No. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

KRYSTLE HOFFMAN, PETITIONER,

v.

PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS

## APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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# APPENDIX

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# APPENDIX A

Opinion of the Illinois Appellate Court, Second District

(December 21, 2023)

2023 IL App (2d) 230067
No. 2-23-0067
Opinion filed December 21, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>KRYSTLE L. HOFFMAN,<br><br>Defendant-Appellant. | ) | Appeal from the Circuit Court of Kendall County.<br><br><br><br>No. 18-CF-395<br><br>Honorable Robert P. Pilmer, Judge, Presiding. |

JUSTICE BIRKETT delivered the judgment of the court, with opinion.
Justice Mullen concurred in the judgment and opinion.
Justice Jorgensen specially concurred, with opinion.

OPINION

¶ 1 Defendant, Krystle L. Hoffman, was arrested for committing a drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2018)). Three days after her arrest, defendant's father posted $5000 in bond. Defendant continued to work while out on bond. Four years after she was arrested, defendant pleaded guilty to committing a drug-induced homicide. No agreement was made concerning her sentence. Defendant filed an election to be sentenced under section 5-4-1(c-1.5) of the Unified Code of Corrections (Corrections Code) (730 ILCS 5/5-4-1(c-1.5) (West 2022)), which permits trial courts to exercise their discretion and impose sentences below the mandatory minimums if certain conditions were met. Following a hearing, the trial court sentenced defendant to six years'

imprisonment, the mandatory minimum sentence. See 720 ILCS 5/9-3.3(b) (West 2018) (drug-induced homicide is a Class X felony); 730 ILCS 5/5-4.5-25(a) (West 2018) (sentence for Class X felony is between 6 and 30 years). The court did not impose a sentence under section 5-4-1(c-1.5) of the Corrections Code because it found that provision inapplicable to drug-induced homicide. The court also ordered defendant to pay $4492.64 in restitution to the father of the victim, Lorna Haseltine. Because part of defendant's bond was exonerated, the bond did not completely satisfy the restitution amount. The court set June 30, 2023—6 months and 11 days after the sentencing order was entered—as the date for defendant to pay restitution. Defendant moved the court to reconsider her sentence, challenging only the court's decision not to impose a sentence under section 5-4-1(c-1.5) of the Corrections Code. The court denied the motion, and this timely appeal followed. On appeal, defendant argues that we must vacate her six-year sentence and the restitution order and remand this cause for a new sentencing hearing because (1) section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide and (2) the trial court failed to set the manner and method of paying restitution in light of defendant's ability to pay. We vacate defendant's six-year sentence and remand for the trial court to (1) consider imposing a sentence under section 5-4-1(c-1.5) and (2) set the manner and method of paying restitution in light of defendant's ability to pay.

¶ 2 I. BACKGROUND

¶ 3 On November 16, 2018, defendant was charged by information with drug-induced homicide. The next day, the trial court's staff prepared a pretrial bond report and defendant prepared an affidavit of assets and liabilities. The pretrial bond report indicated that defendant worked as a manager at TGI Fridays, had worked there for the last 15 years, and earned between $3000 and $4000 per month. The affidavit of assets and liabilities revealed that defendant worked

as an "assoc. manager/server" at TGI Fridays, earned $2300 a month, and paid $1035 in rent and $300 toward a car loan.[1] The court set defendant's bond at $50,000, with 10% to apply. Defendant's father posted $5000 in bond on November 19, 2018. He signed the bail bond, acknowledging that "any and all of the bail bond deposited may be used to pay costs, attorney's fees, fines, restitution, or for other purposes authorized by the Court." Nine days after posting bond, defendant retained private counsel to represent her.

¶ 4 Approximately two months later, in January 2019, defendant was indicted. The bill of indictment provided:

> "That on or about August 12, 2017, *** [defendant] committed the offense of DRUG-INDUCED HOMICIDE, *** in that said defendant, while committing a violation of the Controlled Substances Act, Section 401(d) of Act 570 of Chapter 720 of the Illinois Compiled Statutes [(720 ILCS 570/401(d) (West 2018))], unlawfully delivered heroin, a controlled substance, containing fentanyl, to *** Haseltine, and *** Haseltine['s] death was caused by the injection, inhalation, absorption, or ingestion of that controlled substance."

¶ 5 In February 2020, approximately one year after she was indicted, defendant submitted a change of address form. This form reflected that she was moving from an apartment in Joliet to an apartment in Bolingbrook. In June 2021, the conditions of defendant's bond were modified so that she could travel to Florida for about one week. In July 2021, defendant submitted another change of address form, which reflected that she was moving to her father's house. On January 3, 2022, defendant assigned $2000 of her bond money to Dr. Karen Smith, a licensed clinical professional counselor who evaluated defendant and prepared a report.

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[1]Presumably, defendant's rent and car loan were monthly expenses.

¶ 6 On September 14, 2022, defendant filed an election to be sentenced under section 5-4-1(c-1.5) of the Corrections Code (see 5 ILCS 70/4 (West 2022) ("If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.")). The State did not concede that section 5-4-1(c-1.5) applied. Defendant entered a blind plea of guilty to committing a drug-induced homicide. The court admonished defendant about sentences that could be imposed, including a sentence under section 5-4-1(c-1.5), and the rights she was giving up by pleading guilty. The factual basis for the plea revealed that, on August 12, 2017, defendant had a text conversation with Haseltine about obtaining drugs and defendant agreed to supply her with some. A Western Union account, which was used to pay for the drugs, showed that defendant collected the money for the drugs as part of the transaction. When police interviewed defendant, she said that she and a man named Mark went to Haseltine's house and "Mark actually reached over [defendant] to hand a package of what [defendant] thought was heroin to *** Haseltine on that particular day." Thereafter, Haseltine was found unresponsive in her bathtub. She later died. An autopsy revealed that heroin laced with other drugs was found in Haseltine's system and that her death resulted from the ingestion of these substances. The court accepted the defendant's guilty plea, finding it knowingly and voluntarily made.

¶ 7 Defendant's sentencing hearing was held on December 19, 2022. At that hearing, various documents were admitted. These included the text messages defendant and Haseltine exchanged, Western Union business records, the psychosocial report Smith prepared, and defendant's presentence investigation report (PSI).

¶ 8 The text messages showed that Haseltine contacted defendant on the morning of August 12, 2017. Haseltine asked defendant if she or defendant's ex-boyfriend could "help [her] out" and

"grab one of those," for which Haseltine would "pay [defendant] extra on top of that." Haseltine then offered to "send[ ] the money to W[estern ]U[nion]" so that defendant could "go into the currency [exchange] with [her identification card] and grab it." Defendant texted Haseltine her address, and Haseltine texted defendant the control number she needed to collect the money at the currency exchange. Defendant replied, "[M]ark said he should have stuff around 1 anyways." Defendant then told Haseltine that she would contact her when she left work. Haseltine texted that she sent defendant $58, and defendant confirmed that she would "drop it off by [Haseltine]." Defendant asked Haseltine how much she wanted, and Haseltine asked defendant to "see if [she] could get 50 and split it." At 2:16 p.m., defendant texted Haseltine, telling her that she was on her way to "get Mark," and she estimated that they would be at Haseltine's house at 2:40 p.m. At 3:02 p.m., defendant texted Haseltine that she was "[h]ere."

¶ 9 The Western Union documents revealed that Haseltine sent $58 to defendant on August 12, 2017, at 11:45 a.m. Defendant collected the payment later that day.

¶ 10 The report Smith prepared, which was based on various documents and interviews Smith had with defendant and her father in February and August 2022, reflected that defendant had lived in her ex-boyfriend's apartment in Bolingbrook. She left there, moved in with a friend who lived in southern Illinois, and slept on the friend's couch.

¶ 11 Smith indicated that defendant was slow academically and, although she got along well with people, she was easily influenced by others. Defendant, who expressed extreme remorse for Haseltine's death, reported that she had attempted to commit suicide by swallowing a bottle of Xanax. In an excerpt of the police interview that Smith reviewed, Smith learned that Mark was defendant's ex-roommate and defendant had driven Mark to Haseltine's home because Mark did not have a driver's license.

¶ 12 The PSI showed that defendant drove while under the influence of alcohol (DUI) on March 14, 2022, while she was out on bond in this case. A month later, she was convicted of that offense and sentenced to 12 months of supervision and DUI counseling. Defendant was employed as a server at Cracker Barrel, earning $7.20 per hour plus tips. Monthly, defendant paid $900 in rent, $340 toward her car loan, and $126 for automobile insurance. She also had an outstanding balance of $3000 on her credit card.

¶ 13 Other evidence presented at the hearing revealed that Haseltine's father paid $4492.64 for Haseltine's funeral. A bill from the funeral home admitted at the hearing confirmed this. Haseltine's father paid for the funeral out of pocket and was never reimbursed.

¶ 14 Haseltine's father and sister testified about how Haseltine's death negatively affected them and Haseltine's young son. Defendant's friends and family testified that defendant was not a drug user and was hardworking, often working overtime or two jobs. At the time of sentencing, defendant lived in a hotel and worked there in addition to her job as a server at Cracker Barrel. Defendant's friends and family indicated that defendant was gullible, naïve, and easily taken advantage of. She was extremely giving, helping her friends and family financially and emotionally. Defendant's compassion was evidenced by the fact that she repeatedly attempted to help her ex-boyfriend overcome his drug addiction.

¶ 15 Suzanne Rubin, a psychotherapist with "quite a bit of background in assessing risk potential," interviewed defendant and testified at the sentencing hearing. She diagnosed defendant with depression, anxiety, and codependency. Rubin described codependency as "essentially fusing yourself with another person." Both people-pleasing and gullibility were characteristics of codependency. Rubin asserted that defendant posed no risk to the public and that "the likelihood of recidivism in any regard with [defendant] in [Rubin's] personal and professional opinion [was]

extremely low." She reached this conclusion knowing that defendant had committed DUI while out on bond.

¶ 16 In allocution, defendant accepted full responsibility for her actions and apologized to Haseltine's family.

¶ 17 The trial court sentenced defendant to six years' imprisonment. In imposing the sentence, the court considered the PSI and the evidence the parties presented, including all the exhibits. The court found in aggravation that "defendant's conduct caused or threatened serious harm" and "a sentence [was] necessary to deter others from committing the same crime." See 730 ILCS 5/5-5-3.2(a)(1), (7) (West 2022). The court gave "no weight to [defendant] being charged with the offense of DUI," as she "accepted responsibility for that offense shortly after being charged." In mitigation, the court found that "defendant did not contemplate [that] her criminal conduct would cause or threaten serious physical harm to another," she either "ha[d] no history of prior delinquency or criminal activity or ha[d] led a law-abiding life for a substantial period of time before the commission of the present crime," her "criminal conduct was the result of circumstances unlikely to recur," her "character and attitude[ ] *** indicate[d] she [was] unlikely to commit another crime," and she "[was] particularly likely to comply with the terms of a period of probation." See *id.* § 5-5-3.1(a)(2), (7), (8), (9).

¶ 18 In addressing this last point, the court considered whether it should sentence defendant under section 5-4-1(c-1.5) of the Corrections Code. In doing so, the court noted that "[c]ertainly if [it] had broad discretion in imposing a sentence, it may very well be that a term of probation would be appropriate under the very specific facts of this case." The court also found that "[defendant did] not pose a risk to public safety" and that "the events of August 12, 2017[,] involve[d] the use or possession of drugs" per section 5-4-1(c-1.5). See 730 ILCS 5/5-4-1(c-1.5) (West 2022).

However, the court determined that "the phrase [']use or possession of drugs[']] in conjunction with a mandatory minimum sentence as set forth in the statute does not apply to the offense of drug-induced homicide, a Class X felony."

¶ 19 The court then ordered defendant to pay Haseltine's father $4492.64 in restitution, noting that restitution would be paid from the bond money before any other assessments were satisfied. The State interjected that "the only thing [it] would point out, there's a partial exoneration of the bond, there's 2,000 less." Thus, "there's 2,500 available." The State asked "that that [balance] go to restitution first." Defendant did not object. The State then alerted the court that "[w]e need a date for that, that it needs to be paid by." The court ordered "that the balance should be paid by June 30, 2023." Defendant did not object.

¶ 20 Defendant moved the trial court to reconsider the sentence, challenging the trial court's determination that section 5-4-1(c-1.5) of the Corrections Code did not apply to drug-induced homicide. Defendant did not challenge the restitution order. The court denied the motion.

¶ 21 Four days after the trial court denied her motion to reconsider, defendant filed a notice of appeal. Thereafter, this court granted in part defendant's motion to stay her sentence and set her bond at $100,000, with 10% to apply. Defendant posted the $10,000 appeal bond in the trial court.

¶ 22 This timely appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant raises two issues on appeal. She argues that (1) section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide and (2) the restitution order is improper because the trial court failed to set the manner and method of paying restitution in light of defendant's ability to pay. We consider each issue in turn.

¶ 25 A. Section 5-4-1(c-1.5) of the Corrections Code

¶ 26 Resolving whether section 5-4-1(c-1.5) applies to drug-induced homicide necessarily begins with interpreting the statute. In interpreting the statute, we are guided by the well-settled rules of statutory construction. "Our primary objective when construing a statute is to ascertain the intent of the legislature and give effect to that intent." *People v. Ramirez*, 2023 IL 128123, ¶ 13. "The best evidence of legislative intent is the statutory language itself, which must be given its plain and ordinary meaning." *Id.* "Statutes must be read as a whole, and all relevant parts should be considered." *Id.* "A reviewing court may also discern legislative intent by considering the purpose of the statute, the problems to be remedied, and the consequences of interpretating the statute one way or another." *People v. Palmer*, 2021 IL 125621, ¶ 53. We "may not depart from the language of the statute by interjecting exceptions, limitations, or conditions tending to contravene the purpose of the [statute]." *Ramirez*, 2023 IL 128123, ¶ 13. We review *de novo* the construction of a statute. *Id.*

¶ 27 Before analyzing section 5-4-1(c-1.5), we find it helpful to consider the purpose of this statutory provision, which, as noted above, the canons of statutory construction allow us to do.[2] "The intent of [the] legislation [was] to empower the Judiciary to act appropriately." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 20 (statements of Senator Sims). Section 5-4-1(c-1.5) was enacted "to reform our criminal justice system, to tear down the problems that we have, *** because of the mandatory minimum sentencing." *Id.* The legislators were "not removing the mandatory minimum[s], [but] allowing the [trial] judge to deviate" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 177 (statements of Representative Harper)) and "impose something

[2]Section 5-4-1(c-1.5) (730 ILCS 5/5-4-1(c-1.5) (West 2020)) was introduced by House Bill 1587 (101st Ill. Gen. Assem., House Bill 1587, 2019 Sess.) and added to the Illinois Compiled Statutes by Public Act 101-652, § 20-5 (eff. July 1, 2021).

other than that mandatory minimum and get the [defendant] back to functioning in society as quickly as possible" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 179-80 (statements of Representative Connor)). In doing so, the legislators wanted to "treat the Judiciary as they are, a co-equal branch of government," and ensure that the legislators were not "stand[ing] as a super-judiciary." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 19 (statements of Senator Sims). Although there were discussions about the breadth of offenses that would or would not fall under this provision (see 101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 175 (statements of Representative Bryant) (specifically mentioning that drug-induced homicide would not be included); 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 17 (statements of Senator McClure) (expressing concern that "any offense that involves the use or possession of drugs that is currently not eligible for probation would now be eligible for probation at the discretion of *** the judge")), it was noted that "the language that [the legislators] us[ed] was approved by and came from the [Cook County] State's Attorney" (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 177 (statements of Representative Harper)).

¶ 28 With this in mind, we turn to examining section 5-4-1(c-1.5) of the Corrections Code, which provides:

> "Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser

> term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." 730 ILCS 5/5-4-1(c-1.5) (West 2022).

For purposes of this appeal, we find it necessary to determine only whether, under section 5-4-1(c-1.5), drug-induced homicide (1) is "an offense that requires a mandatory minimum sentence of imprisonment[ ]" and (2) "involves the use or possession of drugs." *Id.*

¶ 29 First, we consider whether drug-induced homicide is "an offense that requires a mandatory minimum sentence of imprisonment." *Id.* As charged here, drug-induced homicide is a Class X felony. 720 ILCS 5/9-3.3(b) (West 2018). A defendant convicted of a Class X felony faces a prison sentence between 6 and 30 years. 730 ILCS 5/5-4.5-25(a) (West 2018). This six-year sentence is a mandatory minimum. See *People v. Skillom*, 2017 IL App (2d) 150681, ¶ 29. Thus, section 5-4-1(c-1.5) of the Corrections Code applied to defendant insofar as the offense to which she pleaded guilty, *i.e.*, drug-induced homicide, was an offense that required the trial court to impose a minimum sentence.

¶ 30 We next consider whether drug-induced homicide is one of the enumerated offenses as to which the trial court can exercise its discretion and impose a sentence less than the minimum if the remaining conditions specified in section 5-4-1(c-1.5) are met. Although the State recognizes that drug-induced homicide is a Class X felony and that Class X felonies have mandatory minimum sentences, it claims that section 5-4-1(c-1.5) cannot apply to drug-induced homicide because "[n]one of the enumerated offenses[, *i.e.*, the use or possession of drugs, retail theft, or driving with a revoked license that resulted from unpaid financial obligations,] are Class X felony offenses." We find the State's argument misguided. Nowhere does section 5-4-1(c-1.5) indicate that it excludes Class X felonies. Nor is its applicability otherwise restricted based on the class of

the offense. Rather, the enumeration of offenses in section 5-4-1(c-1.5) states simply that "the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations." 730 ILCS 5/5-4-1(c-1.5) (West 2022). The State would have us find an exception for Class X felonies—an exception for which the legislature did not provide. We simply cannot inject such an exception into section 5-4-1(c-1.5). *Ramirez*, 2023 IL 128123, ¶ 13.

¶ 31 Turning to the offenses enumerated in section 5-4-1(c-1.5), we determine that drug-induced homicide falls within the first type of offense listed: it is an offense that "*involves* the use or possession of drugs." (Emphasis added.) 730 ILCS 5/5-4-1(c-1.5) (West 2022). In construing what the legislature meant by "involves the use or possession of drugs," we find it necessary to look to the dictionary. See *People v. Castillo*, 2022 IL 127894, ¶ 24 ("In determining the plain, ordinary, and popularly understood meaning of a statutory term, it is entirely appropriate to look to the dictionary for a definition of the term."). "Involves" is defined as "to have within or as part of itself: include" or "to relate closely: connect." Merriam-Webster Online Dictionary, **********.merriam-webster.com/dictionary/involves (last visited Nov. 15, 2023) [https://perma.cc/FZ3R-TZN5].

¶ 32 In light of this definition, we look to the elements of drug-induced homicide as set forth in section 9-3.3(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/9-3.3(a) (West 2018)):

> "A person commits drug-induced homicide when he or she violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully *delivering* a controlled substance to another, and any person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance." (Emphasis added.)

In line with section 9-3.3(a) of the Criminal Code, defendant was charged with drug-induced homicide because she "unlawfully *delivered* heroin, a controlled substance, containing fentanyl, to *** Haseltine." (Emphasis added.)

¶ 33 In light of the above, we conclude that "delivering" a controlled substance for purposes of drug-induced homicide "involves," *i.e.*, is "connect[ed]" to or "include[s]," the use or possession of drugs. More specifically, we conclude that delivering a controlled substance is connected to or includes possession because, without possession, a drug could not be delivered. See 720 ILCS 570/102(h) (West 2018) (" 'Deliver' or 'delivery' means the actual, constructive or attempted transfer of possession of a controlled substance ***."); *People v. Bolar*, 225 Ill. App. 3d 943, 947 (1992) ("While a person can possess something without delivering it, he cannot deliver it without possessing it. Therefore, when the jury found [the defendant] 'delivered' the cocaine, it also necessarily found that he possessed it."); *People v. Fonville*, 158 Ill. App. 3d 676, 687 (1987) ("[P]ossession is necessarily involved where someone intends to manufacture or deliver a controlled substance.").

¶ 34 Supporting our position is *United States v. James*, 834 F.2d 92 (4th Cir. 1987). There, the defendant was charged with possessing cocaine with the intent to distribute and carrying a firearm during a crime of drug trafficking. *Id.* at 92. Drug trafficking was defined as "any felony violation of federal law *involving* the distribution, manufacture, or importation of any controlled substance." (Emphasis added and internal quotation marks omitted.) *Id.* The defendant moved to dismiss the charges brought against him. *Id.* The trial court granted that motion as to carrying a firearm during a crime of drug trafficking, finding that possessing cocaine with the intent to distribute was not an offense involving distribution. See *id.* The government appealed. *Id.*

¶ 35 The reviewing court concluded that "possession with intent to distribute [was] a crime 'involving' distribution." *Id.* The court observed:

> "[V]iolations 'involving' the distribution, manufacture, or importation of controlled substances must be read as including more than merely the crimes of distribution, manufacturing, and importation themselves. Possession with intent to distribute is closely and necessarily involved with distribution. In fact, the line between the two may depend on mere fortuities, such as whether police intervene before or after narcotics have actually changed hands." *Id.* at 93.

The court also observed:

> "[T]his interpretation is necessary to give rational effect to [the carrying-a-firearm-during-drug-trafficking provision]. The statute is obviously intended to discourage and punish the deadly violence too often associated with drug trafficking. Such violence can readily occur when drug traffickers attempt to protect valuable narcotics supplies still in their possession or attempt to stop law enforcement officials from disrupting intended transactions. [The carrying-a-firearm-during-drug-trafficking statute] ought not to be interpreted so narrowly as to exclude such dangerous situations." *Id.*

¶ 36 The same is true here. First, "involves the use or possession of drugs" must include more than just use or possession. As observed in *James*, possession is closely and necessarily involved with distribution—here, delivery, which section 9-3.3(a) of the Criminal Code requires.[3] Further, construing section 5-4-1(c-1.5) of the Corrections Code as applying to only use-or-possession drug

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[3]Distribute is synonymous with deliver. See Merriam-Webster Online Thesaurus, **********.merriam-webster.com/thesaurus/deliver (last visited Nov. 15, 2023) [https://perma.cc/MN7L-ASUC].

offenses not only entails that we exclude the term "involves," which we cannot do, but also frustrates the legislative purpose, which is to undo the harm that the extensive mandatory minimum sentencing laws created. See *In re S.P.*, 297 Ill. App. 3d 234, 238 (1998) (noting that "several offenses under the [Corrections Code] carry mandatory minimum sentences").

¶ 37 The State argues that section 5-4-1(c-1.5) does not apply to drug-induced homicide because "[n]oticeably absent from this provision is any indication the legislature sought to include any offense that involved the 'delivery' of a controlled substance." We find the State's argument unavailing. The fact that the legislature did not include the term "delivery" in the phrase "use or possession of drugs" does not mean that drug-induced homicide, an offense requiring the delivery of a controlled substance, does not fall under this provision. Section 5-4-1(c-1.5) applies to offenses that "*involve*[ ] the use or possession of drugs" (emphasis added) (730 ILCS 5-4-1(c-1.5) (West 2022)), *not* simply the use or possession of drugs. If the legislature wanted to limit section 5-4-1(c-1.5) to only use-or-possession drug offenses, it would not have modified the phrase "use or possession of drugs" with the term "involves." Taking the State's position would require us to disregard the term "involves," which would render that term completely meaningless. See *Chapman v. Chicago Department of Finance*, 2023 IL 128300, ¶ 39 (noting that appellate court's failure to construe clause in statute violated rules of statutory construction because it rendered that clause superfluous). We simply cannot do that. See *id.*

¶ 38 While we come to our decision here by "giv[ing] undefined statutory words and phrases their natural and ordinary meanings" "[a]nd *** enforc[ing] the clear and unambiguous language as written, without resort to other aids of construction, *e.g.*, legislative history" (*People v. Cavitt*, 2021 IL App (2d) 170149-B, ¶ 167), had we found the statute ambiguous, the legislative history in this matter would support our reading. As noted, the legislature was warned that this law could

encompass drug-induced homicide. See 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 16 (statements of Senator McClure) (noting that "there's an entire category of if the offense involves the use or possession of drugs, and it could be any offense. Why is that so ambiguous, Senator, versus the other two offenses, which are very specific?"). Aware of this fact, the legislators voted to add section 5-4-1(c-1.5) of the Corrections Code.

¶ 39 As a final matter, we note that the mere fact that section 5-4-1(c-1.5) of the Corrections Code applies to drug-induced homicide does not mean that every defendant convicted of that offense will be subject to sentencing under this provision. Rather, even though drug-induced homicide is "an offense that requires a mandatory minimum sentence" and "involves the use or possession of drugs," a sentence under section 5-4-1(c-1.5) is allowed only if all the other conditions are met. 730 ILCS 5/5-4-1(c-1.5) (West 2022). That is, the trial court must still "find[ ] that the defendant does not pose a risk to public safety" and that "the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment." *Id.* Moreover, as an additional safeguard, imposing a sentence under section 5-4-1(c-1.5) requires that the trial court "must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." *Id.*

¶ 40 Given that section 5-4-1(c-1.5) applies to drug-induced homicide, we grant defendant the relief for which she asks, *i.e.*, a remand for a new sentencing hearing. In doing so, we stress that we express no opinion on whether defendant should be sentenced under section 5-4-1(c-1.5) of the Corrections Code.

¶ 41 B. Restitution

¶ 42 Defendant argues that the restitution order was improper because the trial court failed to set the manner and method of payment in light of her ability to pay. Defendant recognizes that she

forfeited this issue when she did not object to the restitution order at sentencing and challenge the order in her motion to reconsider the sentence. See *People v. Enoch*, 122 Ill. 2d 176, 198 (1988). Nevertheless, she asks us to consider the issue under the plain-error rule. The State argues that plain-error review is inappropriate because no error occurred.

¶ 43 "Generally, on appeal, we consider forfeited for appeal any issue not raised at trial and in a posttrial motion." *People v. D'Alise*, 2022 IL App (2d) 210541, ¶ 21. However, "[f]orfeiture does not apply when the issues raised fall within the parameters of the plain-error rule." *Id.* ¶ 23. Forfeited errors in sentencing, of which restitution is a part, may be reviewed under the plain-error rule if the error is plain and the defendant shows that either "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." (Internal quotation marks omitted.) *People v. Adame*, 2018 IL App (2d) 150769, ¶ 12; see *D'Alise*, 2022 IL App (2d) 210541, ¶¶ 23, 28.

¶ 44 Defendant argues that the trial court's imposition of restitution without setting the manner and method of payment in light of her ability to pay is reviewable under the second prong of the plain-error rule. We agree. See *D'Alise*, 2022 IL App (2d) 210541, ¶ 24.

¶ 45 The first step in reviewing an issue under the plain-error rule is deciding whether " 'plain error' occurred." *People v. Quezada*, 2022 IL App (2d) 200195, ¶ 40 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007)). "Plain error" is a " 'clear' " or an " 'obvious' " error. *Id.* (quoting *Piatkowski*, 225 Ill. 2d at 565 n.2). Thus, we address whether a clear or obvious error arose when the trial court did not (1) consider defendant's ability to pay restitution and, based thereon, (2) set the manner and method of paying restitution.

¶ 46 "Generally, a trial court's order for restitution will not be disturbed on appeal absent an abuse of discretion." *D'Alise*, 2022 IL App (2d) 210541, ¶ 26. "A trial court abuses its discretion

only when its ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would adopt the court's view." *Id.* That said, an order for restitution must comply with section 5-5-6 of the Corrections Code (730 ILCS 5-5-6 (West 2022)). *D'Alise*, 2022 IL App (2d) 210541, ¶ 27. A claim that an order for restitution failed to comply with section 5-5-6 of the Corrections Code is reviewed *de novo*. *Id.* Because defendant's arguments concern whether the order for restitution complied with the statutory requirements, our review here is *de novo*. See *id.*

¶ 47 Considering whether the restitution order here complied with section 5-5-6 of the Corrections Code mandates that we construe this statute. In doing so, we are again guided by the well-settled rules of statutory construction outlined above.

¶ 48 Section 5-5-6(f) of the Corrections Code covers the issues raised here. It provides, in relevant part:

> "Taking into consideration the ability of the defendant to pay, *** the court shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time not in excess of 5 years, *** not including periods of incarceration, within which payment of restitution is to be paid in full. Complete restitution shall be paid in as short a time period as possible. *** If the defendant is ordered to pay restitution and the court orders that restitution is to be paid over a period greater than 6 months, the court shall order that the defendant make monthly payments; the court may waive this requirement of monthly payments only if there is a specific finding of good cause for waiver." 730 ILCS 5-5-6(f) (West 2022).

¶ 49 In *D'Alise*, this court considered the application of section 5-5-6(f) in a situation similar to that presented here. There, the defendant, an unlicensed dentist who was convicted of the unlicensed practice of dentistry, was ordered to pay restitution to two former patients who were

injured by the defendant or those he employed. *D'Alise*, 2022 IL App (2d) 210541, ¶¶ 1, 9-10. In entering the restitution order, the trial court did not make a specific finding about the defendant's ability to pay or specify the time frame for the defendant to pay all the restitution. *Id.* ¶ 13.

¶ 50 On appeal, we determined that "a trial court is not required to expressly state that it considered a defendant's ability to pay" when ordering the defendant to pay restitution. *Id.* ¶ 51. Rather, we concluded that "there need only be sufficient evidence before the court concerning the defendant's ability to pay." *Id.* The trial court in *D'Alise* had sufficient evidence before it to determine that the defendant was able to pay restitution. *Id.* However, we determined that this fact "d[id] not mean that the restitution order [was] proper." *Id.* ¶ 55. Rather, we noted that a trial court ordering restitution must set the manner and method of making payments and, in doing so, "must specifically consider a defendant's ability to pay restitution." *Id.* We observed that, for example, "a court should consider that a defendant with many liquid assets might be able to easily pay a small amount of restitution in a very short time, while a defendant with no assets might not." *Id.* Because the trial court "fail[ed] to define the time during which [the] defendant must pay all the restitution," we "remand[ed] th[e] case for the limited purpose of allowing the trial court to determine the time frame for [the] defendant to pay restitution in full." *Id.* ¶¶ 61-62.

¶ 51 Here, as in *D'Alise*, evidence before the trial court suggested that defendant had the ability to pay restitution. Although defendant had debt and had lived with friends and family, presumably for free, she had money to obtain a private attorney and travel to Florida, had worked steadily for several years, and was working two jobs and living in a hotel when the trial court ordered her to pay restitution. That said, we note that the trial court here, like the trial court in *D'Alise*, failed to set the manner and method of paying restitution in light of defendant's ability to pay. More problematic is the fact that the trial court's order, which was entered on December 19, 2022,

seemed to require defendant to pay restitution in a lump sum, as it ordered only that restitution had to be paid by June 30, 2023. The difficulty is that June 30, 2023, was 6 months and 11 days after the order for restitution was entered. Because this was "greater than 6 months," the court had to "order that *** defendant make monthly payments" or "waive this requirement of monthly payments only if there [was] a specific finding of good cause for waiver." 730 ILCS 5/5-5-6(f) (West 2022). The trial court did neither. That is, it neither set monthly payments nor specifically found that monthly payments were waived for good cause. Thus, although the overage of 11 days may seem *de minimis*, it is nonetheless outside the six months our legislature set and is, therefore, improper.

¶ 52 Given the above, we conclude, as we did in *D'Alise*, that the failure to define the manner and method of paying restitution is a clear and obvious error. Thus, even though defendant forfeited this issue by failing to raise it in the trial court, we invoke the plain-error rule to review it and find that the restitution order is improper.

¶ 53 The State argues that "[w]here, as here, the trial court was silent as to the specific payment schedule[ ], it may be inferred that the court did not intend restitution to be paid over a period but rather intended a single payment." In making this argument, the State relies on *People v. Brooks*, 158 Ill. 2d 260 (1994). There, the defendant was convicted of armed robbery, sentenced to 10 years' imprisonment, and ordered to pay $2767.93 in restitution within two years after his release from prison. *Id.* at 262. At issue before our supreme court was whether the requirement in section 5-5-6(f) that a trial court "fix a period of time not in excess of 5 years" for payment of restitution meant 5 years from the defendant's sentencing or 5 years from the defendant's release from prison. (Emphasis and internal quotation marks omitted.) *Id.* at 263-64. Our supreme court determined

that this five-year period could run from either time. *Id.* at 263, 267-68.[4] In light of that holding, the court did not analyze in depth the defendant's argument that the restitution order was improper because it failed to set the manner and method of payment. See *id.* at 272. Specifically, the court asserted:

> "We do not consider at length an additional argument raised by [the] defendant that the [restitution] order was inappropriate for its failure to specify the method and manner of payment. [Citation.] The trial court's failure to define a specific payment schedule is understandable, given that [the] defendant had yet to serve his [prison] term and the regularity and amount of his future income, if any, was unknown. [Citation.] Furthermore, it is appropriate to infer from the trial court's failure to specify a payment schedule that restitution is to be made in a single payment. [Citation.] Under such circumstances, the [restitution] order's lack of specificity is not unreasonable." *Id.* at 272.

¶ 54 Notably, section 5-5-6(f) as applied in *Brooks* required, as it does now, monthly restitution payments if the restitution period exceeded six months, unless the court made "a specific finding of good cause for waiver" of the monthly-payment requirement (see Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-5-6(f)). Curiously, although the restitution period in *Brooks* exceeded six months (see *Brooks*, 158 Ill. 2d at 262) and the trial court neither required monthly payments nor (apparently) found good cause for waiver, the supreme court did not discuss whether the trial court erred in that respect. Nonetheless, the plain language of section 5-5-6(f) constrains us to hold that the trial court in this case erred by not making a specific finding of good cause for waiving the

[4]The version of section 5-5-6(f) of the Corrections Code in effect when *Brooks* was decided did not provide, as it does now, that the time within which a defendant had to pay restitution excluded any time the defendant was incarcerated. See Ill. Rev. Stat. 1991, ch. 38, ¶ 1005-5-6(f).

monthly-payment requirement, where the restitution period exceeded six months. See *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 82 (compliance with section 5-5-6(f) is mandatory).

¶ 55 As a final matter, we note that the State asks us to take judicial notice of the fact that defendant posted an appeal bond of $10,000, she is not currently in custody, and an outstanding balance of $1992.64 in restitution remains. In her reply brief, defendant notes that her father posted her appeal bond and did not receive notice that the bond could be used to satisfy the restitution order. Defendant intimates that, given the lack of notice, the appeal bond cannot be used to satisfy the outstanding amount of restitution.

¶ 56 We do not consider here how, if at all, the appeal bond affects the restitution order. We simply order, consistent with *D'Alise*, that the trial court on remand set the manner and method for paying restitution in light of defendant's ability to pay. In doing so, we express no opinion on whether the appeal bond can be used to pay restitution.

¶ 57 III. CONCLUSION

¶ 58 For these reasons, we vacate defendant's six-year sentence and remand this cause for the trial court to (1) consider whether to impose a sentence under section 5-4-1(c-1.5) of the Corrections Code and (2) set the manner and method of paying restitution in light of defendant's ability to pay. We otherwise affirm the judgment of the circuit court of Kendall County.

¶ 59 Affirmed in part and vacated in part; cause remanded with directions.

¶ 60 JUSTICE JORGENSEN, specially concurring:

¶ 61 While I concur in the majority's decision to remand this cause for a new sentencing hearing, I write separately to voice my concerns with the breadth of the result.

¶ 62 On appeal, defendant calls attention to the fact that she should have been eligible for sentencing under section 5-4-1(c-1.5) because her drug-induced homicide conviction required a

mandatory minimum sentence of imprisonment and "involve[d] the use or possession of drugs." 730 ILCS 5/5-4-1(c-1.5) (West 2022). As the majority correctly points out, sentencing eligibility under section 5-4-1(c-1.5) is not limited to *only* the "use or possession of drugs" but also includes all offenses *involving* the possession of drugs—including the delivery of drugs.

¶ 63 I am left troubled, however, because I do not believe, based on the legislators' comments at the House and Senate proceedings, that the General Assembly intended for all possession-, use- , and *delivery*-related offenses to be encompassed in the new sentencing scheme. While I am wary of the eventual application of this sentencing provision, I acknowledge that the plain language and the legislative history support the majority's decision. However, if the legislature takes issue with the potential broad application of section 5-4-1(c-1.5) to *all* delivery offenses, then I hope it takes the opportunity to clarify its intent.

*People v. Hoffman*, 2023 IL App (2d) 230067

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|---|---|
| Decision Under Review: | Appeal from the Circuit Court of Kendall County, No. 18-CF-395; the Hon. Robert P. Pilmer, Judge, presiding. |
| Attorneys for Appellant: | James E. Chadd, Thomas A. Lilien, and Ann Fick, of State Appellate Defender's Office, of Elgin, for appellant. |
| Attorneys for Appellee: | Eric C. Weis, State's Attorney, of Yorkville (Patrick Delfino, Edward R. Psenicka, and Victoria E. Jozef, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People. |

# APPENDIX B

Opinion of the Illinois Supreme Court

(June 26, 2025)

2025 IL 130344

# IN THE

# SUPREME COURT

# OF

# THE STATE OF ILLINOIS

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(Docket No. 130344)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v.
KRYSTLE HOFFMAN, Appellee.

*Opinion filed June 26, 2025.*

CHIEF JUSTICE THEIS delivered the judgment of the court, with opinion.

Justices Overstreet, Holder White, and Cunningham concurred in the judgment and opinion.

Justice O'Brien dissented, with opinion, joined by Justices Neville and Rochford.

## OPINION

¶ 1 This issue in this appeal is whether section 5-4-1(c-1.5) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-1(c-1.5) (West 2022)) permits the trial court to deviate from the otherwise mandatory minimum prison term for drug-induced

homicide. The Kendall County circuit court found that the statute did not permit a sentencing deviation for that offense. The appellate court determined, however, that it did. 2023 IL App (2d) 230067, ¶ 40. For the reasons that follow, we hold that section 5-4-1(c-1.5) does not allow a sentencing deviation for drug-induced homicide, as that construction of the statute would lead to absurd results. Therefore, we reverse the judgment of the appellate court, in part.

¶ 2 BACKGROUND

¶ 3 Defendant Krystle Hoffman was charged with the drug-induced homicide of Lorna Haseltine. On August 12, 2017, Haseltine texted defendant to inquire whether her boyfriend could obtain heroin for Haseltine. Defendant responded that her roommate, Mark Matthews, would have heroin that afternoon. Haseltine then wired money to defendant via Western Union. Defendant retrieved the money and drove Matthews to Haseltine's home, where Matthews handed Haseltine the heroin. Shortly thereafter, Haseltine went upstairs to take a bath. Sometime later, her nine-year-old son checked on her and began screaming that she would not wake up. An autopsy report attributed her death to heroin laced with other substances, including fentanyl. About one year later, the police interviewed defendant. Although defendant was not herself a drug user, she ultimately acknowledged arranging for Matthews to give Haseltine heroin.

¶ 4 On September 14, 2022, defense counsel informed the trial court that defendant intended to enter an open guilty plea to drug-induced homicide and asked to be sentenced under the recently enacted section 5-4-1(c-1.5) of the Code, although the State did not agree that the statute applied. After the State presented the factual basis, the trial court accepted defendant's guilty plea.

¶ 5 At the sentencing hearing, the State presented the text messages between Haseltine and defendant, a document showing the Western Union transfer, and the video of defendant's interview with police. Haseltine's father testified regarding the events on the day she died, and her sister read a victim impact statement attesting to her family's trauma and emotional suffering, including the deprivation experienced by Haseltine's son.

¶ 6 Several of defendant's friends and family members testified on her behalf. Their collective testimony indicated that defendant was a hard worker, was against drug use, and would often help others. She was naïve, however, rather than a leader. Suzanne Rubin, a psychotherapist, testified that defendant was not a threat to the public and was at a low risk for recidivism as to this offense. In addition, Karen L. Smith's psychosocial evaluation revealed that defendant was a slow learner, as well as a people pleaser, and struggled with codependency. The presentence investigation report showed that defendant had no criminal background but had been sentenced to supervision for driving under the influence of alcohol after being charged in this case. In elocution, defendant acknowledged that what she did was wrong and apologized to Haseltine's family.

¶ 7 The parties disputed whether, under section 5-4-1(c-1.5) of the Code, the trial court could deviate from the mandatory minimum prison sentence required for drug-induced homicide. Section 5-4-1(c-1.5) permits a trial court to deviate from a mandatory prison term when, among other things, "the offense involves the use or possession of drugs." 730 ILCS 5/5-4-1(c-1.5) (West 2022).

¶ 8 The State argued that the statute referred to the "use" or "possession" of drugs but omitted "delivery," which is required to commit drug-induced homicide. Defendant did not use drugs, and although Matthews possessed them, defendant did not. According to the State, the statute was only intended to address "minimum sentencing laws that were imposed in the '80s for drug cases" and drug users who were imprisoned for having an addiction. Sentencing a defendant to probation for killing someone would be absurd.

¶ 9 Defense counsel argued that this case clearly involved the "use" of heroin but acknowledged that the statute did not specify whether it applied to a defendant's "use" or a victim's "use." Additionally, the statute applied to drug-induced homicide because that offense required "delivery" and delivery required "possession." Defense counsel further argued that, because the statute was ambiguous, it should be interpreted in defendant's favor.

¶ 10 The trial court found that, if section 5-4-1(c-1.5) applied, "it may very well be that a term of probation would be appropriate under the very specific facts of this case." Yet the court surmised that "the phrase use or possession of drugs in conjunction with a mandatory minimum sentence as set forth in the statute does not

apply to the offense of drug-induced homicide, a Class X felony." The trial court imposed the minimum six-year prison term.

¶ 11 The appellate court vacated Hoffman's sentence and remanded this matter for a new sentencing hearing. 2023 IL App (2d) 230067. The appellate court held that drug-induced homicide constitutes an offense that "involves the use or possession of drugs" within the unambiguous meaning of section 5-4-1(c-1.5), which permitted the trial court to deviate from the mandatory minimum prison term. *Id.* ¶¶ 31-33, 38, 40. Because drug-induced homicide requires a defendant to commit the offense of delivery and delivery requires possession, the court opined that possession is closely involved with delivery and drug-induced homicide. *Id.* ¶¶ 32-33. Moreover, under the statute, a defendant convicted of drug-induced homicide would nonetheless be subject to a mandatory prison term if she posed a risk to public safety or if the interest of justice did not require a sentencing deviation. *Id.* ¶ 39.

¶ 12 Justice Jorgensen specially concurred. She agreed that the statute's plain language supported the majority's holding but expressed concern that the legislative history showed that the legislature did not intend for the statute to apply broadly to all delivery offenses. *Id.* ¶¶ 61-63 (Jorgensen, J., specially concurring). She urged the legislature to clarify its intent if this was the case. *Id.* ¶ 63.

¶ 13 We allowed the State's petition for leave to appeal. Ill. S. Ct. R. 315(a) (eff. Dec. 7, 2023).

¶ 14 ANALYSIS

¶ 15 The issue before us is the proper construction of section 5-4-1(c-1.5) and whether it authorizes a trial court to deviate from the mandatory minimum prison sentence for drug-induced homicide.

¶ 16 Our primary objective in construing a statute is to ascertain and effectuate the legislature's intent. *People v. Burge*, 2021 IL 125642, ¶ 20. The best indication of that intent is the statute's plain language, given its ordinary meaning. *People v. Wells*, 2023 IL 127169, ¶ 31. Where a statute's language is clear and unambiguous, we must effectuate the statute's meaning without consulting other aids of statutory

construction. *People v. Davidson*, 2023 IL 127538, ¶ 14. Where a statute is ambiguous, however, we must consult extrinsic tools. *People v. Boyce*, 2015 IL 117108, ¶ 22.

¶ 17 Section 5-4-1(c-1.5) of the Code states:

> "Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) *the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations*; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." (Emphasis added.) 730 ILCS 5/5-4-1(c-1.5) (West 2022).

¶ 18 Initially, we observe that this statute is not a model of clarity in legislative drafting. The legislature seemingly intended to allow the trial court to depart from mandatory minimum prison terms for certain offenses that it deemed to be less serious. Beyond that, little is clear. Nonetheless, our construction must be guided by the language of the statute and well-settled principles of statutory construction.

¶ 19 Here, the parties dispute what it means for an offense to constitute one that "involves the *** possession of drugs," focusing on the term "involves." *Id.*

¶ 20 The State argues that the legislature modified the "possession of drugs" with the word "involves" because Illinois recognizes not just one offense for the mere possession of drugs but several possession offenses spread across several acts. See 720 ILCS 570/402 (West 2022); 720 ILCS 646/60 (West 2022); 720 ILCS 550/4 (West 2022). The State suggests that the legislature unambiguously referred to an offense that "involves" drug possession as an alternative to listing every statutory possession offense. Thus, the legislature did not intend to allow sentencing deviations for offenses that involve additional conduct beyond mere possession.

¶ 21 Defendant contends that, by modifying "possession of drugs" with the word "involves," the legislature unambiguously intended to include offenses beyond mere possession. She argues that, because one cannot deliver what one does not possess, section 5-4-1(c-1.5) encompasses the delivery of drugs. See, *e.g.*, 720 ILCS 570/102(h) (West 2022) (stating that under the Illinois Controlled Substances Act, " 'delivery' means the actual, constructive or attempted transfer of possession of a controlled substance, with or without consideration"). Defendant further asserts that, because drug-induced homicide requires the delivery of drugs (720 ILCS 5/9-3.3(a) (West 2022)), section 5-4-1(c-1.5) also encompasses drug-induced homicide.

¶ 22 A statute is ambiguous if reasonably well-informed persons could understand it in multiple ways. *People v. Lighthart*, 2023 IL 128398, ¶ 39. In addition, ambiguity is a question of statutory context, not definitional possibilities. *Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶ 14. If a statutory term has multiple definitions that would each make some sense in the statute's context, the statute is ambiguous. *Id.* We review matters of statutory construction *de novo*. *People v. Fair*, 2024 IL 128373, ¶ 61.

¶ 23 We find section 5-4-1(c-1.5) to be ambiguous. A reasonably well-informed person could understand this statute to allow the trial court to deviate from a mandatory sentence for any offense that requires mere drug possession, to the exclusion of other conduct, regardless of where the offense appears in the Criminal Code. A reasonably well-informed person could also, however, understand the statute to permit the trial court to deviate from a mandatory minimum prison term for any offense that includes the possession of drugs in addition to other conduct. In short, reasonably well-informed persons could understand "involves" in multiple ways.

¶ 24 Dictionary definitions provide no clarity here. The word "involve" is susceptible to several meanings. The term "involve" means "to have within or as part of itself" but also "to relate *closely*: connect." (Emphasis added.) Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/involves (last visited Apr. 29, 2025) [https://perma.cc/7JN5-DBH3].

¶ 25 As defendant argues, delivery and drug-induced homicide each have drug possession "within or as part of itself." On the other hand, the State's assertion that drug-induced homicide is a far cry from mere drug possession—*i.e.*, drug-induced

homicide is not "closely" related to mere drug possession—is also well taken. The respective definitions ascribed to "involves" by each party make some sense within the context of this statute. This supports our determination that the statute is ambiguous. See *People v. Beachem*, 229 Ill. 2d 237, 246 (2008) (finding the statute to be ambiguous because "custody" has several definitions and the statute's context did not indicate the appropriate definition to apply).

¶ 26 Having determined that the statute is ambiguous, we must resort to extrinsic tools of statutory interpretation. *Boyce*, 2015 IL 117108, ¶ 22. Where a statute is ambiguous, courts may examine legislative history and debates to ascertain the legislature's intent. *People v. Reyes*, 2023 IL 128461, ¶ 32.

¶ 27 Defendant and the State each argue that the legislative history behind section 5-4-1(c-1.5) supports their respective positions. We conclude that it supports neither party.

¶ 28 The provision in question was introduced as part of House Bill 1587 on January 30, 2019, and was amended four times. 101st Ill. Gen. Assem., House Bill 1587, 2019 Sess. The first two amendments broadened the offenses that would be excluded from the deviations permitted by the statute. *Id.* (as amended March 14 and March 21, 2019). The third, however, eliminated the list of exclusions and instead enumerated the offenses that would be eligible for a sentencing deviation, including an offense that "involves the possession of drugs." *Id.* (amended April 4, 2019). The fourth and final amendment narrowed eligible offenses for driving on a revoked license to those in which the license was revoked due to unpaid financial obligations. *Id.* (amended April 5, 2019). That amendment also added eligibility for offenses involving the "use" of drugs. *Id.*

¶ 29 Defendant states that it is significant that the legislature added drug "use" to the list of eligible offenses. She has not, however, explained the import of that significance. We also observe that, because a person must "possess" a drug to "use" it, the addition of "use" undermines defendant's argument that section 5-4-1(c-1.5) encompasses delivery offenses solely because delivery requires possession. Such reasoning would seemingly render the term "use" superfluous because use, like delivery, necessarily entails possession. See *Fair*, 2024 IL 128373, ¶ 61 (recognizing that a statute must be construed as a whole so that, if possible, no term is rendered superfluous).

¶ 30 Defendant further argues that legislators' remarks during debates show that the legislature intended to return offenders to society (101st Ill. Gen. Assem., House Proceedings, Apr. 11, 2019, at 179-80 (statements of Representative Connor)) and undo the general harm done by mandatory minimums (*id.* at 180 (statements of Representative Skillicorn)). Examining the debates more closely, those comments shed no light on which offenders should be returned to society or which mandatory minimums were considered to have been unduly harmful.

¶ 31 During House debates on House Bill 1587, Representative Sonya Harper, one of the bill's sponsors, stated that it allowed "judges to sentence an offender to a sentence less than the statutory minimum when it makes sense." *Id.* at 175 (statements of Representative Harper). In opposition, Representative Terri Bryant remarked that the bill permitted deviations for "a whole plethora of charges," including "drug-induced homicides." *Id.* at 175-76 (statements of Representative Bryant). Representative Mark Batinick then asked whether it was correct that the bill would make mandatory minimums optional. *Id.* at 176 (statements of Representative Batinick). Representative Harper responded, "No, I believe there's a misunderstanding about the [b]ill. *** [T]his [b]ill only refers to offenses only involving drug use or possession, retail theft, or driving on a revoked license for unpaid financial obligation." *Id.* (statements of Representative Harper).

¶ 32 We reject the State's assertion that Representative Harper's reference to a misunderstanding was clearly directed at Representative Bryant's belief that the statute would apply to drug-induced homicide. Rather, that reference immediately followed Representative Batinick's question and may have been limited to the suggestion that the trial court could deviate from a mandatory prison term for any offense. We further note that Representative Harper merely recited the provision's language without clarifying its scope.

¶ 33 During Senate proceedings, Senator Steve McClure questioned why the category of an offense that "involves the use or possession of drugs" was "so ambiguous" and "so broad" compared to the "very specific" offenses of retail theft and driving on a revoked license due to unpaid financial obligations. 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 16-17 (statements of Senator McClure). He observed that even Class X aggravated criminal sexual assault based on delivering a controlled substance to the victim would be eligible for a deviation

and remarked that "judges, for whatever reason, *** can make very poor decisions on the wrong day." *Id.* at 17-18. Senator McClure concluded that this was "bad legislation." *Id.* at 19.

¶ 34 Defendant argues that, despite these comments, the statute was enacted without altering its language, showing that the legislature intended to adopt the broad meaning discussed by Senator McClure. Defendant ignores, however, that following Senator McClure's comments, House Bill 1587 failed to pass in the Senate. 101st Ill. Gen. Assem., House Bill 1587, 2019 Sess. (failed to pass in the Senate, was placed on postponed consideration, and ultimately adjourned *sine die*); 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 20-21. Instead, the provision was subsequently included verbatim in House Bill 3653 and passed with no acknowledgement of Senator McClure's prior remarks. 101st Ill. Gen. Assem., House Bill 3653, 2019 Sess. Thus, the passage of House Bill 3653 does not signify an endorsement of Senator McClure's prior interpretation of the statute during debates on House Bill 1587.

¶ 35 Representative Justin Slaughter, House Bill 3653's chief sponsor, stated that the statute provided "more judicial discretion for lower level, non-violent offenses." 101st Ill. Gen. Assem., House Proceedings, Jan. 13, 2021, at 7 (statements of Representative Slaughter). Yet, we note that even a simple possession offense may constitute a Class X felony. See, *e.g.*, 720 ILCS 646/60(4) (West 2022) (stating that possession of 100 grams or more of methamphetamine constitutes a Class X felony). Accordingly, we also reject the State's suggestion that Representative Slaughter's view of House Bill 3653 demonstrates the legislature's intent.

¶ 36 In short, the legislative history here does not clarify what the collective legislative body intended when section 5-4-1(c-1.5) was enacted. Instead, it reflects individual legislators talking past one another. *People v. R.L.*, 158 Ill. 2d 432, 442 (1994) (recognizing that courts generally give individual legislators' comments little weight, as the collective body's intent guides our construction).

¶ 37 Among the many guides for interpreting an ambiguous statute is our consideration of the consequences of any given interpretation. *Solon v. Midwest Medical Records, Ass'n*, 236 Ill. 2d 433, 441 (2010). We may reject an otherwise reasonable interpretation of a statute if that interpretation would lead to absurd results. See *Wells*, 2023 IL 127169, ¶ 31 (stating that this court must presume the

legislature did not intend absurdity). We find that defendant's interpretation of section 5-4-1(c-1.5) would indeed lead to absurd results.

¶ 38 Defendant's expansive reading of the statute would permit a trial court to deviate from a mandatory minimum prison term for any offense that encompasses drug possession, which, as we have noted, implicates delivery. In turn, a sentencing court could deviate from a mandatory prison term with respect to any offense that includes delivery. Many offenses requiring delivery constitute Class X offenses that are subject to mandatory minimum prison terms (730 ILCS 5/5-4.5-25(d) (West 2022)) and would therefore be eligible for sentencing deviations under defendant's interpretation of section 5-4-1(c-1.5). See, *e.g.*, 720 ILCS 5/31A-1.2(c), (e) (West 2022) (Class X unauthorized delivery of contraband, including controlled substances, to an inmate); 720 ILCS 570/407(b)(1) (West 2022) (Class X delivery of a controlled substance within 500 feet of a school when minors are present); 720 ILCS 5/33G-3(e)(4), 33G-4, 33G-5 (West 2022) (Class X racketeering predicated on methamphetamine delivery). For several reasons, we find that casting such a broad net would lead to absurd results.

¶ 39 As the offense of drug-induced homicide shows, offenses that require delivery may lead to another's death. See 720 ILCS 5/9-3.3(a) (West 2022). Delivery of a controlled substance, or even possession, may be a component of felony murder (*id.* § 9-1(a)(3)), which is also subject to a mandatory minimum prison term (730 ILCS 5/5-4.5-20 (West 2022)). See 720 ILCS 5/33A-2(a) (West 2022); *People v. Trowers*, 215 Ill. App. 3d 862, 865-66 (1991) (recognizing that armed violence may be predicated on possession of a controlled substance); *People v. Greer*, 336 Ill. App. 3d 965, 971 (2003) (recognizing that armed violence based on delivery of a controlled substance may constitute a forcible felony, serving as a predicate for felony murder). We find that it would be absurd for the legislature to extend the same sentencing grace to a defendant who merely possesses drugs and a defendant whose actions lead to someone's death.

¶ 40 As the State observes, certain Class X offenses may also be committed by deliberately delivering drugs to a victim as a tool to further violate the victim's person. Class X predatory criminal sexual assault of a child, for example, may be committed by "deliver[ing] *** any controlled substance to the victim." 720 ILCS 5/11-1.40(a)(2)(D), (b) (West 2022). Similarly, a person may commit Class X

aggravated criminal sexual assault by "deliver[ing] *** any controlled substance to the victim." *Id.* § 11-1.30(a)(7), (d). Under defendant's interpretation of section 5-4-1(c-1.5), a trial court could find such offenses where the defendant weaponized the delivery of drugs eligible for sentencing deviations. We find that this too renders defendant's construction of the statute inherently absurd. Simply put, there is no reason why a defendant's use of drugs against another would reduce the defendant's culpability.

¶ 41 Moreover, certain offenses may be committed both with and without the delivery of drugs. For example, the foregoing offense of predatory criminal sexual assault of a child may be committed by delivering drugs to the victim but may also be committed by being armed with a firearm. *Id.* § 11-1.40(a)(2)(A), (d). Aggravated criminal sexual assault may be committed through the delivery of drugs but may also be committed by displaying a dangerous weapon. *Id.* § 11-1.30(a)(1), (7), (d). Similarly, a person may confine a child for the purpose of committing the Class X offense of promoting juvenile prostitution "by administering to the child *** any *** drug" or by administering alcohol. *Id.* § 11-14.4(a)(4), (d). Defendant has failed to identify any conceivable reason why the legislature would empower the trial court to return to society individuals who commit offenses by weaponizing drugs but deny the trial court's authority to do the same for defendants who commit the same offenses through other means.

¶ 42 Defendant argues that section 5-4-1(c-1.5)'s other requirements—that the defendant is not a threat to public safety and that the interest of justice require a sentencing deviation—ameliorate these absurdities. Those requirements, however, do not explain why the legislature would make sentencing relief available for the aforementioned delivery offenses in the first instance.

¶ 43 In light of the presumption that the legislature did not intend absurd results, section 5-4-1(c-1.5)'s reference to an offense that "involves the *** possession of drugs" cannot mean any offense that includes or necessarily entails possession and, in turn, delivery.

¶ 44 In contrast, the State's interpretation of what it means for an offense to "involve[ ] the *** possession of drugs" does not lead to absurd results. The State contends that such language refers to any offense criminalizing the mere possession of drugs, regardless of what enactment the offense appears in. This interpretation

furthers the legislature's purpose of alleviating the effects of mandatory minimum prison terms, as some offenders will be entitled to a sentencing deviation.

¶ 45 We hold that section 5-4-1(c-1.5)'s reference to an offense that involves drug possession authorizes a trial court to deviate from a mandatory minimum prison term for the mere possession of drugs, not for any and all offenses that implicate drug possession, provided that the statute's other requirements are satisfied.

¶ 46 In reaching this determination, we reject defendant's assertion that the rule of lenity requires us to construe the statute in her favor. Under that rule, a court adopts a more lenient interpretation of a criminal statute where, after applying traditional tools of statutory construction, an ambiguous statute remains. *People v. Gaytan*, 2015 IL 116223, ¶ 39.

¶ 47 Here, we have resolved the specific ambiguity before us by using traditional tools of statutory construction to determine the legislature's intent. Consequently, we are not presented with a grievous ambiguity requiring us to apply the rule of lenity. See *People v. Gutman*, 2011 IL 110338, ¶ 44 (distinguishing between an ambiguity and a "grievous ambiguity").

¶ 48 Finally, although well-settled rules of statutory construction have enabled us to resolve the specific ambiguity before us, our review of the statute and the parties' arguments has revealed several hurdles to understanding and applying section 5-4-1(c-1.5). We briefly touch on them here.

¶ 49 The statute refers to an offense that involves the "use" of drugs, but neither the Controlled Substances Act (720 ILCS 570/100 *et. seq.* (West 2022)), the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 *et. seq.* (West 2022)), nor the Cannabis Control Act (720 ILCS 550/1 *et seq.* (West 2022)) criminalizes drug "use." Instead, they criminalize conduct such as possession, delivery, manufacturing, and trafficking. See 720 ILCS 570/401, 401.1, 402 (West 2022); 720 ILCS 646/15, 55, 56, 60 (West 2022); 720 ILCS 550/4, 5.1, 5.2, 6 (West 2022). Additionally, section 5-4-1(c-1.5) does not define "drugs." Although the statute encompasses offenses involving "retail theft or driving on a revoked license due to unpaid financial obligations," the parties dispute when, if ever, those offenses are subject to a mandatory minimum prison term, as is required for the statute to apply. Moreover, licenses are generally not "revoked" due to

unpaid financial obligations; they are "suspended." See 625 ILCS 5/7-303(a), (b), 7-702(c) (West 2022); see also *id.* § 7-205(a).

¶ 50 For the benefit of defendants, the public, and the courts, we urge the legislature to revisit this statute to ensure that the language employed clearly reflects the legislature's intent.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we hold that section 5-4-1(c-1.5) permits the trial court to deviate from a mandatory minimum prison term where an offense criminalizes the mere possession of drugs, regardless of what enactment the offense appears in. The statute does not authorize a deviation for offenses that include possession in addition to other conduct, including the conduct involved in drug-induced homicide. Recognizing this, the trial court correctly sentenced defendant to the mandatory minimum six-year prison term for that offense. Accordingly, we reverse the appellate court's judgment to the extent that the court vacated defendant's prison sentence and affirm the appellate court's judgment in all other respects. The appellate court also remanded with directions to set the manner and method of paying restitution, and we do not disturb this portion of the appellate court's judgment.

¶ 53 Appellate court judgment affirmed in part and reversed in part.

¶ 54 Circuit court judgment affirmed and remanded with directions.

¶ 55 JUSTICE O'BRIEN, dissenting:

¶ 56 I disagree with the majority's conclusion that the sentence reduction statute (730 ILCS 5/5-4-1(c-1.5) (West 2022)) is ambiguous and does not apply to the offense of drug-induced homicide. See *supra* ¶¶ 1, 23. I also disagree with the majority's speculative belief that the application of the sentence reduction statute to the instant case will lead to absurd results in the future. *Supra* ¶ 38. Because I would find that the sentence reduction statute is unambiguous and applicable to the offense of drug-induced homicide, I dissent.

¶ 57 The question to be answered in this appeal is whether the sentence reduction statute (730 ILCS 5/5-4-1(c-1.5) (West 2022)) applies to the offense of drug-induced homicide. "This is a question of statutory interpretation, and as such the principles guiding our analysis are well established." *People v. Swift*, 202 Ill. 2d 378, 385 (2002). This court's primary objective when interpreting a statute is to give effect to the legislature's intent. *Id.* Importantly, it is the statutory text that best reflects the legislature's intent. *People v. Grant*, 2022 IL 126824, ¶ 24. When the statutory text is clear and unambiguous, a court may not depart from the plain language and meaning of the statute by reading into it exceptions, limitations, or conditions that the legislature did not express. *Id.* ¶ 25 (citing *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 26 (2005), and *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 309-10 (2001)). If we can determine the legislative intent from the plain language of the statute, we must give that intent effect without resorting to other interpretive aids or consideration of the legislative history of the statute. *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶ 44; *People v. De Filippo*, 235 Ill. 2d 377, 384 (2009); *People v. Roberts*, 214 Ill. 2d 106, 116 (2005); *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 292 (2004) (citing *Envirite Corp. v. Illinois Environmental Protection Agency*, 158 Ill. 2d 210, 216-17 (1994)); *County of Du Page v. Graham, Anderson, Probst & White, Inc.*, 109 Ill. 2d 143, 151 (1985); *Illinois Power Co. v. Mahin*, 72 Ill. 2d 189, 194 (1978) (citing *Western National Bank of Cicero v. Village of Kildeer*, 19 Ill. 2d 342, 350 (1960)).

¶ 58 The sentence reduction statute states:

> "(c-1.5) Notwithstanding any other provision of law to the contrary, in imposing a sentence for an offense that requires a mandatory minimum sentence of imprisonment, the court may instead sentence the offender to probation, conditional discharge, or a lesser term of imprisonment it deems appropriate if: (1) the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations; (2) the court finds that the defendant does not pose a risk to public safety; and (3) the interest of justice requires imposing a term of probation, conditional discharge, or a lesser term of imprisonment. The court must state on the record its reasons for imposing probation, conditional discharge, or a lesser term of imprisonment." 730 ILCS 5/5-4-1(c-1.5) (West 2022).

¶ 59 The statute provides the trial court discretion to impose a sentence below the mandatory minimum term in three instances: if "the offense involves the use or possession of drugs, retail theft, or driving on a revoked license due to unpaid financial obligations." *Id.* The majority finds ambiguity in both the individual word—"involves"—and the relevant nine words—"the offense involves the use or possession of drugs." The majority believes a reasonable person could read the sentence reduction statute as applicable only to "mere drug possession" offenses but also as applying to offenses that include drug possession "in addition to other conduct." *Supra* ¶ 23. Likewise, the majority believes that "well-informed persons could understand 'involves' in multiple ways." *Supra* ¶ 23. I emphasize that the common understanding and usage of the term "involves" in our everyday vocabulary is not an abstract or amorphous concept. Using this unambiguous term, the legislature's intent is crystal clear—if the offense involves the use or possession of drugs and the other requirements of the statute are met, the defendant is eligible for a lesser sentence. See 730 ILCS 5/5-4-1(c-1.5) (West 2022). This language cannot be reasonably read to apply only to a narrow and specific subset of drug possession offenses. The majority's opposite conclusion that a reasonable person could interpret this language as applicable only to "mere drug possession" offenses violates the cardinal rule of statutory construction that a court "may not depart from the plain language and meaning of a statute by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *People v. Legoo*, 2020 IL 124965, ¶ 14; see *People v. Lighthart*, 2023 IL 128398, ¶ 39 (citing *Brunton v. Kruger*, 2015 IL 117663, ¶ 24, and *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 56); *People v. Hardman*, 2017 IL 121453, ¶ 31 (citing *Roberts*, 214 Ill. 2d at 116); *People v. Giraud*, 2012 IL 113116, ¶ 6 (citing *People v. Perry*, 224 Ill. 2d 312, 323-24 (2007)); *People v. Dominguez*, 2012 IL 111336, ¶ 16; *People v. Amigon*, 239 Ill. 2d 71, 85 (2010); *People v. Rissley*, 206 Ill. 2d 403, 414 (2003).

¶ 60 Because the statute does not define the term "involves," my analysis, like the majority's, begins with looking to the word's plain meaning as set forth in the dictionary. *People v. Chapman*, 2012 IL 111896, ¶ 24 ("When a statute contains a term that is not specifically defined, it is entirely appropriate to look to the dictionary to ascertain the plain and ordinary meaning of the term."). "Involve" is defined as "to have within or as part of itself: include" or "to relate closely: connect" (Merriam-Webster Online Dictionary, https://www.merriam-webster.com/

dictionary/involve (last visited June 6, 2025) [https://perma.cc/DS3Z-NLNB]) and "to contain as a part; include" and "to connect closely and often incriminatingly; implicate" (American Heritage College Dictionary 716 (3d ed. 1997). Unlike the majority, I find no conflict in the dictionary definitions of "involves." The dictionary definitions assign similar meanings to "involves," such as "connect," "contain," and "include." I hold that the meaning and definition of the word "involves" is unambiguous.

¶ 61 While the majority distorts the plain meaning of the word "involves," it also disregards and removes the word "use" from the statute. Specifically, the majority focuses entirely on drug possession as an eligible offense, not drug "use or possession" as the statute dictates. *Supra* ¶ 45. By focusing only on drug possession and omitting drug use from its interpretation of the statutory text, the majority violates the well-established principle that all words in a statute are to be considered when construing it. *People v. Casas*, 2017 IL 120797, ¶ 18 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous."). I would find the statute read in its entirety, giving meaning to each and every word, is unambiguous.

¶ 62 The statute does not limit its applicability to specific drug use or drug possession offenses. As the appellate court concluded, if the legislature had intended a narrow application of section 5-4-1(c-1.5) (730 ILCS 5/5-4-1(c-1.5) (West 2022)) incorporating only drug use and possession offenses, it would not have employed "involves." 2023 IL App (2d) 230067, ¶ 36. For example, instead of using the word "involves," the legislature could have enacted the sentence reduction statute to unambiguously apply to a narrow and specific subset of drug offenses if it so intended. Significantly, that is exactly what the legislature did when addressing the sentence reduction statute's applicability to offenses involving "driving on a revoked license *due to unpaid financial obligations*." (Emphasis added.) 730 ILCS 5/5-4-1(c-1.5) (West 2022). The legislature was consciously aware of its ability to include such limiting language. It therefore logically follows that the legislature could have restricted the sentence reduction statute's application to offenses involving use or possession of drugs as defined in the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.* (West 2022)), the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 *et seq.* (West 2022)), the Cannabis Control Act (720 ILCS 550/1 *et seq.* (West 2022)), and the Use of

Intoxicating Compounds Act (720 ILCS 690/0.01 *et seq.* (West 2022)). Or the legislature could have restricted the statute's application based on the class of the offense or the nonviolent nature of the offense. It, however, did not include any of the above restrictions or limiting language. Instead, the legislature consciously chose for the statute to plainly apply "if: (1) the offense involved the use or possession of drugs." 730 ILCS 5/5-4-1(c-1.5) (West 2022).

¶ 63 The legislature's placement of the words "offense involves" before the words "use or possession of drugs," without any additional limiting language or citations of specific criminal statutes, illustrates its unambiguous intent for the statute to include all offenses that "involve[d] the use or possession of drugs," as opposed to merely applying to a possession or use of drug offense under a particular criminal statute. See *id.* Put simply, the sole condition precedent to the satisfaction of this portion of the sentence reduction statute is that the "offense involves the use or possession of drugs." *Id.* Unlike the majority, I would hold that the legislature's selection of this unambiguous language illustrates its clear intent to widen the statutory scope of the sentence reduction statute to allow trial courts to exercise discretion to impose a lower sentence in circumstances where the offense "involves the use or possession of drugs" and the respective "public safety" and "interest of justice" requirements of the statute are also met. *Id.*

¶ 64 The remaining question therefore with respect to the instant case is whether the offense of drug-induced homicide constitutes an offense that "involves the use or possession of drugs." *Id.* The offense has two elements: (1) the defendant "unlawfully deliver[ed] a controlled substance to another," and (2) a "person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance." 720 ILCS 5/9-3.3(a) (West 2018). The indictment here alleged defendant "unlawfully delivered" heroin to Haseltine and Haseltine's subsequent "injection, inhalation, absorption, or ingestion" of the heroin resulted in Haseltine's death. The appellate court correctly explained that defendant could not have delivered the heroin without possessing it. 2023 IL App (2d) 230067, ¶¶ 32-33. " 'Deliver' or 'delivery' means the actual, constructive or attempted transfer of *possession of a controlled substance*, with or without consideration, whether or not there is an agency relationship." (Emphasis added.) 720 ILCS 570/102(h) (West 2018). The State acknowledged the applicability of this definition during the proceedings in the trial court and conceded that "one has to possess drugs before

one can deliver them." Even the majority itself tepidly acknowledges the legal truth that one cannot knowingly deliver a drug without first knowingly possessing it. *Supra* ¶¶ 25, 38. It therefore logically follows that the first element the State was required to prove to convict defendant of drug-induced homicide—unlawful delivery of heroin to Haseltine—unambiguously "involves" the "possession" of a drug (heroin). Likewise, the second element the State was required to prove to convict defendant of drug-induced homicide—Haseltine's "injection, inhalation, absorption, or ingestion" of the heroin resulting in her death—unambiguously "involves" the "use" of a drug (heroin). Accordingly, I would hold that the offense of drug-induced homicide constitutes an offense that "involves the use or possession of drugs."

¶ 65 For these reasons, I would affirm the appellate court's judgment vacating defendant's six-year sentence and remanding this cause for the trial court to consider whether to impose a sentence under section 5-4-1(c-1.5) of the sentence reduction statute. 730 ILCS 5/5-4-1(c-1.5 (West 2022).

¶ 66 While the following portion of my dissent is not necessary to my dispositional analysis above, I would be remiss if I did not offer comment on the further flawed reasoning of the majority after it found the sentence reduction statute to be ambiguous. Upon finding the statute ambiguous, the majority proceeds to find ambiguity throughout the statute's legislative history. Because I have found the statute to be unambiguous, I offer no comment on its legislative history. *People v. Reyes*, 2023 IL 128461, ¶ 30 (courts do not consider legislative history when a statute is unambiguous). However, to summarize, the majority finds the following ambiguous: (1) the individual word "involves" (*supra* ¶ 23), (2) the relevant nine words—"the offense involves the use or possession of drugs" (*supra* ¶ 23), and (3) the statute's legislative history (*supra* ¶ 30). At this point, there is no remaining text or history for the majority to examine. Ignoring this reality, the majority curiously proceeds to reject defendant's argument that "the rule of lenity requires us to construe the statute in her favor." *Supra* ¶ 46. The sole stated basis for the majority's rejection: "[W]e are not presented with a grievous ambiguity requiring us to apply the rule of lenity." *Supra* ¶ 47. Such a finding prompts the question: If the statute in question is deemed to be ambiguous, along with the statute's entire legislative history, what remains to be deemed ambiguous before the existing ambiguity qualifies to be one of a grievous nature? In pondering this question, I

believe the majority compounds its error by failing to apply the rule of lenity, considering its multiple findings of ambiguity. There is simply nothing of substance remaining for the majority to review. Put more plainly, all the ambiguity boxes have been checked. This court, citing a case from 1820, recently stated: "In construing a criminal statute, courts must resist the impulse to speculate regarding legislative intent, for 'probability is not a guide which a court, in construing a penal statute, can safely take.' " *People v. Hartfield*, 2022 IL 126729, ¶ 69 (quoting *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 105 (1820)); see *United States v. Davis*, 588 U.S. 445, 464 (2019); *People v. Gaytan*, 2015 IL 116223, ¶ 39; *Fitzsimmons v. Norgle*, 104 Ill. 2d 369, 374 (1984). The majority violates this precedent by not applying it to the instant case.

¶ 67 Instead of adhering to our cautionary precedent and applying the rule of lenity in defendant's favor, however, the majority succumbs to "the impulse to speculate regarding legislative intent." *Hartfield*, 2022 IL 126729, ¶ 69. In doing so, the majority compares what it believes to be two reasonable interpretations of the sentence reduction statute and proceeds to pick the one it concludes will lead to the least absurd result. To emphasize, the majority's entire dispositional outcome in the instant case rests upon speculating whether the application of the sentence reduction statute to the instant case will lead to absurd results in future hypothetical scenarios. While the majority claims otherwise, its analysis is not grounded in "traditional tools of statutory construction." *Supra* ¶¶ 46-47. Specifically, the majority presents a list of offenses it contends exemplify the absurd results of expansively interpreting the sentence reduction statute to include delivery offenses that therefore involve drug possession. These offenses include unauthorized delivery of contraband, including controlled substances, to an inmate (720 ILCS 5/31A-1.2(c), (e) (West 2022)); delivery of a controlled substance within 500 feet of a school when minors are present (720 ILCS 570/407(b)(1) (West 2022)); racketeering predicated on methamphetamine delivery (720 ILCS 5/33G-3(e)(4), 33G-4, 33G-5, (West 2022)); felony murder predicated on delivery or possession of a controlled substance (*id.* § 9-1(a)(3); 730 ILCS 5/5-4.5-20 (West 2022)); armed violence predicated on possession of a controlled substance (720 ILCS 5/33A-2(a) (West 2022)); predatory criminal sexual assault committed by delivering a controlled substance to the victim (*id.* § 11-1.40(a)(2)(D), (b)); and aggravated criminal sexual assault by delivering any controlled substance to a victim (*id.* § 11-1.30(a)(7), (d)). *Supra* ¶¶ 38-39, 41.

¶ 68 Importantly, none of the above scenarios are before us today. See *People v. Bass*, 2021 IL 125434, ¶ 29 (reviewing courts do not decide "moot or abstract questions, will not review cases merely to establish precedent, and will not render advisory opinions"). Our analysis must be limited to the case and facts presently before us. See *id.* More specifically, the question is not whether a reviewing court can contrive a hypothetical absurd result that *may* arise in the future if the sentence reduction statute is applied in the instant case. The appropriate question is instead whether the "proffered reading of a statute leads to absurd results." *Dawkins v. Fitness International, LLC*, 2022 IL 127561, ¶ 27; see *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27; *People v. Johnson*, 2017 IL 120310, ¶ 15; *People v. Hanna*, 207 Ill. 2d 486, 498 (2003). Importantly, the appropriate question is one of present tense form; not future tense form. Reviewing the present circumstances, I note that the trial court stated it would be inclined to sentence defendant to a term of probation had it believed such an option was available. The court stated: "Certainly if the court had broad discretion in imposing a sentence, it may very well be that a term of probation would be appropriate under the very specific facts of this case." The majority's creation of hypothetical scenarios it arbitrarily finds to be absurd is not a "traditional tool[ ] of statutory construction." *Supra* ¶¶ 46-47. " '[T]he absurd results doctrine should be used sparingly because it entails the risk that the judiciary will replace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said.' " *In re D.F.*, 208 Ill. 2d 223, 250 (2003) (Freeman, J., specially concurring, joined by McMorrow, C.J.) (quoting 2A Norman J. Singer, Sutherland on Statutory Construction § 46:07, at 199 (6th ed. 2000)).

¶ 69 Lastly, the majority's hypothetical and speculative discussion dismisses entirely the fact that the sentence reduction statute is discretionary in nature and contains two additional requirements that the trial court must determine exist prior to being afforded said discretion. Specifically, the trial court must find that the defendant poses no risk to public safety and that the interests of justice support a reduction in the statutory minimum sentence. 730 ILCS 5/5-4-1(c-1.5) (West 2022). Here, in sentencing defendant, the trial court found that defendant did not pose a risk to the public and that, although the State, defendant, and Haseltine's family all wanted to satisfy the interests of justice, there was "no agreement as to what form that justice should take." Unlike the majority, I will not render judgment on cases or specific issues that may appear before this court in the future; however,

I will note that the legislature, via these two additional requirements, makes clear that merely being convicted of an offense involving "use or possession of drugs" will not automatically entitle a defendant to a reduced sentence, as the majority seems to believe. The sentence reduction statute unambiguously requires that all three factors are satisfied first and only then "*may*" the trial court impose a reduced sentence. (Emphasis added.) *Id.* Indeed, the fact that the statute "*may*" apply to a defendant who committed one of the hypothetical offenses proposed by the majority does not mean that the defendant will ultimately be deemed eligible for a reduced sentence when the other two statutory factors are considered. And even if all three statutory factors are met, that does not mean the trial court will ultimately exercise its discretion and sentence the defendant to a reduced sentence. The majority chooses to ignore this reality and instead rests its entire dispositional conclusion on hypothetical scenarios and imaginary defendants that are not before us today.

¶ 70 To summarize, the sentence reduction statute is unambiguous. The offense of drug-induced homicide involves both the use and possession of drugs. Accordingly, the appellate court's judgment vacating defendant's six-year sentence and remanding this cause for the trial court to consider whether to impose a sentence under section 5-4-1(c-1.5) of the sentence reduction statute must be affirmed. Alternatively, if *both* the text and legislative history of the sentence reduction statute are ambiguous, as the majority finds, we have no choice but to apply the rule of lenity under our existing precedent.

¶ 71 For these reasons, I dissent.

¶ 72 JUSTICES NEVILLE and ROCHFORD join in this dissent.

## APPENDIX C

Petition for rehearing in the Illinois Supreme Court

(July 17, 2025)

No. 130344

IN THE

SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Appellate Court of Illinois, No. 2-23-0067. |
| Plaintiff-Appellant, | ) | |
| | ) | There on appeal from the Circuit |
| -vs- | ) | Court of the Twenty-Third Judicial |
| | ) | Circuit, Kendall County, Illinois, No. |
| | ) | 18 CF 395. |
| KRYSTLE HOFFMAN, | ) | |
| | ) | Honorable |
| Defendant-Appellee. | ) | Robert P. Pilmer, |
| | ) | Judge Presiding. |

# PETITION FOR REHEARING FOR DEFENDANT-APPELLEE

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## PETITION FOR REHEARING FOR DEFENDANT-APPELLEE

**This Court should grant rehearing because the majority's ruling defies fundamental principles of statutory construction to conclude 730 ILCS 5/5-4-1(c-1.5) is ambiguous, and violates Krystal Hoffman's due process rights by rejecting the rule of lenity.**

In a divided opinion, this Court reversed a unanimous appellate court and departed from the cardinal rules of statutory interpretation to conclude that section 5-4-1(c-1.5) of the Unified Code of Corrections (730 ILCS 5/5-4-1(c-1.5) (2022)) is ambiguous and applies only to defendants convicted of "the mere possession of drugs." *People v. Hoffman*, 2025 IL 130344, ¶¶ 45, 55, 72 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.). The majority relied on hypothetical scenarios to conclude Hoffman's interpretation of the statute *might* lead to absurd results. *Id.* ¶¶ 37-41 (majority opinion). In resolving the perceived ambiguity in the statute based on such speculation, the majority declined to adhere to the long-held principle that "ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor," *United States v. Davis*, 588 U.S. 445, 464 (2019), and denied Krystal Hoffman her constitutional right to due process. The thoughtful and well-reasoned dissent—which the majority did not acknowledge—adhered to long-established principles of statutory construction. For the reasons below, Ms. Hoffman respectfully asks this Court to reconsider its decision.

**(1) The statute at issue applies to a wide range of serious offenses that require a mandatory minimum.**

The majority began its analysis with a flawed premise: "The legislature seemingly intended to allow the trial court to depart from mandatory minimum prison terms for certain offenses that it deemed to be less serious. Beyond that

little is clear." *Hoffman*, 2025 IL 130344, ¶ 18. Nothing in the plain language of the statute suggests it is intended only for "less serious" offenses. In fact, the language indicates the opposite because the statute is only implicated when an offense requires a mandatory minimum sentence.730 ILCS 5/5-4-1(c-1.5). Generally, only the most serious offenses require mandatory prison sentences, 730 ILCS 5/5-5-3(c)(2) (2022), and it is presumed that the legislature was aware of the grave nature of those offenses when it enacted section 5-4-1(c-1.5). *DeGrand v. Motors Insurance Corporation*, 146 Ill. 2d 521, 526 (1992) ("It is presumed that the legislature, in enacting various statutes, acts rationally and with full knowledge of all previous enactments. [Citation.]"). Thus, the fact that section 5-4-1(c-1.5) applies only when a mandatory minimum sentence is required demonstrates the legislature's intent that it apply to serious offenses.

**(2) Where the plain language of the statute is unambiguous, the majority's ruling renders superfluous the words "involves" and "use," and reads into the statute exceptions and limitations which do not exist.**

A cardinal rule of statutory interpretation is that each word and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). A correlated tenet is that a court "may not depart from the plain language and meaning of a statute by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *People v. Legoo*, 2020 IL 124965, ¶ 14. As set forth in the dissent, the majority opinion defies both fundamental principles. *Hoffman*, 2025 IL 130344, ¶¶ 57-65 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.).

The Court here held that "section 5-4-1(c-1.5)'s reference to an offense that

involves drug possession authorizes a trial court to deviate from a mandatory minimum prison term for the mere possession of drugs, not for any and all offenses that implicate drug possession, provided that the statute's other requirements are satisfied." *Id.* ¶ 45 (majority opinion). According to this reasoning, section 5-4-1(c-1.5) applies only to violations of the following statutes:

> 720 ILCS 570/402. Possession unauthorized by this Act; penalty: "Except as otherwise authorized by this Act, it is unlawful for any person knowingly to possess a controlled or counterfeit substance or controlled substance analog."
>
> 720 ILCS 646/60(a). Methamphetamine possession: "It is unlawful knowingly to possess methamphetamine or a substance containing methamphetamine."
>
> 720 ILCS 550/4. Possession of cannabis; violations; punishment: "Except as otherwise provided in the Cannabis Regulation and Tax Act and the Industrial Hemp Act, it is unlawful for any person knowingly to possess cannabis."

This Court adopted the State's argument that the legislature referred to an offense that "involves drug possession as an alternative to listing every statutory possession offense." *Hoffman*, 2025 IL 130344, ¶¶ 20, 44. However, listing every possession offense would not have been a cumbersome task. The General Assembly could have easily enumerated the three statutes that fall within section 5-4-1(c-1.5)'s ambit. See *People v. McCarty*, 223 Ill. 2d 109, 125 (2006) ("In the absence of the legislature's express statement of such a limitation, we decline to read one into the statute"); *People v. Savory*, 197 Ill. 2d 203, 213 (2001) (finding that if the legislature intended to limit the application of the statute, "it would have chosen a different way of expressing the statutory requirements").

In fact, in May of 2025, just one month before the opinion at hand was released, this Court issued a unanimous decision quoting a case from more than

100 years ago which warned against reading into a statute limitations and exceptions that do not exist. *People v. Wallace*, 2025 IL 130173, ¶ 18. In *Wallace*, this Court stated:

> The plain and obvious meaning of the language used by the Legislature is generally the safest guide to follow in construing any act. Seeking hidden meanings at variance with the language used is a perilous undertaking, which is as apt to lead to an amendment of a law by judicial construction as to arrive at the actual thought in the legislative mind. *Illinois Publishing & Printing Co. v. Industrial Comm'n*, 299 Ill. 189, 196 (1921).

Here, citing dictionary definitions, this Court determined the word "involves" is susceptible to different meanings and "well-informed persons could understand 'involves' in multiple ways." *Hoffman*, 2025 IL 130344, ¶¶ 23-24. Specifically, this Court stated:

> A reasonably well-informed person could understand this statute to allow the trial court to deviate from a mandatory sentence for any offense that requires mere drug possession, to the exclusion of other conduct, regardless of where the offense appears in the Criminal Code. A reasonably well-informed person could also, however, understand the statute to permit the trial court to deviate from a mandatory minimum prison term for any offense that includes the possession of drugs in addition to other conduct. *Id.* ¶ 23.

On the contrary, a reasonably well-informed person would *not* interpret the statute to mean deviation is permitted for "any offense that requires mere drug possession" because the plain language of the statute expressly provides that the offense "involves the use or possession of drugs." It does not use the word "require" nor does it use the word "mere." The canons of statutory construction prohibit such an interpretation because it ignores the actual language lawmakers saw fit to use.

As discussed in the dissent, "the common understanding and usage of the term 'involves' in our everyday vocabulary is not an abstract principle or amorphous concept." *Id.* ¶ 59 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.). The Seventh Circuit found it unambiguous as well, stating, "The plain and ordinary meaning of 'involved' means 'to include.'" *United States v. Arnaout,* 431 F.3d 994, 1002-03 (2005). By finding the word "involves" ambiguous, the majority defies the fundamental principle of statutory construction that a statute's plain language is given its ordinary meaning.

The majority holding in this case also rendered the word "use" in the statute superfluous. In fact, in finding the defendant's interpretation of the statute would lead to absurd results, the majority did not acknowledge that the statute even includes the word. Instead, the majority omitted the word "use" from the phrase "involves the use or possession of drugs" and replaced it with "involves the *** possession of drugs" to find that section 5-4-1(c-1.5) "cannot mean any offense that includes or necessarily entails possession and, in turn, delivery." *Hoffman*, 2025 IL 130344, ¶¶ 43, 44.

Although legislative history need not be consulted because the statute is unambiguous, it is notable that "use" was specifically added to the statute in the legislature's fourth and final amendment. 101st Ill. Gen. Assem., House Bill 1587, 2019 Sess. (amended April 5, 2019). The majority here stated the defendant "has not, however, explained the import of that significance." *Hoffman,* 2025 IL 130344, ¶ 29. The significance is clear. Adding the word "use" purposefully broadens the reach of the statute to go beyond offenses for the "mere possession" of drugs.

In *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm'n*, 2017 IL 121302, ¶ 42, this Court declined to "rewrite the statute to reinsert language the General Assembly affirmatively removed." By dismissing the inclusion of the word "use," the decision here does just that—it rewrites section 5-4-1(c-1.5) to omit language the General Assembly affirmatively *added*. This violates fundamental rules of statutory construction. As this Court stated in *People v. Smith*, 2016 IL 119659, ¶ 28, "No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include."

The majority then went on to say, "We also observe that, because a person must 'possess' a drug to 'use' it, the addition of 'use' undermines defendant's argument that section 5-4-1(c-1.5) encompasses delivery offenses solely because delivery requires possession." *Hoffman*, 2025 IL 130344, ¶ 29. While Ms. Hoffman does contend that since delivery requires possession, the crime of drug-induced homicide is subject to section 5-4-1(c-1.5), that interpretation does not render the word "use" superfluous. As noted in the dissent, one of the elements of drug-induced homicide is that a person's death must have resulted from the "inhalation, absorption, or ingestion" of a drug. *Id.* ¶ 64 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.). Thus, drug-induced homicide also requires use of a drug. If lawmakers intended section 5-4-1(c-1.5) to be confined only to offenses for the "mere possession" of drugs, it would not have chosen to use the broad terms "involve" and "use." Therefore, adding the word "use" to the statute evinces the legislature's intent that section 5-4-1(c-1.5) apply to a range of

offenses.

This majority's interpretation of the statute also disregarded the word "or" in the statute. The word "or" is disjunctive. *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, ¶ 36 ("Disjunctive therefore connotes two different alternatives. [Citation.]"). The legislature's use of "or" in section 5-4-1(c-1.5) indicates that the statute applies to an offense that involves the use of drugs or, alternatively, involves the possession of drugs.

The majority holding here that section 5-4-1(c-1.5) applies only to the "mere possession of drugs" contravenes the basic principle that no part of a statute should be rendered meaningless or superfluous. *People v. Lane*, 2023 IL 128269, ¶ 13. As this Court has said, "We apply the statutes of this state as written, and do not carve out exceptions that do not appear in the statute simply because we do not like how the statute applies in a given case." *In re C.C.*, 2011 IL 111795, ¶ 41; see also *Illinois Landowners Alliance,* 2017 IL 121302, ¶ 50 ("Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court's own idea of orderliness and public policy").

In construing a statute, a court "should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it." *People v. Christopherson*, 231 Ill. 2d 449, 454 (2008). The apparent objective of section 5-4-1(c-1.5), based on its plain language, was to provide trial courts the option to deviate from mandatory minimum prison sentences when incarceration would be unjust. Such is the case here, where even the trial court said it would consider probation if it could. *Hoffman*, 2025 IL

130344, ¶ 68 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.).

**(3) By relying on the absurd results doctrine to resolve the statute's alleged ambiguity and rejecting application of the rule of lenity, the ruling here defies the stated intent of the legislature and amounts to an advisory opinion which denies Ms. Hoffman her right to due process under the law.**

Having found section 5-4-1(c-1.5) ambiguous, the majority looked to the legislative history for clarity. *Hoffman*, 2025 IL 130344, ¶ 26. But it found none, stating that the legislative history "supports neither party." *Id.* ¶ 27. This determination disregards the explicitly stated intent of legislators.

Throughout the proceedings, Ms. Hoffman argued that lawmakers clearly articulated their intent in crafting this legislation. Representative Harper said the measure was intended to give "smart sentences to individuals who are convicted of a crime but do not pose a threat to public safety." 101st Ill. Gen. Assem., House Proceedings, April 11, 2019, at 175 (statements of Representative Harper). Representative Skillicorn, a self-identified conservative, supported the bill in part because it gave judges and prosecutors "the ability to impose something other than that mandatory minimum and get that person back to functioning in society as quickly as possible." 101st Ill. Gen. Assem., House Proceedings, April 11, 2019, at 179-80 (statements of Representative Skillicorn). Senator Sims subsequently said, "We are not going to act as a super-judiciary; we are allowing the judges to then make the—make—use their discretion to make the decisions that they're charged with making." 101st Ill. Gen. Assem., Senate Proceedings, May 24, 2019, at 175 (statements of Senator Sims).

The majority here found the comments made during the debates "shed no light on which offenders should be returned to society or which mandatory minimums were considered to have been unduly harmful." *Hoffman*, 2025 IL

130344, ¶ 30. This interpretation presupposes the statute was meant to apply to a specific subset of defendants and offenses. On the contrary, the debates, which are detailed in Ms. Hoffman's brief, (Def. Br. at 31-38), as well as the language of the statute itself, confirm that section 5-4-1(c-1.5) was designed to be broad in order to give trial court judges the discretion to sentence defendants based on the specific facts of each individual case.

Finding the legislative history "does not clarify what the collective legislative body intended" when section 5-4-1(c-1.5) was enacted, the majority resolved this case by relying exclusively on the absurd results doctrine. As the dissent stated, "the majority's entire dispositional outcome in the instant case rests upon speculating whether the application of the sentence reduction statute to the instant case will lead to absurd results in future hypothetical scenarios." *Hoffman*, 2025 IL 130344, ¶ 67 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.); see also *People v. Bass*, 2021 IL 125434, ¶ 29 ("Courts of review will not decide moot or abstract questions, will not review cases merely to establish precedent, and will not render advisory opinions").

Application of the absurd results doctrine allowed this Court to decide Ms. Hoffman's fate based on imagined fact patterns that *might* be presented to a court at some point in the future. For example, it noted that under defendant's interpretation of the statute, the following offenses would be eligible for a downward deviation: predatory criminal sexual assault of a child by delivering any controlled substance to the victim and aggravated criminal sexual assault by delivering any controlled substance to the victim would fall within the statutes purview. *Hoffman*, 2025 IL 130344, ¶ 40. The statute, however, provides that deviation from the mandatory minimum prison sentence *may* be considered *only*

if the trial judge finds, on the record, that a defendant is not a threat to the public *and* the interest of justice requires a deviation. 730 ILCS 5/5-4-1 (c-1.5). As the dissent opined, "The majority chose to ignore this reality and instead rests its entire dispositional conclusion on hypothetical scenarios and imaginary defendants that are not before us today." *Hoffman*, 2025 IL 130344, ¶ 69 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.).

The absurd results feared by the majority assumes a trial court will affirmatively ignore the safeguards embedded in the statute. That assumption disregards the well-established principle that "the trial court is presumed to know the law and apply it properly." *People v. Schoonover*, 2021 IL 124832, ¶ 40 (quoting *People v. Howery*, 178 Ill. 2d 1, 32 (1997)). Even if this Court has reservations about the extent of discretion provided to trial courts via this statute, it is not the role of the judiciary to question the wisdom of the legislature. *Lawrie v. Department of Public Aid*, 72 Ill. 2d 335, 348 (1978) ("it is not the function of this court to 'second guess' the wisdom of the legislature).

Finally, this Court refused to apply the rule of lenity because it "resolved the specific ambiguity before us by using traditional tools of statutory construction to determine the legislature's intent." *Hoffman*, 2025 IL 130344, ¶ 47. According to the majority, the purported ambiguity in the statute was not grievous, obviating the need for the rule of lenity. *Id.* But a concurrence in *Wooden v. United States*, 595 U.S. 360, 392 (Gorsuch, J., concurring, joined in part by Sotomayor, J.), tracing the history of the rule, doubts the value of differentiating between a mere ambiguity and a grievous one. Justice Gorsuch observed:

> This "grievous" business does not derive from any

> well-considered theory about lenity or the mainstream of this Court's opinions. Since the founding, lenity has sought to ensure that the government may not inflict punishments on individuals without fair notice and the assent of the people's representatives. [Citation.] A rule that allowed judges to send people to prison based on intuitions about "merely" ambiguous laws would hardly serve those ends. *Id.*

Similarly, the dissent here challenged the propriety of relying on the purported lack of a grievous ambiguity to reject the rule of lenity. It argued the majority's finding "prompts the question, 'If the statute in question is deemed to be ambiguous, along with the statute's entire legislative history, what remains to be deemed ambiguous before the existing ambiguity qualifies to be one of a grievous nature?'" *Hoffman*, 2025 IL 130344, ¶ 66 (O'Brien, J., dissenting, joined by Neville and Rochford, JJ.). It continued, "Put more plainly, all the ambiguity boxes have been checked." *Id.*

The dissent further observed that by rejecting the rule of lenity here, the majority violated long-standing precedent this Court recently reaffirmed in its *Hartfield* decision. *Id.* ¶¶ 66-67 (citing *People v. Hartfield,* 2022 IL 126729, ¶ 29). Quoting a case from 205 years ago, the *Hartfield* Court stated: "In construing a criminal statute, courts must resist the impulse to speculate regarding legislative intent, for 'probability is not a guide which a court, in construing a penal statute, can safely take.'" *Hartfield*, 2022 IL 12677729, ¶ 29 (quoting *United States v. Wiltberger,* 18 U.S. (5 Wheat.) 76, 105 (1820)). Contrary to well-established principles of law, the majority here relied on the probability of absurd results to construe this statute against Ms. Hoffman.

Ultimately, this Court's refusal to apply the rule of lenity violates Ms. Hoffman's state and federal constitutional due process rights. Ill. Const. 1970, art.

I, § 2; U.S. Const., amends. V, XIV. As the Supreme Court has stated, "the rule [of lenity] exists in part to protect the Due Process Clause's promise that 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed.'" *Bittner v. United States*, 598 U.S. 85, 102 (2023) (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931)); see also *United States v. Davis*, 588 U.S. 445, 464-65 (2019) (noting the rule of lenity "is founded on 'the tenderness of the law for the rights of individuals' to fair notice of the law 'and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department.' [Citation.]"). Here, if the statute is indeed ambiguous, it is this Court's duty to construe it in favor of Ms. Hoffman because it is she—not imaginary defendants—who will be deprived of her liberty if this decision stands.

For the reasons set forth above, Ms. Hoffman respectfully requests this Court grant rehearing and adopt the analysis set forth by the dissent.

## CONCLUSION

For the foregoing reasons, Krystle Hoffman, defendant-appellant, respectfully requests that this Court grant this petition for rehearing.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-APPELLANT

## CERTIFICATE OF COMPLIANCE

I certify that this petition conforms to the requirements of Supreme Court Rules 341(a) and 367(a) and (c). The length of this petition, excluding the pages contained in the Rule 341(d) cover, the Rule 367(a) certificate of compliance, and the certificate of service, is 13 pages.

/s/Ann Fick
ANN FICK
Assistant Appellate Defender

## APPENDIX D

Order of the Illinois Supreme Court denying petition for rehearing

(September 22, 2025)

# SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
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September 22, 2025

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Ann Marie Fick
Office of the State Appellate Defender
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In re: People v. Hoffman
130344

Dear Ann Marie Fick:

The Supreme Court today entered the following order in the above entitled cause:

Petition for rehearing denied.

The mandate of this Court will issue to the Appellate Court and/or Circuit Court or other agency on 10/27/2025.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Aron Michael Williams
Attorney General of Illinois - Criminal Division
Appellate Court, Second District
Garson Steven Fischer
Katherine Marie Doersch
State's Attorney Kendall County
Victoria Elizabeth Jozef