17-0978  
Petition for Leave to Appeal Denied.
- 127740 - People State of Illinois, respondent, v. Jovan Williams, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2302  
Petition for Leave to Appeal Denied.
- 127741 - Gabriela Flores, respondent, v. Luxury Motors Credit, Inc., et al., petitioners. Leave to appeal, Appellate Court, First District. 1-20-0974  
Petition for Leave to Appeal Denied.
- 127742 - Robert Antonson, petitioner, v. The Department of Human Services et al., etc., respondents. Leave to appeal, Appellate Court, First District. 1-19-2492  
Petition for Leave to Appeal Denied.
- 127743 - John Colt Landreth, petitioner, v. Myers, Berry, O'Connor & Kuzma, Ltd., et al., respondents. Leave to appeal, Appellate Court, Third District. 3-19-0607  
Petition for Leave to Appeal Denied.
- Carter, J. took no part.
- 127744 - Lawrence S. Kirsch, petitioner, v. MNJ Technologies Direct, Inc., etc., et al., respondents. Leave to appeal, Appellate Court, First District. 1-20-0953  
Petition for Leave to Appeal Denied.

- 127745 - People State of Illinois, respondent, v. Edward Wallace, petitioner.  
Leave to appeal, Appellate Court, First District. 1-19-1089  
Petition for Leave to Appeal Denied.
- 127746 - People State of Illinois, respondent, v. Cortez Phyfiher, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0634  
Petition for Leave to Appeal Denied.
- 127748 - Rodrick S. Studer, respondent, v. Central Illinois Scale Company,  
petitioner. Leave to appeal, Appellate Court, Third District. 3-20-0277  
Petition for Leave to Appeal Denied.
- 127749 - Amy Giacomo et al., petitioners, v. Debra Carson, M.D., et al.,  
respondents. Leave to appeal, Appellate Court, Fifth District. 5-21-0040  
Petition for Leave to Appeal Denied.
- 127751 - People State of Illinois, respondent, v. Mary Cook-Williams, petitioner.  
Leave to appeal, Appellate Court, First District. 1-20-0048  
Petition for Leave to Appeal Denied.
- 127752 - Marie Patton, petitioner, v. Christian Biswell, respondent. Leave to  
appeal, Appellate Court, Fourth District. 4-20-0187  
Petition for Leave to Appeal Denied.
- 127753 - People State of Illinois, respondent, v. Jorge Diaz, petitioner. Leave to  
appeal, Appellate Court, Second District. 2-19-1040  
Petition for Leave to Appeal Denied.
- Michael J. Burke, J. took no part.
- 127755 - People State of Illinois, respondent, v. Thomas A. Boitnott, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0398  
Petition for Leave to Appeal Denied.
- 127756 - People State of Illinois, respondent, v. Joe Thompson, petitioner. Leave  
to appeal, Appellate Court, First District. 1-19-0896  
Petition for Leave to Appeal Denied.

- 127757 - People State of Illinois, respondent, v. Robert J. Libricz, petitioner.  
Leave to appeal, Appellate Court, Second District. 2-19-0329, 2-19-0452  
Petition for Leave to Appeal Allowed.
- 127758 - Patricia Marinaro, respondent, v. Lucas Pettit et al., etc., petitioners.  
Leave to appeal, Appellate Court, First District. 1-20-1083  
Petition for Leave to Appeal Denied.
- 127759 - James Delegatto, Indv., etc., petitioner, v. Advocate Health and Hospitals, etc., et al. (Silver Cross Hospital and Medical Center, respondent). Leave to appeal, Appellate Court, First District. 1-20-0484  
Petition for Leave to Appeal Denied.
- 127762 - People State of Illinois, respondent, v. Stephane Edouard, petitioner.  
Leave to appeal, Appellate Court, First District. 1-18-0494  
Petition for Leave to Appeal Denied.
- 127764 - In re Marriage of Robbyn C. Brown, petitioner, and Kirk H. Brown, respondent. Leave to appeal, Appellate Court, Fifth District. 5-20-0007  
Petition for Leave to Appeal Denied.
- 127765 - People State of Illinois, respondent, v. Kristopher Horton, petitioner.  
Leave to appeal, Appellate Court, First District. 1-19-1846  
Petition for Leave to Appeal Denied.
- Neville, J. took no part.
- 127766 - People State of Illinois, respondent, v. David M. Brocksom, petitioner.  
Leave to appeal, Appellate Court, Second District. 2-19-1098  
Petition for Leave to Appeal Denied.
- 127767 - People State of Illinois, respondent, v. Bobby Tatum, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0206  
Petition for Leave to Appeal Denied.

127768 - People State of Illinois, respondent, v. Ricardo Rodriguez, petitioner.  
Leave to appeal, Appellate Court, First District. 1-20-0173  
Petition for Leave to Appeal Denied.

Neville, J., joined by Carter, J., dissenting from the court's  
denial of the petition for leave to appeal.  
Dissent attached.

Anne M. Burke, C.J. took no part.

127770 - People State of Illinois, respondent, v. Jesus Hernandez, petitioner.  
Leave to appeal, Appellate Court, Second District. 2-19-0566  
Petition for Leave to Appeal Denied.

127771 - People State of Illinois, respondent, v. Alfredo Ramos, petitioner. Leave  
to appeal, Appellate Court, First District. 1-19-0894  
Petition for Leave to Appeal Denied.

127772 - People State of Illinois, respondent, v. Davontae D. Dye, petitioner.  
Leave to appeal, Appellate Court, Third District. 3-18-0503  
Petition for Leave to Appeal Denied.

127773 - Juan Moore, respondent, v. LG Chem, Ltd., petitioner. Leave to appeal,  
Appellate Court, First District. 1-21-0951  
Petition for Leave to Appeal Denied.

127775 - Old Republic Insurance Company, respondent, v. Pro-Agr, Inc. et al.,  
petitioners. Leave to appeal, Appellate Court, Fourth District. 4-20-  
0340, 4-20-0365  
Petition for Leave to Appeal Denied.

127779 - Thaddeus Joseph Beaulieu, petitioner, v. Insight Global, LLC, et al.,  
respondents. Leave to appeal, Appellate Court, Second District. 2-20-  
0567  
Petition for Leave to Appeal Denied.

127780 - People State of Illinois, petitioner, v. Eric M. Galarza, respondent.  
Leave to appeal, Appellate Court, Second District. 2-21-0019  
Petition for Leave to Appeal Denied.

- 127781 - Cristy Cawthon, petitioner, v. Illinois Human Rights Commission et al., respondents. Leave to appeal, Appellate Court, Fifth District. 5-20-0212  
Petition for Leave to Appeal Denied.
  
- 127784 - People State of Illinois, respondent, v. Carnell Jackson, petitioner. Leave to appeal, Appellate Court, First District. 1-20-1065  
Petition for Leave to Appeal Denied.
  
- 127785 - Marshal P. Morris, petitioner, v. Erin Cartwright Weinstein, etc., et al., respondents. Leave to appeal, Appellate Court, Second District. 2-20-0512  
Petition for Leave to Appeal Denied.
  
- 127786 - People State of Illinois, respondent, v. Randolph Mays, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1102  
Petition for Leave to Appeal Denied.
  
- 127788 - People State of Illinois, respondent, v. Kyle J. Lergner, petitioner. Leave to appeal, Appellate Court, Third District. 3-19-0715  
Petition for Leave to Appeal Denied.
  
- 127789 - People State of Illinois, petitioner, v. Ernesto Urzua, respondent. Leave to appeal, Appellate Court, Second District. 2-20-0231  
Petition for Leave to Appeal Allowed.
  
- 127790 - People State of Illinois, respondent, v. Brian A. Thompson, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-18-0830  
Petition for Leave to Appeal Denied.
  
- 127792 - People State of Illinois, respondent, v. Roscoe Hollie, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2220  
Petition for Leave to Appeal Denied.
  
- 127793 - In re Marriage of Juli L. Keller, petitioner, and Gary R. Keller, respondent. Leave to appeal, Appellate Court, First District. 1-20-0739  
Petition for Leave to Appeal Denied.

- 127794 - People State of Illinois, respondent, v. Caroline Woods, petitioner.  
Leave to appeal, Appellate Court, First District. 1-19-0493  
Petition for Leave to Appeal Allowed.
  
- 127795 - People State of Illinois, respondent, v. Charles A. Flynn, petitioner.  
leave to appeal, Appellate Court, Fourth District. 4-20-0172  
Petition for Leave to Appeal Denied.
  
- 127796 - U.S. Bank Trust National Association, etc., respondent, v. Richard J. Zofkie et al., petitioners. Leave to appeal, Appellate Court, First District. 1-20-1232  
Petition for Appeal as a Matter of Right or, in the alternative, Petition for Leave to Appeal Denied.
  
- 127797 - People State of Illinois, respondent, v. Keith McGrew, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0213  
Petition for Leave to Appeal Denied.
  
- 127799 - People State of Illinois, respondent, v. Dustin L. Nunamaker, petitioner. Leave to appeal, Appellate Court, Fifth District. 5-19-0259  
Petition for Leave to Appeal Denied.
  
- 127801 - Jorome Tims et al., etc., respondents, v. Black Horse Carriers, Inc., petitioner. Leave to appeal, Appellate Court, First District. 1-20-0563  
Petition for Leave to Appeal Allowed.
  
- 127802 - In re Application of the County Treasurer and Ex Officio County Collector of Cook County, Illinois, etc. (Bradley L. Freas, petitioner, v. Wheeler Financial Inc., respondent). Leave to appeal, Appellate Court, First District. 1-19-2386, 1-20-0393  
Petition for Leave to Appeal Denied.
  
- 127803 - People State of Illinois, respondent, v. Ramon Delgado, petitioner. Leave to appeal, Appellate Court, First District. 1-18-2285  
Petition for Leave to Appeal Denied.
  
- 127805 - People State of Illinois, respondent, v. Trumane Tompkins, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0693  
Petition for Leave to Appeal Allowed.

- 127807 - People State of Illinois, respondent, v. DMarlo Quartez Bryant, petitioner. Leave to appeal, Appellate Court, Third District. 3-19-0530  
Petition for Leave to Appeal Denied.
- 127809 - People State of Illinois, respondent, v. Chavez K. Saulsberry, petitioner. Leave to appeal, Appellate Court, Second District. 2-18-1027  
Petition for Leave to Appeal Denied.
- 127810 - People State of Illinois, respondent, v. Teranza Jones, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0751  
Petition for Leave to Appeal Allowed.
- 127811 - People State of Illinois, petitioner, v. Paxton Dale Singer, respondent. Leave to appeal, Appellate Court, Second District. 2-20-0314  
Petition for Leave to Appeal Denied.
- Michael J. Burke, J. took no part.
- 127812 - People State of Illinois, respondent, v. Ayisha Ali, petitioner. Leave to appeal, Appellate Court, First District. 1-17-2414  
Petition for Leave to Appeal Denied.
- 127814 - People State of Illinois, respondent, v. Stephen L. Brown, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0286  
Petition for Leave to Appeal Denied.
- 127818 - People State of Illinois, respondent, v. Derrick Lee, petitioner. Leave to appeal, Appellate Court, First District. 1-18-2086  
Petition for Leave to Appeal Denied.
- 127819 - First Financial Investment Fund III, LLC, petitioner, v. Theresa Johnson, respondent. Leave to appeal, Appellate Court, Fifth District. 5-19-0410  
Petition for Leave to Appeal Denied.

- 127820 - Midwest Masonry, Inc., petitioner, v. Central Irrigation Supply, Inc., respondent. Leave to appeal, Appellate Court, Second District. 2-20-0604  
Petition for Leave to Appeal Denied.  
Michael J. Burke, J. took no part.
- 127821 - People State of Illinois, respondent, v. Mark Jones, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0533  
Petition for Leave to Appeal Denied.
- 127823 - People State of Illinois, respondent, v. Raul Martinez, petitioner. Leave to appeal, Appellate Court, First District. 1-18-2553  
Petition for Leave to Appeal Denied.
- 127824 - People State of Illinois, respondent, v. Laura A. Epstein, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-1059  
Petition for Leave to Appeal Allowed.
- 127827 - People State of Illinois, respondent, v. Donnte Kindle, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0484  
Petition for Leave to Appeal Denied.
- 127828 - People State of Illinois, respondent, v. Shaquille P. Prince, petitioner. Leave to appeal, Appellate Court, Third District. 3-19-0440  
Petition for Leave to Appeal Allowed.
- 127829 - Kwang Ja Lee, respondent, v. Seong Gu Cho, petitioner. Leave to appeal, Appellate Court, First District. 1-21-0971  
Petition for Leave to Appeal Denied.
- 127830 - Casey Galloway, respondent, v. Illinois Central Railroad Company, petitioner. Leave to appeal, Appellate Court, First District. 1-20-1198  
Petition for Leave to Appeal Denied.
- 127832 - People State of Illinois, respondent, v. Cordell L. Irons, petitioner. Leave to appeal, Appellate Court, Third District. 3-19-0372  
Petition for Leave to Appeal Denied.

- 127833 - People State of Illinois, respondent, v. Mark A. Winger, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0599  
Petition for Leave to Appeal Denied.
  
- 127834 - People State of Illinois, respondent, v. Marquis Ceazer, petitioner.  
Leave to appeal, Appellate Court, First District. 1-18-1464  
Petition for Leave to Appeal Denied.
  
- 127835 - People State of Illinois, respondent, v. Britany Watson, petitioner.  
Leave to appeal, Appellate Court, First District. 1-18-0034  
Petition for Leave to Appeal Denied.
  
- 127837 - John W. Givens et al., etc., respondents, v. The City of Chicago,  
petitioner. Leave to appeal, Appellate Court, First District. 1-19-2434, 1-  
19-2457  
Petition for Leave to Appeal Allowed.
  
- 127839 - People State of Illinois, respondent, v. Paris McGee, petitioner. Leave  
to appeal, Appellate Court, First District. 1-19-0362  
Petition for Leave to Appeal Denied.
  
- 127840 - People State of Illinois, respondent, v. Terrell Randall, petitioner. Leave  
to appeal, Appellate Court, First District. 1-19-1194  
Petition for Leave to Appeal Denied.
  
- 127842 - Lynn Fazekas, Indv., etc., petitioner, v. The City of DeKalb, respondent.  
Leave to appeal, Appellate Court, Second District. 2-20-0692  
Petition for Leave to Appeal Denied.
  
- 127844 - People State of Illinois, respondent, v. Thomas Lindsey, petitioner.  
Leave to appeal, Appellate Court, First District. 1-19-2208  
Petition for Leave to Appeal Denied.
  
- 127847 - Brittanie M. Hayes, respondent, v. Bradley M. Arthur, petitioner. Leave  
to appeal, Appellate Court, First District. 1-21-0359  
Petition for Leave to Appeal Denied.

- 127848 - People State of Illinois, respondent, v. Giovanni Garcia, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2576  
Petition for Leave to Appeal Denied.
- Anne M. Burke, C.J. took no part.
- 127849 - People State of Illinois, respondent, v. Marell Carter, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1158  
Petition for Leave to Appeal Denied.
- 127850 - RLI Insurance Company, petitioner, v. Thomas Engineering Group, LLC, et al., respondents. Leave to appeal, Appellate Court, First District. 1-19-1950, 1-19-1963, 1-19-1987  
Petition for Leave to Appeal Denied.
- 127851 - People State of Illinois, respondent, v. Christopher Doehring, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0420  
Petition for Leave to Appeal Denied.
- 127852 - William Malloy, Indv., etc., respondent, v. DuPage Gynecology, S.C., etc., et al., petitioners. Leave to appeal, Appellate Court, First District. 1-19-2102  
Petition for Leave to Appeal Denied.
- 127854 - People State of Illinois, respondent, v. Ryan J. Heineman, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0689  
Petition for Leave to Appeal Allowed.
- 127855 - Toya Banks, respondent, v. Advocate Health and Hospitals Corporation, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1728  
Petition for Leave to Appeal Denied.
- 127856 - Andy Ambrosius et al., petitioners, v. Chicago Athletic Clubs, LLC, et al., respondents. Leave to appeal, Appellate Court, First District. 1-20-0893  
Petition for Leave to Appeal Denied.

- 127857 - People State of Illinois, respondent, v. Joshua Hoskins, petitioner.  
Leave to appeal, Appellate Court, First District. 1-19-1368  
Petition for Leave to Appeal Denied.
- 127860 - People State of Illinois, respondent, v. Kenneth W. Ohler, petitioner.  
Leave to appeal, Appellate Court, Third District. 3-18-0248  
Petition for Leave to Appeal Denied.
- 127861 - People State of Illinois, respondent, v. Derrell Miseen Hibbler,  
petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0022  
Petition for Leave to Appeal Denied.
- 127862 - Richard Allen, etc., respondent, v. Richard H. Wikiera DO, et al., etc.  
(Missouri Baptist Medical Center, petitioner). Leave to appeal,  
Appellate Court, Fifth District. 5-21-0263  
Petition for Leave to Appeal Denied.

In the exercise of this Court's supervisory authority, the Appellate Court, Fifth District, is directed to vacate its order in Allen v. Missouri Baptist Medical Center, case No. 5-21-0263 (10/07/21), denying the Rule 306(a)(3) petition for leave to appeal. The appellate court is directed to allow the petition for leave to appeal.

- 127863 - People State of Illinois, respondent, v. LaTrey C. Ferguson, petitioner.  
Leave to appeal, Appellate Court, Third District. 3-20-0041  
Petition for Leave to Appeal Denied.
- 127864 - In re Marriage of Lloyd Sowell, Jr., respondent, and Sharon F. Sowell,  
petitioner. Leave to appeal, Appellate Court, First District. 1-19-2607  
Petition for Leave to Appeal Denied.

Anne M. Burke, C.J., joined by Carter, J., dissenting from the court's denial of the petition for leave to appeal.  
Dissent attached.

Neville, J. took no part.

- 127865 - Clifford Jerman et al., petitioners, v. Woolsey Operating Company, LLC, et al., respondents. Leave to appeal, Appellate Court, Fifth District. 5-21-0007  
Petition for Leave to Appeal Denied.
- 127867 - People State of Illinois, respondent, v. Bobby Selvie, petitioner. Leave to appeal, Appellate Court, First District. 1-18-2159  
Petition for Leave to Appeal Denied.  
  
Neville, J. took no part.
- 127868 - People State of Illinois, respondent, v. Joseph Fox, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0569  
Petition for Leave to Appeal Denied.
- 127869 - People State of Illinois, respondent, v. Arthur Chaney, petitioner. Leave to appeal, Appellate Court, First District. 1-16-3033  
Petition for Leave to Appeal Denied.
- 127870 - People State of Illinois, respondent, v. Paul K. Barksdale, petitioner. Leave to appeal, Appellate Court, Second District. 2-18-0977  
Petition for Leave to Appeal Denied.
- 127871 - People State of Illinois, respondent, v. Pablo Vega, petitioner. Leave to appeal, Appellate Court, First District. 1-18-1931  
Petition for Leave to Appeal Denied.
- 127874 - People State of Illinois, respondent, v. Jayme Dordies, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2468  
Petition for Leave to Appeal Denied.
- 127876 - Robert Popovich, petitioner, v. Izat Hasounah, respondent. Leave to appeal, Appellate Court, First District. 1-20-0263  
Petition for Leave to Appeal Denied.
- 127877 - People State of Illinois, respondent, v. Andre Tyson, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1500  
Petition for Leave to Appeal Denied.

- 127878 - People State of Illinois, respondent, v. Frank James Jefferson III, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0179  
Petition for Leave to Appeal Denied.
- 127879 - People State of Illinois, respondent, v. David Alexander, petitioner. Leave to appeal, Appellate Court, Third District. 3-19-0767  
Petition for Leave to Appeal Denied.
- 127880 - People State of Illinois, respondent, v. David Vida, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1933  
Petition for Leave to Appeal Denied.
- 127881 - People State of Illinois, respondent, v. Louis Rhodes, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0681  
Petition for Leave to Appeal Denied.
- 127883 - People State of Illinois, respondent, v. Brian E. Pruitt, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0598  
Petition for Leave to Appeal Denied.
- 127884 - People State of Illinois, respondent, v. Curtis Carr, petitioner. Leave to appeal, Appellate Court, Fifth District. 5-18-0387  
Petition for Leave to Appeal Denied.
- 127885 - People State of Illinois, respondent, v. Charles T. Allen, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0333  
Petition for Leave to Appeal Denied.
- 127886 - Keith O. Anglin, Indv., etc., respondent, v. The Carle Foundation Hospital et al., etc., petitioners. Leave to appeal, Appellate Court, Fourth District. 4-20-0322  
Petition for Leave to Appeal Denied.
- 127887 - People State of Illinois, respondent, v. Marquest A. Friar, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-1104  
Petition for Leave to Appeal Denied.

- 127889 - People State of Illinois, respondent, v. James Smith, petitioner. Leave to appeal, Appellate Court, First District. 1-18-0550  
Petition for Leave to Appeal Denied.
  
- 127890 - People State of Illinois, respondent, v. Maurice Donald, petitioner. Leave to appeal, Appellate Court, First District. 1-20-0931  
Petition for Leave to Appeal Denied.
  
- 127891 - James H. Kane, etc., petitioner, v. Option Care Enterprises, Inc., etc., respondent. Leave to appeal, Appellate Court, First District. 1-20-0666  
Petition for Leave to Appeal Denied.
  
- 127892 - People State of Illinois, respondent, v. Ricardo Vasquez, petitioner. Leave to appeal, Appellate Court, First District. 1-20-0092  
Petition for Leave to Appeal Denied.
  
- 127894 - People State of Illinois, respondent, v. Jose Castillo, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-19-0633  
Petition for Leave to Appeal Allowed.
  
- 127895 - People State of Illinois, respondent, v. Keith Nelson, petitioner. Leave to appeal, Appellate Court, First District. 1-20-1265  
Petition for Leave to Appeal Denied.
  
- 127896 - Birgit S. Huffman, respondent, v. Katz, Huntoon and Fieweger, P.C., et al., etc., petitioners. Leave to appeal, Appellate Court, Third District. 3-20-0128  
Petition for Leave to Appeal Denied.
  
- 127897 - People State of Illinois, respondent, v. Willie B. Burnett, Jr., petitioner. Leave to appeal, Appellate Court, Second District. 2-18-0152  
Petition for Leave to Appeal Denied.
  
- 127898 - People State of Illinois, respondent, v. Denzel Devonte Reid, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0537  
Petition for Leave to Appeal Denied.

- 127899 - People State of Illinois, respondent, v. Sherman Gibson, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0128  
Petition for Leave to Appeal Denied.
  
- 127900 - People State of Illinois, respondent, v. Brian V. Bowald, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0693  
Petition for Leave to Appeal Denied.
  
- 127901 - People State of Illinois, respondent, v. Lavert Pitts, petitioner. Leave to  
appeal, Appellate Court, First District. 1-19-2478  
Petition for Leave to Appeal Denied.
  
- 127902 - People State of Illinois, respondent, v. Michael Smith, petitioner. Leave  
to appeal, Appellate Court, First District. 1-20-0107  
Petition for Leave to Appeal Denied.
  
- 127903 - Roger Ivey et al., etc., petitioners, v. Transunion Rental Screening  
Solutions, Inc., respondent. Leave to appeal, Appellate Court, First  
District. 1-20-0894  
Petition for Leave to Appeal Allowed.
  
- 127904 - People State of Illinois, respondent, v. Antonio D. Kidd, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0345  
Petition for Leave to Appeal Allowed.
  
- 127905 - People State of Illinois, respondent, v. Jack Skaggs, petitioner. Leave  
to appeal, Appellate Court, Fourth District. 4-20-0300  
Petition for Leave to Appeal Denied.
  
- 127906 - People State of Illinois, respondent, v. William J. Dugar Jr., petitioner.  
Leave to appeal, Appellate Court, Second District. 2-19-0656  
Petition for Leave to Appeal Denied.
  
- 127907 - People State of Illinois, respondent, v. Latron Y. Cross, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-19-0114  
Petition for Leave to Appeal Allowed.

- 127908 - People State of Illinois, respondent, v. Kendall Omar Gunn, petitioner.  
Leave to appeal, Appellate Court, Fourth District. 4-20-0398  
Petition for Leave to Appeal Denied.
  
- 127909 - People State of Illinois, respondent, v. Michael D. Lymon Jr., petitioner.  
Leave to appeal, Appellate Court, First District. 1-17-3182  
Petition for Leave to Appeal Denied.
  
- 127910 - People State of Illinois, respondent, v. Jose Hernandez-Avendano,  
petitioner. Leave to appeal, Appellate Court, First District. 1-20-0305  
Petition for Leave to Appeal Denied.
  
- 127912 - Quatanya Seals, etc., respondent, v. Rush University Medical Center et  
al. (Walgreen Company, petitioner). Leave to appeal, Appellate Court,  
First District. 1-20-0558  
Petition for Leave to Appeal Denied.
  
- 127913 - Jane Coe, petitioner, v. Community High School District 99 et al.,  
respondents. Leave to appeal, Appellate Court, Second District. 2-21-  
0047  
Petition for Leave to Appeal Denied.
  
- 127914 - People State of Illinois, respondent, v. Sean Hemphill, petitioner.  
Leave to appeal, Appellate Court, Second District. 2-19-0473  
Petition for Leave to Appeal Denied.
  
- 127915 - In re Commitment of Johnnie LaRue (People State of Illinois,  
respondent, v. Johnnie LaRue, petitioner). Leave to appeal, Appellate  
Court, First District. 1-20-0858  
Petition for Leave to Appeal Denied.
  
- 127917 - People State of Illinois, respondent, v. Daniel K. Cleary, petitioner.  
Leave to appeal, Appellate Court, Third District. 3-19-0344  
Petition for Leave to Appeal Denied.
  
- 127918 - People State of Illinois, respondent, v. Richard Leon Gray Jr.,  
petitioner. Leave to appeal, Appellate Court, Third District. 3-20-0360  
Petition for Leave to Appeal Denied.

- 127919 - People State of Illinois, respondent, v. Ventura Mendoza-Cereso, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2191  
Petition for Leave to Appeal Denied.
- 127920 - Donald L. Ropp, Jr., respondent, v. Raymond L. Ropp, etc., petitioner. Leave to appeal, Appellate Court, Third District. 3-20-0196, 3-20-0197, 3-20-0198, 3-20-0199  
Petition for Leave to Appeal Denied.
- Carter, J. took no part.
- 127921 - People State of Illinois, respondent, v. Leroy Sullivan, petitioner. Leave to appeal, Appellate Court, First District. 1-18-2438  
Petition for Leave to Appeal Denied.
- 127923 - Pepper Construction Company, respondent, v. Palmolive Tower Condominiums, LLC, et al., etc. (Bourbon Marble, Inc., petitioner). Leave to appeal, Appellate Court, First District. 1-20-0753  
Petition for Leave to Appeal Denied.
- 127924 - Donald L. Metzger, petitioner, v. Kenn Brotman et al., respondents. Leave to appeal, Appellate Court, First District. 1-20-1218  
Petition for Leave to Appeal Denied.
- 127925 - People State of Illinois, petitioner, v. Roman Foreman, respondent. Leave to appeal, Appellate Court, First District. 1-18-1621  
Petition for Leave to Appeal Denied.
- 127931 - In re Marriage of Nicholas P. Fitz, petitioner, and Maria M. Fitz (Weiler & Lingle, P.C., respondent). Leave to appeal, Appellate Court, Second District. 2-21-0012  
Petition for Leave to Appeal Denied.
- 127933 - People State of Illinois, petitioner, v. Jesus A. LaRosa, respondent. Leave to appeal, Appellate Court, Third District. 3-19-0288  
Petition for Leave to Appeal Denied.

- 127935 - People State of Illinois, respondent, v. David Acevedo, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-0575  
Petition for Leave to Appeal Denied.
- 127936 - People State of Illinois, respondent, v. Lawrence Wallace, petitioner. Leave to appeal, Appellate Court, First District. 1-18-1673  
Petition for Leave to Appeal Denied.
- 127937 - People State of Illinois, respondent, v. Joseph Dixon, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1612  
Petition for Leave to Appeal Denied.
- 127938 - People State of Illinois, respondent, v. Timothy S. Smith, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-1014  
Petition for Leave to Appeal Denied.
- 127941 - People State of Illinois, respondent, v. Willie Hayes, petitioner. Leave to appeal, Appellate Court, First District. 1-17-2417  
Petition for Leave to Appeal Denied.
- 127942 - William "Wes" Johnson, respondent, v. Lucas Armstrong et al., etc. (Sarah Harden et al., etc., petitioners). Leave to appeal, Appellate Court, Fourth District. 4-21-0038  
Petition for Leave to Appeal Allowed.
- This case is consolidated with case No. 127944.
- 127943 - Anne Schlafly Cori, Indv., etc., respondent, v. Andrew Schlafly, Indv., etc., petitioner. Leave to appeal, Appellate Court, Fifth District. 5-21-0146  
Petition for Leave to Appeal Denied.
- 127944 - William "Wes" Johnson, respondent, v. Lucas Armstrong, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-21-0038  
Petition for Leave to Appeal Allowed.

This case is consolidated with case No. 127942.

- 127945 - People State of Illinois, respondent, v. Deonta Noble, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0409  
Petition for Leave to Appeal Denied.
- 127946 - People State of Illinois, respondent, v. Carl Smith Jr., petitioner. Leave to appeal, Appellate Court, Fifth District. 5-19-0066  
Petition for Leave to Appeal Allowed.
- 127949 - Country Mutual Insurance Company, respondent, v. Billy Joe Akers et al. (Karen Joslin, petitioner). Leave to appeal, Appellate Court, Fourth District. 4-21-0219  
Petition for Leave to Appeal Denied.
- 127950 - People State of Illinois, respondent, v. Anthony B. Tucker, petitioner. Leave to appeal, Appellate Court, Fifth District. 5-19-0099  
Petition for Leave to Appeal Denied.
- 127953 - People State of Illinois, respondent, v. Eric Ericson, petitioner. Leave to appeal, Appellate Court, Second District. 2-19-1055  
Petition for Leave to Appeal Denied.
- 127954 - People State of Illinois, respondent, v. Santonio Byars, petitioner. Leave to appeal, Appellate Court, Fourth District. 4-20-0042  
Petition for Leave to Appeal Denied.
- 127956 - People State of Illinois, respondent, v. James Linder, petitioner. Leave to appeal, Appellate Court, Second District. 2-20-0694  
Petition for Leave to Appeal Denied.
- 127957 - People State of Illinois, respondent, v. Kasey Guyton, petitioner. Leave to appeal, Appellate Court, First District. 1-19-1139  
Petition for Leave to Appeal Denied.
- Neville, J. took no part.
- 127958 - People State of Illinois, respondent, v. Andre Davis, petitioner. Leave to appeal, Appellate Court, First District. 1-19-0813  
Petition for Leave to Appeal Denied.

- 127959 - People State of Illinois, petitioner, v. Charles Edward Roach Jr., respondent. Leave to appeal, Appellate Court, Second District. 2-19-0893  
Petition for Leave to Appeal Denied.
- 127960 - In re Marriage of Francine Pearce, respondent, and Rodney Falls, petitioner. Leave to appeal, Appellate Court, First District. 1-20-1185  
Petition for Leave to Appeal Denied.
- 127961 - People State of Illinois, respondent, v. Eddie Mosley, petitioner. Leave to appeal, Appellate Court, First District. 1-19-2045  
Petition for Leave to Appeal Denied.

IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS

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(Docket No. 127768)

THE PEOPLE OF THE STATE OF ILLINOIS, Respondent, v.  
RICARDO RODRIGUEZ, Petitioner.

*Filed January 26, 2022.*

JUSTICE NEVILLE, dissenting:

¶ 1 I have previously disagreed with this court's practice of entering an order that simply denies—with no additional explanation—a petition for leave to appeal where there are not four votes to deny. See, *e.g.*, *People v. Sheldon*, No. 127355 (Ill. Sept. 29, 2021) (denial order); *People v. Brown*, No. 127093 (Ill. Sept. 29, 2021) (same). Because the court has elected to continue this practice and enter such an order in this matter, in spite of the constitution's four-vote rule, I am compelled to voice my disagreement yet again.

¶ 2 As was true in those earlier cases, the order entered by the court in this matter states that the petition for leave to appeal is “denied.” Given that this simple denial expresses no rationale for the ruling, the order purports to represent that the petition does not meet the criteria for discretionary review under Illinois Supreme Court

**FILED**

JAN 26 2022

**SUPREME COURT  
CLERK**

Rule 315 (eff. Oct. 1, 2019) and consequently a majority of the court has voted to deny it on the merits. However, the order entered in this case does not reflect the actual votes cast on this petition. In fact, the votes in this matter are evenly divided. Three justices have voted to allow the petition for leave to appeal, three justices have voted to deny, and one justice is not participating.

¶ 3 Because our constitution requires four concurring votes for a decision (see Ill. Const. 1970, art. VI, § 3), the simple denial order in this case must, at the very least, explain that the four votes necessary to allow the petition have not been achieved.

¶ 4 I cannot agree with the court's practice of entering a simple denial order when a majority of the court has not voted for that disposition. The entry of a denial order based on only three votes is inaccurate and violates the constitutional rule of four votes for a decision.

¶ 5 Moreover, there is no justifiable reason for the court to engage in this practice. For more than four decades, the court has utilized an established procedure—the *Perlman* order—to resolve matters in which a constitutional majority cannot be achieved. See *Perlman v. First National Bank of Chicago*, 60 Ill. 2d 529 (1975) (*per curiam*). A *Perlman* order specifically notes that one or more members of the court are not participating, states that the constitutional majority of four votes cannot be achieved, and dismisses the action. *Id.* at 529-30. This court has applied *Perlman* orders to opinions (see *In re J.M.A.*, 2021 IL 125680 (*per curiam*)), full court motions (see *Chicago Public Media v. Gaughan*, No. 123880 (Ill. Sept. 12, 2018)), and to petitions for rehearing (see *Chultem v. Ticor Title Insurance Co.*, No. 120448 (Ill. Sept. 25, 2017)). In fact, this court also has applied *Perlman* orders to petitions for leave to appeal. See *PHL, Inc. v. Pullman Bank & Trust Co.*, 181 Ill. 2d 575 (1998); *PHL, Inc. v. Pullman Bank & Trust Co.*, 181 Ill. 2d 593 (1999) (denying motion to reconsider dismissal of petition for leave to appeal). Yet, the court has refused to enter a *Perlman* order in this case and also refuses to offer any explanation for that action.

¶ 6 This approach runs counter to the court's core values of accountability and adherence to the rules prescribed in our constitution. Transparency in the reporting of legal decisions is not only important—it is critical. To advance this goal, the court should accurately reflect the resolution of matters that come before it. Here, that can be achieved by entering a *Perlman* order. This is not simply a matter of

internal procedure. Rather, it represents the court's communication of its disposition on the pending petition.

¶ 7 I cannot agree with the court's practice of entering orders that convey inaccurate information to the litigants and the public by failing to identify the evenly divided votes of the court. I believe that a *Perlman* order should be entered in this matter. Because the court has opted not to do so, I respectfully dissent.

¶ 8 JUSTICE CARTER joins in this dissent.

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

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(Docket No. 127864)

*In re* MARRIAGE OF LLOYD SOWELL JR., Respondent, and  
SHARON F. SOWELL, Petitioner.

*Filed January 26, 2022.*

CHIEF JUSTICE ANNE M. BURKE, dissenting:

¶ 1 I have written in the past about this court's practice of entering a straight denial order on a petition for leave to appeal in situations where a majority of this court has not, in fact, voted to deny. See, e.g., *People v. Sheldon*, No. 127355 (Ill. Sept. 29, 2021) (denial order). Unfortunately, the court has again applied this practice here.

¶ 2 When an order of this court states that a petition for leave to appeal has been denied and no further explanation or identification of the court's votes is provided, it indicates to the parties and the public that a majority of the justices of the court have concluded that the petition does not meet the criteria for discretionary review under Illinois Supreme Court Rule 315 (eff. Oct. 1, 2021) and have, therefore, voted

**FILED**

JAN 26 2022

**SUPREME COURT  
CLERK**

to deny the petition. See Ill. Const. 1970, art. VI, § 3 (the concurrence of four justices “is necessary for a decision” of this court). Such a “straight” denial order is a decision on the merits of the petition for leave to appeal.

¶ 3 The order entered by the court in this matter states, without qualification, that the petition for leave to appeal has been “denied”—a straight denial. It would appear, therefore, that at least four justices have determined that the petition for leave to appeal does not merit further review by this court. But this is not, in fact, the case. The votes in this matter are evenly divided. Three justices have voted to deny the petition, three justices have voted to allow, and one justice is not participating. The court has thus denied a petition for leave to appeal on the merits, even though there are not four votes to deny.

¶ 4 The court’s practice of entering a straight denial order when there are not four votes to deny should be ended. Three does not equal four. A straight denial order that is entered on the basis of only three votes to deny is inaccurate and violates the constitutional rule that four votes are necessary for a decision of this court.

¶ 5 Further, there is no need for this practice. The court already has a long-established procedure in place—the *Perlman* order—to address those situations where it is not possible to obtain four votes. See *Perlman v. First National Bank of Chicago*, 60 Ill. 2d 529 (1975). A *Perlman* order notes that one or more members of the court are not participating, states that it is not possible to obtain the concurrence of four votes necessary for a decision, and dismisses the action. *Perlman* orders are applied to cases that have been fully briefed and argued. See, e.g., *In re J.M.A.*, 2021 IL 125680 (*per curiam*). They are applied to full-court motions. See, e.g., *Chicago Public Media v. Gaughan*, No. 123880 (Ill. Sept. 12, 2018). They are applied to petitions for rehearing. See, e.g., *Chultem v. Ticor Title Insurance Co.*, No. 120448 (Ill. Sept. 25, 2017). They have even been applied to petitions for leave to appeal. *PHL, Inc. v. Pullman Bank & Trust Co.*, 181 Ill. 2d 575 (1998); *PHL, Inc. v. Pullman Bank & Trust Co.*, 181 Ill. 2d 593 (1999) (denying motion to reconsider dismissal of PLA). There is no reason why a *Perlman* order should not be entered here.

¶ 6 Moreover, even if there were some reason to continue the practice of entering a denial order in this situation, the court could, at minimum, identify the votes of the court. In this way, the court could accurately inform the public that the votes

are evenly divided and that the denial is not a decision on the merits of the petition for leave to appeal. Yet, the court does not take even this simple step.

¶ 7 To date, no member of the court has offered any defense of the practice of entering a straight denial order when there are not four votes to deny. It should be apparent by now that there is none. The practice continues not for any logical, defensible reason but only because of institutional inertia and a puzzling unwillingness on the part of the court to correct an easily correctable error.

¶ 8 A *Perlman* order should be entered in this matter. Because one is not, I respectfully dissent.

¶ 9 JUSTICE CARTER joins in this dissent.

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (3d) 190344-U

Order filed October 21, 2021

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2021

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Tazewell County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-19-0344
v.	)	Circuit No. 10-CF-205
	)	
DANIEL K. CLEARY,	)	Honorable
	)	Michael D. Risinger,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices O'Brien and Schmidt concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) Defendant failed to make a substantial showing of ineffective assistance of appellate counsel, and (2) the record shows that defendant made a knowing and voluntary waiver of his right to postconviction counsel.
- ¶ 2 Defendant, Daniel K. Cleary, appeals from the third-stage dismissal of his postconviction petition. Defendant argues that: (1) he received ineffective assistance of appellate counsel who failed to raise an issue concerning the Tazewell County circuit court's denial of defendant's motion for a mistrial, and (2) the court deprived defendant of his right to counsel during the third-stage postconviction proceedings. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

At the outset, we note that we have previously described the facts of defendant's trial in his prior appeal. *People v. Cleary*, 2013 IL App (3d) 110610. The facts in this case are limited to those necessary to decide the two postconviction issues presented.

¶ 5

The State charged defendant with five counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)). The charges alleged that defendant killed his wife, MeLisa Cleary, on June 6, 2008. On February 28, 2011, the matter proceeded to a jury trial.

¶ 6

### A. Trial

¶ 7

#### 1. Brandy Gerard

¶ 8

On June 6, 2008, at approximately 1 p.m., Brandy Gerard, MeLisa's sister, spoke with MeLisa on the phone. MeLisa made arrangements to leave her house and meet Gerard at 5:30 p.m. Gerard never saw or heard from MeLisa again. Gerard reported MeLisa missing.

¶ 9

#### 2. Deputy Chris McKinney

¶ 10

Chris McKinney, a deputy with the Tazewell County Sheriff's Department, was dispatched to defendant's residence at 10:40 a.m. on June 7, 2008, following a report that MeLisa was missing. After speaking with several of MeLisa's family members, defendant gave McKinney permission to walk through the residence. While walking through the residence, McKinney looked in the garage and saw defendant scrubbing the floor. Over the course of 30 minutes, McKinney continued to periodically observe defendant scrubbing the garage floor. The spot defendant was scrubbing grew from baseball size to basketball size. Defendant told McKinney that he was cleaning oil that had spilled while changing the oil in MeLisa's vehicle.

¶ 11

### 3. J.C.

¶ 12

J.C., MeLisa and defendant's son, was nine years old at the time of MeLisa's death. On June 7, 2008, J.C. woke at 6 a.m. and found defendant doing laundry. Defendant told J.C. not to go into the garage. Later, J.C. disregarded defendant's direction and opened the door to the garage. J.C. saw defendant scrubbing the floor with a rag and bleach.

¶ 13

### 4. Jean Cahoon

¶ 14

Jean Cahoon, MeLisa's mother, went to defendant's residence on June 7, 2008, after learning that MeLisa was missing. Between 2:30 p.m. and 3 p.m., Cahoon observed defendant scrubbing the garage floor with a red rag and a spray bottle. Cahoon identified People's exhibit No. 21, a photograph of the Oil Eater spray bottle and rag. Defendant told Cahoon that he had spilled oil. Cahoon did not observe spilled oil. Cahoon left to inform an officer that she observed defendant cleaning. When she returned approximately 10 minutes later, defendant was still scrubbing the floor.

¶ 15

### 5. Michael Vien

¶ 16

Matthew Vien, a crime scene investigator, reported to defendant's residence on June 7, 2008, at approximately 7 p.m. On top of the dryer, Vien observed damp shoes, laundry detergent, and a bottle of bleach.

¶ 17

### 6. Michael Oyer

¶ 18

On June 9, 2008, at approximately 7:30 p.m., Illinois State Police Sergeant Michael Oyer reported to defendant's residence to conduct a crime scene investigation. While processing the scene, Oyer took photographs inside the residence and garage. Oyer identified People's exhibit No. 42, a photograph showing a red rag on the floor and a bottle of Oil Eater. Oyer explained "Oil Eater is a solvent that is sold primarily for cleaning grease, degreasing, cleaning up things.

It claims to be a cleanser for many, many different types of stains. One of the things it claims for is also blood.” Following Oyer’s explanation, the following colloquy occurred.

“[THE STATE]: Claims for blood in what way, sir?

[OYER]: If you visit their web site and you read some of their documentation, is that it’s very good at cleaning bloodstains up.”

Defense counsel objected to Oyer’s testimony as impermissible hearsay. The court overruled the objection, and the State continued its examination.

“[THE STATE]: \*\*\* What did it indicate to you when you read that web site for—is this the manufacturer of this chemical?

[OYER]: This is the manufacturer of the chemical that has the web site, yes, sir.

[THE STATE]: And what did it say with regards to blood?

[OYER]: That it’s very good at cleaning up blood and removing the stains and getting rid of any evidence of those stains.”

¶ 19 The following day, prior to resuming the trial, the court stated,

“I do want to take a second to revisit one of my rulings from yesterday. When Michael Oyer was on the stand, and I’ve asked our court reporter \*\*\* to look up the portion of the transcript in question beginning with when Mr. Oyer was talking about looking on the Internet regarding the spray bottle \*\*\*.

\*\*\*

\*\*\* I’m willing for input from counsel, but on second thought, it appears to me it’s clearly hearsay. I think what I was thinking at one point, that if it was

on the bottle, my ruling might have been correct that he could testify as to what he saw that wasn't true, but if the State wants to argue the point with me."

¶ 20 Defense counsel moved for a mistrial and argued that the inadmissible hearsay evidence could not be cured by the court's instruction. The court denied defendant's motion for a mistrial and instructed the jury,

"I want to revisit some testimony that you heard yesterday and a ruling that I made.

You probably will recall that Michael Oyer from the Illinois State Police was here and testified at some length yesterday on various subjects. In particular, there was reference made to a spray can in the garage. The spray can was referred to as Oil Eater, and during the testimony, Mr. Oyer made reference to a web site, and that if you get on the web site of the manufacturer, the web site will tell you certain things about the product, including the fact that it might be good for cleaning blood.

I ruled at the time that that evidence was admissible, that he could say what he saw, but it doesn't mean that it was true. I'm reversing myself on that. I've thought about it, and any reference that Mr. Oyer made to the web site or any information that he may have gained from looking at that web site is hearsay and is not admissible, and I'd like you to disregard that and strike that from your notes and try to disregard that in consideration of the case.

I will say, Mr. Oyer will be back here Monday. Whether this area will be revisited at that time or not, I don't know, and he testified on a lot of other subjects, and my ruling is just specific to any reference after he talked about the

web site. If he said something before that regarding the product, that's admissible, but as soon as he made reference to the web site and what it says if you look on their web site, that's inadmissible, should not be considered by you."

¶ 21 In the State's closing and rebuttal argument, the prosecutor referenced the testimony of several witnesses who saw defendant scrubbing the garage floor following MeLisa's disappearance. The State did not comment on the testimony regarding defendant's use of Oil Eater or the stricken testimony regarding the uses of Oil Eater.

¶ 22 Following deliberations, the jury found defendant guilty.

¶ 23 On April 6, 2011, defendant filed a motion for a new trial that argued, *inter alia*, that the court erred by denying defendant's motion for a mistrial. The court denied defendant's motion. The court sentenced defendant to 60 years' imprisonment.

¶ 24 On appeal, we affirmed defendant's convictions and sentence. *Cleary*, 2013 IL App (3d) 110610, ¶ 69.

¶ 25 B. Postconviction Proceedings

¶ 26 On February 20, 2015, defendant filed a postconviction petition alleging, *inter alia*, that his due process rights were violated when the State presented hearsay testimony regarding the uses of Oil Eater. Defendant further alleged that appellate counsel was ineffective for failing to raise this claim. The circuit court advanced defendant's petition to the second stage and appointed counsel.

¶ 27 On April 24, 2017, the State filed a motion to dismiss defendant's postconviction petition.

¶ 28 On June 13, 2017, counsel filed a supplemental petition, which alleged that appellate counsel was ineffective for failing to claim that the circuit court erred in denying defendant's motion for a mistrial due to Oyer's hearsay testimony regarding the Oil Eater website.

¶ 29 The court denied the State's motion to dismiss and advanced the petition to a third-stage evidentiary hearing regarding defendant's claims of ineffective assistance of appellate counsel for failing to raise the denial of his motion for a mistrial and failing to raise the court's hearsay ruling.

¶ 30 On November 8, 2017, before the evidentiary hearing, defendant filed a motion to proceed as a self-represented litigant. Defendant claimed that due to counsel's unfulfilled promises, he had no other course of action but to proceed as a self-represented litigant. On November 30, 2017, following a hearing, the court granted defendant's motion to represent himself.<sup>1</sup>

¶ 31 On April 17, 2018, the State requested the court to reconfirm with defendant that he wanted to represent himself and "that he understands he has the right to assistance but is choosing not to avail himself of that right." Before the court could question defendant, defendant stated, "I understand, [Y]our Honor." Without further questioning, the court permitted defendant to proceed as a self-represented litigant. The State indicated that on November 30, 2017, the court granted defendant's motion to represent himself "[a]fter much questioning and hearings."

¶ 32 On August 16, 2018, defendant filed a motion requesting leave to file a supplemental postconviction petition. On the same day, defendant filed a "Supplemental Petition for Post-Conviction Relief" which presented a new claim of ineffective assistance of appellate counsel

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<sup>1</sup>The record lacks a report of proceedings for the November 30, 2017, hearing. However, an order entered by the court shows that, following full advisement, the court permitted defendant to proceed as a self-represented litigant and discharged the public defender.

resulting from counsel's alleged failure to raise a sufficiency of the evidence argument related to the scientific evidence.

¶ 33 On September 19, 2018, defendant filed a second motion requesting leave to file a supplemental postconviction petition. On the same day, defendant filed a second "Supplemental Petition for Post-Conviction Relief," alleging a new claim regarding appellate counsel's ineffective assistance for failing to raise a sufficiency of the evidence argument related to impeachment by omission in several witnesses' testimony. The court granted defendant leave to file both supplemental claims.

¶ 34 On December 20, 2018, the matter proceeded to an evidentiary hearing. Defendant introduced documents produced by the Illinois State Police, including phone records, crime scene investigation reports, and excerpts from defendant's direct appeal brief. The court made a directed finding for the State and denied defendant's petition. Defendant appeals.

## ¶ 35 II. ANALYSIS

### ¶ 36 A. Ineffective Assistance of Appellate Counsel

¶ 37 Defendant argues that the circuit court erred by denying defendant's postconviction allegations of ineffective assistance of appellate counsel. Specifically, defendant contends that appellate counsel was ineffective for failing to allege that the court abused its discretion by denying trial counsel's motion for a mistrial due to improperly admitted hearsay statements.

¶ 38 The Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) provides a three-stage process for a criminal defendant to challenge his conviction based on an allegation that his constitutional rights were violated. *People v. Cotto*, 2016 IL 119006, ¶ 26. At a third-stage evidentiary hearing, "the burden is on the defendant to make a substantial showing of a deprivation of constitutional rights and the circuit court's decision will not be disturbed unless it

is manifestly erroneous.” *People v. Coleman*, 206 Ill. 2d 261, 277 (2002). “Manifest error is that which is ‘clearly evident, plain, and indisputable.’ ” *People v. Johnson*, 206 Ill. 2d 348, 360 (2002) (quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997)).

¶ 39 To prevail on a postconviction claim of ineffective assistance of appellate counsel, defendant must make a substantial showing that “appellate counsel’s performance fell below an objective standard of reasonableness and that this substandard performance caused prejudice, *i.e.*, there is a reasonable probability that, but for appellate counsel’s errors, the appeal would have been successful.” *People v. Golden*, 229 Ill. 2d 277, 283 (2008). “Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel’s appraisal of the merits is patently wrong.” *People v. Easley*, 192 Ill. 2d 307, 329 (2000). “Thus, if the underlying issue is not meritorious, defendant has suffered no prejudice from counsel’s failure to raise that issue on appeal.” *People v. Peebles*, 205 Ill. 2d 480, 514 (2002).

¶ 40 The decision to declare a mistrial lies within the sound discretion of the circuit court. *People v. Foster*, 394 Ill. App. 3d 163, 166 (2009). A mistrial should only be declared if “there is some occurrence at trial of such a character and magnitude that the party seeking a mistrial is deprived of a fair trial.” *Id.* We review the trial court’s underlying decision for an abuse of discretion. *People v. Walker*, 386 Ill. App. 3d 1025, 1030 (2008). “A decision is an abuse of discretion only if it is illogical, arbitrary, or contrary to the law.” *People v. Appelt*, 2013 IL App (4th) 120394, ¶ 86.

¶ 41 In the present case, the circuit court ultimately sustained defense counsel’s hearsay objection and instructed the jury to disregard the Oil Eater evidence as it related to the testimony from the manufacturer’s website. This instruction mitigated any prejudicial effect of the hearsay

testimony. See *People v. Biggs*, 294 Ill. App. 3d 1046, 1051 (1998) (generally, any prejudicial effect caused by the admission of improper evidence is sufficiently cured by the court's instruction that the jury disregard the problematic evidence). Despite the court's limiting instruction, defendant believed the prejudicial impact of the hearsay evidence necessitated the declaration of a mistrial. The record is devoid of any indication that the jury failed to follow this instruction, and defendant has not argued that the jury failed to follow the court's instruction and disregard the hearsay testimony regarding Oil Eater. See *People v. Scott*, 401 Ill. App. 3d 585, 601 (2010) ("[W]e presume that jurors consider only relevant evidence and follow the instructions given them."). Thus, any prejudicial impact caused by the erroneous admission of the Oil Eater hearsay testimony was eliminated by the jury instruction.

¶ 42 In reaching this conclusion, we reject defendant's claim that after the court instructed the jury to disregard the hearsay evidence, the State structured its case in a way that repeatedly drew the jury's attention to the stricken evidence. Contrary to defendant's assertion, the State's argument that defendant cleaned the garage floor made no mention of the use of Oil Eater. Rather, the State based its argument on the properly admitted testimony from several witnesses who observed defendant cleaning the garage floor after MeLisa's disappearance. Therefore, the remaining evidence and argument the State presented did not repeat or draw unnecessary attention to the improper Oil Eater testimony.

¶ 43 We conclude that the court did not err by denying defendant's claim of ineffective assistance of appellate counsel, as appellate counsel is not ineffective for failing to raise a meritless claim. See *Easley*, 192 Ill. 2d at 329.

¶ 44 B. Right to Counsel in Postconviction Proceeding

¶ 45 Defendant argues that the court violated his right to postconviction counsel where, “given the lack of a transcript, the record does not demonstrate that [defendant] made a knowing and voluntary waiver of his right to counsel.”

¶ 46 In postconviction proceedings, there is no constitutional right to counsel. *Cotto*, 2016 IL 119006, ¶ 29. However, at the second stage of postconviction proceedings, the Act permits the court to appoint counsel for an indigent defendant. 725 ILCS 5/122-4 (West 2014). Defendant may waive his right to appointed counsel in a postconviction proceeding so long as the waiver is voluntarily, knowingly, and intelligently made. *People v. Lesley*, 2018 IL 122100, ¶ 34. A reviewing court must look at the particular facts and circumstances of each case to determine whether a knowing and voluntary waiver has been made. *Id.* ¶ 51. We review *de novo* whether defendant was deprived his right to postconviction counsel. *Id.* ¶ 30.

¶ 47 Our review in the present case is hindered by the absence of the report of proceedings for the November 30, 2017, hearing where defendant requested to proceed as a self-represented litigant. The “appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). Therefore, we must construe any omission in the record against defendant. *Id.* at 392.

¶ 48 Nonetheless, the record we have on appeal indicates that defendant made a voluntary, knowing, and intelligent waiver of his right to counsel. The court order from November 30, 2017, showed that defendant independently sought to represent himself. On April 17, 2018, the court order was confirmed by the State’s recollection that the court conducted “much questioning and hearings” with defendant before it discharged the public defender. Moreover, on the same date defendant acknowledged that he had the right to counsel and reaffirmed his waiver of that

right and choice to proceed to the evidentiary hearing as a self-represented litigant. Therefore, defendant made a knowing and voluntary waiver of his right to postconviction counsel.

¶ 49

### III. CONCLUSION

¶ 50

The judgment of the circuit court of Tazewell County is affirmed.

¶ 51

Affirmed.