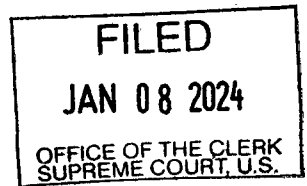


24 - 5047



No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

PEDRO TERRAZAS (#M33374) — PETITIONER  
(Your Name)

vs.

WARDEN RYAN WOODS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL DISTRICT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PEDRO TERRAZAS (Pri. Reg. No. #M33374)  
(Your Name)

4017 East 2603 Road  
(Address)

Sheridan, Illinois 60551  
(City, State, Zip Code)

(815) 496-2181  
(Phone Number)

## QUESTION(S) PRESENTED

### I.

Was Defendant 'Prejudiced' And Denied His Constitutional Right To The Effective Assistance Of Appellate Counsel On [Direct-Appeal] For Failing To Raise A Plain And Obvious [Trial Court Error], Where The [State Concedes], And The [Appellate Court Agree's] That The Trial Court Made A Plain And Obvious [Trial Court Error] Pursuant To Illinois Supreme Court Rule 431(b) To Identify And Prevent [From Serving On The Jury] Any Potential Juror Who Is "Prejudiced" Against The "Bedrock Principles Of Anglo-American Criminal Law", Where The Trial Court's Failure To Strickly Comply With Rule 431(b) Threatens The Integrity Of, And Casts Doubt On, The Fundamental Fairness Of The Entire Trial Process?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- PEOPLE v. PEDRO TERRAZAS, 2023 IL App (2d) 210357-U (Order filed May 19, 2023)
- People v. Pedro Terrazas, 2014 IL App (2d) 130112-U (Order filed Dec. 3, 2014)

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	4
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT .....	20
CONCLUSION.....	21

## INDEX TO APPENDICES

- APPENDIX A - People v. Pedro Terrazas, 2023 IL=App (2d) 210357-U  
(Order filed May 19, 2023)
- APPENDIX B - People v. Pedro Terrazas, Illinois Supreme Court, Denial  
of Petition for Leave To Appeal. IL. Sup. Ct. #129940  
(Order of November 29, 2023)
- APPENDIX C - People v. Pedro Terrazas, (Circuit Court of Kane County  
Order of June 16, 2021) Case No. 10-CF-2122
- APPENDIX D
- APPENDIX E
- APPENDIX F

# TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MORGAN v. ILLINOIS, 504 U.S. 719, 729-730 (1992)-----	13--
Strickland v. Washington, 466 U.S. 668 (1984)-----	12, 18
Douglas v. California, 372 U.S. 353, 354-58 (1963)-----	12
People v. Zehr, 103 Ill.2d 472 (1984)-----	6,7,10,13,14
People v. Griffin, 178 Ill.2d 65, 72-73 (1997)-----	10
People v. Coleman, 183 Ill.2d 366 (1998)-----	11
People v. Strain, 194 Ill.2d 467, 475-476 (2000)-----	13
People v. Edwards, 197 Ill.2d 239, 245-46 (2001)-----	11
People v. Johnson, 2005 Ill.2d 381, 405-06 (2002)-----	12
People v. Hall, 217 Ill.2d 324, 334 (2005)-----	11
People v. Piatkowski, 225 Ill.2d 551, 565 (2007)-----	17
People v. Thompson, 238 Ill.2d 598 (2010)-----	13,14
People v. Ligon, 239 Ill.2d 94, 107-09 (2010)-----	12
People v. Clark, 2011 IL App (2d) 100188-----	13
People v. English, 2013 IL 112890-----	12
People v. Domagala, 2013 IL 113688-----	11
People v. Belknap, 2014 IL 117094-----	9,14
People v. Terrazas, 2014 IL App (2d) 130112-U-----	6,7,13,18
People v. Sebby, 2017 IL 119445-----	17
People v. McGuire, 2017 IL App (4th) 150695-----	13,14
People v. Olla, 2018 IL App (2d) 160118-----	9
People v. Stevens, 2018 IL App (4th) 160138-----	14,15
People v. Othman, 2019 IL App (1st) 150823-----	16
People v. Terrazas, 2023 IL App (2d) 210357-U-----	9,15

## STATUTES AND RULES

725 ILCS 5/122-1(a)(1)(2020)-----	10
725 ILCS 5/122-2.1(a)(2)(2020)-----	10,11
Illinois Supreme Court Rule 431(b)(eff. July 1, 2012)-----	5,7,9,10,13,14, 15,17,19

## OTHER

American Bar Association, Criminal Justice Standards for the Defense Function, Standard 4-9.2(b)(4th ed. 2017)-----	12
--	----

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "A" to the petition and is

☒ reported at 2023 IL App (2d) 210357-U; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11/29/2023.  
A copy of that decision appears at Appendix "B".

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 14, 2024(date) on May 15, 2024(date) in Application No.   A  . (See Attached Letter of May 15, 2024 From Office of The Clerk) (Page 3)

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- SIXTH AMENDMENT-UNITED STATES CONSTITUTION;
- FOURTEENTH AMENDMENT-UNITED STATES CONSTITUTION;
- Illinois Constitution of 1970, Article I, §§ 2, and 8;
- 725 ILCS 5/122-1 (2020)



## STATEMENT OF THE CASE

A jury found Spanish-speaking Pedro Terrazas guilty of predatory criminal sexual assault of a child, five counts of criminal sexual assault, and five counts of aggravated criminal sexual abuse for conduct involving his stepdaughter, M.D., from 2002 until 2010. -- The jury found Pedro Not Guilty of two counts of criminal sexual assault (based on allegations that he placed his mouth on M.D.'s sex organ and placed his penis in M.D.'s mouth) and two counts of aggravated criminal sexual assault (based on allegations that he made M.D. touch his penis with her mouth and placed his mouth on M.D.'s sex organ).

## VOIR DIRE

During *voir dire*, the court gave a general statement of the law that: "a defendant is presumed innocent; that presumption is not overcome unless the jury is convinced beyond a reasonable doubt that the defendant is guilty; the State has the burden of proving the defendant guilty beyond a reasonable doubt; and the defendant is not required to prove himself innocent, put on a case, or testify and may rely on the presumption of innocence."

Supreme Court Rule 431(b) requires the trial court to ask each potential juror, individually or in a group, whether the juror understands and accepts that (1) "defendant is presumed innocent of the charge(s) against him," (2) "before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt," (3) "the defendant is not required to present any evidence on" his behalf, and (4) "if the defendant does not testify it cannot be held against him." Ill.S. Ct. R. 431(b)(eff. July 1,

2012). Which in Illinois is referred to as the "Zehr principles". See People v. Zehr, 103 Ill.2d 472 (1984).

During voir dire, As to the Zehr inquiry, the court asked the following questions: 1) "Does anyone have an issue or problem with the following concept: a person accused of a crime is presumed to be innocent of the charges against him [?] Raise your hand if you have a problem with that concept"; 2) "Does anyone have a problem with the concept that the State has the burden of proving a defendant guilty beyond a reasonable doubt in a criminal trial? Raise your hand if you have a problem with that idea"; and 3) "Does anyone have an issue or problem with the concept that the presumption of innocence remains with the defendant throughout the entire course of trial and is not overcome unless from the evidence you as a jury believes the State has proven the defendant guilty beyond a reasonable doubt? Does anyone take issue with that concept?" (R.181-182).

Before trial, the court reiterated to the sworn jurors that a defendant is not required to put on a case, is not required to call witnesses or testify, and may rely on the presumption of innocence. (R. 352). Nowhere in the record does the court ask the juror's the last "Zehr Principle" "That if the defendant does not testify it cannot be held against him" and whether the Jurors 'understood' and 'accepted' that principle. [ A plain and obvious 'Trial Court Error'] that may have affected the "Fundamental Fairness" of the entire trial, Nor did the trial court voir dire the juror's on the principle that defendant was not required to present any evidence on his behalf.

#### DIRECT APPEAL

On Direct Appeal, Pedro Terrazas's Court Appointed Appellate Defender argued that his convictions violated the one-act, one-crime doctrine, and that certain sentences should run concurrent to each other. People v. Terrazas, 2014 IL App (2d) 130112-U, ¶ 2. Appellate Counsel failing to

raise the Plain and Obvious Trial Court Error. However, the Appellate Court affirmed the convictions, but ordered the mittimus to be corrected to reflect the concurrent sentences the trial court orally imposed. Terrazas, 2014 IL App (2d) 130112-U, ¶¶22-23, 26.

### POST-CONVICTION PROCEEDINGS

On November 30, 2015, Pedro Terrazas filed a pro se post-conviction petition. The pro se petition, in part, challenged trial counsel's failure to question Maria about her motive to fabricate the sexual abuse allegations. Pedro Terrazas attached his own statement to the petition, which explained that he told his trial attorney that Maria was in financial distress and fabricated the allegations to take all of Pedro's assets, namely the \$50,000 he had in his bank account and his cars. (C. 369-70)

The Circuit Court advanced the Pro se post-conviction petition to the second-stage with the appointment of counsel. (R. 998). Post-Conviction counsel filed an "Amended Post-Conviction Petition" on September 17, 2020. (C. 429). In pertinent part, the amended petition first argued that the trial court's *voir dire* violated People v. Zehr, 103 Ill.2d 472 (1984), and **Illinois Supreme Court Rule 431(b)** and that Appellate Counsel was ineffective for not raising this "Plain and Obvious Trial Court Error" on direct appeal. (C. 431-32, 437, 439). The petition next argued that defense counsel was ineffective for not attacking Maria's testimony by showing her bias, motivation, and reason to lie. (C. 434-36). Shortly before the allegations, Maria lost her job because she lived in the United States illegally. (E. 124). On August 25, 2010, just two days after Pedro's arrest, Maria closed a joint bank account that she shared with Pedro and withdrew the balance of (\$51, 538.93) from the account. (C.372, 434). Additionally, On March 31, 2011. Pedro's 1998 Plymouth Voyager was sold without his permission.

(C. 434). The car was sold with Pedro's Forged signature on the title, but Pedro was incarcerated at the time the car was sold. (C. 434; S.R.). Trial counsel was aware of the sale, as evidenced by a December 5, 2011 letter counsel wrote to the Secretary of State inquiring about the Sale. (C. 434, 371). The Amended Petition alleged that these facts demonstrated a financial motivation on the part of Pedro's family to fabricate the allegations of sexual abuse, but yet, counsel did not question Maria about it. (C. 434-35).

The State's (Motion to Dismiss) Conceded that the trial court violated Zehr. (C. 448, 450). However, the motion argued that appellate counsel could not have raised the issue on direct appeal because the evidence was overwhelming, so the error did not constitute plain error under the closely-balanced prong and trial counsel's failure to object was not prejudicial. (C. 450-56).

#### APPEAL OF COLLATERAL PROCEEDINGS

On Appeal of the trial Courts granting the State's Motion to Dismiss at the second-stage of the post-conviction proceedings, Appellate Counsel raised the following issues for review:

1. Did the post-conviction petition make a substantial showing that trial counsel was ineffective for not impeaching Maria Orquiz's testimony with her untruthfulness and her family's financial motive to fabricate the allegations?
2. Was Pedro Terrazas denied the reasonable assistance of post-conviction counsel in violation of Illinois Supreme Court Rule 651(c), where counsel failed to file a response to the State's motion to dismiss and inadequately presented Pedro's ineffective assistance of counsel claim?
3. Did Pedro Terrazas make a substantial showing that appellate counsel was ineffective for not challenging the inadequate voir

*dire*, as the trial court plainly erred in admonishing the potential jurors under Rule 431(b) by failing to ensure that the potential jurors understood and accepted each of the four principles enumerated in the rule?

The Appellate Court of Illinois, Second District in People v. Pedro Terrazas, 2023 IL App (2d) 210357-U, ¶1 Held:

"Defendant's postconviction petition properly dismissed at second stage where issue of partner's financial motive to fabricate testimony was collateral to issue of whether defendant sexually abused partner's daughter; court's violation of Rule 431(b) was not plain error where evidence of defendant's guilt was not closely balanced; postconviction counsel was not ineffective for failure to raise 431(b) issue on direct appeal. Affirmed."

(See: APPENDIX - "A")

~~The Appellate Court~~ Likewise Conceded and Agreed That the Trial Court must ensure that (each) prospective juror both understands and accepts each of the four principles. People v. Belknap, 2014 IL 117094, ¶¶44-46 (it is error for the trial court to ask the prospective jurors whether they agree with the principles but fail to ask whether they understand them); See also; People v. Olla, 2018 IL App (2d) 160118, ¶ 29. Here, the Court asked the prospective jurors only about the first two principles and asked them only if they had an issue or a problem with those principles. The State concedes, and we agree, that the court violated Rule 341(b). (Emphasis added) See: People v. Pedro Terrazas, 2023 IL App (2d) 210357-U, ¶¶ 40-41. (APPENDIX-"A").

The defendant was 'prejudiced' and denied his constitutional right to the effective assistance of appellate counsel on [direct-appeal] for failing to raise a plain and obvious [trial court error]. where the [State conceded], and the [Appellate Court agreed] that the trial court made a plain and obvious [Trial Court Error] pursuant to Illinois Supreme Court Rule 431(b) to identify and prevent [from serving on the jury] any potential juror who is prejudiced against the "Bedrock Principles of Anglo-American Criminal Law", where the trial court's failure to strickly comply with Rule 431(b) threatens the integrity of, and casts doubt on, the 'Fundamental Fairness of the entire trial process.

As conceded by the State in its motion to dismiss, and on appeal, and the appellate court's agreement that the trial court undoubtedly violated People v. Zehr, 103 Ill.2d 472 (1984), by failing to ascertain whether Pedro Terrazas's jurors understood and accepted the four bedrock principles set forth in Illinois Supreme Court Rule 431(b). (R. 181-86, C. 448, 450). Appellate counsel did not - but could have - raised the Zehr violation on direct appeal as a matter of plain error under the first prong of the rule, as the evidence in this case was conflicted, challenged and closely balanced.

The Post-Conviction Hearing Act ("The Act") provides a mechanism for a criminal defendant to claim that a substantial violation of his State or Federal Constitutional rights occurred at the proceedings that resulted in his conviction. 725 ILCS 5/122-1(a)(1)(2020); People v. Griffin, 178 Ill.2d 65, 72-73 (1997). Section 122-2.1(a)(2) of the Act provides for dismissal of petitions found by the circuit court to be frivolous or patently without merit at the first stage of proceedings. 725 ILCS 122-2.1(a)(2)(2020). If

the circuit court does not dismiss the petition as frivolous or patently without merit, then the petition advances to the second stage. 725 ILCS 122-2.1(b)(2020). As occurred here, Counsel is appointed for indigent petitioner's, and the State is allowed to file responsive pleadings. 725 ILCS 5/122-4(2020); 725 ILCS 5/122-5(2020); People v. Edwards, 197 Ill.2d 239, 245-46 (2001).

At the second-stage of post-conviction proceedings, the circuit court must determine whether the petition and any accompanying documentation make a substantial showing of a constitutional violation. Id. at 246. In making this determination, all factual allegations not positively rebutted by the record must be accepted as true. People v. Hall, 217 Ill.2d 324, 334 (2005). A circuit court may not "engage in any fact-finding or credibility determinations." People v. Domagala, 2013 IL 113688, ¶ 35 (quoting People v. Coleman, 183 Ill.2d 366, 385 (1998)). If the petition does not make a substantial showing of a constitutional violation, the petition is dismissed; However, if a substantial showing of a constitutional violation is set forth, then the petition is advanced to the third stage, where the circuit court conducts an evidentiary hearing. Coleman, 183 Ill.2d at 382. Pedro Terrazas made a substantial showing that he was deprived of the effective assistance of Appellate Counsel; Which is a Sixth and Fourteenth Amendment of the United States Constitution violation, as well as a violation of Article I, Sections 2 and 8 of the Illinois Constitution of 1970; Therefore, his petition should have been advanced to third stage proceedings for an evidentiary hearing to be factually developed, because the [Trial Court Error] that Appellate Counsel failed to raise on Direct Appeal may have affected the "fundamental fairness" of the entire trial proceeding.

The State and Federal Constitutions guarantee Pedro Terrazas the right to the effective assistance of counsel at trial and on direct-appeal of his

conviction. U.S. Const., amend. XI, XIV; Ill. Const. 1970, art. I, §§ 2,8; Douglas v. California, 372 U.S. 353, 354-58 (1963); People v. Ligon, 239 Ill.2d 94, 107-09 (2010); Strickland v. Washington, 466 U.S. 668, 686 (1984). A post-conviction petition alleging ineffective assistance of appellate counsel is subject to the standard set forth in Strickland, 466 U.S. 668 at 694. Under Strickland, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and the defendant was prejudiced by counsel's substandard performance. Id. Counsel's performance is deficient when his or her "representation fell below an objective standard of reasonableness...under prevailing professional norms." Id. at 687-88. Prevailing professional norms require appellate counsel for the defendant to "consider all issues that might affect the validity of the judgment of conviction and sentence," including "issues not objected to below or waived or forfeited, if in the best interests of the client." American Bar Association, Criminal Justice Standards for the Defense Function, Standard 4-9.2(b)(4th ed. 2017); see also Strickland, 466 U.S. at 689 (explaining that the ABA Standards can be used as "guides to determining what is reasonable"). Appellate Counsel renders deficient performance when "the failure to raise an issue on appeal was objectively unreasonable." People v. Johnson, 205 Ill.2d 381, 405-06 (2002).

A defendant is prejudiced when there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. Strickland, 466 U.S. at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome." Id. Thus, when the effectiveness of counsel on direct appeal is challenged, it must be shown that "there is a reasonable probability that the appeal would have been successful." English, 2013 IL 112890, ¶ 33. However, at the second-stage of post-conviction collateral proceedings, a petitioner is not



required to prove that counsel was ineffective to merit an evidentiary hearing so long as he makes a substantial showing of such a claim. People v. Clark, 2011 IL App.(2d) 100188, ¶¶28-29. Pedro Terrazas met this standard.

On direct appeal, appellate counsel raised just two issues - that his convictions violated the one-act, one-crime doctrine and that five of his sentences should have run concurrently. People v. Terrazas, 2014 IL App (2d) 130112-U, ¶2. (C. 485-86). The Appellate Court rejected the first argument, but modified the sentencing orders for counts 8 through 16. Terrazas, 2014 IL App (2d)130112-U, ¶¶22-23, 26. (C. 491, 492). Appellate Counsel did not, however, raise the trial court's plain and obvious *Zehr* violation, an error the State Conceded in both its Motion to Dismiss and on Appeal, and the Appellate Court Agree's that the Trial Court violated the *Zehr* principles and Illinois Supreme Court Rule 431(b). Pedro Terrazas's post-conviction made a substantial showing that his appellate attorney was ineffective for not raising this issue on direct appeal.

The United States and Illinois Constitutions guarantee criminal defendants the right to a trial by a fair and impartial jury. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §§ 8, 13. This constitutional guarantee of a fair and impartial jury includes the right to an adequate *voir dire* to identify and exclude unqualified jurors. Morgan v. Illinois, 504 U.S. 719, 729-730 (1992); People v. Strain, 194 Ill.2d 467, 475-476 (2000). To ensure that a defendant receives a fair and impartial jury, Rule 431(b) requires trial courts to inquire into the prospective jurors' basic qualifications for jury service by ascertaining both their understanding and acceptance of certain "fundamental" aspects of a jury trial. See People v. Thompson, 238 Ill.2d 598, 607 (2010); People v. Zehr, 103 Ill.2d 472, 477 (1984); People v. McGuire, 2017 IL App (4th) 150695, ¶ 35

(proclaiming that the Rule 431(b) principles are "the bedrock principles of Anglo-American criminal law"). The purpose of Rule 431(b) is to identify and prevent from serving on the jury any potential juror who is prejudiced against the bedrock principles of criminal law. See Zehr, 103 Ill.2d at 477; McGuire, 2017 IL App (4th) 150695, ¶¶27, 35. To that end, the trial court's failure to strickly comply with Rule 431(b) threatens the integrity of, and casts doubt on, a guilty verdict returned by the jury. See People v. Stevens, 2018 IL App (4th) 160138, ¶25.

Rule 431(b) requires a trial court to question the potential jurors and ascertain whether each potential juror can both "Understand" and "Accept" four Fundamental Principles: (1) the defendant is presumed innocent of the charges against him; (2) the State must prove the defendant guilty beyond a reasonable doubt before he can be convicted; (3) the defendant is not required to offer any evidence on his behalf; and (4) the defendant's choice not to testify cannot be held against him. See Thompson, 238 Ill.2d at 606-07; People v. Belknap, 2014 IL 117094, ¶ 45 (finding that the language of Rule 431(b) "is clear and unambiguous"); Stevens, 2018 IL App (4th) 160138, ¶ 26 (explaining that the language of Rule 431(b) is "clear", the four principles are set forth "succinctly", and the questions to be asked are "simple"). Though the potential jurors may be questioned either individually or in a group, the trial court must inquire in a manner that provides "an opportunity for a response from each prospective juror on their understanding and acceptance of thos principles." Thompson, 238 Ill.2d at 607 (emphasis added). In doing so, Rule 431(b) "mandates a specific question and response process" to ensure the jurors' understanding and acceptance of each enumerated principle. *Id.*

In that question-and-response process, the trial court must carefully instruct the jurors on the Rule 431(b) bedrock principles and "must not

deviate in any way from the precise language chosen by the Illinois Supreme Court to be in that rule." Stevens, 2018 IL App (4th) 160138, ¶ 25 (internal quotations omitted).

As the State concedes, and Appellate Court Agrees, the Trial Court's *Voir dire* was inadequate. (C. 448, 450); People v. Pedro Terrazas, 2023 IL App (2d) 210357-U, ¶ 41. During *voir dire*, the trial court gave a general statement of the law that: a defendant is presumed innocent; that presumption is not overcome unless the jury is convinced beyond a reasonable doubt that the defendant is guilty; the State has the burden of proving the defendant guilty beyond a reasonable doubt; and a defendant is not required to prove himself innocent, put on a case, or testify and may rely on the presumption of innocence. (R. 172-73).

As to gauging the prospective jurors' understanding and acceptance of the 431(b) principles, the trial court asked the following questions:

Does anyone have an issue or problem with the following concept: a person accused of a crime is presumed to be innocent of the charges against him. Raise your hand if you have a problem with that concept.

Does anyone have a problem with the concept that the State has the burden of proving a defendant guilty beyond a reasonable doubt in a criminal trial? Raise your hand if you have a problem with that idea.

Does anyone have an issue or problem with the concept that the presumption of innocence remains with the defendant throughout the entire course of trial and is not overcome unless from the evidence you as a jury believes the State has proven the defendant guilty beyond a reasonable doubt? Does anyone take issue with that concept?

(R. 181-82). The Trial Court's *voir dire* was inadequate.

First, The court only asked about (two) of the (four) principles enumerated in Illinois Supreme Court Rule 431(b); In fact the court "repeated" the same principle twice; The Court neglected to make 'any' inquiry into Pedro Terrazas's right "Not to present evidence, on his own

behalf and right not to testify, ["A 50-percent error rate"]. (R. 182). Although Pedro testified at trial, therefore rendering moot the trial courts error and failure to question the juror's about his right not to testify, It was critical in this case that jurors understood and accepted Pedro's right not to present evidence in his defense because the Prosecution 'commented' on Pedro's failure to produce evidence. (R.724, 936-38). In closing argument, the State referenced Pedro's recorded statement, telling the jury that Pedro was given the opportunity to say "no" when the investigators asked him if he had sex with M.D., but that pedro always answered in the affirmative. (R. 936-38). Pedro did however, initially deny the allegations; the jury never heard this evidence because the trial court deemed it inadmissible. (R. 729-30, 823). The prosecutor's closing remarks improperly suggested that Pedro Terrazas did not deny the allegations until he took the stand at trial and implied that Pedro would have produced evidence that he told the investigators "no" if he actually denied the allegations before trial. (R. 936-38). Given the State's closing argument, it was critical that Pedro's jurors did not fault him for failing to produce evidence that he denied the allegations before trial.

Second, as to the two principles the court did address - the presumption of innocence and the State's burden of proof - the court only asked if if anyone had a "problem" with either principle, not whether every juror "understood" and "accepted" each principle. (R. 181-82).

By not asking the jurors if they "understood" the four *Zehr* principles, the court failed to give any juror [the chance'] to admit that he or she did not understand one of the principles, so the court could clear up the issue or dismiss the juror. People v. Othman, 2019 IL App (1st) 150823, ¶ 65. Whether or not a single juror understands both the words and the implication of the principles is "foundational" to justice, and constitutes error. *Id.*

Although trial counsel failed to object to the "wholly inadequate" *voir dire* regarding the principles enumerated in Rule 431(b) court's inquiry, The Appellate Court could have reviewed it on direct-appeal as a matter of plain error, because it affected the "Fundamental fairness" of the entire trial proceeding, had appellate counsel raised the issue on direct appeal. People v. Sebby, 2017 IL 119445, ¶ 48. Plain-error review is warranted if the error is clear and obvious and either: (1) the evidence was so closely balanced that the error threatened to tip the scales of justice against the defendant; or (2) the error was so serious that it affected the fairness of the defendant's trial and casts doubt on the judicial proceeding's integrity. People v. Piatkowski, 225 Ill.2d 551, 565 (2007). In this context, the trial court's Rule 431(b) blatant violation is cognizable under (both) prongs.

As clearly demonstrated above, and conceded by the State, and Agreed to by the Appellate Court, the trial court's admonishments failed to comply with (the requirements and purpose) of Rule 431(b), which may have affected the 'fundamental fairness' and casts doubt on the 'judicial proceedings integrity'.

While the evidence in this case may have been sufficient to sustain Pedro Terrazas's conviction on review, the evidence was closely balanced. Pedro's conviction rested in large part on M.D.'s testimony. "Where the determination of a defendant's guilt or innocence turns on the credibility of the defendant and the accuser, error is particularly likely to be prejudicial". This is particularly true where, as here, M.D. gave conflicting accounts of the abuse and the jury did not believe all of M.D.'s testimony. M.D. claimed that Pedro performed oral sex on her, but she did not mention this to Investigator Arroyo. (R. 451). She also initially said that Pedro did not use sex toys on her, but then she testified that he did.

(R. 450). These inconsistencies undermine the reliability of her testimony. Indeed, as evidenced by the fact that the jury found Pedro not guilty of Oral sex allegations, it obviously did not fully believe M.D. (R. 962-66). Finally, Pedro presented a defense contradicting M.D.'s allegations - Pedro Terrazas himself testified at trial that he did not sexually abuse M.D. (R. 739-40). Because Pedro's conviction rested on M.D.'s allegations, which were inconsistent, contradicted by Pedro's testimony, and not entirely believed by the jury, the evidence was closely balanced. Therefore, the trial court's plain and obvious inadequate *voir dire* constitutes plain error under the closely-balanced prong of the plain-error rule.

Appellate counsel's failure to raise the *Zehr* issue on direct-appeal was objectively unreasonable depriving Pedro Terrazas of his constitutional right to the effective assistance of counsel on direct-Appeal. Strickland, 466 U.S. 668 at 694.

Although trial counsel did not object to the *voir dire*, the error was obvious from a simple reading of the record, Indeed the error was so obvious that the State confessed error, and the Appellate Court Agreed, as previously mentioned, and is so serious that it affects the integrity of the entire judicial process and deprived Pedro Terrazas of "Fundamental Fairness", It was clearly in Pedro's best interest for appellate counsel to raise this issue on direct appeal, as it warrants a new trial. But, appellate counsel did not raise a single trial issue in his direct appeal Terrazas, 2014 IL App (2d) 130112-U, ¶ 2 (C. 485-86). Given the obviousness and seriousness of the error, relief is warranted, any reasonably competent appellate attorney would have raised the issue, and appellate counsel's failure to do was was professionally unreasonable. Appellate counsel's failure to recognize that the trial courts error may have affected the 'fundamental fairness' of the entire trial was prejudicial. Had appellate counsel argued

on direct-appeal that the trial court's Rule 431(b) admonishments were 'wholly inadequate', there was a reasonable probability that the Appellate Court would have reversed Pedro Terrazas's conviction and remanded the cause for a new trial to ensure the integrity of the judicial process.

## **REASONS FOR GRANTING THE PETITION**

A State Court has decided and entered a decision in conflict with the relevant decisions of this Court regarding an individual's constitutional right to a fundamentally fair trial with an unbiased jury, and the right to effective assistance of counsel on Direct-Appeal.



### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
PEDRO TERRAZAS #M33374

Date: June 11, 2024