No. 23-5224

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES SCOTT — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois, First Judicial District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES SCOTT #R30284
(Your Name)

P.O. Box 1000
(Address)

MENARD IL 62259
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

Whether Appellate Court abused it's discretion by dening to Vacate and or Grant a Evidentiary hearing where Pro se petitioner established, and State did not rebut that trial counsel was ineffective for not disclosings Any of the discovery prior to the entering of a plea Agreement.

Whether Appellate Court abused it's discretion by reviewing a part of the Newly Discovered Evidence/ Retention File that is outside of the trial Court records, and by Not sending back to the Trial Court So All of the Newly Discovered Evidence could be reviewed in a Evidentiary Hearing.

LIST OF PARTIES

Petitioner, Pro se : James Scott - R30284
P.O. Box 1000
Menard Il 62259

For Respondent
Athony Wills : Mr. Kwame Raoul - Attorney General
100 W. Randdph St., 12th Floor
Chicago, Il 60601

OPINION BELOW

The order of the Appellate Court of Illinois first Judicial District, which was published in 2022 IL App (1st) 210097-U, This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23 (E)(1), is included herein in Appendix A. The order of the Illinois Supreme Court denying the petitioners request for review is attached hereto as Appendix C.

JURISDICTION

The order of the Appellate Court of Illinois, first Judicial District, was entered on August 5, 2022. This petition is timely filed within ninety (90) days of the denial of the petitioner's request for review by the Illinois Supreme Court on January 25, 2023. This Court's Jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V Due process
Ineffective Assistance of Trial Counsel

STATEMENT OF CASE

STATEMENT OF FACTS

James Scott is currently serving two natural life sentences for first degree murder–one for the shooting of Lorenzo Aldridge in January 1998 and one for the shooting of police officer John Knight in January 1999. (C. 236; R. 4188). Mr. Scott was arrested hours after the Knight shooting, and was subsequently arrested for the Aldridge shooting while in custody for the Knight case. (CI. 35).

Pre-Plea Proceedings

During pre-trial proceedings, Mr. Scott moved to suppress inculpatory statements he made related to both shootings, alleging that the police mentally and psychologically coerced him into confessing. (C. 125-27, 144-48). Both motions were denied. (R. 3301, 4910-11). The State sought the death penalty in both cases, proceeding on the Knight case first. (C. 135-36).

Mr. Scott testified in his own defense at the Knight trial, admitting that he committed the shooting but maintaining that he did not know the men he shot at were police officers, and explaining that he acted in self-defense. (R. 3682-3755). The jury found him guilty of first degree murder and attempted murder of a peace officer. (CI. 483R. 4147-48). The next day, Mr. Scott pled guilty to first degree murder in the Aldridge case in exchange for natural life sentences for both cases. (R. 4153-73). As part of the plea deal, Mr. Scott agreed to forfeit all appellate and post-conviction rights in both cases. (R. 4155-58, 4173). The entire plea agreement was set forth in writing and signed by Mr. Scott and attorneys on both sides. (CI. 497-99).

Plea Agreement

The factual basis for the Aldridge case consisted of a summary of his confession, along with proposed testimony from two witnesses, Terrance Battle and Lila Porter. In his confession, Mr. Scott admitted that on January 4, 1998, he and his friend and co-defendant, Laward Cooper, saw Aldridge's truck parked in front of 9800 South Union, where they knew someone named

Fonville[2] lived. They left that address and went to Mr. Scott's house at 9632 South Parnell, retrieved two guns with laser beams, and changed into black jumpsuits. Returning to Fonville's, they waited for Aldridge to leave the house. When he did so, both men fired at him and he fell to the ground. Mr. Scott then walked up to Aldridge and shot him in the head. The two men returned to Mr. Scott's house to change clothes, then stayed at a motel for the night. (R. 4169).

The State indicated that Terrance Battle would testify that he knew Mr. Scott and Cooper sold drugs, and that a month before Aldridge's death he heard both men complaining about declining drug sales, speculating that Aldridge was the cause. A week after the shooting, Battle accused Scott of shooting Aldridge; Scott agreed and said he hid in the bushes and waited until Aldridge left the dope house and shot him in the head. According to the State, Lila Porter, Cooper's niece and Battle's girlfriend, would testify that she was present for that conversation. She heard Mr. Scott admit to hiding in the bushes and shooting Aldridge as he walked back to his truck. The parties stipulated that there were no eyewitnesses to the shooting. (R. 4170-72).

Motion to Withdraw Plea

The day after his plea, Mr. Scott wrote to the court, explaining that he did not understand all of the rights he gave up in pleading guilty and asserting that he did not kill Aldridge. (CI. 514-15). At his next court date, Mr. Scott filed a *pro se* motion to withdraw his plea, alleging it was involuntary. (CI. 602-04). The court eventually appointed a new attorney. (R. 4207). At a hearing on the motion to withdraw, Mr. Scott maintained that he never wanted to plead guilty but that he was so exhausted after his three-week trial and his attorneys' attempts to convince him to plead guilty to avoid the death penalty that he gave in. (R. 4305, 4312-14, 4317, 4321, 4324). He also alleged that he did not fully understand the appellate rights he waived.

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[2] The factual basis referred to someone named Farmer. (R. 4169). Ralph Fonville went by the nickname Farmer, and this brief will use the name Fonville. (C. 446; CI. 1306, 1324).

(R. 4321-22). The court denied the motion to withdraw, but admonished Mr. Scott that he had the right to appeal the denial of that motion. (R. 4477, 4479-82). Mr. Scott filed an appeal. (C. 238).

Direct Appeal

On direct appeal, Mr. Scott's cases were consolidated and appellate counsel filed an *Anders* motion to withdraw. Mr. Scott filed *pro se* responses arguing that his trial counsel's ineffectiveness rendered his plea invalid and that he should be allowed to proceed with a jury trial to prove his innocence in the Aldridge case. The appellate court found that trial counsel was not ineffective for advising him to enter into the plea agreement, and that his plea was knowing and voluntary. It also found that there was no evidence to support his actual innocence claim, but acknowledged that, to the extent that his claim was based on matters outside the record, it could not be reviewed on direct appeal. See *People v. Scott*, No. 1-04-1884 & 1-04-2634 (2006) (unpublished order under Illinois Supreme Court Rule 23).

Post-Conviction Proceedings

Mr. Scott next pursued post-conviction relief. His first *pro se* petition was summarily dismissed (C. 267-76; CI. 872-80), and his second petition, filed only months later, was dismissed for failure to establish cause and prejudice. (C. 282-95; CI. 957). In his second petition, Mr. Scott alleged both actual innocence and ineffective assistance of counsel in the Aldridge case, citing his attorney's failure to tell him about an eyewitness statement that contradicted his confession, as well as affidavits from Terrance Battle and Lila Porter recanting their inculpatory statements. (C. 284-85, 289-92). By way of factual support, he included a letter to his trial attorney dated several months after the denial of his motion to withdraw his plea, in which he requested copies of the affidavits.(C. 296).

Appeal from First-Stage Dismissal

His appeals from his dismissed post-conviction petitions were consolidated. The appellate court affirmed the dismissal of issues related to the Knight case, but remanded for second-stage proceedings in the Aldridge case, finding that Mr. Scott did not need to satisfy cause and prejudice because his petition raised a claim of actual innocence. The court held that the recantation evidence could result in his acquittal at trial, where the State relied on Battle's and Porter's statements as part of the factual basis for his plea and, in the absence of physical evidence to support it, Mr. Scott's confession could have been insufficient for the jury to find him guilty. Further, the court found that his plea could be rendered involuntary and his post-conviction waiver invalid if his ineffectiveness claim was successful, but that this matter was better addressed at the next stage where he could be represented by counsel. See *People v. Scott*, No. 1-07-1679 & 1-08-0856 (2010) (unpublished order under Illinois Supreme Court Rule 23).

Second-Stage Proceedings

On remand, Assistant Public Defender Michael Davidson was appointed to represent Mr. Scott. (R. 5377). Over the course of his representation, APD Davidson sent Mr. Scott a letter in which he explained that his office could not find the trial file for the Aldridge case; Davidson found this suspicious and told Mr. Scott he would continue to search for the file, as well as attempt to obtain copies of the affidavits in other ways. (CI. 1297). After representing Mr. Scott for about a year, APD Davidson retired and the case was transferred to Assistant Public Defender Bruce Landrum. (R. 5398).

During APD Landrum's representation of Mr. Scott, he informed the court that his investigator was attempting to locate the affidavits, as well as Lila Porter (Terrance Battle was deceased by this time). (R. 5407). On that same day, the State remarked that there was only

ever a statement from an investigator, adding that he believed the parties agreed that recantation affidavits never existed. (R. 5408).

Landrum eventually filed a 651(c) certificate stating that there was nothing to be added by amending or supplementing Mr. Scott's petition. (CI. 1396). His certificate was accompanied by three supporting documents. The first was a recent report documenting his investigator's unsuccessful attempts to locate Porter. (CI. 1397-98). The second was a report from December 2000, in which an investigator for the Public Defender's Office recorded notes from an interview with Porter in which he said that neither Mr. Scott nor Cooper ever admitted to killing Aldridge. That same document, however, also included a handwritten statement and a signature dated December 28, 2010, asserting that Porter did not recall that interview. (CI. 1399). The third document was the front page of Porter's grand jury testimony transcript, which bore a similar handwritten statement and signature, in which Porter said that the transcript was accurate and that she heard Mr. Scott say he killed Aldridge. (CI. 1400).

Mr. Scott filed a *pro se* supplement to his post-conviction petition, defending his claims and challenging APD Landrum's reasons for abandoning them. (CI. 325-26). His supplemental pleading was accompanied by several exhibits. (CI. 327-56).

The State filed a motion to dismiss the petition, arguing that the recantation affidavits never existed and that the defense investigator merely interviewed two people, pointing out that the reports documenting those interviews were not authenticated in any way. (CI. 1337-39). It then claimed that neither summary report contradicted the stipulation entered during the plea. (CI. 1339-40). The State also pointed out that Porter did not remember speaking to that investigator but that she had confirmed that her grand jury testimony was true. (CI. 1340-41).

Mr. Scott then filed a *pro se* reply to the State's motion, in which he maintained that his trial attorney showed him the recantation affidavits after he moved to withdraw his plea,

and that they had been lost through no fault of his own. (CI. 1351, 1357). He questioned why the State would bother to get Porter to affirm her incriminating statements if she never recanted, and pointed out that the State's factual allegations demonstrated the need for an evidentiary hearing. (CI. 1352, 1354). Mr. Scott then criticized his post-conviction counsel for failing to get an affidavit from the original investigator and requested new counsel or the right to argue his petition *pro se*. (CI. 1354-56, 1358-59).

After a lengthy argument by the State at a hearing on its motion (R. 5418-35), Landrum rested on his certificate, only noting that his investigator had been unable to find Porter. (R. 5435-36). Mr. Scott was not present at the hearing, and the court never addressed his *pro se* reply. The court granted the State's motion, reasoning that the defense investigator's summaries were not affidavits and that the affidavits likely never existed. (R. 5436-38).

Appeal from Second Stage Dismissal

On appeal, the appellate court found that, despite the fact that the post-conviction court, the State, and post-conviction counsel were seemingly unaware of Mr. Scott's *pro se* pleadings, Mr. Scott asserted his right to represent himself as best he could. The court vacated the second-stage dismissal and remanded for the limited purpose of ruling on Mr. Scott's request to proceed *pro se*, instructing the post-conviction court to hold a new hearing on the State's motion to dismiss if it found his waiver of counsel knowing and voluntary. See *People v. Scott*, 2016 IL App (1st) 133101-U (unpublished order under Illinois Supreme Court Rule 23).

Remanded Second-Stage Proceedings

On remand, the post-conviction court held a hearing to determine whether Mr. Scott knowingly and intelligently waived his right to counsel. (Sup R. 13-20). The court established that Mr. Scott understood that he had a statutory right to counsel, that an attorney would be appointed if he could not afford one, and that the court could not help Mr. Scott if he chose

to represent himself. (Sup R. 13-14, 17-18). Mr. Scott then confirmed that he had understood all of his rights when he requested to go *pro se* back in 2013, and that he had wanted to represent himself at that time. (Sup R. 17, 19). The court determined that Mr. Scott knowingly and intelligently relinquished his statutory right to post-conviction counsel. (Sup R. 20).

Mr. Scott's case was continued over the next two years, as the court file, the common law record, and the State's trial boxes were located. (Sup R. 34-99). During this time, Mr. Scott also requested copies of Terrance Battle's grand jury transcript, Ralph Fonville's statement to the police, and his own confession. (Sup R. 29-30, 76). On June 28, 2018, the State gave Mr. Scott a copy of Battle's grand jury transcript, but the State took his copy back on August 27, 2018, in order to make additional copies. (C. 407; Sup R. 96-97, 105-06). The State never returned the transcript to Mr. Scott, despite the fact that Mr. Scott filed a motion to compel requesting that the court order the State to return his copy. (C. 406-09; Sup R. 109). The transcript is not included in the record on appeal.

The State did not amend its initial motion to dismiss. (CI. 1332-48; Sup R. 103). On October 30, 2018, the court held a hearing on the State's motion. (Sup R. 109-25). At the hearing, Mr. Scott argued that the summary reports prepared by the defense investigator verified the existence of the missing exculpatory affidavits and that Battle's grand jury transcripts could lead a trier of fact to believe that he shot Aldridge. (Sup R. 112). He also explained that he sent a letter to the investigator who spoke to Battle and Porter to ask her to verify her summary reports, and pointed out that Lila Porter's alleged recantation of her recantation were not verified either. (Sup R. 115, 117). Mr. Scott then argued that his trial counsel's ineffectiveness in failing to inform him about the exculpatory affidavits could void the waiver of his appellate and post-conviction rights. (Sup R. 118-19). Finally, Mr. Scott renewed his request for Ralph Fonville's statement to the police. (Sup R. 119).

The post-conviction court granted the State's motion to dismiss, finding that Mr. Scott's actual innocence claim was in fact a reasonable doubt argument, and therefore not cognizable under the Post-Conviction Hearing Act. (C. 434-45; R. 5443-44). The court also expressed doubt that the recantation affidavits ever existed, but found that even if they did, they did not go to trial counsel's ineffectiveness, because neither counsel's advice to plead guilty nor Mr. Scott's decision to enter into the plea were unreasonable. (C. 439-40; R. 5444). Finally, the court found that the existence of the affidavits would not lead Mr. Scott to prevail at trial. (C. 437; R. 5445).

Mr. Scott filed a motion to reconsider, in which he argued that (1) the State intentionally kept evidence from him during post-conviction proceedings; (2) his trial counsel never discussed discovery in the Aldridge case with him prior to his guilty plea; (3) he was shown the recantation affidavits only after entering into the plea agreement and filing his *pro se* motion to withdraw the plea; and (4) the fact that he filed a motion to withdraw his plea immediately after pleading guilty shows that he would not have entered into the agreement had he known about the affidavits or the overall lack of evidence against him in the Aldridge case. He also discussed the Knight case, asserting that he acted in self-defense.(C. 442-59).

Back in court, Mr. Scott insisted that the State had two documents that it failed to disclose to him: the summary report of the interview between Terrance Porter and the defense investigator and a statement from Ralph Fonville. (R. 5466-77; 5486-5504, 5509). The court ordered the State to continue to look into Mr. Scott's claims, and the ASA eventually turned over a copy of the investigator's report on Battle. (C. 466; R. 5525). The hearing on the motion to reconsider was delayed for about a year while the State continued to search for the Fonville statement, and the scheduled hearing was further delayed due to the COVID-19 closures. (C. 474, 475).

The State took the court's shutdown as an opportunity to meticulously go through its trial boxes, finally finding Fonville's statement. (C. 477; R. 5536).

After a hearing via Zoom, during which Mr. Scott pointed out discrepancies between his confession and Fonville's statements, the court denied his motion to reconsider.(C. 480; R. 5549-73, 5576-81).

This timely appeal follows.

TABLE OF AUTHORITIES

Strickland V Washington, 466 U.S. 668 (1984)
Boykin V Alabama, 395 U.S. 238 (1969)
Hill V Lockhart, 474 U.S. 52 (1985)
UNITED STATES V Cronic, 466 U.S. 648 (1984)

REASON FOR GRANTING WRIT

It has been established that trial counsel was ineffective for not disclosing any of the discovery prior to the entering of the plea agreement. The circuit court does not deny that fact but, goes on to case No 99CR3092, not the merits of the case at hand. Circuit Court has disregarded the fact that Trial counsel clearly failed to disclose any of the discovery with petitioner prior to the plea and that that amounted to No representation at all which make the Adversary and guilty plea processes presumptively unreliable.

The State never rebuts or denies the fact of ineffective assistance and on the 22nd of January 2022 State's Attorney Ms. Walls stated "Okay. So that would show that there's ineffective and No Brady violation for not turning over statements."

The Court goes on to state "Hold on, Mr. Scott. That goes as to argument because the existence of that certainly could lend to support your argument, it could certainly support her argument."

Note: The existence is in reference to the hand written statements of Ralph Fonville.

The only argument that Ms. Walls presented was too how strong the two summary reports are in support of petitioners chances for actual innocence claim, and to consider case No. 99CR3092 in which petitioner acted in self defence in the death of Police officer Mr. Knight, and not in the total lack of evidence against petitioner in case No. 99CR3090.

It has been established by Appellate Court in it's first Order by all 3 Judge Hall, P.J, Patti, and Lampkin, JJ all concurring that "Moreover, the evidence was not cumulative. Without any physical evidence, the strength of the State's case rested on the defendant's confession. Even if the defendant did not succeed in suppressing his confession, without any physical evidence to support it, the confession may have proved insufficient for the Jury to find him guilty. The recantation evidence was new, material, noncumulative and could result in the defendant's acquittal following a trial."

Now add to that, that the circuit court incorrectly stated in it's order that "Scott's claim relies solely on the purported Battle and Porter affidavits recanting their statements."

Petitioner was also reling on the police report of Mr. Fonville statements, the only eyewitness, that goes to prove petitioners actual innocence and it also goes to prove a Plausible defense.

Now it was not until petitioner showed the circuit that Mr. Fonville is mentioned in the post-conviction petition, and reminded of all the F.O.I. request that petitioner was doing prior to the second stage hearing that circuit court orders that the state turn over the Retention file/Police reports and that was after the ruling from the second stage hearing.

That goes to show that circuit court did not read the petitioner post-conviction petition or the Appellate court order, because in the order it stated "we have been unable to locate any statement by Mr. Farmer". Mr. Farmer is Ralph Fonville.

Now Circuit stated in it's order that "At most, had Battle and Porter recanted their statements at trial, the recantations would have given Scott only a marginally. better chance of acquittal!"

And by that statement the circuit court prove petitioner does in fact have a Plausible defense.

Now after State (Ms. Walls) turned over the Retention files/Police report with Mr. Fonville statement and more police reports (which petitioner never knew of prior to the plea) that are exculpatory and have never been reviewed in the circuit court, how can the petitioners chances of an acquittal decrease and not increase.

And how could an Evidentiary hearing not be held, on the 23rd of September 2020 Ms. Walls stated that "Well, Part of -- part of the problem with that, Judge, is the Doctrine of Completeness. If the petitioner wants that particular portion of the police reports to be reviewed

by Your Honor, I would say Your Honor should be reviewing all of the reports, but Normally we would have this issue at a third-stage hearing and not in a motion to reconsider our motion to dismiss."

Therefore the State Agreed that a evidentiary hearing should be held.

Now it was established that petitioner would have proceeded to trial had petitioner been disclosed the exculpatory evidence by trial counsel and never entered into a plea by the fact that immedintely after the plea petitioner wrote a letter to Judge Crane stating that petitioner wants to go to trial in case No. 99CR3090 and that petitioner wants to go through the death penalty phases because petitioner did not know they were police in case No. 99CR3092.

That letter was written without any knowledge of what was in the discovery that trial counsel withheld.

Please Note: That letter is apart of the court record, and petitioner did request a copy of it from the circuit court after the court ordered the State to turn it over.

Now it is established that there is absolutely No physical evidence, No eye witnesses, No D.N.A., No occurrence witnesses, And No rumors of Petitioner involvement in case No. 99CR3090.

So the alleged safe that the Appellate Court refered to in their order is outside of the circuit record, and goes to prove it should be an evidentiary hearing to review all the Newly discovered evidence, the Retention files.

The alleged safe has no finger prints of petitioner on it or in it, and the only reason that case No. 99CR3090 came about is because of the death of police officer Mr. Knight in which petitioner acted in self defense. Those two cases are a year apart and are in no way connected.

This is a list of the Police reports from the Retention file that petitioner received after the ruling from the second stage hearing, and that Petitioner was unable to present in court because 1) the rehearing was held in a Zoom hearing and 2) because circuit court denied a evidentiary hearing

Retention File / Police Reports

4th of January 1998 Area 2 supplementary report
12th of January 1999 Area 2 supplementary report
4th of January 1998 Crime Scene processing report
4th of January 1998 Area 2 Supplementary report (Dr. Mitchell)
3rd of February 1999 Area 2 Supplementary
5th of February 1999 Area 2 Supplementary

Those Police reports are Exculpatory and show how the reports have been changed from 1998 to 1999 a few days after petitioner acted in self-defense in the death of Police officer Mr. Knight.

Please note that these consolidated cases 99CR3092 and 99CR3090 are due to the fault of the States Attorney office attempting to conceal serious Due process violations of a Non-impartial Jury in 2 ways, and in which a mis-

trial was motioned for and not objected to by the state, and a serious Due process Brady violation all in Jury trial case No.99CR3092.

This unethical plea Agreement does not preclude the petitioner from Any appeal, it states that if "This Agreement is breached by him, and the Cook county State's Attorney's office elects to void the Agreement and prosecute him, that he waives Any double Jeopardy limitation that may exist. The Cook County State's Attorney's office has the sole Authority to reinstate all of the charges on both cases and seek the death penalty on either case."

Conspicuously Absent from the Agreement remedy is Any provision that indicates that the State may obtain a dismissal of Any proceeding initiated in violation of the Agreement.

Both the State and the petitioner must be bound by the terms of the Agreement (St. Br. 15, quoting People V. Whitfield, 217 Ill. 2d 177, 190 (2005), The State may move to vacate the Agreement, but may Not obtain a dismissal of Any Appeal.

CONCLUSION AND PRAYER FOR RELIEF

If Circuit Court is Allowed to Abuse discretion And or disregard unrebutted ineffective Assistance of counsel in which trial Counsel did Not disclose Any discovery with petitioner prior to a plea After a Jury trial in which petitioner Acted in self-defense in the death of Police officer Mr. Knight, where is the fundamental fairness for a Young

(Petitioner was 23 when case No 99CR3092 occurred), Poor, Uneducated (Petitioner was in learning disabled classes from grade school through high school, did receive a G.E.D.), minority or the equal protection of the law.

If Appellate court is allowed to abuse discretion by reviewing any one piece of Newly discovered evidence, and not remand for a evidentiary hearing so all the Newly discovered evidence can be reviewed as in the Doctrine of Completeness, the a pro se petitioner that has established (to the best of petitioners Ability) all the prongs of case law, and that have not been rebutted, then that petitioner or any other pro se petitioner will have no chance of fundamental fairness or equal protection of the law.

Petitioner Prays that this Honorable Supreme Court Please objectively consider case No 99CR3090 on it's merits, and the total lack of evidence.

Without case No. 99CR3092 in which petitioner acted in self-defense in the death of Police officer Mr. Knight, then it would be no ineffective assistance, No plea agreement, No coerce alleged statement, and on it's own petitioner would have never been charged with case No. 99CR3090.

If a conviction by a plea agreement due to ineffective Assistance with this kind of lack of evidence and the reason the case has been forced upon petitioner is allowed then No citizen will be safe or protected from malicious prosecution or have equal protection of the law.

Please grant relief as Justice requires.

Date: April 10th of 2023

Respectfully Submitted,

James Scott
Pro se Petitioner
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